

Understanding the Extent of Doctor's Liability in Medical Disputes

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ABSTRACT

Background. In order to protect themselves from the possibility of being arrested and subjected to criminal penalties, doctors developed defensive medicine, which is currently being widely applied by many doctors. This is motivated by a situation where the patient is dissatisfied with the results of the medical action that has been carried out and complains about this to the police and some patients often do not want to use the mediation first, then cases like this will end up in court.

Purpose. The purpose of this research is to explain how responsibility is imposed on doctors for medical disputes and violations that occur to patients.

Method. This type of research is normative, the writer also uses statute approach and conceptual approach to analyze the issue.

Results. Based on the background problems, the results obtained from this research are that a doctor who has carried out their duties in accordance with professional standards, service standards, and standard operating procedures is entitled to legal protection.

Conclusion. An action can be said to be malpractice if an element of negligence is found in the medical action, whereas in medical risk there is no element of negligence. That if a mistake cannot be found, the doctor cannot be held responsible.

KEYWORDS

Legal Protection, Liability, Medical Disputes

INTRODUCTION

Patient safety is the main thing for doctors in carrying out their duties because it is already a doctor's obligation ethically and professionally in treating sick people, which is in accordance with the Hippocratic (Di Vaio et al., 2020). (This obligation requires doctors to make maximum efforts in helping patients regardless of their condition. Whether a patient's condition is treatable or has little hope for recovery, doctors must not discriminate. Basically, medical practice is the provision of individual assistance by doctors to patients in the form of medical services. If someone comes to a doctor to take advantage of available medical services, then a legal relationship occurs between the doctor and the patient which is called a therapeutic transaction (Coppola et al., 2019). This kind of legal relationship that does not promise healing or death is called *inspanningsverbintenis*, which is different from the legal

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relationship that usually applies in agreements in general that promise a definite result.

However, the rising number of suspected cases of malpractice or negligence among doctors has created a dilemma that can generate anxiety and uncertainty in fulfilling their responsibilities. This situation can lead to defensive medicine, which is detrimental to society (Y. Yang et al., 2019). There is no doubt that doctors will prefer patients who have a high probability of recovery, or can be saved, and are afraid to help for emergency patients who have a small chance of being saved (Paul et al., 2021). The doctor will also carry out a complete examination as possible, in fact it is not uncommon for the examination to not be really necessary, causing high costs of treatment and care so as not to be blamed by the patient (Morel et al., 2020). And finally, the doctor will refuse patient treatment because of inadequate health facilities, the impact of which is that the patient will have to be referred to another hospital which can cause delays in the medical assistance needed by the patient.

The current conditions have undergone many changes, the doctor-patient relationship which is paternalistic and based on trust (fiduciary relationship) is beginning to falter (Chandrasekar et al., 2020). Some examples of cases in medical practice that occurred were cases involving one of the doctors at Anutapura Hospital in Palu, dr. Heryani Parewasi, m.kes, sp, og, was suspected of having committed negligence (W.-Y. Yang et al., 2019). This obstetrics and gynecology specialist (obgyn) is suspected of having committed malpractice causing the death of a patient giving birth. Based on the results of the trial conducted by the Medical Ethics Honorary Council (MKEK), there were 17 doctors who handled it and it turned out that the results of the examination did not find any violations committed by the suspect in medical treatment (Karimi-Maleh et al., 2022). Then, it ended with the suspect being charged with Article 359 of the Criminal Code which carries a one-year prison (Luque et al., 2019). In several other cases there was also the Supreme Court decision Number 90/PID.B/2011/PN.MDO which three colleagues sentenced to 10 months in prison, namely Doctor Dewa Ayu Sasiary Prawani, Doctor Hendry Simanjuntak, and Doctor Hendy Siagian for medical services (emergency cesarean section) that have been given to patient giving birth, but the patient's life could not be saved.

As stated in Article 50 letter (a) of Law Number 29 of 2004 concerning Medical Practice, doctors or dentists in carrying out medical practices have the right to obtain legal protection as long as carrying out their duties in accordance with professional standards and standard operating procedures (Riess et al., 2019). If a doctor or dentist has carried out medical services or medical practices in accordance with professional standards and standard operating procedures, then the doctor or dentist cannot be prosecuted, either administratively, civilly or criminally (Reichstein et al., 2019). In reality doctors who have carried out their medical practices in accordance with the applicable standards are still prosecuted by law, and even imprisoned (Stuart et al., 2019). Law Number 29 of 2004 concerning Medical Practice, which is expected to protect and provide legal certainty, in fact still has deficiencies that cause the use of articles in the Criminal Code to prosecute doctors suspected of committing malpractice (Nosyk et al., 2021). Legal protection is given to all individual rights of each citizen, but the country's constitution must also determine and know the procedural ways to obtain protection for these guaranteed rights (Callhoff et al., 2020). Basically the existence of law in social life is very important in life, so it can be said that law cannot be separated from human life (Budiarsih, 2021).

