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DOCTOR'S CIVIL RESPONSIBILITY IN MEDICAL MALPRACTICE IN INDONESIA

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Abstract. In the perspective of civil law, medical malpractice is an unlawful act (onrechtmatige daad) in accordance with the provisions of the Civil Code (Burgerlijk Wetboek). This study aims to analyze the civil liability of a doctor in medical malpractice in Indonesia. This type of research is legalistic, doctrinal or normative. Based on the results of the study, a lawsuit against the law in medical malpractice is regulated in Article 1365 Burgerlijk Wetboek (BW) with elements such as the patient having to suffer losses, mistakes or negligence (other than private persons, hospitals). may also be liable for errors or omissions). negligence of employees), there is a causal relationship between loss and error, the act violates the law. In addition, the form of the doctor's liability in acts against the law of medical malpractice based on Article 1365 BW can be in the form of material and immaterial compensation to patients.

Keywords: action; against the law; medical malpractice; Indonesia.

INTRODUCTION

All Indonesian people have the right to get quality health services. certain religions and groups. This attitude is very much needed to maintain the quality of health services and to increase public trust in hospitals and doctors in Indonesia, so as to reduce the number of patients seeking treatment abroad.

In order to protect the rights mentioned above, the government issued Law no. 36 of 2009 concerning Health, Law no. 29 of 2004 concerning Medical Practice and Law no. 36 of 2014 concerning Health Workers. The law serves as a basis or guarantee to the public that the government has carried out the constitutional mandate and is serious about managing and improving the quality of health services in Indonesia.

Quality health services are based on the implementation of medical practice in every health service unit throughout Indonesia. In order to create a good legal relationship between patients and doctors or other health workers, health services are based on therapeutic agreements. Therapeutic agreement is an agreement made between doctors and health workers with patients, in the form of a legal relationship that gives birth to rights and obligations for both parties (Broderick, 2020).

Therapeutic agreements must be made by competent people. The recipients of medical services are patients, while the providers of medical services are doctors and health workers. Therapeutic agreements have an object, namely medical services or healing efforts. The lawful cause contained in the Therapeutic Agreement is where the purpose of the healing effort is the maintenance and improvement of health which is oriented on the principle of kinship, including activities to improve the quality of health (promotive), disease prevention (preventive), disease cure (curative), and health restoration (rehabilitative) (Rock & Degeling, 2015).

However, in carrying out their obligations, doctors may make mistakes or omissions when carrying out their profession which is known as medical malpractice. Medical malpractice can be done either consciously or unconsciously. In the public's view, every practice or professional work of a doctor that causes harm is as if the doctor is still at fault, without assessing how the subjective (inner) factor of the doctor influences his actions. In fact, the view of medical malpractice cannot only judge the form of the doctor's actions and their consequences without assessing the elements of the inner attitude of the perpetrator (Ahmad, 2011).

It differs from the general public view that an assessment of a doctor's actions starts from the result or is based on the effect. However, this view exceeds the meaning of the language, which in a literal point of view is solely based on bad actions. Meanwhile, the community sees it in terms of consequences bad, then judge on the medical form of the doctor. Therefore, it is a bad result, so the doctor's actions that produce the result become bad (despicable) actions (Goodenough, 2010).

The view of medical malpractice can also be seen from the point of view of the

doctor's obligations being violated, where there is no medical malpractice without any violation of the legal obligations carried out by doctors in the doctor-patient relationship. This view is correct, because there can be no medical malpractice if it is not in a doctor-patient relationship, which means that there is a right and obligation relationship between a doctor and a patient in a therapeutic contract where the doctor's law is then violated (Astuti, 2017).

Doctors' mistakes in carrying out health services can be prosecuted based on unlawful acts.A doctor's action can be categorized as an unlawful act, if the doctor who is supposed to make maximum healing efforts and does not deviate from the specified standards, but in carrying out the medical service the doctor makes an error in the form of negligence or carelessness resulting in harm to the patient.In the concept of civil law, unlawful acts are regulated in Article 1365 of the Civil Code where unlawful acts that can result in harm to others, are burdened with civil responsibility to provide compensation. This provision can be used to sue hospitals, doctors or other health workers . Therefore, this study will analyze the civil liability of a doctor in medical malpractice in Indonesia.

