

JURIDICAL ANALYSIS OF DOCTORS' RESPONSIBILITIES FOR MALPRACTIC ACTION

M. Rizky Fernandez^{[1]*}; Moh. Muhibbin^[2]; Hanafi Arief^[3].

^{[1][2]}Malang Islamic University

^{[1][2]}Jl. Cakrawala No.5, Sumbersari, Kec. Lowokwaru, Kota Malang, Jawa Timur 65145

^[3]Kalimantan Islamic University

^[3]Jl. Adhyaksa No.2, Sungai Miai, Kec. Banjarmasin Utara, Kota Banjarmasin, Kalimantan Selatan
70123

*Email: 22102021029@unisma.ac.id

* *Corresponding Author*

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Abstract: This study aims to describe the criminal liability of doctors who commit malpractice acts and to analyze the legal protection for patients who are victims of malpractice in positive law studies in Indonesia. This study uses normative legal research using three types of legal materials related to the responsibility of doctors for malpractice actions, namely primary legal materials, secondary legal materials and tertiary legal materials, with the nature of qualitative descriptive research, types of normative juridical research, statutory and conceptual approaches. The results of the study stated that malpractice is included in the realm of criminal law other than civil and administrative. Doctors can be prosecuted criminally, although the criminal law does not clearly stipulate criminal penalties for malpractice. However, several conventional articles in the Criminal Code implicitly mention provisions regarding malpractice that can be used as a basis for criminal charges. In the Criminal Code, criminal liability for malpractice is contained in Article 90, Article 359, Article 360 paragraphs (1) and (2) and Article 361. Those subject to this article include doctors, midwives, medicine experts, who are experts in their work. each. If they ignore the regulations or requirements in their work, causing death (Article 359) or serious injury (Article 360), they will be punished more severely. Legal protection for victims of medical malpractice is regulated in Law no. 29 of 2009 concerning Medical Practice, granting rights to victims to submit complaints to the Chairman of the Indonesian Medical Discipline Honorary Council, as well as simultaneously taking criminal and civil law remedies to court.

Keywords: Juridical Analysis; Doctor's Responsibility; Malpractice.

1. INTRODUCTION

Patients as members of society certainly also need rules that can protect them from the actions of health workers who violate the rules of order for the health workers

themselves. This is where the law is needed to regulate that health workers comply with the rules set by their profession. Without clear sanctions for the violations they commit, as ordinary people, of course, health workers can act carelessly. Therefore, if indeed a health worker is proven to have committed malpractice which resulted in fatal consequences for the patient, of course it is necessary to study whether there is a penalty that can be imposed on this profession (Isfandyarie, 2005).

Health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian people. While health development is essentially the implementation of health efforts by the Indonesian nation to achieve the ability to live healthy for every resident in order to achieve optimal public health status, as one element of the general welfare of the national goal.

Implementation of health development, including health efforts and resources must be carried out in an integrated and sustainable manner in order to achieve optimal results. Health efforts that initially focused on efforts to cure sufferers have gradually developed towards integrated health efforts as a whole. Therefore, the implementation of health insurance which involves efforts to improve health (promotive), prevent disease (preventive), cure disease (curative) and restore health (rehabilitative) must be carried out in a comprehensive, integrated and sustainable manner between the government and the community.

Doctor as one of the main components of providing health services to the community have a very important role, because they are directly related to the provision of health services and the quality of services provided. The main foundation for doctors to be able to perform medical procedures on other people is their knowledge, technology and competencies obtained through education and training. Furthermore, the knowledge they have must be continuously maintained and improved in accordance with the progress of science and technology itself.

In medical practice, mistakes often occur that can lead to a crime, for example, misdiagnosis and errors in surgery, as is known as malpractice. Even though a doctor before carrying out his medical practice or medical services has carried out a fairly long

education and training. So that the community, especially patients, depends on the life expectancy and/or recovery of patients and their families who are suffering from illness.

Doctors are ordinary people who are full of shortcomings in carrying out their medical duties which are full of risks. Such as a patient who has the possibility of being disabled or dying after being treated by a doctor, it can happen, even though the doctor has carried out his duties according to professional standards or good medical service standards. This kind of situation is usually referred to as a medical risk, but sometimes it is interpreted differently by parties outside the medical profession as a medical practice error (malpractice) (Machmud, 2008).

2. METHODS

This is a normative legal research, using a statutory regulation approach that focuses on primary legal material, namely Law Number 36 of 2009 concerning Health. The nature of the qualitative descriptive analysis, the collection of legal materials is done by means of document studies, the processing of legal materials is done by means of checking (*editing*), marking (*coding*), reconstruction (*reconstructing*), and systematizing (*systematizing*). Analysis of legal materials was carried out qualitatively and comprehensively.