It is not uncommon for patients (victims) to confuse and have a wrong understanding of medical consequences/risks and negligence, as well as malpractice. That such as the emergence of negative consequences or the patient's condition that does not improve, and this actually still cannot prove the existence of negligence (Makdessi et al., 2019). In carrying out the medical

profession, doctors are indeed capable of making mistakes, so that they can be held liable legally, both civil, criminal and state administration, but the formulation of the elements of a medical crime related to when a doctor can be reported, sued and sentenced, can not only be based on the fulfillment of the formulation of a criminal act, because the fulfillment of these elements may not necessarily be connected with accountability between acts against formal and material law (Pretorius et al., 2021). In law, there is a principle that states an adagium *volenti non fit iniuria* or assumption of risk, that if someone places himself in a known danger (risk), he cannot hold other people accountable if that risk actually occurs (Elvén et al., 2022). This cannot hold someone accountable because the risk occurs not because of a mistake (*schuld*) whether intentional or negligence (*culpa*), if the risk arises during medical services, the patient cannot hold a medical professional accountable.

RESEARCH METHODOLOGY

This type of research is normative legal research, it focuses on positive legal studies with a juridical approach or library law research by examining data consisting of primary, secondary, and tertiary legal materials. Then the legal material is arranged systematically, reviewed, and conclusions are drawn in relation to the problem under study (Mao et al., 2019). The approach used by the writer is based on statutory regulations (statute approach) and a conceptual approach. The statute approach is carried out by examining all laws and regulations that are related to current legal issues (Scarabottolo et al., 2022). The result of this approach is an argument to solve the issue, conceptual approach is used to examine and analyze the framework or theoretical basis of the legal issue under study.

RESULT AND DISCUSSION

Medical Disputes in Health Services

In relation to medical services by doctors for patients, a conflict will arise if the patient's expectations of the medical service process in the context of healing his illness do not materialize or do not have good results (Bojanic & Warnick, 2020). Starting from the feeling of dissatisfaction that has been conveyed to the second party (doctor), but the second party responds and cannot satisfy the first party (patient), and with this condition continuing is called a medical dispute. Medical disputes between patients or their families and health workers or patients and hospitals/health facilities are usually the result or end result of health services by not paying attention to or ignoring the process. In fact, in health law it is recognized that health workers or the implementation of health services when providing services are only responsible for the process or effort taken (*inspaning verbintenis*) and does not guarantee/guarantee the final result (*resultalte verbintenis*). Therefore, before there is a decision from a professional court or medical logical discrepancy between a patient and a doctor/hospital, the correct term is a medical dispute, not medical malpractice. This is related to whether or not there is a decision and consideration of medical logic and legal logic to determine whether the medical action/action carried out by the doctor falls into the category of medical malpractice.

This difference in perception can arise because patients do not really understand medical logic that medical efforts are efforts that are full of uncertainties and the results cannot be calculated mathematically because they are heavily influenced by other factors that are beyond the doctor's control; such as body resistance, body defense mechanisms, type and virulence of disease, stage of disease, drug quality, individual response to drugs and patient compliance in following procedures and advice from doctors and nurses. So far, people often use their own logic that they think medical

effort is the only variable that can affect a patient's health level, so that if the medical effort is correct, the patient shouldn't die, his condition will get worse or new problems will arise. In fact, even the best medical efforts do not guarantee a cure, and vice versa. In fact, it is not uncommon for doctors to make a misdiagnosis which is also followed by an error in therapy, but patients can actually recover through their own body's defense mechanisms. Therefore, it is not wrong if there are some experts who state "medicine is a science of the uncertainty, an art of the probability".

Every medical action always carries a risk, no matter how small the action, it can still pose a big risk, so that the patient suffers a loss/injury. In the event of a risk, both predictable and unpredictable, the doctor cannot be held responsible. From this it can be concluded that medical risk means that in the medical follow-up carried out on patients there is a possibility (risk) that can occur. Examples of medical risks include inherent risks (hair loss due to administration of cytostatics/drugs that kill cancer cells), hypersensitivity reactions (such as excessive/deviating immune/immune responses to foreign substances/drugs that are often unpredictable), complications that occur suddenly and cannot be predicted in advance (amniotic fluid embolism in mother during childbirth). With regard to medical risk, in law there is an assumption of risk, that if someone puts himself into a known danger (risk), he cannot hold other people accountable if the risk really happened. Cannot hold someone accountable because the risk occurs not because of an error (schuld) either intentionally or negligence (culpa), if the risk arises during medical services, the patient cannot hold a medical staff accountable.

