

Legal Protection of the Medical Code of Ethics in Resolving Health Disputes Between Doctors and Patients

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ABSTRACT

A doctor is a person who has trained in a way professional For help people in need maintenance health in accordance with Human Rights Embodied man with various way, one of them through practice medicine. The purpose of study This is For give protection law code ethics facing medicine with dispute health moment do action medical. Focus study This is about How protection law solution dispute medical between doctor with patient or family. This research uses a normative juridical method using secondary data which is analyzed descriptively. The research results used for know and get description comprehensive with see related facts with problem so that can prove and discover scientific solution _ show that treating doctor dispute medical with patients in hospitals have right For get protection law. Law no. 29 of 2004 concerning Practice Medicine and Law no. 36 years old 2014 regarding Health Workers no give adequate protection for doctor in solution dispute medical between doctor and patient. This is because investigator police will use procedures or procedures in the Criminal Procedure Code when handle case conjecture malpractice, on the other hand UUPK involves institution profession medical do work they in accordance with standard profession a the doctor did it work they in accordance with standard profession, service, and procedures operational entitled on protection law .

Keywords: Legal protection, medical code of ethics, dispute resolution

INTRODUCTION

Doctors are "leaders" in health services, but other health workers still have features that cannot be replaced. In addition, medical law regulates all doctors' behaviour in providing health services. Thus, all written rules that bind doctors' behaviour in carrying out their profession can be included in medical law if viewed from various legal points of view.

The study of medical law from a normative legal perspective includes works of art, medical conflicts caused by negative events (unexpected events) in the therapeutic relationship (professional behaviour) (Hall et al., 2024) (Breen, J, K et.al, 2010). The generalized negative event is malpractice, and it is influenced by internal and external factors of the patient. These internal and external factors will have positive and negative effects. Law is a collection of rules used to regulate human life so that everything runs well and appropriately. Health is something that is regulated by law. According to Law no. 36 of 2009 concerning health, a state of physical, mental and social well-being that enables every person to live a socially and economically productive life.

Health is very important for everyone. Because doctors are closely related to the provision and quality of health services, their role as one of the main components of providing health services to the community is very important. To perform medical procedures on other people, doctors must have knowledge, technology and abilities. achieved through training and education. Skills must continue to be maintained and improved in accordance with advances in technology and science. Considered a revolutionary symbol, information technology and electronic media have united the entire world system in social, cultural, economic and financial terms (Pranoto, 2018). Globalization is not something new; the desire for enlightenment in medieval Europe drove the search for a new world. Throughout Indonesia, rapid population growth has caused various problems. With human development, the work environment has become increasingly difficult to avoid various problems that exist in the workplace, especially in public hospitals. Medical records fall into a very important category of written evidence. One of the biggest advantages of medical records is their legal aspect in medical, nursing, and pharmaceutical malpractice cases. Law officers and judges can determine whether an illegal act occurred, how it occurred, and who is truly at fault in the case by using information in medical records.

In the legal relationship between patients and hospitals, administrative law refers to policies or administrative provisions that regulate the provision of proper and appropriate health services in accordance with hospital service standards, operational standards and other standards. Doctors and health workers can face verbal or written sanctions, revocation of practice licenses, suspension of regular salaries, if they violate administrative policies or regulations. Doctor's Criminal Liability: Principles of Legality in Doctor's Criminal Liability: Article 1 paragraph (1) of the Criminal Code states that "no act can be punished, unless based on criminal provisions in legislation which existed before the act was committed". Based on the formulation of this article, to demand criminal responsibility a doctor must follow two principles of criminal law. Doctors who carry out medical procedures cannot be considered a criminal act if the action has not been regulated by law. In other words, the action cannot be considered a criminal act if the action has not been legally regulated. Doctors are an eternal profession and are oriented towards human values as regulated by Republic of Indonesia Law no. 23 of 1992 concerning Health and its amendments by Republic of Indonesia Law no. 29 of 2004 concerning Medical Practice, the Code of Medical Ethics (KODEKI) is the value system that underlies the medical profession (Mahayani et al., 2023).

Article 10 of the Code of Medical Ethics states that every doctor is obliged to be honest and use all his knowledge and skills for the benefit of the patient. If he cannot carry out examination or treatment, he must refer the patient to a qualified doctor with the patient's consent. In the code of ethics, medicine is considered a humanitarian calling by prioritizing patient safety and the patient's interests over personal interests. However, a patient is any individual who visits a doctor to obtain necessary medical treatment, either directly or indirectly as written in Article 1 number 4 Law no. 44 of 2009 concerning Hospitals. For this reason, a doctor has good reasons to help a patient, such as keeping the patient's body healthy, improving the patient's body health, or at least reducing the patient's suffering. However, the health services provided by a doctor to patients do not always work well, so that patients become victims (HS Brahmana, 2011) .

