

Legal And Human Right Protection For Victim of Malpractice

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Abstract

One of the main concerns in regard to medical law and healthcare is malpractice. In Indonesia, medical law, additionally referred to as health law, is still a relatively new field of study. The numerous focus on health law, particularly on physicians and hospitals, contrasts with the recently established medical law and the recently acknowledged notion of malpractice. Thus, the issues at hand include how patients' and their families' rights to receive medical information, how to settle disagreements between them and the defendants, and how much the legal procedure settles for in situations of negligence. This study seeks to address the issues surrounding medical disputes and the reasons for patients' and their families' struggles in exercising their right to receive medical data. That it is challenging to prove malpractice lawsuits because it is challenging to access the medical records of patients impacted by malpractice cases.

I. Introduction

In the field of health law, there are more serious problems, such as malpractice claims. Malpractice is the inappropriate or careless practice of a profession, which can only give cause for legal blame for its practice if the profession causes a loss that is specified or governed by law. Professional behavior can transpire in a variety of fields, including medicine. Errors committed in the practice of medicine will give rise to criminal or civil law liability (based on the type of losses sustained). These legal liabilities consist of three main components that work together as a cohesive whole: (1) treatment that does not follow established protocols; (2) careless actions; and (3) legal repercussions for losses incurred.

Legal losses are those that are acknowledged by the law and that can be made up by holding those who commit the crimes and those who use legal tactics legally liable. Medical malpractice is handled medically by analyzing the instruments and procedures utilized throughout the examination, gathering false medical information, diagnosing the condition based on the information gathered, providing therapeutic care, and managing losses brought on by erroneous therapy or misdiagnosis. Legal ambiguity results from the fact that the definition of negligence/culpa in the context of medical malpractice is not consistently applied. Legal culpability in medical malpractice cases is determined by the losses incurred as a result of the negligence, as per the law. Law Number 20 of 2016 concerning Marks and Geographical Indications states that Article 1 number 1 states that a mark is a sign that is displayed either graphically such as an image, logo, name, word, letter, number, color arrangement, in the form of two and/or three dimensions, sound, hologram, or a combination of two or more of these elements, money is used to distinguish goods and/or services produced in trade traffic by persons or legal entities.

Law in Indonesia has the goal of achieving public order. The achievement of this goal is inseparable from the legal rules that are bound by each other in an orderly and orderly manner which is an order. The lower rule of law should not conflict with the higher rule of law. So that many existing legal rules are interrelated which is called the legal order. Health services in Indonesia are an effort by the government to reduce the number of deaths and increase the percentage of people who are hospitalized. The success of health efforts depends on the availability of health resources in the form of manpower, facilities and infrastructure in adequate quantity and quality.

The types of malpractice reviewed in terms of professional ethics and legal aspects can be divided into two forms, namely ethical malpractice and juridical malpractice :

Ethical Malpractice, namely health workers taking actions that are contrary to their professional ethics as health workers. For example, a midwife who commits

an act that is contrary to midwifery ethics. Midwifery ethics outlined in the Midwifery Code of Ethics is a set of ethical standards, principles, rules or norms that apply to all midwives.

Juridical Malpractice, Soedjatmiko distinguishes this juridical malpractice into three forms, namely civil malpractice, criminal malpractice and administrative malpractice.

Criminal Malpractice, Criminal malpractice occurs when a patient dies or experiences disability due to lack of care by health workers. Or not careful in making care efforts for patients who have died or are disabled.

Health as a human right must be realized in the form of providing various health efforts to the entire community through the implementation of quality and affordable health development. Providing legal protection and certainty to the community, doctors and dentists, it is necessary to regulate the implementation of medical practice. Supporting the creation of good health services, the government issues various kinds of rules in the form of laws, government regulations and ministerial regulations. The implementation of medical practice faces many obstacles, one of which is known as medical malpractice. The absence of normative legal rules (laws) that regulate in detail regarding medical malpractice makes this medical malpractice difficult to prove, causing losses to the patient who is the victim. In addition, the absence of detailed legal rules regarding medical malpractice also has an impact on health workers because there are no clear provisions on how the criteria for medical treatment can be declared as medical malpractice.

Indonesia has not yet had a law on medical malpractice. Indonesia's legal system does not all regulate medical malpractice. Regulations regarding medical malpractice in general can be seen from the provisions listed in the Civil Code, Criminal Law and Administrative Law. The relevant laws include: Law No. 23 of 1992 concerning Health, Law No. 29 of 2004 concerning Medical Practice, Law No. 36 of 2009 concerning Health, as well as Law No. 44 of 2009 concerning Hospitals, and Law No. 8 of 1999 concerning Consumer Protection provide a basis for patients to apply for legal remedies. Medical malpractice can enter the field of criminal law, if it meets certain conditions in three aspects, namely the requirements in the doctor's mental attitude, the requirements in medical treatment and the requirements regarding consequences. Basically, the condition in medical treatment is deviant medical treatment. The condition regarding mental attitude is the condition of intention or culpa in medical malpractice. Consequence Conditions are conditions regarding the occurrence of losses to the health or life of patients. Broadly speaking, the regulation regarding medical malpractice in law in Indonesia can be seen from the provisions of the Criminal Code, Law No. 36 of 2009 concerning health and Law No. 29 of 2004 concerning Medical Practice.