An unexpected outcome in medical practice can actually be caused by several possibilities (Mulyohadi, 2006) :

1. The result of a course of disease or complications of a disease that has nothing to do with medical procedures performed by doctors
2. The result of an unavoidable risk:

Risks that cannot be known beforehand (unforeseeable), risks like this are made possible in medical science because of the nature of empirical science and the nature of the human body which varies widely and is susceptible to external influences

Risks that, although foreseeable, are considered acceptable, and have been informed to the patient and the patient has agreed to do so, namely: risks that have a relatively small degree of probability and severity, can be anticipated, calculated, or can be controlled, for example drug side effects, bleeding, and infection during surgery, and others; a risk that has a large degree of probability and severity in certain circumstances, namely when a risky medical action must be taken because it is the only way (the only way), especially in an emergency situation.

Violation of medical action is considered a medical risk, if the medical action carried out by a doctor is in accordance with medical service standards (medical service standards and operational standards), doctors have taken anticipatory or predictive measures or precautions in carrying out medical actions on patients, the violation was not committed due to medical error or negligence, there are countermeasures against the possible consequences arising from medical action, patients also have a contribution/role/share in the consequences that arise/occur; and there are reasons to justify and/or pardon as regulated in Criminal Code.

Medical risks that occur outside the will of the doctor or patient result in the loss of responsibility by the doctor, so that in terms of determining the consequences of a medical action as a medical risk the doctor cannot be blamed for the medical consequences because the doctor has carried out medical actions in accordance with professional standards, medical standards, as well as standard operating procedures. Guwandi compiled a systematic for several bases for the abolition of penalties or errors specific to the medical field, namely (Guwandi, 2004):

Treatment risk (risk of treatment): inherent or inherent risks, allergic reactions, complications in the patient's body

1. Medical accident
2. Error of clinical judgment (non-negligent error of judgment)
3. Volenti non fit iniuria
4. Contributory negligence
5. Medical Violations and Doctor's Liability

An action can be called medical malpractice if it includes actions doing something that a doctor should not have done, not doing what should be done or neglecting an obligation, and violating a provision according to the law (Guwandi, 2004). The doctor's actions can be classified as malpractice actions which cause the doctor to be responsible administratively, civilly or criminally, must fulfill the following juridical elements (Fuadi, 2005):

There is action, in the sense of "doing" or "not doing" (neglect).

The action is carried out by a doctor or someone under his supervision (such as a nurse), even by health facility providers, such as hospitals, pharmacies, and others.

The action is in the form of medical action, either in the form of diagnostic, therapeutic or health management measures.

The action was performed on the patient. The act was committed in violation of law, decency, decency, and/or professionalism principles.

Done intentionally or carelessly (negligence, carelessness).

The action resulted in the patient experiencing misconduct, pain, injury, disability, death, damage to the body and/or soul, and/or other losses to the patient.

As for what is called a medical malpractice, is an error in carrying out the medical profession in accordance with the standards of the medical profession or not taking medical action according to certain standards based on medical knowledge and experience that the average doctor has according to the situation and the conditions under which the medical action was performed. Doctor's malpractice is professional negligence, either by doing or not doing something that is done by a doctor. The doctor's actions were considered to be below the standard of practice accepted by the medical community under the same conditions resulting in loss or injury, in this case it resulted in death (Chazami, 2007) .

In malpractice, the proof is based on whether the criminal element is fulfilled or not. In the event that a doctor is accused of negligence so that the patient being treated dies, suffers serious or moderate injuries, what must be proven is the existence of an wrong element, which is done with an inner attitude of negligence or carelessness. That not every treatment result that is not in accordance with the patient's expectations is evidence of malpractice considering that such an incident can also be part of the risk of medical action. Misdiagnosis also should not be automatically used as a measure of malpractice, because many factors can affect the accuracy of the diagnosis, some of which are sometimes beyond the power of the doctor. If proven guilty, the doctor can be punished according to the type of crime he committed. Besides that, doctors can still sued through civil court on the basis of unlawful acts (onrechtmatigedaad). Proof of malpractice can be done by directly proving that the elements consist of fulfilling obligations, neglecting obligations, damaging health, and there is a direct relationship between acts of neglecting obligations and damage to health (Wiriadinata, 2014).