Therefore, investigating medical malpractice is very important from a legal perspective, and it is necessary to discuss medical malpractice from a criminal perspective. Criminal law guidelines that may be related to negligence or medical malpractice must be taken into account, especially those relating to legal protection for victims of medical malpractice, in this

case patients. The problem of malpractice focuses more on legal issues because malpractice is a medical practice that violates the law and can cause the death of a patient due to negligence in obtaining medical treatment or health services.

Repressive legal protection involves the application of sanctions against perpetrators apart from looking at criminal acts and also looking at losses as consumers. Therefore, there is a need for actual law enforcement which is usually carried out in court. Law No. 48 of 2009 concerning Consumer Protection defines consumer protection as all efforts to ensure legal certainty to protect consumers. In other words, consumer protection is a legal system created by government agencies to protect consumers from various problems and disputes because they feel disadvantaged by business actors.

Customer protection of goods and services, from the time they are purchased to the time they use them is included in health services. The scope of consumer protection consists of: 1) Protection against the possibility that the goods provided to consumers do not comply with agreed standards; and 2) protection against the possibility that unfair terms will be applied to consumers.

The aim of this research is to provide legal protection to doctors who are faced with health disputes when carrying out medical procedures. The aim of this research is to provide legal protection for a medical code of ethics when dealing with health disputes when carrying out medical procedures.

Problem

What is legal protection in resolving medical disputes between doctors and patients or families?

RESEARCH METHODS

This research uses a normative juridical approach, which means trying to approach the problem being studied by considering the nature or peculiarities of normative law (Soerjono Soekanto & Sri Mamudji, 1985). In this research, the research specification used is descriptive analysis. In Law of the Republic of Indonesia number 29 of 2004 concerning Medical Practice and Law no. 36 of 2014 concerning Health Workers, for example, the 1945 Constitution of the Republic of Indonesia, the Civil Code, the Criminal Code, Law no. 49 of 2009 concerning General Courts, Law no. 8 of 1999 concerning Consumer Protection, Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Law no. 48 of 2009 concerning Judicial Power, Law no. 44 of 2009 concerning Hospitals, conceptual methods are used to investigate the legal basis for resolving medical disputes in Indonesia. The secondary data used comes from secondary legal source materials including research findings, scientific journals, textbooks, and online news about the legal protection of medical ethical codes in resolving medical disputes between doctors and patients or families. Data can be classified based on its source and characteristics (Mukti Fajar and Yulianto Achamd, 2010). Study This use approach legislation (statute approach) and approaches conceptual (conceptual approach).

RESULTS AND DISCUSSION

Disputes Medical in Indonesia

In Indonesia, dispute medical varied and causes Lots problems, from the smallest to the most significant . As a result , problems law the more increasing and worrying . Following a number of for example :

First: The case started when the defendant Rusmini, aged 25 years, came to Dr. Setianingrum in Pati, Central Java as a patient receiving treatment. After examination, it was

found that the patient had upper respiratory tract inflammation due to flu and cold cough. After learning that the patient had received previous injections, the doctor administered streptomycin. As a result, the patient suffered from nausea, weakness, and pallor, and was given cortizone, coffee, and delladryl. After going through the process for some time due to allergies, the patient finally died (Widodo Tresno Novianto, 2017);

Second: Supreme Court Decision Number 2863K/Pdt/2011 stipulates breach of contract in medical disputes. Because it was proven that someone did not pay the maintenance costs, the judge decided that the reconvention lawsuit was invalid. When the debtor does not fulfil his obligation to perform the obligation properly and there is an element of wrongdoing, it is called a default. Adi Husada Hospital Surabaya, together with letter statement accountability administrative costs _ amounting to IDR 10,557,000;

Third : Decision of the Settlement Body Jogjakarta City Dispute (BPSK-YK) Number 21/Abs/BPSK-YK/VII/2008 between Mrs. Susi Indrawati (Plaintiff) and dr. Francinita Nati MM (Director of Mitra Keluarga Hospital) pointed out that doctor responsible answer on error or negligence (Purnamasari et al., 2017). This case started when customer complain Defendant to the Settlement Body Dispute Consumers (BPSK) Yogyakarta City about his loss _ experience as consequence from service that he accept .

