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Legal Protection against Physicians for Presumed Malpractice in Indonesia: A Judicial Review

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ABSTRACT: Increased public awareness of health rights and legal access has sparked intensive discussions on malpractice in healthcare. However, differing views between lawyers and doctors regarding the definition of malpractice as well as the limits of doctors' authority create complexity. Types of medical malpractice, such as criminal, administrative, ethical and meritorious, are the focus for understanding the legal liability framework. Although civil law can protect consumers, the lack of an independent medical law formulation in Indonesia is an obstacle. Normative research methods are used to explore the legal views and responsibilities of doctors in medical practice. Discussions on malpractice proof, legal protection for doctors, and ethical and legal obligations in medical practice contribute to the understanding of this complex issue. Therefore, this article aims to detail the legal and ethical framework related to medical malpractice in Indonesia and explore protection and enforcement efforts to optimize the relationship between patients and the medical profession.

KEYWORDS: Malpractice; Medicine; Legal Protection; Health Laws;

I. INTRODUCTION

Malpractice in healthcare has become an increasing topic of conversation in recent years. Many complaints of malpractice cases from the public reflect awareness of their rights and increased access to legal services. However, differing views between lawyers and doctors on the definition of malpractice can be a source of problems. To address this, there is a need for mutual agreement on the definition of malpractice and the limits of doctors' authority in their practice. This will help prevent unwarranted allegations of malpractice, promote mutual understanding, and maintain the relationship between patients and the medical profession. [1]

There are several types of medical malpractice, including criminal, administrative, and ethical and meritorious malpractice. Criminal malpractice involves medical acts that violate criminal laws, such as physician negligence or misconduct that leads to the death of a patient. Administrative malpractice is medical acts that violate administrative laws, such as practicing without a license or with an expired license. Ethical and professional malpractice involves medical actions that violate the ethics and norms of the medical profession, such as not providing clear information to patients or performing actions outside the applicable medical professional standards.[2,3]

In malpractice cases, civil law can be used as a form of liability and consumer protection. The patient or the patient's family can sue civilly if they consider that the doctor has committed an unlawful act based on Article 55 of Law No. 23 of 1992 concerning Health. In addition to civil suits, malpractice can also be prosecuted criminally under Article 359 of the Criminal Code.[1,4] Until now, in Indonesia, medical law has not been formulated independently, causing differences in the understanding and definition of medical malpractice depending on individual perspectives. Therefore, this paper will discuss the juridical review and legal protection of doctors suspected of committing malpractice.[1,2]

II. RESEARCH METHODS

The research method applied in this study is a normative approach. The normative legal approach, also known as library research, involves the investigation, review and analysis of existing literature or documents. In the context of legal research, this method is often referred to as Legal Research, doctrine, or literature study, which involves analyzing various sources, such as laws and journals relevant to the issue being studied.

III. RESULTS AND DISCUSSION

A. Juridical Responsibility

Law No. 29/2004 on Medical Practice was implemented to govern medical practice with the aim of providing protection to patients, maintaining and improving the quality of medical services, and providing legal certainty to the stakeholders, including the public, doctors, and dentists. At the beginning, this regulation regulates the requirements for doctors to practice medicine, including having a medical competency certificate from the College, a Registration Certificate from the Indonesian Medical Council, and a Practice License from the City or Regency Health Office. The doctor is also required to take a doctor's oath, maintain physical and mental health, and commit to abide by professional ethics.[4]

The element of obligation means that it must be done without exception, so it is absolute. While the element of action includes all actions taken, so that responsibility is a state that is legally valid for both individuals and legal entities, and is able to bear obligations for actions taken. In a legal context, responsibility means entanglement. Every individual, from birth to death, has rights and obligations, considered a legal subject. This also applies to doctors, who in every action must be responsible as a legal subject that carries rights and obligations. A doctor's actions can be distinguished between daily activities unrelated to his profession and actions related to the practice of his profession. Therefore, the legal responsibility of a doctor can involve various aspects related to the implementation of his profession.[5]

Doctors' attachment to legal provisions in carrying out their profession is a responsibility that must be fulfilled by doctors which basically includes 2 (two) responsibilities, namely:

1. Administration, which is contained in Article 29, Article 30 and Article 36 jo. 37, Law Number 29 of 2004 concerning Medical Practice.
2. Criminal provisions, where the formulation of articles regarding the responsibility of medical practice are listed in articles 75 to 80, Law. No. 29 Year 2004.

