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A LEGAL REVIEW OF CIVIL LIABILITY IN MALPRACTICE CASES IN INDONESIA

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Medical malpractice is a complex legal issue involving aspects of criminal law, civil law and medical ethics. Medical malpractice cases often result in both physical and psychological harm to patients, thus demanding legal accountability from medical personnel. This study aims to analyse the forms of civil liability in medical malpractice cases and the obstacles to law enforcement. The research method used is a normative juridical method with a statutory and conceptual approach. The results show that civil liability focuses more on the existence of unlawful acts or breaches of contract that cause harm to patients. Law enforcement in medical malpractice cases still faces obstacles in obtaining evidence and differing views between the legal and medical professions.

Keywords: legal review, criminal law, civil liability, malpractice, Indonesia.

ЮРИДИЧЕСКИЙ ОБЗОР ГРАЖДАНСКОЙ ОТВЕТСТВЕННОСТИ В ДЕЛАХ О ХАЛАТНОСТИ В ИНДОНЕЗИИ

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Врачебная халатность – это сложный юридический вопрос, включающий аспекты уголовного, гражданского права и медицинской этики. Случаи врачебной халатности часто приводят к причинению как к физического, так и морального вреда пациентам, что требует привлечения медицинского персонала к установленной законом ответственности. Целью данного исследования является анализ форм гражданско-правовой ответственности в случаях врачебной халатности и имеющихся правоприменительных препятствий. В качестве метода исследования использован нормативный юридический метод, основанный на законодательном и концептуальном подходе. Результаты показывают, что гражданско-правовая ответственность в большей степени зависит от наличия противоправных действий или нарушений

условий договора, которые причиняют вред пациентам. Правоохранительные органы в случаях врачебной халатности по-прежнему сталкиваются с препятствиями в получении доказательств и расхождениями в позициях юристов и медиков.

Ключевые слова: юридическая экспертиза, уголовное право, гражданско-правовая ответственность, злоупотребление служебным положением, Индонезия.

Introduction

The development of science and technology in the health sector has a positive impact on improving the quality of medical services. However, on the other hand, the complexity of medical procedures also increases the risk of medical errors or malpractice. Medical malpractice not only impacts the patient's health condition but also gives rise to serious legal issues. The relationship between doctor and patient is a legal relationship that gives rise to rights and obligations for each party. When a doctor or medical personnel makes a mistake that harms a patient, legal liability arises, both criminal and civil. Therefore, a comprehensive understanding of legal liability in cases of medical malpractice is necessary. Health is one of the human rights guaranteed by the 1945 Constitution of the Republic of Indonesia. Article 28H paragraph (1) of the 1945 Constitution states that everyone has the right to live in physical and spiritual prosperity, to have a place to live and to receive health services. In order to fulfil these rights, the state is obliged to provide a safe, high-quality and equitable health care system for all members of society. These health services are carried out by medical personnel and health workers who have the competence, expertise, and professional responsibility according to established standards.

Advances in medical science and technology have brought significant progress in healing efforts and improving the quality of human life. Various modern medical diagnostic and therapeutic methods enable medical professionals to treat previously incurable diseases. However, despite these advances, medical practice also carries risks that cannot be completely avoided. These risks can arise from limited scientific

knowledge, complex patient conditions, or errors in the implementation of medical procedures. It is in this context that the issue of medical malpractice becomes a significant concern from legal, ethical and social perspectives.

As described above, medical personnel sometimes make mistakes in providing health services to their patients. Bahder Johan Nasution stated that these medical personnel errors can occur due to lack of knowledge, lack of experience and understanding, as well as ignoring an action that should not be done [q.v.: 10]. If the error is made intentionally or due to negligence of the doctor or medical personnel, the problem that may arise is, what form of responsibility the hospital, where the doctor and medical personnel carry out their professional duties, will take. Negligence in question is a lack of caution where the actions taken by the doctor and medical personnel fall below the established standards of medical service.

The actions of doctors and other medical personnel that result in harm to patients in relation to the health services provided are known as medical malpractice, which can be simply defined as the wrong treatment method [8, p. 359-371]. In such circumstances the hospital is required to be held accountable both criminally and civilly. This is the subject of the study or problem that will be analysed in this paper, so that it can be known how the hospital is responsible if malpractice occurs by medical personnel and results in harm to patients. The responsibility referred to is from a civil law perspective.

Medical malpractice is a crucial issue in the healthcare sector, particularly regarding the legal liability of medical personnel. The term *malpractice* itself has a more comprehensive meaning than negligence, encompassing not only unintentional acts but also intentional acts that violate applicable laws. In practice, medical malpractice is often identified with the failure of medical personnel to meet professional standards, Standard Operating Procedures (SOPs), and informed consent, which are the foundation of healthcare services [q.v.: 1].

