

CHAPTER 5

DISCUSSION, RECOMMENDATIONS AND CONCLUSION

5.1 Introduction

This chapter will summarize this research that has been conducted since year 2020. Besides, it also discuss the implication and recommendation for future study.

5.2 Discussion of Findings

One of the most important findings relates to this study is the healthcare professionals who works in crisis management have knowledge about Legal Risk. Starting from identifying Legal Risk using LRIM, these professionals has select the related legal area for each of Legal Risk similar to what have been validated by the expert respondent. Thus, these healthcare professionals has understand well the legal consequences that will take place in the event of bomb threat and evacuation process. Instead of that, where there are lack data for certain incident such as bomb threat, the risk analysis process will use the judgment from purposive or expert respondent. Difficulties that has been highlighted by Barrera (2017) in the research regarding bomb threat shows that the bomb threat event is a rare event and no abundant data available. However, although having problem with the data, the implementation of risk scale in determining likelihood and impact/consequences for the incident is very important. Only the respondent who has real experience based on the incident can provide good risk analysis input. Furthermore, in this study, it has been found that the most potential

Legal Risk during bomb threat and evacuation in Malaysia are medical negligence to emergency patient, late Evacuation Order – Liability of Public Authorities or The Organization and Tort Claim from Employee to the Organization.

Instead of that, each hospital management must aware that the bomb threat and evacuation process are unavoidable for hospital operation. In LRM, this is called as Legal Risk Acceptance/Tolerance. The hospital management also must knew that there is non-existence of predetermined uniform procedure for hospital evacuation. The hospital evacuation procedure is unique to each hospital as every hospital is different in terms of building arrangement, number of staff and geographical location.

For all 11 Legal Risk that has been identified and validated, it is figured out that the healthcare institution, they have put in place Legal Risk mitigation inside their crisis management program. However, they cannot overlook on what the expert respondent mentioned about good communication between the premise owners with the third party contractor during the installation of firefighting and prevention equipment for the purpose of insurance/takaful law contract. Besides, formulating good working system in terms of document keeping can help in preserving the evidence in crisis. Other than that, when discussing bomb threat and evacuation, the role of Bomb Disposal Unit (BDU) from Royal Malaysian Police and Hazardous Material Team (HAZMAT), Department of Fire and Rescue, cannot be ignored, especially in the matter relating Public Order situation & Terrorist Act. Legal Risk Mitigation action must involve them to give broad recommendation in managing these situation

Table 4.1, 2.5 and 2.6 will be referred for discussion of finding. There are 3 Operational Legal Liabilities during crisis which are Planning, Crisis Decision-Making and Evacuation. The 11 Potentials Legal Risk fall under one of these 3 categories. These finding will be discussed together with relevant literature review, relevant case law,

mitigation action from KPJSSH and additional mitigation action from the expert (if related).

5.2.1 Evidence Law-Evidence Gathering

For Potential Legal Risk No.1, this legal risk fall under Operational Legal Liabilities in Planning, because it is more on the Crisis Planning from the organization. Once the hospital operator received the bomb threat call, he/she should response by obtaining more information about the bomb from the caller by referring to the relevant SOP. The SOP must include on how the conversation can be recorded as it can be used as evidence for criminal and civil litigation after the bomb threat incident occurred. The operator should alert the Hospital Security Officer regarding the call. The recording of Closed-Circuit Television (CCTV) for entrance and exit point of the hospital can be referred to identify potential suspect. Therefore, the call recording and CCTV recording can be considered as evidence, must be kept safely for investigation and to be admissible in court trial. Evidence collection method must be put in the SOP of bomb threats and evacuation. By referring to the case of *PP v Ong Cheng Heong (1998)* and *Ahmad Najib bin Aris v PP (2009)*, if the CCTV or telephone conversation recording is not being supported by certificate of operation or oral evidence of the person in-charge, these recording may not be admissible in trial. Thus, it will impose legal risks to the hospital in term of failure to assisting the government authorities in finding the suspect. The recording also can be used for defense in civil litigation if there is civil suit claiming the negligence of the hospital in providing adequate security to the patients, visitors and employees.

