



Responsibility Of Doctors Who Perform Malpractices (An Overview Under Health Law)

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ARTICLE INFO

Keywords:

Medical Malpractice,

Article history:

Received Sept 21, 2019;

Revised Oct 15, 2019;

Accepted Des 27, 2019;

Online Jan 30, 2020.

ABSTRACT

The public's trust and positive assessments of the medical world are starting to decline, the medical world that used to seem unreachable by the law can now become a legal problem. This can be seen from the news that is reported by various mass media, both print and electronic media, there are often legal cases both civil and criminal which are examined by the Court related to medical practice or are often mentioned by many groups as: "Malpractice Medical". The problems that will be discussed by the author in writing this thesis are: What are the limitations that can be used to determine that a doctor has committed medical malpractice on a patient; What actions or legal remedies can a patient or his family take if he is exposed to medical malpractice; What sanctions can be imposed on doctors who commit medical malpractice as a form of responsibility of doctors to their patients. The type of research used in this paper is a normative juridical research, namely research conducted on written regulations governing health law and legal materials related to medical malpractice.

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1. Introduction

The history of the medical treatment of a doctor is identified with the "healing god" who is glorified by society, because of his ability to know things that are not visible from the outside. Moreover, at that time, there were times when healing from illness was obtained after "the doctor" read prayers for his patients, as clergy do. In subsequent developments along with the development of the human mind and civilization, this element of worship gradually disappeared. However, the position and role of doctors are still considered high by the community. The emergence of a higher position is due to the needs of community members who are sick (patients) in dire need of a doctor's help to heal themselves.

Public respect for the medical profession is higher than other professions in society, such as: traders, police, prosecutors, judges, lawyers, civil servants, and even teachers who provide early education for a doctor while still in school. This can be seen from their socio-economic status, because usually someone who works as a doctor will have enough clothing, food and shelter or in other words, his life can be fulfilled properly.

Society views the medical profession as a noble profession because it relates directly to humans and is related to human life and death, so that every member of the community recognizes that a doctor is a wise person or it can be said that a doctor is a "helping god" in the midst of society.

For ordinary people there is also an opinion that a doctor will not be able to make mistakes in carrying out his duties, so they surrender completely to doctors. He will obey all the doctor's advice and the doctor may take any medical measures that must be taken against him in the hope of recovering from the disease. If all treatment measures have been carried out by the doctor but the disease does not heal, even the patient dies or in other words the doctor has "failed" to save the patient, then the patient's family assumes that it is a destiny or fate that has been outlined by God and not because of the inability of doctors to treat disease. In the event that the patient dies when the doctor performs a medical action (such as giving an injection, surgery), the public does not even suspect that the disease caused by the patient's death is due to an error made by the doctor. then the patient's family assumes that it is a destiny or fate that has been outlined by God and not because of the doctor's inability to treat the disease. In the event that the patient dies when the doctor performs a medical action (such as giving an injection, surgery), the public does not even suspect that the disease caused by the patient's death is due to an error made by the doctor. then the patient's family assumes that it is a destiny or fate that has been outlined by God and not because of the doctor's inability to treat the disease. In the event that the patient dies when the doctor performs a medical action (such as giving an injection, surgery), the public does not even suspect that the disease caused by the patient's death is due to an error made by the doctor.

Patients or their families often choose to remain silent even though the treatment and health services received from doctors are considered inadequate. They do not dare to express their dissatisfaction to the doctor or take legal action to sue the doctor for fear that the doctor will refuse to cure the patient's illness.

According to Munir Fuady, the factors behind the patient not expressing his dissatisfaction with the bad service provided by the doctor or in other words demanding the doctor who perform the bad service through legal channels, among others.

- a. Due to the lack of awareness of patients in Indonesia of their rights as patients.
- b. The tendency of Indonesian people to be "nrimo" as it is.
- c. Due to the lack of trust from patients in the legal and judicial process in Indonesia.
- d. Because of the relatively strong position and finances of doctors and hospitals, which makes patients pessimistic about being able to fight for their rights as patients.

The public's trust and positive assessments of the medical world are starting to decline, the medical world that used to seem unreachable by the law can now become a legal problem. This can be seen from the news that is reported by various mass media, both print and electronic media, there are often legal cases both civil and criminal which are examined by the Court related to medical practice or are often mentioned by many groups as: "Malpractice Medical". Complaints that are often submitted as a form of medical malpractice include:⁷

- a. Slow medical services, both by doctors, hospitals, and clinics
- b. Excessive maintenance costs (expensive)
- c. Rejection of patients by the hospital because they cannot afford the down payment.
- d. Trend House sick, nor doctor for do examination or action that the patient assesses is not necessary.