B. Responsibilities within the Hospital Professional Environment

1) Hospital Responsibility

A hospital can be defined as "a facility in the health care system that provides inpatient care, outpatient care, and rehabilitation along with all its support." Thus, the hospital functions as a place for organizing health service efforts. In the context of legal relations as a social system, hospitals are considered as organizations that have the independence to perform legal actions. Hospitals are not personal entities that can engage in legal affairs as human beings (natural persons), but are given legal status as "persons" so that they are recognized as "legal entities." The law recognizes hospitals as "legal persons," and as such, hospitals have legal rights and obligations for the actions they take. To act legally as this legal subject, hospitals involve medical professionals or health workers, which do not only consist of doctors and dentists, but all types of health workers.[6]

Hospital organization is based on Pancasila and its values derived from humanity, ethics, and professionalism. In accordance with Law No. 44/2009, Article 2, to improve the efficiency and effectiveness of health services, the quality of health services is a necessity. Some points related to the explanation of the article include: [7]

1. The application of hospital management upholds the value of humanity by treating patients with kindness and compassion regardless of their colour, nationality, country, religion, or social status.
2. Professionalism and Ethics: Health workers who adhere and uphold to hospital ethics and possess professional attitudes and ethics demonstrate professionalism.
3. The concept of benefit value states that in order to preserve and raise the standard of public health, the hospital's organisation must maximise benefits to mankind.
4. The ability of the hospital organisation to offer high-quality care at a price that the community can pay, along with fair and equitable services, is what makes justice valuable.
5. Equality of rights and Anti-discrimination are implemented in form of the hospital's services distinguish the community both individually and in groups from all economic strata.
6. The hospital's organisation must interact with all societal strata in order to uphold the idea of equity.
7. The significance of protection is that the hospital's organisation must be able to improve health status while still keeping an eye on patient safety and protection. This goes beyond just providing medical services.
8. Patient safety is something that the hospital's administration constantly aims to enhance through clinical risk management initiatives.
9. A hospital's social function is an integral aspect of its duty, which is a moral and ethical commitment to aiding patients, particularly those who are less able to meet their own needs for medical care.

2) Doctor's Responsibility

Fault or negligence is always linked, legally speaking, to a breach of the law—that is, an action committed by someone who can be held liable. A person is considered capable of responsibility if they can realize the true meaning of their actions, consider their actions in accordance with social norms, and are able to determine their intention or will in carrying out their actions. With reference to Article 1 paragraph (11) of Law No. 29 of 2004, doctors as holders of the profession are considered as individuals who are dedicated in the field of health, have knowledge and skills through medical education, and are authorized to provide health care.[8]

The following two perspectives can be used to examine accountability for the acts and deeds of the medical profession as a practical legal subject:

a. Accountability According to The Professional Code of Ethics

Reprimands and guidance are typically the only forms of corrective action given for violations of the code of ethics, as there are no official regulations on consequences. At most, this only leads to suggestions to the relevant institutions for administrative action as a preventive measure against the possibility of similar violations in the future. The primary distinction between law and ethics is that the government sets legal consequences, whereas professional associations define ethical standards. The law imposes stringent limitations on what can and cannot be done, whereas ethics places greater emphasis on the offender's moral consciousness and good intentions.[8]

b. Legal Liability

The legal responsibility of doctors includes the 'attachment' of doctors to legal provisions in carrying out their profession. This attachment includes legal responsibilities that include:[5]