METHODS

This type of research is legalistic, doctrinal or normative. According to Rowe, normative research aims to find, explain, study, analyze and systematically present facts, principles, concepts, theories, laws so as to find new knowledge and ideas to be suggested into a change or renewal (Rowe, 2009). In this study, all documents, references, facts, theories, doctrines and laws related to health will be reviewed, especially those related to unlawful acts in medical malpractice.

The approach used in normative or legalistic research can be in the form of a concept approach, astatute approach, legal history (historical approach), a case analysis approach (case approach) and a comparative approach to law (comparative approach) (Diantha & SH, 2016). However, this study only uses a legal or legal approach because this study analyzes the civil liability of doctors in medical malpractice Indonesiain. 36 of 2009 concerning Health and other related laws.

RESULTS AND DISCUSSION

Nowadays, the term malpractice is gaining popularity in the medical field, there is even a tendency to associate it directly with the medical field. Whereas the meaning of malpractice also occurs in other professions such as the profession of lawyers, advocates, judges, accountants, journalists, police and others. Malpractice is a term that always has a bad impact, is stigmatizing and contradicts the rules that have been set.

The term malpractice was first used by Sir William Blackstone in 1768 (Perin, 2018). Medical malpractice comes from the word malpractice or mala praxis which meansbad practice (Pinto et al., 2012). According to Coughlin, former President of the New York State Bar Association in his book "*Dictionary of Law*", malpractice is defined as (Jamjoom & Davis, 2019):

Professional misconduct on the part of a professional person, such as a physician,

engineer, lawyer, accountant, dentist or veterinarian. Malpractice may be the result of ignorance, neglect or lack of skill or fidelity in the performance of professional duties, intentional wrongdoing or illegal or unethical practice.

The bad action is an act that deviates and is not in accordance with the regulations that have been set. The word malpractice is common and all professions can use this term. If this term is associated with the word doctor or medical profession, it becomes medical malpractice or medical malpractice.

According to John D. Blum medical malpractice as a form of professional Negligence in which measrable injury occurs to a plaintiff patient as the direct result of an act or defedant by the commission practitioner(Healy, 2011). Meanwhile, the formulation that occurs in the world of health is professional misconduct or lack of ordinary skills in the performance of professional act. A practitioner is liable for damages or injuries caused by malpractice (Shakeri et al., 2013).

According to Stedman's medical dictionary, medical malpractice is one way to treat a disease or injury, because it is caused by an indifferent attitude or action, indiscriminately or based on criminal motivation. In the case of Valentin lwn. Society se Bienfaisance de Los Angelos, California, 1956 formulated that medical malpractice is the negligence of a doctor or nurse to apply the level of skill and knowledge in providing treatment and care services to a patient which is usually applied in treating and caring for sick or injured people in the area the same (Fries, 2020).

From the several definitions of medical malpractice above, all scholars agree to define medical malpractice as a doctor's health because it does not use the knowledge and skill level in accordance with professional standards which ultimately results in the patient being injured, disabled or died.

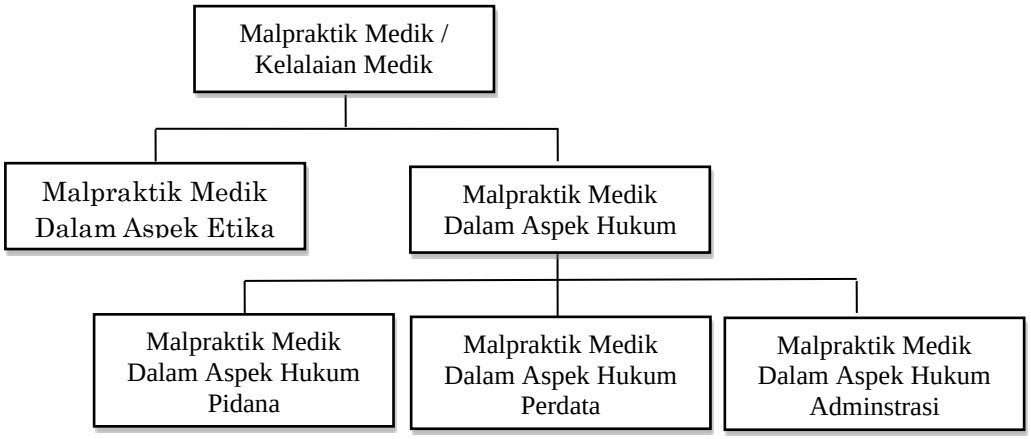
Based on the research that has been done, there are three most dominant aspects that are not carried out by doctors so that doctors have the opportunity to be sued for medical malpractice actions, namely doctors violating medical professional standards, operational standards, and doctors in caring for patients who do not give informed consent. So according to the author's view, the notion of medical malpractice is the action of a doctor in carrying out his duties not based on medical professional standards, standard operating procedures and not carrying out informed consent so that these actions result in patients being injured, disabled or dead (Hatta, 2018).