The following are some examples of cases suspected of being medical malpractice cases that occurred in Indonesia from 1995 to 2009 :

Table 1
Examples Of Case Suspected As Medical Malpractice Cases

NO	VICTIM	CASE	THE PLACE	YEAR
01	Dian Nita A	Leg amputated due to wrong medication	Koesna Hospital Tuban, East Java	1995
02	Meilani Shanti	Dengue Fever, then surgery and die	Mother's Jewel Hospital North Sumatra	1995
03	Sriyanti	Died after being injected	Practice room Ang Djin Tjwan	1997
04	Lim A Hui	Blind due to wrong blood transfusion	Your Hope Hospital Pontianak	1997
05	Paradise	Died after being given antibiotics	Soetomo Hospital Surabaya	2000
06	Chususyanti side	Bleeding and coma from surgery and reportoscopy	Budi Jaya Hospital Jakarta	2000
07	Nelly	Blind after tumor surgery on back	South Jakarta Medistra Hospital	2000
08	Liantia Kaliza	Died due to doctor's negligence	Mataram Hospital and RS Islam Siti Hajar Mataram	2002
09	Irianti Laode Dahai	Died due to surgery by a doctor general	Cenderawasih Tunas Clinic Jayakarta	2002
10	Muhammad Genta	His head was cut by a knife during surgery labor	Family Partner Hospital Bekasi	2002
11	Suwarti	Died after childbirth	Setiawan Hospital Bangkalan Madura	2002
12	Sherly	Disability after childbirth	Libra Citeurup Hospital	2002
13	Arief Budiyanto, Syaifuddin	Died of CO2 poisoning	Bengkulu Hospital	2002
14	Irwanto	Paralyzed after being given medicine	Bintaro International Hospital Tangerang	2003
15	Josephina	Died due to stimulant drugs birth	Bintaro International Hospital Tangerang	2003
16	Adya Fitri Harisusa nti	Wrong diagnosis Bleeding in the uterus turns out to be in the intestines	Bogor PMI Hospital PELNI RSCM . Hospital	2003
17	Asri Muliasari	Died after gland surgery spleen	Wahidin Hospital Sudirohusodo Makassar	2003
18	Lucy Maywati	Died during cesarean delivery and hospital embezzle Medical Record	YPK Maternity Hospital Jakarta	2004
19	Wulan Yulianti	Died due to bowel surgery	RSCM Jakarta	2004
20	Jeremiah	Caesarean section resulted in injuries and disabilities	Budi Lestari Hospital Bekasi Hermina Hospital Bekasi	2004
21	Mindo Sihombing	Hernia surgery failed	Friendship Hospital Jakarta	2004
22	Robinson L	Permanent disability after surgery	Bukit Barisan Military	2004

	Tobing		Command Hospital Medan	
23	Ngatmi	Breast cancer surgery	Friendship Hospital Jakarta	2004
24	Spirit	Died due to failed cancer surgery breast	Dharmais Hospital Jakarta	2004
25	Srifika Modeong, Rasyid Rahman, Juhria Ratubahe, Masna Stiman	Mercury and arsenic poisoning	RSCM Jakarta and MMC Hospital Jakarta	2004
26	Fellina Azzahra	Died due to wrong bowel surgery	Karya Medika Hospital Jakarta	2004
27	Andreas	Births resulting in disability	Pasar Rebo Hospital Jakarta	2004
28	Lexyano Hamsalim	Infection due to heart clip surgery	Jakarta Medistra Hospital	2004
29	Masita Ariani	Nose plastic surgery failure	Plastic Surgery Clinic Bandung	2004
30	Sita Dewati Darmoko	The hospital doesn't tell the results of the diagnosis Those who are told the tumor is malignant even though the cancer is Stage IV ganas	Pondok Indah Hospital Jakarta	2005
31	Nova	Wrong operation (stiff disease bone hearing bag. left but operated on the right ear)	Kemayoran Family Partner Hospital Jakarta	2006
32	Dorkas Hotmian br Silitonga	Coma 3 months after giving birth Inadequate medical services	Bakti Yuda Hospital, Depok Depok Family Partner Hospital	2008
33	Gavin Tambunan	Disability after birth (fracture of hand left)	Sarah Medan Hospital	2009

Medical malpractice claims submitted by the public to the court for doctors are considered a threat, the application of law in the medical field is considered a legal intervention, the doctors consider that all their actions can be justified because medical actions are carried out on the basis of helping patients and the Indonesian Medical Code of Ethics has it is enough to regulate and supervise doctors in their work so that there is no need for legal intervention.

2. Method

2.1. Types of research

The type of research used in this paper is a normative juridical research, namely research conducted on written regulations governing health law and legal materials related to medical malpractice.

2.2 Data analysis

The data analysis carried out in this paper is qualitative, namely what is obtained from field research and interviews conducted in writing and orally which are thoroughly and thoroughly researched.

3. Analysis and Results

3.1. Making a Complaint to MKDKI

The first legal remedy that a patient or his family can take if they feel they have experienced malpractice by a doctor is to file a complaint with the MKDKI. MKDKI is an autonomous institution from KKI which was formed to enforce the discipline of doctors in the implementation of medical practice.