1) Civil Liability
2) Criminal Responsibility
3) Administrative Responsibilities

As long as the medical treatment of the patient has been carried out correctly and properly according to professional standards, standard operating procedures, then even without the expected healing results, it does not give birth to medical malpractice from a legal point of view, but if after medical treatment there is a situation without the expected results (without healing) or may be more severe in the nature of the disease because of the doctor's medical treatment that violates professional standards, then the doctor is considered to have committed medical malpractice. Of course, with several conditions, namely, no cure or more severe disease after medical treatment from the point of view of professional standards, standard procedures, and general principles of medicine.

If the treatment is so severe that it meets criminal criteria, such as death or injury (articles 359 or 360 of the Criminal Code), criminal liability, which is not just compensation (civil), but may be punishment.[9]

C. Causes of Alleged Medical Malpractice in Hospitals

There are two main categories of causes of alleged medical malpractice in hospitals, namely willfulness (*dolus*) and negligence (*culva*). Willfulness (*dolus*) is an *intentional tort*, which results in physical injury to a person (*assault and battery*). This is rare and can be classified as a criminal act based on the element of intent.[10] Meanwhile, negligence (*culva*) is a category of medical negligence in the form of:

- *Malfeasance*: The doctor commits an act that is against the law;
- *Misfeasance*: An act that is not right;
- *Nonfeasance*: Not performing an action that one is actually obligated to perform;
- *Maltreatment*: Unprofessional treatment that does not meet the standards of the medical profession due to ignorance, negligence or lack of will to do better;
- *Criminal Negligence*: Indifference or disregard for the safety of others even though he knows that his actions will cause harm to others.[10]

The general criteria for negligence are: (1) The existence of an obligation based on a contract that gives birth to rights and obligations, depending on the type of performance, for example, performing medical actions according to professional norms and standards. (2) Neglect of duty that causes material loss, e.g. due to disability cannot earn a living anymore, and immaterial loss, e.g. emotional suffering/emotional instability. (3) The existence of a causa or cause, that the loss suffered is related to the act. In other words, there is a reciprocal relationship / cause and effect or cause in accordance with the law. A person is called negligent if they meet the criteria: Lack of care / reckless / negligent attitude; Doctors perform medical actions below

professional standards; Doctors do something that should not be done; Not doing what should be done with a careful and reasonable attitude; Resulting in loss or injury to others.[10]

D. Definition And Overview of Malpractice

A person experiencing health problems will naturally seek help from a medical professional, hoping to cure their ailment. At this point, the patient and the doctor have a highly significant legal connection that carries rights and obligations that both parties must uphold. As doctors perform their duties and carry out their medical obligations, there is a great potential that acts of negligence or lack of care in the exercise of their profession may result in unwanted suffering for the patient. This phenomenon is known as medical malpractice, a legal concept that has the potential to give rise to legal liability for adverse consequences that may be experienced by the patient due to the doctor's errors or omissions in his or her medical practice.[11]

Malpractice comes from the word "*mal*", which means bad, and "*practice*", which means an act or practice. Therefore, it can literally be defined as a "bad" medical act that doctors perform on their patients. In Indonesia, the term "malpractice" actually refers to a type of medical negligence, or medical negligence, in Indonesian. [1,11,12] With the increase in knowledge and knowledge in the health sector, the Indonesian people are increasingly critical as patients of the medical services theyreceive. Medical service activities that can be considered as malpractice include examinations, examination methods, tools used, drawing a diagnosis based on examination results, and types of therapy and treatment for maldiagnosis and maltherapy.[11]