For this potential legal risk, the risk ranking score is 3 which is Lower Risk. The probability of occurrence is Possible with Negligible impact or probability of

occurrence is rare with Moderate impact. This potential legal risk can be mitigated by risk control. Good SOP Formulation and Planning can help the hospital to train the employee regarding evidence collection.

According to KPJSSH, their premise has adequate power supply backup and CCTV recording storage during emergency has been prepared by the hospital. Besides, the person who enter the premise for work need to apply Permit To Work (PTW) from the management before starting the work. The record of person enter and exit certain area in the hospital also has been made compulsory.

For additional mitigation action, the court judge has suggest that evidence gathering system can be done by creating good routine system. As example, by keeping the related documents such as maintenance record of important system, such as security system which recording the individual who entering and exiting the building. Plus, also for the CCTV recording footage.

5.2.2 Evidence Law-Non-admissible of Evidence

For Potential Legal Risk No.2, this legal risk fall under Operational Legal Liabilities in Planning, because it is more on the Crisis Planning from the organization. The definition of computer evidence by referring to the court have 3 different terms which are computer printout, computer output and computer evidence. In the case of *PP v Ong Cheng Heong [1998] 6 MLJ 678*, the evidence was presented as computer printouts and the court refused to accept computer printouts as electronic evidence because the person who presented the printouts identified himself only as the supervisor of the vehicle registration department and made no claim of responsibility for the conduct of the activities for which the relevant computer was used. This court ruling

portrayed the legal risk for not having proper evidence collection method where at the end of the trial, the evidence is not admissible because of it has been tainted.

For this potential legal risk, the risk ranking score is 2 which is Lower Risk. The probability of occurrence is Rare with Minor impact or the probability of occurrence is Unlikely with Negligible impact. Thus, in crisis management, the employer must train their employees in legal issues such as evidence identification and preservation, as well as procedures for dealing with witnesses. This is the Legal Risk Control or Treatment that can be implemented.

Instead of that, for mitigation action, in order to secure the data or evidence especially in electronic form, KPJSSH has implemented layer of protection has been used to safeguard the data. This including the usage of password to prevent unwanted intrusion for tampering the data.

The session court judge also proposed that for court trial, the person who produce the document (document maker) as evidence need to testify in court. This is to ensure the credibility of the evidence. If the person has practice good document keeping before, this practice will helps during court trial.

5.2.3 Tort Law-Employer's Liability

For Potential Legal Risk No.3, this legal risk fall under Operational Legal Liabilities in Planning, because it is more on the Crisis Planning from the organization. The hospital's emergency response team (ERT) should be trained regarding the Code Black (bomb threat incident) Plan. They should be skilled in finding suspicious person/package in the hospital. Thus, sufficient training must be provided to them in order to prevent them from getting harmed. In addition, suitable equipment and medical coverage must be provide to them. Referring to the case of *Kanagasabapathy v*

Narsingham [1979], failure of the hospital to provide sufficient training, equipment and medical coverage to the ERT, can pose legal risks. The ERT may be injured or harmed during bomb threat and evacuation.

The potential legal risk ranking score is 5 which is Lower Risk. The possibility of occurrence is almost certain with negligible impact or probability of occurrence is Rare with Extreme impact. For Legal Risk Transfer, the protection from the SOCSO for the employee can be obtain by the hospital management as the SOCSO protection is compulsory under the law. Besides, the hospital management also can provide the coverage to those who did being covered by SOCSO through Employers Liability Takaful.

For KPJ, this legal risk being mitigate by always informing the employee about evacuation order guideline for safe escape route during emergency situation and this also including preventing them to use the lift service. Besides, Group Personal Accident Insurance/Takaful also being subscribe to cover any staff who met with accident

5.2.4 Tort Law-Medical Negligence

For Potential Legal Risk No.4, this legal risk fall under Operational Legal Liabilities in Crisis Decision-Making by the organization. If the organization failed to decide properly the emergency medical base during evacuation and if the number of medical staff not sufficient, this may cause the medical staff to deny the treatment to those who need to be attend. During partial evacuation in emergency situation, the people involved includes patients, visitors, employees and others will be moved from the hospital to a safe point. In this situation, there might be injury caused by the evacuation process. Besides, if the bomb threat is real, the explosion can injured the victim. Therefore, the medical staff cannot deny the treatment to non-patient of the

hospital. If they failed to treat the injured person accordingly, the injured party sue the hospital as the case of *Lowns v Woods (1996)*.