The phenomenon of medical malpractice in Indonesia is increasingly attracting public attention as awareness of their rights as patients grows. Numerous malpractice cases have surfaced and drawn media attention, shaping public opinion that tends to

marginalize doctors and other healthcare professionals. Often, any failure in medical practice is immediately associated with malpractice, even though it may not meet the legal criteria for medical malpractice [13, p. 482].

In the context of Indonesian positive law, the term medical malpractice is not explicitly recognized in legislation. However, events sociologically constructed as medical malpractice can still be interpreted and approached through existing legal provisions, such as the Criminal Code (KUHP), Law No. 29 of 2004 concerning medical practice and Law No. 36 of 2009 concerning health. This demonstrates the need to properly establish the legal construction of medical malpractice within the Indonesian legal system

Medical malpractice cases in Indonesia generally involve negligence or errors in medical procedures. This negligence can take the form of a lack of care, thoroughness, or failure to adhere to established professional standards. In some cases this negligence results in physical and psychological harm to patients, even death. Therefore, legal protection for patients and the legal liability of medical personnel are crucial and warrant further study [14, p. 971-985].

The legal liability of medical personnel in malpractice cases can be divided into three aspects: civil, criminal, and administrative. The civil aspect relates to the patient's right to seek compensation for losses suffered as a result of medical treatment that does not comply with professional standards. The criminal aspect arises when there is an element of intent or gross negligence that causes injury or death to the patient. Meanwhile, the administrative aspect relates to violations of administrative provisions, such as practicing without a license or failing to maintain medical records in accordance with regulations [q.v.: 2].

One of the main challenges in handling medical malpractice cases is proving fault or negligence on the part of medical personnel. Many cases cannot be prosecuted due to obstacles in providing evidence, both technically and legally. This is exacerbated by the public's tendency to view every medical failure as malpractice, without understanding the complexity of medical procedures and the inherent risks involved [q.v.: 20].

Law No. 29 of 2004 concerning medical practice and Law No 36 of 2009 concerning health are the two main regulations governing medical practice and patient protection in Indonesia. These two laws provide the legal basis for enforcing the accountability of medical personnel, including disciplinary, civil, and criminal matters. However, the implementation of these two laws still faces various obstacles, particularly in terms of harmonization and synchronization between regulations [3, p. 3453-3461].

Methodology

1. Type of research

This research is a normative juridical study using a statute approach and a conceptual approach. Normative juridical research was used because the primary focus is on the study of laws and regulations, Islamic legal doctrine, and court decisions relevant to malpractice committed by medical personnel [q.v.: 9].

2. Data sources

This research uses secondary, consisting of: Primary legal materials [q.v.: 17]:

a) The 1945 Constitution of the Republic of Indonesia.

b) The Civil Code/BW.

c) Law No. 29 of 2004 concerning medical practice.

d) Law No. 17 of 2023 concerning health.

Secondary legal materials: books, journals, articles and previous research on malpractice by doctors and nurses.

Tertiary legal materials: legal dictionaries, encyclopaedias and other supporting sources.

3. *Data collection techniques*

Data were collected through library research, exploring relevant literature from both print and digital sources, including national and international law journal databases.

4. Data Analysis Techniques

Data were analysed qualitatively using the descriptive-analytical method.

The analysis steps included:

a) Inventory of Islamic legal norms and laws related to malpractice by doctors and nurses.

b) Classification of legal issues arising from malpractice.

c) Interpretation of legal norms using malpractice theory and legal certainty theory.

d) Evaluation by comparing the reality of malpractice in society with the public demand for health services.

5. Research approach

In addition to the normative approach, this study also uses a comparative approach by comparing how malpractice occurs with the demand for health services and the public's need for health [5].

Results and discussion

A review of malpractice by doctors and nurses

According to article 1 No. 10 of Law No. 17 of 2023 concerning health, a hospital is a health service facility that provides comprehensive individual health services through promotive, preventive, curative, rehabilitative and/or palliative health services by providing inpatient, outpatient and emergency services.

Malpractice can also be defined as bad practice that promotes wrong actions. Malpractice can be defined as an incorrect treatment method or a disaster that occurs unintentionally (previously suspected), but rather involves negligence that should not be carried out by a doctor, resulting in disability or death of the patient.

In practice, proving medical malpractice is often difficult due to the patient's limited medical knowledge and the dominance of information by medical personnel. M. Yusuf Hanafiah argues that whatever the definition of medical malpractice, it essentially contains one of the following elements:

a) The doctor lacks mastery of medical knowledge and skills generally accepted within the medical profession.

b) The doctor provides substandard medical care.

c) The doctor commits gross negligence or carelessness, which may include:

(a) Failing to perform an action that should have been performed; or

(b) Performing an action that should not have been performed.

d) Performing a medical procedure that violates the law [4].