If the negligence causes material loss, harms, and even takes the lives of other people, the negligence is a serious negligence (culpa lata) and can be classified as a criminal act (Hanafiah, 1999). In medical law, there is a formulation of negligence that has universally applied; negligence

is reasonable accuracy, not doing what other people with reasonable care and prudence would do, or doing what other people with reasonable care do it's only natural not to do it (Guwandi, 2003). This means that negligence includes two things, because of doing something that should not be done or because of not doing something that should be done, in other words negligence occurs when a person commits the act because he is negligent of obligations according to the prevailing social order of life the doctor shouldn't have done it.

In the mechanism for handling medical discipline violations, the MKDKI determines three types of violations, namely ethical, disciplinary and criminal violations (Andryawan, 2017). Ethical violations are delegated to the Medical Ethics Code Council (MKEK), disciplinary violations are delegated to the Indonesian Medical Council (KKI), and criminal violations are delegated to the patient to be transferred to the police or district court. If the case is transferred to the police, at the level of investigation the doctor who is suspected of having committed medical malpractice will still receive his rights under the law (Hanafiyah, 1999).

The distinction between the types of violations is based on the material source of law used and the institution authorized to adjudicate when the violation occurs (Andryawan, 2017). Some examples of forms of malpractice that can lead to lawsuits include misdiagnosis, misreading or ignoring laboratory results, carrying out operations that are not appropriate, surgical or surgical errors, and giving inappropriate drug doses. Meanwhile ethical violations with legal implications, for example, are: doctors who publish secrets about the patient's health condition without any justification (Article 16 of the Indonesian Medical Code of Ethics), doctors who perform abortions (Article 11 (2) of the Indonesian Code of Medical Ethics), doctors who perform euthanasia (Article 11 (2) of the Indonesian Code of Medical Ethics). And regarding the forms of medical discipline violations, there are 28 types of violations which have been mentioned in detail in the decision of the Indonesian Medical Council Number 17/KKI/KEP/VIII/2006 concerning Guidelines for the Enforcement of Discipline in the Medical Profession.

To check whether a doctor has violated his obligation to care for and treat patients, it is necessary to pay attention to the following provisions (Muhamad, 1983):

The doctor is present when treating the patient, or if unable to attend will appoint a substitute who is responsible for his abilities.

The doctor has used all kinds of available methods to make the correct diagnosis, all kinds of existing methods are adjusted to the professional standards that apply to the level of knowledge and conditions in that place.

Provide treatment and other assistance correctly in accordance with the diagnosis it enforces.

Carefully monitoring the effects of the assistance provided and immediately taking appropriate action if side effects or complications occur.

Make the necessary efforts to avoid injury or accident as a result of the assistance provided.

Medical errors must also be based on a doctor's negligence in carrying out medical procedures. It is known that the negligence of a doctor in carrying out a medical action, by law enforcement officials it is difficult to prove the negligence in the medical action, to be used as an error in criminal law. The difficulty for law enforcers to prove medical errors of doctors is influenced by the lack of knowledge of law enforcers regarding the scope of legal rules contained in the medical profession, whether medical actions are included as medical mistake or not. Because it has to go through a series of evidence contained in medical disciplines. In addition, the proof must look at the medical error, not only from the scope of criminal law, but first look at medical error from the aspect of medical disciplines. medical science, aspects of medical ethics and legal aspects,

especially criminal law. These three aspects have a position to regulate the medical profession which are different from each other, but cannot be separated from one another.

The provisions of the articles in the Code of Medical Ethics (KODEKI) are also contained in Law Number 29 of 2004 concerning Medical Practice and the Criminal Code, so that it applies as positive law with legal sanctions and has coercive power. Ethical violations do not result in formal sanctions for doctors who violate them, where the sanctions given depend on the severity of the ethical violation. The sanctions given are educational in nature (administrative sanctions) and are preventive measures for the same violation, which can be in the form of: verbal or written warnings or instructions, delays in salary or rank, reduction in salary or a lower level of rank, temporary revocation of doctor's license to practice, and cases of ethical violations are punished according to the applicable staffing regulations and are processed in court. ((Hanafiah, 1999))

The definition of medical discipline is contained in Article 55 paragraph (1) of Law Number 29 of 2004 concerning Medical Practice, namely rules and or provisions for the application of science in the implementation of services that doctors and dentists must follow. These rules and provisions are contained in the Medical Practice Act, Government Regulations (PP), Minister of Health Regulations (PerMenKes), Medical Council Regulations (KKI), Provisions and Guidelines for Professional Organizations (IDI), Professional Code of Ethics (KODEKI) and common practice in the field of medicine and dentistry. Discipline violations are violations of the rules and/or provisions for the application of science, which in essence can be grouped into: carrying out medical practice without competent, professional duties and responsibilities towards patients are not carried out properly, also disgraceful behavior that damages the dignity and honor of the medical profession.