3. RESULTS AND DISCUSSION

3.1. *Criminal Liability of Doctors Who Perform Malpractice Actions*

Health services basically aim to carry out the prevention and treatment of diseases including in medical services which are carried out on the basis of individual relationships between doctors and patients who need healing. In the relationship between the doctor and the patient, a therapeutic transaction occurs, meaning that each party has rights and obligations in civil relations (Sofyan, 2005).

The relationship in this therapeutic transaction should be carried out in an atmosphere of mutual trust. Therefore, in order to maintain mutual trust, doctors must make maximum efforts for the recovery of patients and patients must also provide clear

information about their illness to doctors who are trying to carry out therapy on themselves and comply with doctor's orders that need to be done to achieve the expected recovery (Yogha, 2006).

Even so, sometimes the results achieved are not in accordance with the expectations of each party. It is not uncommon for the patient to sue the doctor because he cannot cure the patient's illness, even though the doctor has tried his best, experience and knowledge (Hartanto, 2007). Therefore, in order for doctors to avoid medical actions that can endanger patients, it is necessary for doctors to carry out medical procedures by (Guwandi, 1996): a) Act carefully and thoroughly; b) Based on medical indications; c) Actions carried out based on the standards of the medical profession; d) The existence of patient consent "informed consent".

Malpractice or medical malpractice is a term that is often used by people for criminal acts committed by people who work in the world of health or are commonly called health workers. Jusuf Hanafiah stated that medical malpractice is the negligence of a doctor to use the level of skill and knowledge that is commonly used in treating patients or injured people according to the standard in the same environment (Hanifah & Amir, 1999). Meanwhile, according to Veronica, medical malpractice is an error in carrying out the medical profession that is not in accordance with the standards of the medical profession in carrying out their profession. Many malpractice issues, on the legal awareness of patients raised into criminal matters. According to Maryanti, this gives the impression of the community's legal awareness of their health rights (Isfandyarie, 2005).

Malpractice can be divided into several categories of legal systems, for example in the fields of criminal law, civil law and perhaps also in the field of administrative law (Kansil, 1991). Malpractice committed by a doctor, resulting in liability in law. To avoid patient dissatisfaction, doctors should provide a complete "informed consent" explanation about the patient's disease and the possible risks that the patient will experience during the treatment procedure (Sofyan, 2005).

Article 45 of Law Number 29 of 2004 concerning Medical Practice, between health workers and patients is a form of agreement or engagement from the patient

before the health worker performs medical action on the patient. Those medical actions that carry a high risk must be given with written consent signed by those who are entitled to give consent. With an engagement, it is hoped that the patient or the patient's family can better understand the risks that will occur.

Agreement between the patient or the patient's family and the doctor can still be held accountable if something unexpected happens. All of this is due to increased public awareness of their rights which is a positive indicator of increasing legal awareness in society. The negative indicator is the trend of increasing cases of health workers or hospitals being subpoenaed and even being sued by patients which as a result will affect the process of health services for health workers.

This should be understood because patients have an equal position with health workers which allows patients to always ask questions about their disease, examination, treatment, and actions to be taken regarding their illness and this is a right that should be respected by health service providers. The legal relationship between doctor and patient occurs because the law obliges doctors to provide health services to patients. This means that for this legal relationship to occur, no initiative or even the participation of the patient is required. Legal relations like this occur, for example, in an emergency situation where it is not possible to ask the patient's consent for health services to occur, even though the law orders doctors to provide assistance (Machmud, 2008).

In accordance to the 1945 Constitution of the Republic of Indonesia Article 28H paragraph (1) it has been emphasized that: "everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to get a good and healthy environment and has the right to obtain health services". Health services basically aim to carry out prevention and treatment of diseases, including medical services which are carried out on the basis of individual relationships between doctors and patients who need healing but doctors often make mistakes which result in malpractice for patients (Wiradharmairadharma, 1999).

Legal responsibilities can be distinguished into administrative legal responsibilities, civil legal responsibilities and criminal legal responsibilities. Against these legal violations committed by the medical profession, action can be taken or in

other words law enforcement is carried out (Wiradharmairadharma, 1999). Administrative responsibility arises when a doctor or other health worker violates applicable State Administrative law, for example practicing a doctor without a license or permit, practicing with an expired license and practicing without keeping medical records. Meanwhile, civil legal responsibility arises because of a legal relationship between a doctor and a patient, this relationship is called a therapeutic agreement or transaction. If a dispute occurs, the dispute is between individuals or is personal in nature, then the patient or family can file a lawsuit against the doctor who has committed a default or unlawful act to the Court.

Unlike the case with criminal law liability, where law enforcement is carried out by authorized law enforcement officials (Wiradharmairadharma, 1999). In the past, the world of medicine seemed unreachable by law, with the growing public awareness of their need for legal protection, the world of medicine is not only a civil relationship, it often develops into a criminal matter. There are many malpractice issues that we encounter, because of the patient's legal awareness, they are raised into criminal matters.