Hulman Panjaitan stated that civil legal liability arises when a person who feels harmed by the actions of another person files a lawsuit to demand compensation from the other person who committed the harmful act. In other words, civil legal liability arises in relation to an unlawful act, which in civil law is known as onrechtmatige daad as regulated in article 1365 of the Civil Code.

Medical malpractice frequently committed by healthcare workers (doctors and dentists) is generally known to occur due to the following factors:

a) The doctor or dentist lacks mastery of generally accepted medical practices within the medical or dental profession.

b) Providing medical or dental services below professional standards.

c) Committing gross negligence or providing careless services [q.v.: 11].

In medical law, the term *medical malpractice* refers to poor medical practice. When discussing the definition of medical practice from the perspective of a doctor's responsibility in a contract with a patient, the legal qualifications of the medical actions performed must be assessed.

Materially, a medical procedure is not unlawful if the following three conditions are met:

1. It has a medical indication leading to a concrete treatment goal.

2. It is performed in accordance with applicable medical regulations.

3. It has obtained the patient's consent.

The first two conditions are also referred to as legitimate actions, or actions that comply with medical professional standards. The third condition is one of the most important patient rights: the right to informed consent. The doctor-patient relationship, where the patient, on the one hand, and the doctor/medical team/hospital, on the other, create legal responsibilities, can be established in the form of an agreement [q.v.: 21]

If we examine the legal aspects of medical malpractice, the following guidelines must be considered:

1. Deviation from professional medical standards.

2. Errors committed by the doctor, whether intentional or negligent.

3. Consequences resulting from medical procedures that result in material, non-material or physical (injury or death) or mental harm.

Deviations from medical professional standards can occur due to unclear medical indications and/or substandard medical procedures. All of these must be investigated: whether the doctor's actions were thorough and careful, the methods used were within medical standards, the doctor truly possessed the skills required to obtain a certificate for his expertise, whether he was in a specific situation where the action was performed, and whether he applied the principle of balance between the means he used and the concrete goals he wanted to achieve [6].

The terms *medical malpractice* and *negligence* are two different things. Medical negligence is indeed considered medical malpractice, but it includes more than just negligence; it can also be intentional. The definition above clearly demonstrates that malpractice has a broader meaning than negligence, as it encompasses actions committed intentionally (intentional, dolus, opzettelijk) and violates the law. Intentional action implies a motive (mens rea, guilty mind) while negligence is more about unintentional action (culpa), carelessness, indifference, recklessness, and disregard for the interests of others, even though the consequences are not the intended outcome. It must be acknowledged that cases of pure malpractice involving intent (criminal malpractice) that reach court are indeed few. Similarly, in foreign countries, claims are generally civil or compensation-based.

In the explanation of Law No. 29 of 2004 concerning medical practice, it is stated that medical professional standards are the minimum competency limits that a doctor must master to be able to carry out his professional activities in the community independently, which are compiled by the Indonesian Medical Association. Meanwhile, standard operating procedures are an instructive device regarding standardized steps to complete a certain routine work process. Standard operating procedures are compiled by the institution where the doctor works (hospital, community health center, etc.).

Civil liability due to malpractice cases

Civil liability in medical malpractice cases is a form of legal liability that aims to provide legal protection and redress for patients who have suffered harm due to the actions or negligence of medical personnel. Unlike criminal liability, which focuses on punishing the perpetrator, civil liability focuses more on the loss and aims to restore the victim's condition as close as possible to the condition it was in before the loss occurred.

The relationship between medical personnel and patients in healthcare practice is essentially a legal relationship stemming from a therapeutic agreement. This agreement arises when the patient consents to the medical treatment to be performed by a doctor or other healthcare professional. In this therapeutic agreement, the healthcare professional does not promise a specific outcome, but rather promises to perform their best efforts (inspanning verbintenis) in accordance with professional, scientific, and prudent standards. However, if the healthcare professional fails to fulfil this obligation and causes harm to the patient, civil liability arises.

Civil liability in medical malpractice cases in Indonesia is based on applicable civil law provisions, primarily those stipulated in the Civil Code, as well as specific provisions in health legislation. The main provisions that form the basis for civil liability are:

1. Breach of contract as regulated in articles 1239 and 1243 of the Civil Code; 2. Unlawful Acts (PMH) as regulated in article 1365 of the Civil Code.

In addition, Law No. 29 of 2004 concerning Medical Practice, Law Number 36 of 2009 concerning health, and Law No. 17 of 2023 concerning health also strengthen the rights of patients to obtain safe and quality health services, as well as the right to receive compensation in the event of negligence by medical personnel.