However, there are some authors who say that it is difficult to distinguish between medical negligence (negligence) and medical malpractice (malpractice) (Smith, 2010). There are those who argue that it is better for malpractice to be considered synonymous with professional negligence. Indeed, in the literature, the use of the two terms is often used interchangeably as if they mean the same thing. According to J. Guandi, medical malpractice is not the same as negligence. Negligence is indeed included in malpractice, but in malpractice there is not always an element of negligence. Malpractice has a broader meaning because in the act of malpractice

there are actions that contain elements of negligence (culpa) and intentional (intentional). While the meaning negligence is an action that is not intentional or negligent, careless, does not care about the interests of others and the consequences of these actions are not the goal. The resulting consequences are due to negligence that actually occurred against the will of the perpetrator.

A. Types of Medical Malpractice

As a professional group, the medical profession is not enough just to be regulated based on a medical code of ethics, but doctors in their duties need a legal basis so that health workers performing medical services can be protected. In addition, if the doctor makes a mistake such as medical negligence or medical malpractice, the doctor can be sued in court and the patient gets compensation from the doctor or the hospital. Therefore, errors in the medical profession are regulated in two instruments, namely medical malpractice in ethical and legal aspects.



Scheme: Types of Medical Malpractice in Indonesia

In the aspect of criminal law, doctors' mistakes can be seen in aspects of medical services which are caused by intentional or negligence that can result in someone dying, being disabled or injured. seen in unlawful acts or defaults in carrying out therapeutic agreements between doctors, hospitals and patients or patients' families. In addition, the medical profession can also be prosecuted under state administrative law relating to medical practice permits and so on.

Civil malpractice occurs when there are things that cause non-fulfillment of the contents of the agreement (default) in therapeutic transactions by health workers, or the occurrence of unlawful acts (onrechtmatige daad), causing harm to patients. Violations of the medical profession according to law Civil law is based on two legal grounds, namely default (Article 1239 of the Civil Code). In this case the doctor does not fulfill his obligations arising from the existence of an agreement (contractual responsibility).

In a literal sense, it is a bad performance which basically violates the content/agreement in an agreement/contract by one of the parties. The forms of violations in default are as follows:

1. Not giving any achievements at all as agreed.
2. Delivering performance that is not as it should be, does not match the quality or quantity that was promised.
3. Delivering achievements but not being on time as promised.
4. Delivering other achievements than promised.

From the therapeutic transaction which is inspanning verbentenis where the obligations or achievements of doctors that must be carried out on patients are medical treatment that is as good as possible and as carefully as possible in accordance with medical professional standards or standard operating procedures. Therefore, a doctor's default occurs because he violates medical professional standards or standard operating procedures so that he does not provide medical services to patients properly, and/or provides achievements that are not in accordance with the patient's medical needs.

B. Doctor's Civil Responsibilities in Medical Malpractice Acts

Article 77 of Law Number 36 of 2014 concerning Health Workers stipulates that "*Every recipient of health services who is harmed due to errors or negligence of health workers can ask for compensation in accordance with the provisions of the legislation*". Every time health services will be carried out, it requires approval in the form of a therapeutic agreement from the patient for examination by a doctor or other health worker. In this case, there will be a legal relationship between the doctor and the patient which is carried out with a sense of trust from the patient towards the doctor, which is called a therapeutic transaction.

As usual, the legal relationship between one party and another according to the provisions of Article 1233 of the Civil Code is born because of an agreement or because of the law. If the hospital, doctor and patient in the health service is carried out on the basis of an agreement between them, the rights and obligations between the hospital and the patient should be stated in an agreement, including the choice of settlement if there is a dispute between them. If there is one party who is considered to have violated the promise, namely doing it but being late, doing but not in accordance with the agreement, doing what is prohibited or not doing it at all, the party who feels aggrieved can sue in court.