Definition Dispute Medical

“ Conflict ” and “ dispute ” are two terms different in English vocabulary ; both of them refers to differences interests between two or more party, but both of them can differentiated . Conflict in Indonesian means conflict, while dispute means dispute. If the party who feels disadvantaged expresses dissatisfaction, either directly to the party who is considered detrimental or to another party, the conflict develops or turns into a dispute. In other words, a dispute is a continuation of a conflict that cannot be resolved. Disputes have the meaning of being destructive and detrimental, but also constructive, interesting and dynamic as a catalyst for change (Yusuf Shofie, 2003).

Medical disputes are disputes between medical personnel and patients or their families or between patients and hospitals or health facilities. Disputes between doctors and patients will be discussed in this article. One of the things that is often disputed is violations of medical ethics, medical discipline, patient or community rights. The existence of a doctor-patient relationship that is caused by negligence or error; object in the patient's healing efforts; and the injured parties are various types of medical disputes. When hospital claims, police complaints, or court challenges arise, new medical disputes emerge. Medical disputes begin with patients or their families looking for reasons why they are dissatisfied because the doctor did not do what he promised (John M. Echols and Hasan Shadily, 1977).

Violations committed by doctors in their work can take the form of ethical, disciplinary, administrative, or legal (criminal and civil) violations. The causes of medical practice violations can be divided into two categories: system factors, and factors between doctors and society. In general, system factors include systems that do not have good social control, are closed, monopolistic or oligopolistic, and have too many elements of the state compared to society and liberalism, especially in terms of health services. However, the elements that encourage violations between doctors and society are hedonistic in nature. They do not act as civil society. The end results of health services that are not paid attention to or ignore the health care process are usually the topic of medical disputes between patients and their families and health workers or patients in hospitals or health facilities. However, in health law, health workers or the implementation of services are only responsible for the process or efforts made (inspaning verbintenis) and do not guarantee or guarantee the final results (Zaluchu &

Syahrudin, 2022). Therefore, before professional justice makes decisions or inconsistencies in medical logic between patients and medical services in health facilities. Reduced understanding of Health law leads to poor understanding of the nature of medical efforts. This is caused by a lack of understanding of how contractual relationships are formed, which determine the rights and obligations of each -each party. Few people realize that doctors and hospitals do not have an obligation to cure patients, but rather to make quality efforts according to standards of care. This is because the relationship between the care recipient and the care provider is a form of contract. Misunderstanding or disagreement between doctors, hospitals, and patients can cause conflicts that can escalate into disputes if not resolved.

Practice Mall

Malpractice comes from the words "mala," which means "bad," and "practice," which means "the exercise of a profession." Malpractice, or malpractice literally means bad practice (Hermien Hadiati Koeswadji, 1998). In general, malpractice is a collection of various types of deviant behavior that can occur as a result of intentional actions, such as negligence, or unreasonable incompetence or unprofessionalism. Malpractice is a wrong professional action by a doctor, accountant, lawyer, dentist, or veterinarian (Walter G. Alton, Malpractice, 1998). Indifference, negligence, or lack of skill or care when carrying out one's professional obligations can result in malpractice.

Another definition of malpractice is the wrong professional actions of a doctor, accountant, lawyer, dentist or veterinarian. Indifference, negligence, lack of skill or care when carrying out one's professional obligations, or intentional misconduct or unethical practices from some sources of malpractice. Violations of ethical provisions, professional discipline, administrative violations, civil violations, and criminal violations are all examples of these professional violations.

Malpractice means "bad practice" related to the application of science and technology in carrying out the medical profession which has certain characteristics. Apart from that, Hermien formulated malpractice as a medical error because it does not comply with the standards of medical science and technology (H.Gifis, 1984). Malpractice in Dutch is an action that is unintentional but contains an element of error (Media et al., 2019). In Dutch, "Kunstfout", which means "art of error", means a medical procedure that is not intentionally carried out, but is accompanied by an element of negligence that is inappropriate for a medical professional and a medical procedure that results in fatal consequences (for example, death or disability due to negligence, according to Articles 359, 360 and 361 of the Criminal Code).

According to the Big Indonesian Dictionary, medical malpractice is medical practice that is not in accordance with the law or code of ethics. In addition, medical malpractice is defined in the General Indonesian Dictionary by JS Badudu as a doctor's practice that is not in accordance with medical science, violates the law, or violate the medical code of ethics. Medical malpractice, according to Stedman's Medical Dictionary, is a method of treating illness or injury caused by attitudes or actions that are indifferent, careless, or based on criminal motivation (Muhammad Soedjatmiko, 2001). Malpractice is basically an error in work caused by the doctor's responsibility as stated in Article 58 of Law Number 36 of 2009 concerning Health, which states that "everyone has the right to claim compensation", and Law Number 29 of 2004 concerning Medical Practice, which only mentions "violations of doctor's discipline" provides a basis for reporting doctors to their professional organizations if it is proven that the doctor's actions caused harm (Sofyan Dahlan, 2005).