To evaluate and prove whether a medical act falls under the category of malpractice or not, Hubert W. Smith has formulated four important elements referred to as the 4Ds. This is a framework used in the assessment of medical acts suspected of being malpractice. These elements help in determining whether a medical act has characteristics that can be considered as malpractice or not. First, the "duty" element. This element emphasizes that an act of malpractice can only occur if there is an inherent obligation on the party providing the medical care, in this case the doctor or hospital. Without a binding legal obligation, there can be no negligence, so this first element emphasizes that a legal relationship must exist between the patient and the doctor or hospital. The second element is "*dereliction*," which refers to a deviation in the performance of duty. This means that an act of malpractice occurs when the doctor, who has a duty to the patient, in this case performs actions that deviate from the prevailing standards of the medical profession. In other words, doctors must carry out their obligations following established medical standards. [13]

The third element is "*direct* causation". In this element, it is important to show that there is a clear causal link between the medical act performed by the doctor and the harm suffered by the patient. This means that the medical act directly caused the patient's harm. Finally, the fourth element is "*damage*," which indicates that the doctor was the direct cause of the patient's harm. In this element, it is important to prove that the medical act performed by the doctor was the main cause of the patient's harm.[13]

The criteria for medical actions that can be categorized as malpractice involve a number of important factors, namely legal arrangements, legal relationships between the parties, violations of rights and obligations, and legal consequences that arise. Medical actions can be classified as malpractice if they fulfill elements such as default, and/or fulfill elements of unlawful acts. In addition, medical actions that are malpractice will also cause harm to victims of malpractice, both physically and psychologically. In this situation, the patient or victim of malpractice has the right to file a lawsuit, which can include claims for compensation as well as criminal actions that result in the perpetrator of malpractice being imprisoned. [13]

In the Indonesian legal framework, which has a substantive law component as one of its elements, the term "malpractice" does not exist in the prevailing positive law, including in Law No. 23 of 1992 on Health and Law No. 29 of 2004 on Medical Practice. Law No. 23 of 1992, especially Articles 54 and 55, refer to doctors' actions as "mistakes" or "negligence." Meanwhile, Article 84 of Law No. 29 of 2004, refers to these actions as "violation of doctor's discipline." The main approach used to determine the existence of malpractice is the existence of a professional error committed by the doctor when providing care, and the negative impact experienced by other parties as a result of the doctor's actions. However, determining when exactly a professional error occurred is not a simple matter. [1]

E. Proving Malpractice Fault

There are several systems or theories to prove the alleged act. These systems or theories of proof vary according to time and place (country), namely *positive wettelijk bewijstheorie, conviction intime, laconvviction raisonnee and negatef wettelijk*. If a doctor's mistake is a professional mistake, then it is not easy for anyone who does not understand this profession to prove it in court. In the event that a doctor is accused of negligence so that the patient being treated dies, suffers serious injury or moderate injury, then what must be proven is the element of wrongdoing committed with a mental attitude in the form of negligence or lack of care. It should be understood that not every treatment result that does not meet the patient's expectations is evidence of criminal malpractice considering that such events can also be part of the risk of medical action.[6]

It is also not always appropriate to use misdiagnosis as a barometer of unethical behaviour since there are a number of variables that affect diagnosis accuracy, some of which are outside of a physician's control. The components of the crime still need to be demonstrated; both of the aforementioned can only be used as presumptions. The doctor may face punishment specific to the kind of criminal offence he committed if found guilty. Furthermore, physicians may still be sued in civil court for their illegal actions (*onrechtmatige daad*). There are two ways to prove civil malpractice: directly or indirectly. By directly demonstrating the four components—responsibility, neglect of obligation, harm to health, and a clear connection between the two—the four elements can be established. Regarding indirect evidence, this refers to gathering data that, in accordance with the res ipsa loquitor concept, can establish the presence of the doctor's wrongdoing. The res ipsa loquitor doctrine is essentially a variation of the "doctrine of common knowledge," with the exception that in this case, expert testimony is still required to determine whether the discovered facts can be used to support the doctor's negligence. [6]