One of the main tasks of the MKDKI as stated in Article 64 of the Medical Practice Law is to "receive complaints, examine, and decide cases of violations of physician discipline". Based on the article, it can be said that the MKDKI is the authorized institution to determine whether or not there are errors made by doctors in the application of medical disciplines; and establish sanctions for dentists who are found guilty. Discipline violations are violations of the rules and/or provisions of the application of science, which can essentially be grouped into 3 things, namely:

- a. Implementing medical practice incompetently
- b. Professional duties and responsibilities to patients are not carried out properly
- c. Disgraceful behavior that damages the dignity and honor of the medical profession

3.2. Trough Criminal Court

Patients or their families can report a doctor to the police if in practice the doctor has committed an act of medical malpractice which can be qualified as an act that violates the provisions of the Criminal Code, including: sexual assault (article 284), negligence causing death (article 359), negligence causing death. serious injury (article 360), leaving people who need help (article 322) etc.

The increasing number of public complaints against medical malpractice actions that are often reported by the mass media when examined are generally acts of negligence by doctors when practicing medical which causes other people to suffer injuries (disability) and die as regulated in articles 359 and 360 of the Criminal Code.

Based on the complaint, the Police will conduct an investigation to determine the complaint is a criminal act. After the investigation has been carried out and it is found that it is a criminal act, then the Police will carry out investigative actions with the aim of collecting evidence, witnesses related to the crime and to find the suspect who committed the crime. After the evidence is collected, the investigator (police) will pour it into the Minutes of Investigation (BAP) and then submit it to the Public Prosecutor (Prosecutor) to be studied and examined for completeness. The BAP will later become the basis for the Public Prosecutor to make an indictment, therefore if the Public Prosecutor feels that the BAP is incomplete, it can be returned to the investigator to be completed.

3.3 Doing a Lawsuit Against a Doctor to Civil Court

The legal relationship that occurs between a doctor and a patient in a medical practice is included in the engagement, therefore medical practice is a civil law study. The position of doctors and patients in therapeutic transactions is equal, therefore patients can file lawsuits against doctors who commit medical malpractice. Civil malpractice occurs when in a medical practice the patient feels aggrieved by the actions taken by the doctor, so he has the right to file a claim for compensation as compensation for the losses he has incurred through the Civil Court.

Patients who are victims of medical malpractice choose the civil route by filing a lawsuit against a doctor based on a default or an act against the law must prove the existence of an error on the part of the perpetrator (the doctor or the defendant) either by intention or negligence so that the act is included in an unlawful act. . In general, patients have difficulty in

proving that what they suffer is the result of a doctor's error and/or negligence in carrying out medical practice. This difficulty arises because the patient does not have sufficient knowledge about the therapy and diagnosis made by the doctor to him; especially in the case of a surgical patient who is given anesthetic causing the patient not to know the actions taken when the doctor performs surgery, because the patient is in an unconscious state (under the influence of anaesthesia). Therefore, to protect the legal interests of patients who are harmed by health services, some scholars propose to apply the doctrine of *Res Ipsa Loquitur* (The thing speak for it self).

4. Conclusion

Medical malpractice is every action of a doctor (whether intentionally or unintentionally such as negligence, negligence) in carrying out a medical practice, which is not in accordance with medical ethics, medical professional standards, applicable laws and regulations so as to cause harm to the patient such as pain, injury, disability, death and other loss; and for his actions, the doctor must be responsible under administrative law and/or civil law and/or criminal law. 1. Legal remedies that can be taken by patients (or their families) who experience medical malpractice actions consist of: (a) Make a complaint to the MKDKI which based on Law Number 29 of 2004 concerning Medical Practice is the authorized institution to determine whether or not there are errors made by doctors in the application of medical disciplines; and (b) establish sanctions for dentists who are found guilty. (c) Suing a doctor who commits medical malpractice through the Civil Court is related to the patient's loss due to the medical malpractice act. report the doctor who performs medicine to the Police which will later be forwarded to the Public Prosecutor and until finally the doctor's malpractice action will be examined and decided in the Criminal Court. 2. Doctors who commit medical malpractice may be subject to sanctions based on administrative law and/or civil law and/or as a form of legal liability as follow, (a) Sanctions based on Administrative Law contained in the Medical Practice Law: Written warning; Recommendation for Revocation of Registration Certificate (STR) or Temporary Practice Permit (SIP) for a maximum of 1 year; Recommendation for Revocation of Registration Certificate (STR) or Practice License (SIP) permanently or permanently; Obligation to attend education or training in medical education institutions which can be in the form of: Formal education; or Training in knowledge and/or skills, internship in educational institutions or network health service facilities or designated health service facilities for a minimum of 3 months and a maximum of 1 year. (b) Sanctions based on Civil Law: Pay compensation as a result of the medical malpractice. (c) Sanctions based on Criminal Law: Given to doctors who violate the provisions of the Criminal Code and laws and regulations relating to medical practice, including imprisonment, fines.

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