Physicians are required to consider the moral principles applicable to society, the profession, and patients when making clinical decisions. Carrying out medical procedures must be based on medical indications; act with caution; follow medical professional standards and operational procedures; and obtain informed consent. Malpractice has a broader meaning than negligence because malpractice not only includes actions that fall into the category of negligence, but also actions that violate the law and fall into the category of intentionality (intentional, *dolus*, *opzettelijk*). Malpractice carried out intentionally is a type of pure malpractice which is included in the category of criminal malpractice.

Leenen, quoted by Fred Amin, 1991 (Alkemade & Alkemade, 2019), said that a doctor's actions could be considered malpractice. There are three criteria, namely:

(1) Acting carefully/thoroughly (*zorgvuldig handelen*) is associated with negligence/*culpa*. If a doctor acts carelessly, or is not careful, he meets the element of negligence, and if he is very careless, he meets the element of *culpa*;

(2) The doctor's actions are in accordance with the standards of medical science (volgens *demedische standard*); And

(3) The average ability of doctors is compared with the same medical specialty category.

Medical malpractice occurs when a doctor or someone under his or her command intentionally or through negligence does something (active or passive) to a patient at any level in violation of professional standards or medical principles, or by breaking the law without authority, which results in harm. for the patient's body, physical and mental health and/or the patient's life. As a result, doctors or persons under their orders may commit professional misconduct due to unreasonable conduct or due to lack of skill or faithfulness in carrying out their professional obligations or beliefs. A professional error in the health sector is when a doctor does not carry out medical procedures in accordance with the standards of the medical profession or does not carry out medical procedures in accordance with certain standards which are based on a doctor's general knowledge and experience of the situation and conditions in which the medical procedure is performed. Medical malpractice is defined as the professional negligence or negligence, or professional negligence, of doctors regarding what they do or do not do. The doctor's actions were deemed to meet the standards of practice accepted by the medical community in similar situations and could have caused harm or injury. In cases that cause death, health providers such as nurses, hospitals and clinics can also be prosecuted by law enforcement officials based on reports from the patient's family because they are deemed to have committed relatively serious negligence or carelessness that resulted in death (Article 359 of the Criminal Code).

Fault and criminal legal liability

In criminal law, the term "fault" (*schuld*) refers to the burden of criminal liability consisting of intent (*dolus* or *opzet*) and negligence. The element of error (*schuld*) is an element that is inherent in a person's inner state or image before or at the time the activity begins, so that this element is always attached to the perpetrator or maker and is subjective. This element is also an element that connects the action and its consequences, as well as the unlawful nature of the action and the perpetrator or maker. The legal meaning of the word "fault" (*schuld*) is not the same as the literal meaning of the word " *foult* ". Deliberation (*dolus*) is implied to also have a motive (*mens rea*), whereas negligence (*culpa*) focuses on inadvertence, carelessness, and recklessness, and the result is not the goal. Therefore, errors that contain elements of intent or negligence as regulated in the Criminal Code must be explained as follows:

Element of Intention

In a mistake, there must be a strong connection between the perpetrator's mental state and his actions, resulting in a disgraceful act, because intentionality is an act that is conscious, understood and known so that there is no element of misunderstanding or misunderstanding. There is no uniformity in the use of this term intentionally in the current Criminal Code. This can be seen in several articles, such as Articles 333, 338, 372, and 406, where the term "intentionally (*opzettelijk*)" is used. Other terms that are often used are "knowing (*wetende, dat*)" in Articles 204, 220, 279, and "knowing (*waarvan hij weet*)" in Article 480. Article 282 uses another term, "which he already knew (*waarvan hij kent*)", and Article 247 of the Criminal Code uses the term "known to him (*waarvan hem beken is*)." Intentional criminal law has several theories based on levels intentionality in criminal law doctrine (Saleh, Roeslan, 1968).

Negligence

In the fifth edition of Black's Law Dictionary, negligence is defined as "negligence that gives rise to legal consequences, is considered to have committed a criminal act that can be sanctioned or prosecuted". The word "negligent" means "careless action, ignoring obligations,

Although several criminal offense formulations explicitly mention this element of negligence, the law itself does not specify the limits of its meaning. In law, negligence (*culpa*) is not defined in law, but from the explanation of the Criminal Code it can be said that negligence (*culpa*) is (1) an action, whether doing or not doing something; (2) consequences prohibited by law; (3) fulfil the requirements of the offense (Purnama, 2018) (Andi Hamzah, 1991). People who are careless, ignorant, or act carelessly or purposefully are the ones prosecuted. Who makes mistakes because of his negligence and not using his abilities when he should (Jan Remmelink, 2003).