This potential legal risk ranking score is 10 which is Medium Risk. The possibility of occurrence is almost certain with minor impact or probability of occurrence is Unlikely with Extreme impact. For Legal Risk Control, adequate training for Hospital Employee can helps in preventing medical negligence by utilizing scenario in emergency planning. This training can analyze the need for adequate skills and equipment for medical treatment during crisis.

For mitigation, KPJ always prepared the medical staff with adequate training especially when moving patient during emergency. Among the training including Basic Life Support (BLS) and Advanced Cardiac Life Support Training (ACLS). All level of staff need to underwent this training. This can increase the number of non-medical background staff to help in basic live saving during the evacuation and to avoid medical negligence omission.

5.2.5 Tort Law-Late Evacuation Order

For Potential Legal Risk No.5, this legal risk fall under Operational Legal Liabilities in Crisis Decision-Making because it is more on the organization and Government Authority. The decision making can be made by using available instrument which is proper to be used at crisis time. The party who has authority to order the evacuation also need to be addressed properly in written document. Besides, the decision-making for partial evacuation must be made with sufficient justification.

Wrong or late decision-making without proper justification can lead to legal risks under breach of duty of care. For evacuation decision-making, safe escape route is critical in

the line of authority for evacuation command and SOP. The line of authority must be clearly stated between the Government Authority and Private Hospital Management.

The potential legal risk ranking score is 9 which is Medium Risk. The possibility of occurrence is Possible with Moderate impact. Legal Risk Control can be implemented by referring to the case of *Abdul Aziz bin Awang @ Muhammad & Ors v Tenaga Nasional Bhd (2020)* where the justification must be made by using proper instrument before commencing decision-making. The evacuation decision-making can be supported by the installation of Fire Alarm Panel at the hospital. The Fire Alarm Panel can provide the information of the location of fire (in case the bomb explosion has occurred). Hence, the decision of safe escape route can be made by excluding the bomb explosion location from safety escape route. If the bomb did not explode yet, the Fire Alarm Panel can be used to prevent the usage of elevator to reduce the possible harm to evacuees if the explosion occurred.

For this legal risk mitigation, the KPJ Emergency Response Team (ERT) will conduct risk assessment in the event of emergency situation. KPJ ERT is the hospital asset since all the member of ERT has underwent training during emergency situation with Royal Malaysian Police and Fire Brigade. The output of risk assessment conducted by the ERT will be used as valuable guidance for the hospital management to decide proper decision based on the situation occurred. Besides, the decision to evacuate the building can be proposed during office hour since the hospital staff still available before they going home; in order to ensure sufficient manpower to move the patient.

For additional mitigation action, the HAZMAT Commander has suggest the usage of Fire Alarm Panel to notify the premise owner about the current situation in the building, based on the heat and smoke detector. This will helps in finding the safe escape

route during emergency. Besides, the information on the Fire Alarm Panel can help the Authority and Premise Owner in decision making.

Instead of that, the BDU Commander suggest that the trained search team for the bomb threat is very important during the incident. Usually, this team has been trained by the Royal Malaysian Police Bomb Squad, in order to identify the suspicious item. After finding the item, they need to inform the Police for further action. This will decrease the time taken for search the suspicious item, especially in the situation where the premise has many stories. Furthermore, the BDU carry out their job by using the standardized explosive handling guidelines prepared by the Royal Malaysian Police. The time taken to advice for evacuation will be done in careful manner because improper decision can cause difficulties to other party.

5.2.6 Tort Law-Safe Escape Route

For Potential Legal Risk No.6, this legal risk fall under Operational Legal Liabilities in Planning, because it is more on the Crisis Planning from the organization. According to KPJSSH incident report, 346 people have been evacuated. Therefore, with such number of people, the evacuation plan must be safe from any harmed such as obstruction along the safe escape route. The hospital must provide sufficient signage to safe evacuation point and exclude the route which consist of renovation/construction site. The information of renovation/construction site must be constantly updated in the Hospital Evacuation Plan. Daily patrol must be made to ensure the intended escape route as per evacuation plan is free from any blockage. The failure to provide safe escape route will cause legal risk as per case of *Sri Inai (Pulau Pinang) Sdn Bhd. V. Yong Jit Swee & Ors (2003)*.