Along with the increasing legal awareness of the people who are increasingly aware of their rights, these malpractice suits are increasingly being heard. The level of public awareness has increased so that they are more critical of the services provided by doctors. In fact, public criticism of the medical profession in Indonesia has recently appeared more and more frequently in various media, both print and electronic media.

Kinds of Malpractice (Setyowati, 2007)

1. Ethical malpractice; that is a doctor's actions that are contrary to medical ethics. While Medical Ethics as outlined in the code of ethics is a set of ethical standards, principles, rules or norms that apply to doctors. Ethical malpractice is a negative impact of advances in medical technology. Advances in medical technology aim to provide convenience and comfort to patients but in fact give unwanted side effects.
2. Juridical malpractice; that is divided into three forms, one of which is criminal malpractice. Criminal malpractice occurs when a patient dies or is disabled as a result of a doctor or other health worker being careless or inaccurate in making efforts to cure the patient who died or is disabled (Sofyan, 2005).

Criminal malpractice on purpose, for example in cases of abortion provocatus, ending the patient's life (euthanasia), which according to science and experience will never recover) (Adji, Etika Profesional dan Hukum Pertanggungjawaban Pidana Dokter: Profesi Dokter, 1991). Criminal malpractice due to negligence, for example negligence resulting in death or injury, a patient experienced paralysis of the neck muscles due to vacuum extraction carried out 3 years earlier, a baby in Malang was roasted to death on the operating table due to the negligence of doctors and nurses.

Malpractices that can be held criminally responsible are errors in carrying out practices related to violations of the Criminal Code (KUHP), these violations include:

- a. Causing a patient to die or be injured because of belief is subject to Articles 90, 359, 360 (1), (2), 361.
- b. Carry out provocatus abortion, subject to articles 299, 347 (1), (2), 348 (1), (2), 349
- c. Violating decency or decency, subject to articles 285, 286, 290.
- d. Disclosure of medical secrets, is subject to Article 322.
- e. Forgery of a statement, subject to Article 263 (1), 267 (1).
- f. If you agree to commit a crime, you will be subject to Article 221.
- g. Deliberately not providing assistance to people in a state of danger, is subject to Articles 304, 531.

In the KUHP, criminal liability can be charged in Article 90, Article 359, Article 360 paragraphs (1) and (2) and Article 361 (Isfandyarie, 2005). One of them is Article 360 Code which states:

- a. Whoever due to an oversight causes a person to be seriously injured, shall be punished with imprisonment for a maximum of one year.
- b. Any person who dues to an oversight causes a person to be injured in such a way that that person becomes temporarily ill or unable to carry out his position or work temporarily, shall be punished by a maximum imprisonment of nine months or a maximum light imprisonment of six months or a maximum fine of four months. thousand five hundred rupiah.

Malpractice committed by doctors, there are 3 elements that stand out, namely:

- 1) Doctors have made mistakes in carrying out their profession
- 2) The doctor's action was carried out due to negligence or negligence
- 3) The error is the result of the doctor not using the knowledge and skill level that should be based on professional standards
- 4) There is a fatal consequence, namely the death of the patient or the patient suffers serious injuries (Sugandhi, 1981).

Article 360 has a difference with article 359, namely in article 359 it describes the consequences of an act that causes the death of a person, while in article 360 it states: Serious injuries, Article 90 of the KUHP explains serious injuries, namely (Soesilo, 2007):

1. Diseases or injuries that cannot be expected to heal completely or that can bring death. So no matter how big the wound or illness is, if it can heal perfectly and doesn't pose a threat of death, it's not a serious injury.
2. Continuously no longer capable of performing positions or jobs. If it's only for a while, if you're unable to do your job, you won't be seriously injured. Singers, for example, if their throat is damaged, so they cannot sing forever, they will be seriously injured.
3. No longer using (losing) one of the five senses.
4. Verminking or defects so that it looks ugly.
5. Verlamming (paralyzed) means unable to move his limbs.
6. His mind is disturbed beyond four weeks. Abort or kill the mother's future child.
7. Injuries that cause illness (ziek) or interfere with daily work.

Meanwhile, because of his mistake (lack of caution) causing minor injuries, this article does not apply to him. Article 361 states "If the crime described in this chapter was committed in carrying out a position or job, then the sentence can be increased by a third and the offender can be fired from his job, during which time the crime was committed and the judge can order that his decision be announced".

Those subjects to this article are, for example, doctors, midwives, pharmacists, drivers, cab drivers, machinists who as experts in their respective jobs are deemed to have to be more careful in carrying out their work. If they ignore the regulations or requirements in their work, causing death (Article 359) or serious injury (Article 360), they will be punished more severely.