Ethical violations do not result in formal sanctions for doctors who violate them, where the sanctions given depend on the severity of the ethical violation. The sanctions given are educational in nature (administrative sanctions) and are a preventive measure for the same violation, which can be in the form of: verbal or written warnings or instructions, delays in salary or rank, reduction in salary or a lower level of rank, temporary revocation of doctor's license to practice, and cases of ethical violations are punished according to the applicable staffing regulations and are processed in court (Hanafiah 1999). The enforcement of medical professional ethics is carried out by MKEK as stated in Article 1 point 3 of the Organizational and Work Procedure Guidelines of the Indonesian Medical Ethics Honorary Council, MKEK is one of the autonomous bodies of the Indonesian Doctors Association (IDI) specially formed at the Central, Regional and Branch levels to carry out the duties of professional courts, fostering professional ethics and/or other institutional and ad hoc tasks at their respective levels.

MKEK is an institution that enforces medical professional ethics in addition to MKDKI (Pelafu 2015). The mechanism for imposing sanctions by MKEK begins with the submission of a valid complaint, followed by a process of reviewing the case being complained. At the end of the review, the Chairperson of MKEK determines the eligibility of the case to be heard by the panel of examiners who will conduct court hearings until an MKEK decision is reached. If it is proven that there is evidence of ethical violations, the assembly will determine sanctions according to the severity of the defendant's doctor's mistake. The implementation of sanctions is carried out by the MKEK Professional Ethics Development Division for and on behalf of IDI management at the same level (PDS PatKLIn Ethics Council 2018).

In ORTALA MKEK, sanctions against convicted doctors/ethics violators can take the form of counselling, verbal warnings, written warnings, behavior coaching, re-education (re-schooling), to dismissal from IDI membership, either temporarily or permanently (Purwadianto 2008).

Determination of the severity category of the error is based on the criteria for the consequences for patient safety, professional honor, public interest, and the good faith of the complainant in participating in resolving cases, the motivation underlying the occurrence of cases, and environmental conditions that influence the occurrence of cases. In addition, the opinions and views The Indonesian Medical Honorary and Disciplinary Council (MKDKI) is in a very important and prioritized position before further legal action is taken in the form of civil lawsuits or criminal complaints. Because, in accordance with the provisions of Article 1 paragraph (14) of Law Number 29 of 2004 concerning Medical Practice, the MKDKI is an institution that has the authority to determine whether there are errors made by doctors and dentists in the perspective of medical and dental disciplines and to determine sanctions for these mistakes. Current legal phenomena and public attitudes indicate that there is a public tendency to resolve legal issues related to doctors' and hospitals' responsibilities towards litigation settlement through civil lawsuits and criminal complaints. This step was taken without first going through the dispute resolution route at MKDKI. This situation often creates negative impacts that harm all parties, not only patients but also doctors, hospitals and other health workers. In fact, for doctors, carrying out the medical profession carefully for the sake of humanity is the implementation of the legal adagium *lex nemini operatur iniquum*, *nemini facit injuriam* to create harmonious legal relations between doctors and patients are a necessity as well as part of an obligation in order to maintain professional ethics.

CONCLUSION

Doctors who have carried out their duties in accordance with professional standards, service standards and standard operating procedures are entitled to legal protection. The responsibility of a doctor related to mistakes he has made in carrying out his duties resulting in death or injury is an element of negligence, not an intentional mistake, but can be referred to as a medical risk, a doctor cannot be held responsible. In accordance with the principle of *geen straf zonder schuld* or *nulla poena sine culpa*, a person cannot be punished if he is not proven guilty. Especially if the doctor has carried out all his medical actions based on and in accordance with applicable standard procedures. Actually in practice, to prevent doctors from being sued, doctors must also be guided by the Code of Medical Ethics in carrying out their practice or performing their duties in health services.

AUTHORS' CONTRIBUTION

Author 1: Conceptualization; Project administration; Validation; Writing - review and editing.

Author 2: Conceptualization; Data curation; In-vestigation.

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