For this potential legal risk, the risk ranking score is 2 which is Lower Risk. The probability of occurrence is Unlikely with Negligible impact or probability of occurrence is Rare with Minor impact. The Legal Risk Control also can be made by complying to OSHA 1994 and under Legal Risk Sharing, protection under Public Liability Takaful.

To mitigate this potential legal risk, KPJ always comply with the building safety requirement as per Ministry of Health (MOH) Licensing requirement and Sec.15 and 17 of OSHA. Routine inspection always being conduct to ensure the exit signage visible and no blockage at the stairs and exit pathway.

The HAZMAT Commander also suggest that The Safety Committee can play their role by finding the safe escape route during evacuation process. Usually, this committee consists of Incident Commander, Safety Officer, Floor Warden, Rescue Team, and Extinguishing Team. Floor warden play the important role as he needs to find safe escape route during evacuation and also to ensure everybody has left the premise. Besides, the premise owner also can use Public Address (PA) System to guide the victim to safely exit the building.

This is the same additional mitigation action proposed by BDU Commander where he suggest the usage of Public Address (PA) System important during bomb threat where the premise owner, at the beginning can call the trained search team which has been trained by Police, to gather and find the suspicious item in the building. This will reduce the panic among the victim and the safe escape route will not be crowded.

5.2.7 Tort Law-Temporary Shelter

For Potential Legal Risk No.7, this legal risk fall under Operational Legal Liabilities in Planning, because it is more on the Crisis Planning from the organization.

During the evacuation, the evacuees will move out from the building to the temporary shelter. In the case of bomb threat, as the evacuation order being declared because the building is not safe anymore, the temporary shelter should be erected to accommodate the evacuees safely. If the bomb explode, the impact of the explosion may hit the evacuees inside the temporary shelter. Besides, as anybody can enter the shelter, there might be terrorists or criminal will enter the shelter to harm the evacuees or stole the belongings of them. The danger from explosion can be referred as concealed danger if the shelter being erected near the glass window or combustible gas tank and this can be referred to the decided case of *Yeap Cheng Hock v Kajima-Taisei Joint Venture (1973)*

For this potential legal risk, the risk ranking score is 2 which is Lower Risk. The probability of occurrence is Unlikely with Negligible impact or probability of occurrence is Rare with Minor impact. For Legal Risk Control, integrating Building Information Modeling (BIM) and facilities can be used to develop efficient evacuation plans. Also, by using decision-making tools during training and exercises, administrators and public officials can enhance their abilities to make decision on evacuation and shelter-in-place plans

For this potential legal risk, KPJ has strategy on providing shelter to the victim by initiate horizontal evacuation follows by total building evacuation. Besides, KPJ routinely conduct exercise regarding the building evacuation to ensure the hospital staff familiar with the situation instead of making continuous assessment, the best evacuation distance. The security personnel also involved in this exercise.

The Court Judge also suggest that the adequacy of preparedness for the crisis by the hospital will be observed during court trial. This including how the hospitals prepare against emergency situation. Besides, the reasonableness of the organization to prepare the shelter immediately also being taken into consideration. Thus, adequate exercises

regarding the evacuation can be held to familiarize the hospital staff about the evacuation procedure.

5.2.8 Tort Law-Criminal Act of Third Party

For Potential Legal Risk No.8, this legal risk fall under Operational Legal Liabilities in Evacuation. During evacuation, there may be criminals taking advantages of this emergency situation. The criminals may be the bomb caller or other parties planning to take advantage of the crisis situation. The hospital management need to have all the information of enter and exit within the hospital building. In the critical areas such as chemical storage location, new born ward, the usage of access card and CCTV can ensure the area is well guarded. By having sufficient security measure, the criminal act of the third parties during bomb threat incident and evacuation process can be prevented. The failure to provide sufficient security measure can establish legal risk to the hospital as per case of *Al-Najar and others v The Cumberland Hotel (London) Ltd [2019]*.