2. Research Method

In this study, the researcher uses a juridical normative research method, which is a literature research conducted by examining various related legal literature related to the topic of discussion of this research which is also associated with several legal sources in the form of positive law (law).

3. Results and Discussion

Doctor's Responsibility in the Case of Malpractice

Public criticism of the medical profession in Indonesia has recently appeared more and more frequently in various media, both print and electronic media. The world of medicine, which used to be unreachable by law, with the growing public awareness of the need for legal protection which is the right to health care and the right of individuals (the right of self determination), makes the world of medicine not only a civil relationship, but also often develops into a criminal matter. Many problems of malpractice on the legal awareness of the community have been raised as civil issues. For example, the case of Prita Mulyasari, where Prita initially went to the hospital for treatment. Omni International about the complaints that are felt. The results of laboratory tests showed positive dengue fever (fever complaints for three days, severe headache, nausea, vomiting, weakness, sore throat and no appetite). However, after being asked for the test results, there was an initial dispute, because the test results and the diagnosis did not match. Prita won because of the support of the community with "Prita Coins" which are reported almost every day in print and electronic media. Almost all aspects of civil law that concern a patient's lawsuit against the doctor who handles it are matters of compensation claims. Article 1365 of the Civil Code states that every unlawful act, which brings harm to another person, obliges the person who due to his fault to issue the loss, to compensate for the loss. Unlawful acts (onrechtmatige daad) in their development are expanded to 4 (four) criteria.

First, it is contrary to the legal obligation of the perpetrator; or second, against the law of the subjective rights of others; or third, against the rules of moral order; or fourth, it is contrary to the propriety, thoroughness and prudence that a person should have in dealing with fellow citizens of the community or towards the property of others. The issue of the responsibility of doctors in cases of medical malpractice has relevance to the unlawful acts of Articles 1366 and 1364 of the Civil Code, namely first, the patient must suffer a loss.

Second, there is fault or negligence (besides individuals, hospitals can also be responsible for the mistakes or negligence of their employees). Third, there is a

causal relationship between loss and error; and fourth, the act is unlawful. If a person at the time of committing an unlawful act knows very well that his actions will result in a certain circumstance that is detrimental to other parties, it can be said that in general a person can be held accountable. The condition to be able to say that a person knows very well the existence of circumstances that cause the consequences of it to occur. This mistake occurred due to the lack of thoroughness of doctors in observing patients so that unwanted things happened together. This inaccuracy is an action that falls into the category of unlawful acts, causing losses that must be borne by the patient. Vollman questioned whether the condition of error (*schuldvereiste*) should be interpreted in its subjective (concrete) sense. In the case that the condition of the fault must be interpreted in its subjective sense, then the perpetrator in general can be examined whether his actions can be blamed on him, whether his state of mind is such that he can realize the meaning of his actions and whether the perpetrator in general can be held accountable. As for the condition of error in the objective sense, the question is whether the perpetrator can generally be held accountable, can be blamed for a particular act in the sense that he must be able to prevent the consequences of his concrete actions. The perpetrator is different from what he should have done and in such a case the mistake and the unlawful nature become one.

Repressive Legal Protection

Doctrine is the opinion of legal experts and the basis for the use of doctrine, namely legal principles that prioritize *communis opinio doctorum* or one must not deviate from the general opinion of scholars or legal experts. The doctrine that applies in health sciences is *Res Ipsa Loquitur*, which means a doctrine that favors the victim. Proof in the civil procedure law that determines that the victim of an unlawful act in the form of negligence does not need to prove the existence of the element of negligence, it is enough to show the facts. The goal is to achieve justice. This doctrine is usually used in cases of medical malpractice.

The conditions for the validity of *Res Ipsa Loquitur* are, first, the incident does not usually occur; second, the loss was not incurred by a third party; third, the instruments used in the supervision of the perpetrators; and fourth, it is not the victim's fault. This doctrine is felt to give more harm to patients, considering that patients are laymen in the field of medical science. It is very contrary to the principle of justice if a patient who is a victim of an act of negligence, still has to prove that negligence occurred. Even though the patient did not know the process of how the negligence occurred, because he had entrusted his life and health to a doctor who was considered more expert. For this reason, the burden of proof by the doctrine of *Res Ipsa Loquitur* is imposed on medical personnel who are considered to know better the processes and standards used in carrying out the medical procedure. The patient does not need to prove/disclose the process of negligence, just show the consequences of his suffering. Thus, the doctrine of *Res Ipsa Loquitur* is actually a

kind of circumstantial evidence, that is, evidence of a fact where facts can be used to draw conclusions.