There are two types of negligence in criminal law: (1) Negligent acts, where merely committing the act itself constitutes a criminal event, so there is no need to consider the consequences arising from the act (Article 205 of the Criminal Code); (2) Consequential negligence, where just committing the act itself is a criminal event, so there is no need to consider the consequences arising from the act (Articles 359, 360 and 361 of the Criminal Code). Fulfil the element of negligence in criminal law if the following conditions are met: (1) not making assumptions as required by law; (2) does not carry out supervision as required by law; and (3) he can be held responsible for his actions.

In language, "negligence" means a mistake, which means that the inner attitude of the person causing the prohibited situation is not against, wanting, or agreeing to the emergence of the prohibited condition, but because of the mistake or mistake they made when acting, thus giving rise to the prohibited condition. it is because of their inability to remember the prohibition, so they make mistakes, are negligent, or careless. Negligence means not having the judgment or mental attitude required by law or the attention required by law.

Legal protection in resolving medical disputes

The case of Dr. Setianingrum is one of the many medical malpractice cases that occurred in Indonesia which has received great attention and has been studied by doctors and legal practitioners, and has resulted in clear legal decisions. The case started with Rusmini, a 25 year old patient or victim, coming to Dr. Setianingrum as the defendant to receive treatment. After examination, it was discovered that the patient had upper respiratory tract inflammation due to flu and colds. The doctor injected streptomycin after learning that the patient had received previous injections. As a result, the patient felt nauseous, weak and pale, so it was anticipated by injecting cortizone, drinking coffee and more delladryl. After the fourth

injection of adrenaline, the patient experienced anaphylaxis shock. The patient's condition became worse, he was unconscious, breathing stopped, and his pulse was irregular. The patient was transported to Pati General Hospital for treatment and examination. The examination results showed that the patient was unconscious, breathing had stopped, unknown blood pressure, irregular pulse, and other abnormalities (Hanavia & Novianto, 2017).

Legal protection under criminal law

The case of a patient with the name Rusmini, or a 25 year old victim, came to Dr. Setianingrum as the defendant to receive treatment. After the examination, it was discovered that the patient had upper respiratory tract inflammation due to the flu and cough that the patient suffered from, so the process went through and the patient finally died. The doctor analyzed that the disorder was caused by the body's reaction to not being able to tolerate the medication given to the patient. The patient was declared dead. As a result of this incident, the defendant was charged by the Public Prosecutor because his mistake or negligence caused the death of another person and violated Article 359 of the Criminal Code. In the decision of the Pati District Court No.8/1980/Pid/PN Pt on 2 September 1981, the defendant was found guilty of committing a crime because his negligence caused the death of another person. According to legal considerations, the defendant did not want the prohibited consequence, namely death, but the doctor was inattentive, negligent and had no presumption. The defendant's mistake was that he was completely unaware that the prohibited consequences might arise from his actions, even though the dangerous attitude in this case was that the patient's death was caused by intolerance to the medication given to him, so the injection was the direct cause of his death.

The author believes that the Supreme Court's decision in legal considerations regarding *culpa* is incorrect because legal considerations regarding *culpa* regarding consequences should refer to actions carried out before and at the time the action is committed, not after the action is committed. After analysis of subjective negligence, or conscious negligence, this has changed. Subjective negligence is a type of mental attitude that is aware of the consequences that have occurred, but believes that the consequences will not occur or that the symptoms of the consequences can be eliminated with certain efforts that he has mastered.

The author believes that the Supreme Court's legal considerations regarding the requirements for negligence relating to "whether the doctor has made maximum efforts to save the patient's life based on his reasonable abilities and the tools/means available to him" will produce the opposite conclusion because the doctor logically must know about the experience. his practice is so recent and the tools available to him, that gentle caution is naturally required. Compared to considering whether or not *a culpa* is responsible for the outcome of a person's death, the Supreme Court's legal considerations are more suited to considering mitigating factors for the act.

The Supreme Court emphasized that "whether or not there is negligence depends on whether the doctor has made maximum efforts to save the patient's life based on his reasonable abilities and the tools/means available to him." In this case, the definition of negligence must be linked to the doctor's work, so that the definition of negligence in Article 359 of the Criminal Code contains elements of avoidable consequences (*vermijgbaarheid*), foreseeable consequences (*voorzienbaarheid*), and censure by the author. Parameters for evaluating suspected legal violations, or crimes, if they meet the requirements as a (*voorportaal*) or front gate which is strict and limitative (Indriyanto Seno Adji, 2003).