In certain circumstances, such as a patient in an emergency situation, the doctor can provide assistance without the agreement of both parties. Handling by this doctor if it makes the patient recover, of course, it will not cause legal problems. However, if the handling of the patient causes harm, such as getting sicker or even dying, the doctor has an obligation to provide an

explanation to the patient and his family about the medical action taken. If a doctor performs a medical action that is contrary to existing medical operational standards, the consequence is a civil lawsuit.

In the aspect of civil law, medical malpractice can be carried out based on Article 1365 of the Civil Code. Article 1365 of the Civil Code stipulates that any unlawful act that results in harm to another person, obliges the person who committed the act to compensate for the loss. This provision can be used to sue hospitals, doctors or other health workers.

An assessment of whether an act is an unlawful act is not sufficient if it is only based on a violation of the rule of law, however, the act must also be assessed from the point of view of propriety. The fact that someone has violated a rule of law can be a factor of consideration to assess whether the act that caused the loss was appropriate or not with the propriety that a person should have in association with fellow citizens.

The terminology of unlawful acts is a translation of the word onrechtmatigedaad, which is regulated in the Civil Code Book III concerning Engagement, Article 1365 to Article 1380. Some scholars use the term '*violate*' and some use the term '*against*'. Subekti also uses the term " acts that violate the law. Meanwhile, Wirjono Projodikoro uses the term "*unlawful act*" by saying that the term onrechtmatige daad in Dutch usually has a narrow meaning, namely the meaning used in Article 1365 of Burgelijk Wetboek and which only relates to the interpretation of the article, while now the term unlawful act is aimed at to laws that generally apply in Indonesia and most of which are customary law. The terminology of unlawful acts according to Mariam Darus Badrulzaman refers to Article 1365 of the Civil Code which stipulates that any unlawful act that causes harm to another person obliges the person because of his mistake in publishing this loss to compensate for the loss. This civil law is very important because through this article the unwritten law is considered by the law.

Sri Soedewi Masjchoen Sofwan and IS Adiwimarta in translating their book HFA Vollmar also used the term unlawful act. In addition, the terminology of unlawful acts. MA Moegni Djojodirdjo said that Article 1365 of the Civil Code does not provide a formulation but only regulates if a person who has suffered a loss due to an, which was committed by another person against him, will be able to file a claim for compensation at the District Court. unlawful act Violating the Law, according to MA Moegni Djojodirdjo, the word "*against*" has active and passive characteristics. When Mariam Darus Badrulzaman mentions positive and negative traits.

The concept of unlawful acts in Indonesia has been included in a codified law book, namely the Civil Code. The concept of unlawful acts in Indonesia which is part of Continental European law is regulated in Article

1365 of the Civil Code to Article 1380 of the Civil Code. In these articles the form of responsibility for unlawful acts is divided into: First, responsibility is not only for actions against the law itself but also for acts against the law of others and against goods. Article 1367 paragraph (1) of the Civil Code states that a person is not only responsible for losses caused by his own actions but also due to the actions of people who are his dependents, or caused by goods under his control. In addition, Article 1367 paragraph (1) of the Civil Code is a general formulation, so responsibility is divided into:

1. **Responsibility for the actions of others**
   a. Responsibility for actions committed by people who are their dependents in general.
   b. The responsibility of parents and guardians towards children who are not yet adults (article 1367 paragraph 2 of the Civil Code).
   c. The responsibility of the employer and the person who represents his affairs to the person he employs (article 1367 paragraph 3 of the Civil Code).
   d. Responsibilities of school teachers and head craftsmen towards students and craftsmen (Article 1367 paragraph 4 of the Civil Code).
2. **Responsibility for goods under control.**
   a. Responsibility for goods in general (article 1367 paragraph 1 of the Civil Code);
   b. Responsibility for animals (article 1368 of the Civil Code);
   c. The owner's responsibility for the building (Article 1369 of the Civil Code).

Second, unlawful acts against the human body and soul. Article 1370 of the Civil Code states that in the event of intentional killing or negligence, the husband or wife, children, 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 circumstances and wealth of both parties.Third, acts against the law against the good name. The issue of humiliation is regulated in Article 1372 to Article 1380 of the Civil Code. Article 1372 states that claims for insults are aimed at obtaining compensation and restoring good names, in accordance with the positions and circumstances of the parties. Some of the claims that can be filed for unlawful acts are:

a. Compensation in the form of money for the losses incurred.
b. Compensation in kind or returned in its original condition.
c. A statement that the act committed is against the law.
d. Prohibit certain actions from being carried out.