In the case of malpractice crime rules, it is necessary to prove the malpractice crime. Proof in the case of malpractice is an attempt to seek reasonable certainty through legal examination and reasoning about whether or not the incident occurred and why the incident occurred. So the purpose of this proof is to seek and find material truth, not to find fault with the accused.

Based on Article 184 of the KUHP, what can be used as valid evidence are witness statements, expert statements, letters, instructions and statements of the

accused. While based on Article 183 of the KUHP, a judge can impose a sentence provided that there are two valid pieces of evidence and the judge's conviction obtained from these two pieces of evidence or the evidentiary system according to the 'negative wetelijk' theory, because it combines the elements of the judge's conviction and elements of valid evidence. according to the law. In Law Number 36 of 2009 Concerning Health there is no definition of Malpractice, but in the Criminal Provisions in Chapter XX it is regulated in Article 190 which reads:

- (1) Leaders of health service facilities and/or health workers who practice or work at health service facilities who deliberately do not provide first aid to patients in an emergency as referred to in Article 32 paragraph (2) or Article 85 paragraph (2) shall be subject to imprisonment for a maximum of 2 (two) years and a fine of a maximum of Rp. 200,000,000 (two hundred million rupiahs).
- (2) In the event that the act referred to in paragraph (1) results in disability or death, the head of the health service facility and/or health worker shall be punished with imprisonment for a maximum of 10 (ten) years and a fine of up to one billion rupiahs.

Article 63 of Law Number 36 of 2009 clearly regulates efforts to cure disease and efforts to restore health as a benchmark for malpractice according to the criminal provisions contained in article 190 above.

3.2. Criminal Sanctions Against Perpetrators of Sexual Violence

In Law no. 29 of 2004 concerning Medical Practice, it is stated that in Article 66 Paragraph (1) a situation is regulated in which an error occurs involving a health care provider, in this case by a doctor, who can submit a complaint to the Chairman of the Indonesian Medical Disciplinary Honorary Council (MKDKI) by any person who know or have their interests harmed.

In addition to the victims being able to complain about their losses to the Indonesian Medical Discipline Honorary Council, according to Article 66 Paragraph (3) of the Medical Practice Law, malpractice victims who are harmed by a doctor's mistake or negligence in carrying out medical procedures can also report Law no. 29 of 2004

regarding criminal allegations against the authorities and/or suing for civil damages to court.

Furthermore, it is stated in Articles 67 and 68 of the Medical Practice Law that the Medical Discipline Honorary Council has the authority to examine and make decisions on complaints received. If an ethical violation is found, the Medical Honorary Council will forward the complaint to a professional organization.

Based on the description above, it can be concluded that the form of legal protection for victims of medical malpractice as regulated in Law no. 29 of 2009 concerning Medical Practice in the form of:

1. To grant rights to victims of malpractice to make legal efforts to complain to the Chairman of the Honorary Council of Indonesian Medical Disciplines.
2. To carry out legal efforts simultaneously with criminal law and civil law in court.
3. Granting authority to the Indonesian Medical Disciplinary Honorary Council (MKDKI) to issue decisions imposing disciplinary sanctions on doctors who are proven guilty.

Law No. 29 of 2004 Article 45 stipulates that every medical or dental action to be performed by a doctor or dentist on a patient must obtain approval. The consent is given after the patient has received a complete explanation that at least includes:

1. Diagnosis and procedures for medical action;
2. The purpose of the medical action performed;
3. Other alternative actions and risks;
4. Risks and complications that may occur; And
5. Prognosis of the actions taken.

4. CONCLUSIONS

- a. Medical negligence as a form of malpractice is included in the realm of criminal law. Doctors can be criminally prosecuted, even though the criminal law does not clearly regulate criminal threats. Several articles in the Criminal Code implicitly mention provisions regarding malpractice that can be used as the basis for criminal charges due to malpractice as in Article 90, Article 359, Article 360 paragraphs (1) and (2) and Article 361. death of the patient (article 359) or serious injury (article 360), the doctor can be punished more severely.

- b. Forms of legal protection for victims of medical malpractice are regulated in Law no. 29 of 2009 concerning Medical Practice, namely in the form of granting rights to victims of malpractice to take legal action. Legal remedies in the form of complaints to the Chairperson of the Indonesian Medical Discipline Honorary Council, can also simultaneously take criminal and civil law remedies to court.

5. SUGGESTION

- a. With the application of criminal penalties for doctors who commit malpractice, it is hoped that this will minimize malpractice in Indonesia and in the future it is hoped that policy makers will create a legal product that more specifically regulates malpractice crimes so as to ensure legal certainty for the application of criminal penalties for doctors who commit malpractice.
- b. In the future, it is hoped that the government will always provide legal protection for victims of malpractice committed by doctors and implement all regulatory products governing legal protection for victims, one of which seeks compensation (civil) for victims of malpractice.

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