A doctor must always do his profession according to standard highest which is one _ provisions of the Code of Ethics Medicine that can cause dispute in interpretation. What do you mean with size highest and how method measure it? In addition, there are no clear medical standards and a common system for monitoring and supervising the quality of medical services. Therefore, guidelines and regulations must be consistent with society's moral principles which can change, so they need to be changed periodically.

It is very difficult to create professional standards that can be used as a guide to measure them because they must apply to all actors who face the same problems. This includes people who face the same health problems, but whose medical procedures are performed in different ways due to different body types, examination methods, and equipment used. The following provisions must be taken into account to determine whether the doctor has violated his obligation to care for and treat the patient in terms of: 1) The doctor has made all possible efforts to ensure a correct diagnosis, all in accordance with professional standards applicable to the current level of knowledge and conditions; 2) Give information when he should consult a doctor who is more experienced in the problem. In addition, Law Number 29 of 2004 concerning Medical Practice and the Criminal Code (Co Criminal) combines articles in the Code of Medical Ethics (CoME), which makes it a valid and compelling law. Doctors who violate the code of ethics do not receive official sanctions. The sanctions given depend on how serious the violation of the code of ethics is. The sanctions given are educational in nature (administrative sanctions) and function to prevent subsequent violations. They may include verbal or written warnings or guidance, suspension of salary or rank, reduction of salary or rank to a lower level, or temporary suspension of a doctor's license to practice. For ethical violations, sanctions can be processed in court in accordance with applicable employment regulations, for example:

Legal protection according to medical discipline

Article 55 paragraph (1) of the Law Number 29 of 2004 concerning Practice Medical say that discipline medical is rule application science in implementation mandatory service _ followed by doctors and doctors teeth. Regulations This including Regulation Government, Minister of Health Regulations, Regulations Council Indonesian Medicine, Terms and Guidelines Organizations, and Laws Practice Medicine. One of from three category violation discipline is violation to rules and/ or provision application science: (1) do practice medical with No competent; (2) no carry out duties and responsibilities answer professional towards patients with Good ; and (3) behave bad and destructive dignity and honor profession medicine (Hanafiah , Jusuf, 1999).

Form violation defined discipline in guidelines enforcement discipline profession medical including Code of Medical Ethics (CoME): 1) The doctor does practice medical with No own required competency (violation _ against Article 29 paragraph (3) letter d; and Minister of Health Regulation Number : 1419/Menkes/Per/X/2005 concerning Maintenance Practice Medicine and Dentist doctors or doctor tooth must Work in accordance with ability they 're nice in determine the diagnosis or nurse patient ; 2) no refer patient to doctor tooth or other doctors who have required competencies (Article 51 letter b of Law Number 29 of 2004 concerning Practice Medicine). Doctor or doctor tooth must offer patient For referred to doctor or doctor other teeth or means service more health _ in accordance If disease or condition patient outside ability them (because knowledge); 3) give work to power health certain ones don't own required competencies can give action or procedure medical certain to power appropriate health with ability they ; 4) no own required competence and authority

, or No report replacement the Article 40 of the Law Number 29 of 2004 concerning Practice Medicine , everyone considered violate .

Legal protection according to administrative law

Basically, violating the administrative law of a doctor's practice is violating the obligations of medical administration. Doctors have two types of administrative obligations: administrative obligations before and during medical services. Legal violations of this administrative obligation include medical malpractice, namely when the services provided by a doctor cause harm to the patient's health or death. Administrative requirements for having the authority to practice medicine include: having a doctor's or dentist's Registration Certificate (STR) issued by the Indonesian Medical Council which is valid for 5 years and every 5 years for re-registration (Article 29); foreign-trained doctors who practice in Indonesia must pass an evaluation and have a work permit in Indonesia; and, if other requirements are met, then the foreign-trained doctor can practice in Indonesia.

Fulfilment of medical administrative law requirements related to a doctor's authority does not guarantee that there is no malpractice. This is because violating these administrative legal obligations can constitute malpractice if it causes harm to the patient's health or death. Violations of administrative law involving medical practice can be considered criminal malpractice as well as civil malpractice; however, civil malpractice is not always the same as criminal malpractice. Medical malpractice is a violation of administrative law without authority.

In general, violating the administrative law of a doctor's practice is basically a violation of the legal obligations of medical administration. One of these responsibilities is administrative responsibility which is related to the authority before a doctor performs medical services (regarding the authority to practice). For example, doctors must have a STR issued by the Indonesian Medical Council for five years and be re-registered, or doctors must have a SIP issued by health officials in the relevant practice area. Without this authority, medical malpractice is considered unlawful.