Lawsuits in Medical Disputes

First, Law Number 29 of 2004 concerning Medical Practice article 66 paragraph (1) and paragraph (3). Article 66 paragraph (1) stipulates that every person who knows or whose interests are harmed by the actions of doctors or dentists in carrying out medical practice can make a complaint in writing to the Chairman of the Honorary Council of Indonesia Medical Disciplines; and paragraph (3) determines that the Complaint as referred to in paragraph (1) and paragraph (2) does not eliminate the right of every person to report the alleged criminal act to the authorities and/or sue for civil damages to the court. It is implicitly said that a medical dispute is a dispute that occurs because the patient's interests are harmed by the actions of the doctor or dentist who practices medicine. Thus, a medical dispute is a dispute that occurs between medical service users and medical service actors, in this case between patients and doctors and health facilities.

Second, Article 359 of the Criminal Code which stipulates that whoever by his fault (negligence) causes serious injuries to a person, is threatened with imprisonment for a maximum of one year.

Third, Article 360 paragraph (1) and paragraph (2) of the Criminal Code. Paragraph (2) stipulates that whoever by his fault (negligence) causes serious injury to a person, is threatened with imprisonment for a maximum of one year; and paragraph (2) stipulates that whoever by his fault (negligence) causes serious injury to another person in such a way that obstruction disease arises, carries out office work or search for a certain time, is threatened with imprisonment for a maximum of six months or a fine of up to four thousand five hundred rupiah.

Fourth, Article 361 of the Criminal Code which stipulates that if the crime described in this chapter is committed in the exercise of an office or search, then the penalty is increased by one-third and the guilty person may be deprived of the right to carry out a search in which the crime was committed, and the judge may order that the verdict be announced; Fifth, Article 1365 of the Civil Code which stipulates that every unlawful act that brings harm to another person, obliges the person who, due to his fault, repays the loss.

Sixth, Article 1366 of the Civil Code which stipulates that every person who is

responsible not only for losses caused by his actions, but also for losses caused by negligence or lack of carelessness; Seventh, Article 1367 of the Civil Code which stipulates that a person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of people who are his dependents or caused by goods under his supervision.

Eighth, Article 1370 of the Civil Code which stipulates that in the event of an intentional death or due to a person's lack of care, then a wife or wife, children or parents of the victim who usually earn a living from the victim's work have the right to claim compensation, which must be assessed according to the position and wealth of both parties, as well as according to the circumstances; Ninth, Article 1371 of the Civil Code which stipulates that the cause of injury or disability of a limb intentionally or due to lack of care gives the victim the right to in addition to reimbursement for losses caused by the injury or disability, as well as this compensation is assessed according to the position and wealth of both parties, as well as according to the circumstances.

From the articles mentioned above, if it is associated with medical actions, then these articles actually do not adequately accommodate the process of a medical action but only accommodate the results of a medical action, namely the loss to the patient. In fact, in medical services, the results to be achieved are not *verbintennis* results but *Verbitennis* inspanning (earnest efforts). Thus, if there is a loss on the patient's side, it does not necessarily mean that there is negligence on the part of the medical service provider.

In addition, judging from the type of consequences of unlawful acts, especially unlawful acts on people's bodies, compensation can be given if there are any of the following elements. First, economic losses, for example medical and hospital expenses; second, injuries or defects to the victim's body; third, the presence of physical pain; and mental illness, such as stress, extreme sadness, excessive hostility, anxiety, and various other mental/mental disorders. The Civil Code (K.U.H. Civil) does not expressly or even does not refer in detail to certain damages, or one aspect of compensation, so the judge has the freedom to apply the compensation in accordance with the principle of propriety, as long as it is indeed requested by the victim/plaintiff. The justification for the freedom of the judge is because the interpretation of the words loss, *biya* and interest is very broad and can cover almost everything related to compensation. Damages in physician malpractice can be in the form of immaterial damages whose amount cannot be calculated mathematically, but is more likely to be at the discretion of the judge. The judge's considerations include the weight of the mental burden borne by the victim, the status and position of the victim, the situation and conditions under which the unlawful act of malpractice occurred, and the situation and mental condition of the victim and the perpetrator

4. Conclusion

The conclusions of this study are as follows:

- a. Malpractice is negligence on the part of doctors, Malpractice Liability in Criminal Law is very closely related to proving the actions of a person (doctors/medics) to be included in the category of criminal malpractice, when the act meets the formulation of criminal offenses in carrying out medical actions that result in pain, injury, disability, body damage, death and other losses. doctors can be held accountable for malpractice cases that harm patients because of unlawful acts, namely contrary to the legal obligations of the perpetrator, against the law of the subjective rights of others; against the rules of decency, and contrary to the propriety, thoroughness and prudence that a person should have.

- b. To increase knowledge for these law enforcers, especially knowledge in the medical field such as midwifery, so that in the event of a case of malpractice they can carry out the investigation process, prosecute and decide the case appropriately according to their abilities/knowledge. This can be achieved by holding seminars or providing some kind of special education related to malpractice and midwifery problems, especially matters that are very closely related to the events that arise around malpractice. Or at least they are given a handbook/guideline on the law for the midwife profession and all its aspects. It is hoped that later every malpractice case can be completely resolved.

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