F. Legal Protection of Medical Professional Related to Alleged Medical Malpractice

As stated by Hippocrates, medical profession is a combination of science and art. As in making a diagnosis is an art of its own for doctors, because after hearing the patient's complaints, following the patient's complaints. The doctor will imagine and make careful observations of his patient. The knowledge or theories of medicine and the experience he has received so far become the basis for diagnosing the patient's illness, it is hoped that the diagnosis is close to the truth.[14]

Article 50 of Law No. 29/2004 on Medical Practice and Article 27 paragraph (1) of Law No. 36/2009 on Health are the legal foundations that offer doctors legal protection in the course of practicing their profession and in dealing with the law in the event of suspected malpractice. Physicians and dentists practicing medicine have the right to legal protection under Article 50 of Law No. 29 of 2004, provided they fulfil their obligations in compliance with professional standards and professional procedural standards. Article 27 paragraph (1) of Law No. 36 of 2009 reads: Health workers are entitled to compensation and legal protection in carrying out their duties in accordance with their profession.[14,15]

A doctor has a duty to uphold informed consent as part of their professional duties. The term "informed consent" is made up of two words: "informed" (which means explanation or information) and "consent" (which indicates permission or approval). Therefore, informed consent suggests that the patient or his family gives their consent after being informed of the dangers involved in the medical procedures that will be performed on them. Apart from obtaining Informed Consent, physicians are required to create "Medical Records" for each patient in every health service activity. The Medical Practice Act's Article 46, paragraph (1), describes medical record arrangements. Files containing information regarding a patient's identity, examination, treatment, activities, and services are known as medical records. Medical records serve a number of purposes, including patient care, enhancing the calibre of services, funding, education and research, health statistics, and demonstrating ethical, disciplinary, and legal concerns.[15]

patient, because in the *Informed consent* there is a patient's willing consent or authorizes the doctor to take medical action against him. Meanwhile, Informed consent made in the hospital in written form is only formal because in principle Informed consent is not only written but the most important thing is consent.(Hermawan, 2007) Apart from being letter evidence, Informed consent can also be evidence of clues, this is regulated in article 186 of the Criminal Procedure Code paragraph (2), which states that clues can be obtained from letter testimony and testimony of the defendant, this also means that Informed consent can be used as evidence to show evidence that the patient has agreed and information has been given to him so that the doctor cannot be blamed.[8]

In principle, doctors who have provided medical services in accordance with professional standards, medical service standards and standard operating procedures are entitled to legal protection.[14]

G. Medical Dispute Resolution Efforts

In the context of medical dispute resolution, there are two paths that can be followed, namely through litigation (through judicial channels) and non-litigation, which includes consensual approaches and out-of-court settlements. While litigation is a formalized process, it is often time-consuming, expensive and entails significant costs. The slow and formalistic nature of the judicial system often presents challenges to dispute resolution, and in many medical cases, creates winners and losers. .[9,16,17]

In facing the challenges of resolving medical malpractice disputes in Indonesia, efforts are needed to find alternative solutions outside conventional judicial channels. One solution that has emerged is through mediation, which is able to provide a solution that benefits both parties in resolving this dispute. Medical dispute resolution through mediation can be a more efficient and fair alternative in dealing with problems related to medical errors.[9,17]

In the context of medical malpractice, there is a legal basis to claim compensation for errors in medical treatment that cause harm, based on Article 1365 of the Civil Code. This article emphasizes that every unlawful act that causes harm to another party requires the perpetrator of the act that causes the harm due to his or her fault to compensate for the loss.[18,19]

IV. CONCLUSION

In an effort to improve legal protection for doctors, it is necessary to strengthen the legal framework, including clarification of the types of malpractice and more detailed remedies. Legal research using a normative approach, as illustrated in this paper, can provide a basis for identifying legal weaknesses that need to be corrected. At the same time, strengthening professional ethics and increasing legal awareness among doctors are also crucial steps in maintaining the quality of health services and positive relationships between doctors and patients.

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