For this potential legal risk, the risk ranking score is 4 which is Lower Risk. The probability of occurrence is Likely with Negligible impact or probability of occurrence is Unlikely with Minor impact. In Legal Risk Control, integrating Building Information Modeling (BIM) and facilities can be used to develop efficient enter and exit for hospital building. Thus, BIM can provide the information of the vulnerable point where the terrorist and criminals can manipulate exit and enter point. This data can be used for normal operation and crisis situation planning.

For mitigation action, KPJ has taken all the necessary measure to safeguard the premise from criminal act of the third party. This including safety magnetic door bar which only permit entry for authorize personnel. For safety reason, this magnetic bar

will open during emergency situation. Besides, the application of PTW, adequate CCTV surveillance and 24 hours security monitoring has been employed to control this legal risk.

5.2.9 Tort Law-Medical Confidentiality

For Potential Legal Risk No.9, this legal risk fall under Operational Legal Liabilities in Evacuation. During evacuation, unstable patients need to be transferred to the nearby hospital. In this situation, the hospital management need to ensure that the patient transfer SOP includes guidelines regarding patient medical information confidentiality. Hospital management needs to be aware that leak of patient medical information can also be committed by the third party, not necessarily the hospital staff. The third party can use the advancement of technology by taking photos of the patient's medical information during transfer. Thus, safeguarding the patient medical record is one of the most important aspect in patient transfer process. Leak of the medical information can inflict legal risk to the hospital. The case of *Dr Tan Ah Ba v Dr Wong Foot Meow (2012)* with respect to medical confidentiality can be used as the input in developing evacuation process SOP.

For this potential legal risk, the risk ranking score is 4 which is Lower Risk. The probability of occurrence is Likely with Negligible impact or probability of occurrence is Unlikely with Minor impact. The Legal Risk Control can be implemented by conducting audit of legal liabilities during patient transfer process.

For this potential legal risk, KPJSS has taken mitigation action by ensuring Patient's medical record being handle as per Malaysian Medical Council requirement and Personal Data Protection Act (PDPA) 2010. Besides, KPJ always conduct drill to familiarize the healthcare worker with the procedure to handle patient medical

information during emergency/crisis situation. This procedure has always been updated according to current legislation or situation

5.2.10 Tort Law-Injury to Emergency Responder

For Potential Legal Risk No.10, this legal risk fall under Operational Legal Liabilities in Planning, because it is more on the Crisis Planning from the organization. During the evacuation, several patients need to be remained with medical staff inside the hospital building. In this situation, government authorities, such as police and fire-fighters will enter the building to handle the bomb threat. These authorities are under the Legally Authorized Entrants. The hospital management must explain to the government authorities about the dangers or unusual dangers inside the hospital building such as location of chemical storage, flammable gas piping and high voltage cable location. If the Legally Authorized Entrants are injured or harmed by these dangers because the hospital failed to notify them, will impose legal risks to the hospital. This legal risk has been decided by the court in the case of *Shamsuddin v Yap Choh Teh & Anor (1969)*.

For this potential legal risk, the risk ranking score is 3 which is Lower Risk. The probability of occurrence is Possible with Negligible impact or probability of occurrence is Rare with Moderate impact. For Legal Risk Control, using integrating BIM can helps in giving the overview of the danger location in the hospital for emergency responder. Besides, the Legal Risk Sharing is possible under Public Liability Takaful.

For potential legal risk mitigation, during emergency situation, KPJ always inform the authorities about all the hazardous substance inside the building including

the storage of oxygen tanks and other chemical substance. KPJ also provide the authority the premise floor plan to ensure their safety while entering the building.

5.2.11 Tort Law-Nondisclosure of Insurable Interest

For Potential Legal Risk No.11, this legal risk fall under Operational Legal Liabilities in Planning, because it is more on the Crisis Planning from the organization. In normal mode hospital operation, the organization need to identify any instrument or equipment that need to be insured falls under their legal ownership. As hospital contains a lot of medical equipment, the list of these equipment must be made thoroughly. If the instrument or equipment not under their legal ownership, these equipment not their Insurable Interest. Thus, any claim regarding the equipment cannot be covered by the insurance company. This situation can be related to the case of *Chung Kuo Ping @ Richard v Malaysian Assurance Alliance Berhad* [2007].