Legal protection under civil law

Civil law protection in lawsuits based on breach of contract is proven through the following three things:

The first element is the therapeutic contract between the doctor and the patient. Patients can do this by submitting medical records or by agreeing to medical procedures provided by a doctor or hospital;

The second factor must be proven with evidence that the treating doctor made an error or negligence as promised in the therapeutic contract; the doctor did what he promised but was late; or the doctor does something prohibited according to the agreement;

Third , it must be proven that the doctor's actions above are related to the patient's suffering.

Basically, the cumulative element that must be present in a medical malpractice lawsuit is medical treatment that deviates from medical professional standards and operational procedures and causes harm. Medical behaviour that violates medical professional standards and operational procedures can cause a decrease in the quality of doctor's services;

In breach of contract (Wan of achievement) based on Civil Code article 1239, in this case, the doctor did not fulfill his contractual responsibilities. In a literal sense, it is unsatisfactory performance which basically violates the contents or agreements stated in an agreement or contract by one of the parties (Subekti, 1985).

Types of breach of contract (default) are as follows: (a) failure to fulfil the promise in its entirety; (b) providing performance that is not appropriate, for example not according to quantity or quality; (c) delivering performance but not on time as promised; or (d) provide performance different from that promised.

Default in medical disputes is stated in Supreme Court Decision Number 2863K/Pdt/2011. The judge decided that the reconvention lawsuit was invalid because it was proven that someone did not pay the maintenance costs. Default is when the debtor does not fulfil his obligation to perform the obligation properly and has an element of wrongdoing. Yohan Chandra has agreed to pay the costs of medical procedures stated in the medical treatment agreement in his patient's case. Apart from that, patient Yohan Chandra sent a letter requesting a fee reduction to the Director of Adi Husada Hospital Surabaya with the mark TI-3, as well as a statement of responsibility for costs/administration amounting to IDR 10,557,000. In this case, the patient has agreed to pay the costs of the medical treatment as stated in Yohan Candra's signature on December 3 2004. The letter of approval for medical treatment serves as a therapeutic agreement and the patient's agreement to pay the treatment costs. Because the patient did not fulfil his contractual obligations, the Supreme Court judge made a default decision against patient Yohan Chandra on December 3, 2004.

Default because Adi Husada Hospital did not provide the contents of medical records to patients. Medical records, according to the explanation of Article 46 paragraph (1) of Law No. 29 of 2004 concerning Medical Practice, are documents and records that include patient identity, examinations, treatment, procedures and other services that have been provided to patients.

The judge decided that Adi Husada Hospital was in default because there was a contractual relationship between Patient Yohan Chandra and Adi Husada Hospital based on approval of medical procedures. Rights and obligations arise from the agreement. Default is when obligations are not fulfilled due to an element of wrongdoing. In this case, Adi Husada Hospital failed to fulfil its responsibility to provide the contents of medical records to patients, which is part of the health contract relationship. Legislation regulates this obligation. It is suspected to have caused errors in medical treatment in other places which resulted in the patient's disability, because medical records are very important to use during treatment, but the patient asked for these records to be provided by Adi Husada Hospital when the patient requested treatment elsewhere. Therefore, the patient is currently disabled due to the hospital's negligence in fulfilling its obligations as regulated in statutory regulations to provide the contents of medical records. The Supreme Court judge made a default decision because there was a violation of the rights and obligations in the agreement. Default is a term used to describe a violation of these rights and/or obligations. Therefore, breach of contract does not include violations of rights and obligations regulated in statutory regulations; In this case, the judge decided that the breach of contract occurred because Adi Husada Hospital failed to fulfil the obligations stipulated in statutory regulations to provide patients with rights to the contents of medical records. Approval of medical procedures includes doctor selection, fracture surgery procedures, and costs.

Therefore, not providing the contents of the medical record is not a violation of the contents of the agreement; on the contrary, it is a violation of the provisions stipulated in statutory regulations. An act that violates or violates the applicable legal provisions is defined as an act that violates or violates the applicable legal provisions is defined as.

Legal protection under the Consumer Protection Law

Opinions that agree or pro argue that health services can also be linked to the Consumer Protection Act on the basis that professional services, such as doctors and advocates, have similarities with other business services, such as sellers. They both earn money for their services, but becoming a doctor or advocate requires certain education, joining a professional organization, taking a professional oath, and having a professional code of ethics and judicial mechanisms to protect that code of ethics.