In the realm of civil law, the relationship between a doctor and a patient constitutes a form of legal obligation, as regulated by the Civil Code. Medical procedures are categorized as a form of inspanningsverbintenis, a type of obligation that emphasizes optimal performance by medical personnel, without providing any guarantees regarding the final outcome [19, p. 15713-15719].

Thus, a doctor's responsibility in medical procedures is not measured by the results (resultaatsverbintenis), but rather by the extent to which the medical personnel have carried out procedures in accordance with professional standards and reasonable care. This is in accordance with article 280 paragraph (1) of the Health Law, which states that in carrying out practice, medical personnel and health workers who provide health services to patients must make the best possible efforts.

According to article 1371 paragraph (1) of the Civil Code, an act that causes injury or disability to a body part, whether done intentionally or due to negligence, gives the victim the right to sue for compensation. Therefore, if a health worker commits an act that causes a patient to suffer injury or loss, the patient or their family has the legal right to file a lawsuit based on these provisions. In order to file a medical malpractice lawsuit based on an unlawful act, there are four elements that must be met, namely:

1. There is a loss suffered by the patient.

2. There is an error or negligence on the part of the doctor or medical personnel, including the hospital as an institution.

3. There is a causal relationship between the act committed and the resulting loss.

4. The act violates the law [16, p. 107-120].

Legal implications for the settlement of malpractice cases in Indonesia

The legal implications of resolving medical malpractice cases in Indonesia create systemic complexity due to overlapping legal mechanisms. Under Law No. 29/2004 and Law No. 36/2009, settlement must begin with mediation or an examination by the Indonesian Medical Disciplinary Honorary Council (MKDKI) before going to court. However, the MKDKI's decisions are non-binding and are often ignored in the litigation process. This multi-layered procedure actually prolongs case resolution by an average of 3-5 years, at high costs, especially for economically disadvantaged patients [7, p. 629-636].

Civil liability is regulated by article 58 of the Health Law, which mandates compensation. However, the measurement of immaterial losses (such as

psychological trauma) is difficult to standardize legally. Hospitals share vicarious liability (article 46 of the Hospital Law), encouraging closed settlements through financial compensation to protect their reputations, even though it potentially compromises professional accountability. Conflicts of authority arise when courts ignore MKDKI decisions, forcing medical personnel to face a dual process: professional discipline and legal action. Asymmetric protection is also evident in the guarantee of legal assistance for doctors through professional organizations (articles 50-53 of the Medical Practice Law), while patients are denied similar facilities. Administrative sanctions such as revocation of practice licenses are rarely applied, despite being effective as a deterrent [q.v.: 12].

Legal uncertainty arises in cases of non-physical harm. Although article 58 of the Health Law recognizes it, there are no objective guidelines for measuring psychological trauma, leading courts to frequently reject immaterial claims. At the implementation level, minimal socialization of legal procedures results in 65% of patients being reluctant to report due to uncertainty about the outcome. Conflicts of authority arise when courts ignore MKDKI decisions, forcing medical personnel to face a double process. Asymmetric protection is also evident: doctors receive legal assistance from professional organizations (articles 50-53 of the Medical Practice Law), while patients do not receive similar facilities. Administrative sanctions such as revocation of practice licenses are rarely applied despite being an effective deterrent, and the Health Law only regulates mild sanctions such as written warnings for administrative violations [15, p. 423-428].

Harmonizing Law No. 29/2004 and Law No. 36/2009 remains a challenge. The Health Law emphasizes consumer (patient) aspects, while the Medical Practice Law focuses on professional protection, leading to a conflict of interest. This legal loophole has the potential to create uncertainty, particularly in malpractice cases involving non-physical losses [18, p. 2024-2033].

Thus, the Indonesian legal system still faces various challenges in terms of procedure, substance, and implementation. The multi-layered resolution process between professional disciplinary mechanisms and the courts prolongs case handling

times and creates legal uncertainty, especially for patients who suffer losses. Furthermore, overlapping regulations and the lack of harmonization between the two laws lead to ambiguity in determining sanctions and standards for proving medical negligence.

Conclusion

Civil liability in medical malpractice cases aims to provide legal protection and redress for patients who have suffered harm due to the actions or negligence of medical personnel. Civil liability can be based on breach of contract or unlawful acts as stipulated in the Civil Code. In this context patients have the right to claim compensation for material and immaterial losses suffered, as long as there can be proof of the medical personnel's fault and a causal relationship between their actions and the resulting losses. In addition to medical personnel personally, hospitals can also be held civilly liable based on the principle of responsibility for the actions of others in employment relationships.

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