Besides, the hospital also needs to declare all the hazard contain in their premise to the insurance company. The history of previous incident also need to be declared in line with the principle of utmost good faith. Failure to declared will cause the insurance coverage void as per case of *Glicksman v Lancashire and General Assurance Co Ltd* [1925] 2 KB 593

For this potential legal risk, the risk ranking score is 1 which is Lower Risk. The probability of occurrence is Rare with Negligible impact. The Legal Risk Control can be made by updating the list of danger chemical reagent used by the hospital and also declare to the insurance company any past event that related to hospital security and safety.

In mitigating this potential legal risk, KPJ has Imaging and Radiation Committee and Special Team on Chemical Substance which foresees the hazardous substance that

has been stored in the premise. All this hazardous substance was being handle as per Government Legislation and the details of this chemical also been notified during the insurance/takaful renewal.

The Court Judge also suggest that good communication between the premise owners with the third party contractor must be made during the installation of firefighting and prevention equipment. This is very important as the failure of the equipment can cause the situation worsen during emergency and the premise owner will also bear liability. Thus, the insurer can enforce their right in the insurance/takaful contract

5.3 Implications of the Study

Generally, the requirement of in-House Legal Advisor needed in conducting Legal Risk Management where by involving the legal professional, the improvement of Risk Management Programme supported by Legal Risk Management can ensure the good survival of the organization once the organization encountered crisis. It is not sufficient by having Risk Management Team only to develop legal risk management. The leak of patient's medical record during bomb threat and evacuation incident can give bad consequences to the organization. In the sense of direct legal consequences, this information leakage can cause emotion disturbance to the patient as it can exposed the privacy of the individual. However, for implied legal risk, the leakage can initiate legal suit between the patient and the hospital itself. Thus, corrective measure needed to prevent this situation happened.

The results of this study may be used as input to develop any Standard Operating Procedure (SOP) or guideline relating to crisis management for bomb threat and patient evacuation. Moreover, the results also can be used to improve coordination between the

Malaysian private hospital and government sector during any Disaster Event. Besides, the input from this study also can be used to develop Line of Authority to give the command for “Evacuation Process” during the bomb threat events between Government agency and private entity.

On top of that, the result also can be used by National Security Council (NSC) as input in developing any guideline related to bomb threat and evacuation. The healthcare institution also can use the result of this study as the reference in developing Legal Risk Management (LRM) for bomb threat and evacuation. Finally, this intended to share the application of managing the legal risk under ISO 31022:2020 with any healthcare institution who interested to use LRM based on this standard.

5.4 Recommendations of the Study

For future study, the research of LRM can be made to other natural or man-made disaster such as flood, chemical disaster or disaster involving petrochemical. In this study, the selected respondent are from those who directly manage the crisis and also the expert respondent in legal judgment and bomb threat incident. For future study, the other type of respondent such as health insurance groups, health industry and professional associations and hospital visitor can be included in the study.

5.5 Conclusions

This study revolving around identification of Legal Risk and developing legal risk mitigation for healthcare institution. In Malaysia, to date, there is no published literature regarding legal risk management for bomb threat and evacuation. Hence, in conducting the study, the literature from other countries need to be referred. However, the situation has creates the necessity for developing legal risk management for bomb threat and

evacuation in Malaysian setting, which this thesis is developing. However, this thesis has several limitations. Such as the study only focusing one particular healthcare institutions, and private healthcare. The results cannot be generalized to all private healthcare institution in Malaysia. However, these institution has 25 branches all over Malaysia. Therefore, the result can be used as input for SOP formulation and improvement by 28 KPJ Hospital branches. The stakeholder ecosystem at KPJ also plays important role as it can be explored more in terms of Legal Risk Management for hospital operation. The Bomb threat incident rarely happened but the impact towards the population are high. This bomb threat incident can cause disturbance to the national security and public order. Hence, development of legal risk management is necessary to reduce the impact of legal consequences