In the aspect of civil law, according to the law, every responsibility must have a basis, namely things that cause a person's legal right to sue another person as well as a matter that gives

birth to the other person's legal obligation to provide accountability. then the responsibility here is the responsibility of the doctor in relation to his professional duties.

From this responsibility, there will be consequences on the one hand. With a heavy responsibility, a professional will try to respect his profession. On the other hand, there is an assumption that in order to minimize the risks and responsibilities, doctors become hesitant or worried in carrying out their duties. This is because doctors see that if there is an error in carrying out the profession, there will be legal consequences in the form of liability from the doctor.

In the civil lawsuit process, it can be ascertained that the responsibility of doctors to patients is almost all related to demands for compensation. Meanwhile, a lawsuit based on an unlawful act is caused by a doctor's actions that are contrary to the principles of propriety, thoroughness and caution that are expected of him. in his association with fellow citizens (responsibility based on law).

Based on the law, the relationship between health workers refers to Article 1365 BW, Article 1366 BW, and Article 1367 BW. Article 1365 BW regulates acts against the law which stipulates that the loss to another person means that the perpetrator who caused the loss is obliged to claim compensation for the loss. To determine a doctor is responsible and make compensation, there must be a relationship between the error and the loss caused by the act.

In Article 1366 BW determines that a person is not only responsible for the losses caused by himself, but is also responsible for the actions of people who are under his responsibility or caused by goods that are under his supervision. If in carrying out medical services, other medical personnel who are under the supervision of a doctor are the responsibility of the doctor in the event of a medical error.

Article 1367 BW is used for the doctor's responsibility for people who are under his supervision. Completely a person is not only responsible for the losses caused by himself, but also responsible for the actions of people who are under his responsibility or caused by goods that are under his supervision. In this regard, a doctor must be responsible for the actions taken by his subordinates, namely nurses, midwives, and so on.

Acts against the law as discussed above illustrate that responsibility is due to an error on the part of the doctor, causing harm to the patient, both material and immaterial losses. In the judicial process, in addition to proving the doctor's treatment deviates from professional standards, it is also necessary to prove the harm caused by the deviant treatment of the doctor himself. Basically, medical treatment that deviates from professional standards and the existence of losses are cumulative elements that must exist in every medical malpractice. Meanwhile, immaterial losses such as loss of hope of recovery, prolonged feeling of suffering or pain, loss of

certain body parts, memory loss, loss of vision, injuries and even death of the patient.

In medical malpractice which is against the law because of its nature, the will is often directed at the form of the act and not the result. Culpa is usually only focused on the result. The harm to the patient is not desired. operational procedures or at least contrary to normal general practice in the medical world. There are differences in losses that can be prosecuted through unlawful acts and defaults. unlawful acts in addition to material losses, also ideal (immaterial) losses that are not material in nature, but the value of the object can be estimated based on appropriateness or propriety.

The value of the loss that can be sued/sued on the basis of an unlawful act is not determined by law. The plaintiff can determine the value of the ideal or material loss on the basis of his own estimate. Then the judge will judge according to feasibility, especially in the case of an ideal loss. Any kind of loss caused by an unlawful act can basically be prosecuted, except for an illegitimate interest. Likewise for a loss in medical services that is not solely caused by the actions of the doctor, but there is a strong influence from the patient's own actions. The causal relationship of civil law is used to determine the existence of a loss by an act in an effort to compensate the guilty maker. the existence of a causal relationship between the act and the loss due to an unlawful act is one of the essential elements. In the doctor-patient relationship, the patient's physical and psychological suffering can only enter the realm of civil malpractice if there is a causal relationship between the doctor's service and the consequences.

CONCLUSIONS

Medical malpractice is one of the most widely reported crimes in the media, both in print and electronic media. Medical malpractice does not only involve doctors but also involves other health workers. In fact, the hospital where the doctor works and other health workers can also be sued in court if they make a mistake that results in harm to the patient.

In the aspect of civil law, a lawsuit against a doctor in court can be based on an unlawful act (onrechtmatige daad) based on Article 1365 BW. Article 1365 BW stipulates that every act against the law that brings harm to another person, obliges the person who, because of his fault, published the loss, replaces the loss. An unlawful act is defined where one of the parties has committed an unlawful act because his actions or actions are contrary to the principles of propriety, thoroughness and prudence, especially in this case an agreement or agreement between a patient and a doctor. Compensation, there must be a close relationship between the error and the loss caused.

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