Article 1 number 5 of the Consumer Protection Law states that "a service is any service in the form of work or achievement that is provided to the public for use by consumers", and Article 1 number 2 of the Consumer Protection Law states that "a consumer is every person who uses goods and/or services which are available in society, whether for the benefit of oneself, family, other people, or other living creatures and are not for trade."

In the context of the relationship between doctors and patients, this provision is a relationship between producers and consumers because the nature of the agreement in a therapeutic transaction is the provision of medical services, so that the patient has the right to sue the doctor for losses incurred due to the doctor's mistakes in providing medical services to the patient (Triana Ohoiwutun, 2007)

Article 19 paragraph (1) of the Consumer Protection Law states that business actors are responsible for providing compensation for damage, pollution and/or loss caused by the consumption of goods and/or services made or traded. According to Article 19 paragraph (2) UUPK, compensation that can be requested by patients can be in the form of a refund or replacement of damaged goods or services.

In a medical dispute through the Decision of the Yogyakarta City Dispute Resolution Board (BPSK-YK) Number 21/Abs/BPSK-YK/VII/2008 between Mrs. Susi Indrawati (Plaintiff) and dr. Francinita Nati MM (Director of Mitra Keluarga Hospital/Defendant) shows the doctor's responsibility for alleged errors or negligence (Widodo Tresno Novianto, 2017). The case began with the consumer submitting a complaint to the Yogyakarta City Consumer Dispute Resolution Agency (BPSK) regarding the losses he experienced as a result of the services provided by the Defendant. After additional examination, Yogyakarta City BPSK issued Arbitration Decision Number 21/Abs/BPSK Yk/VIII/2008 with the following decisions: (1) Accepting the Consumer/Complainant/Plaintiff's complaint in part; (2) Confirms that Drs. M.Agung Krisna was treated at Mitra Keluarga Hospital Kelapa Gading from January 2 2008 to February 3 2008; (3) Confirms that the Yogyakarta City BPSK does not have the authority to investigate and determine the reasons for the patient's death; (4) Reject demands from consumers, plaintiffs or consumers regarding additional legal remedies such as objections or cassation.

Circular Letter of the Supreme Court of the Republic of Indonesia (SEMA) Number 4 of 2001, in conjunction with SEMA Number 3 of 2001, concerning the Issue of Immediate Decisions, firmly states that the panel of judges in any court cannot easily grant a request for an immediate decision unless the lawsuit is based on proof of authentic letters or handwritten letters (handschrit) whose veracity cannot be disputed. The Yogyakarta District Court made a decision number 64/Pdt.G.BPSK/2008/PN Yk regarding the applicant's lawsuit. BPSK-Yk Arbitration Panel Decision number 21/Abs/BPSK-Yk/VIII/2008, with the following explanation: (1) Accepting part of the Petitioner's objections; (2) Confirms that Dr. M. Agung Krisna was treated at Mitra Keluarga Kelapa Gading Hospital from January 2 to February 3 2008; (3) Confirms that the Yogyakarta City BPSK does not have the authority to investigate and determine the reasons for the death of Dr. Dr. M. Agung Krishna; (4) Confirm that the

Respondent has paid an amount of Rp. 200,000,000 (two hundred million rupiah); (5) Refuse medical and surgical costs (6) Sentence the Petitioner and Respondent each to court costs of IDR 229,000 (two hundred twenty-nine thousand rupiah); (7) Reject all objection requests. The BPSK decision did not indicate any malpractice (not proven). Apart from that, BPSK did not consider the decision contained in the decision regarding the Imposition of Compensation by Business Actors to Consumers in the amount of IDR 287,347,000 and petitum number 9 regarding *uitvoerbaar bij voorraad*. Therefore, the consideration of *judex facti* (district court) is precise and correct for cancel BPSK decision. Application cassation Applicant Cassation must be rejected because, based on considerations above, *judex facti* decision in case This No is not contradictory with law.

CONCLUSION

In resolving health service disputes, medical criminal acts are different from ordinary (general) criminal acts regulated in the Criminal Code. In medical crimes, the doctor cannot be blamed even if the event is fatal, because it is considered the "cause" of the criminal event. From the perspective of criminal law (KUHP), to determine who is to blame or not for a medical *culpa lata*, an assessment of its unlawful nature must begin by determining the result of death or injury. In cases of medical negligence, patients and their family members will be protected by criminal, civil, and consumer law by medical codes of ethics. This protection is provided if the following things are met: (a) The obligation to take or not take certain actions towards patients in certain situations and conditions; (b) Neglect or deviation of obligations; (c) Losses, or anything the patient considers to be losses as a result of medical negligence.

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