

Medical Criminal Law and Malpractice (Aspects Criminal Liability of Internal Doctors Health services)

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ABSTRACT

Public health is the main focus in the development of the health service system. Doctors as the main pillar in providing these services have significant legal responsibilities. This research discusses aspects of medical law and malpractice related to the criminal liability of doctors in the context of health services. Within the framework of health law, the basic principles governing medical practice and their relationship with the rights and obligations of doctors are analyzed. In addition, an in-depth review was carried out on the definition and elements of malpractice, as well as the role of criminal law in regulating violating actions that may be carried out by doctors in carrying out their practice. Through literature study and case analysis, this research identifies factors that may lead to criminal liability of doctors, including misdiagnosis, non-standard treatment, and violations of professional ethics. Apart from that, challenges and changes in the medical criminal law system are also discussed that can influence the assessment of malpractice. The results of this research contribute to further understanding of the dynamics of doctors' criminal liability in health services, while highlighting the need to increase regulatory clarity to protect patient rights and provide justice to doctors. The practical implications of these findings can help policy makers and legal practitioners in developing more effective guidelines in handling malpractice cases in the health sector.

Keywords:

Medical Criminal Law, Dynamics of Malpractice, Medical Practice, Health Services.

1. Introduction

Health services are an important aspect of people's lives that contribute to welfare and productivity. In this context, the role of doctors as health service providers is the main key in ensuring quality and safe services for patients. However, along with the complexity of the world of health, the emergence of medical criminal law issues and medical malpractice has become a serious concern in maintaining the integrity and safety of medical practice.

Medical malpractice, which involves errors in diagnosis, treatment, or negligence in providing health care, can have a serious impact on a patient's health and life. Therefore, it is important to understand the aspects of criminal liability for doctors in the context of health services.

This background is also related to the increasing number of cases of suspected medical malpractice in several countries, including Indonesia. Proper handling of malpractice actions is crucial to protect patient rights and ensure that doctors are obliged to comply with ethical and professionalism standards in medical practice.

Through an in-depth analysis of the concepts of medical law and malpractice, the challenges and complexities faced in enforcing criminal liability against doctors can be identified. This understanding will provide a basis for the development of regulations that are clearer and more effective in protecting the interests of all parties involved in the health care system.

By exploring these aspects, this research aims to contribute to further understanding of medical criminal law and malpractice, as well as detailing the criminal liability of doctors in the context of health services. In addition, it is hoped that this research can help improve the quality of medical services and patient safety in the future.

Literature review

1. Medical Crime Law

Indonesian law does not explicitly recognize the terms "Malpractice" or "Medical Crime," which originate from Western legal culture. A special study needs to be carried out to formulate definitions and limitations of these two terms.

Criminal acts in Indonesia are human behavior that constitutes a crime, is against the law, and can be blamed. The general condition is that the act violates the law and is considered unfair.

Medical malpractice cases in Indonesia can be resolved based on several legal grounds, including the Criminal Code, Civil Code, Law Number 8 of 1999, Law Number 17 of 2023 concerning Health.

The Republic of Indonesia Supreme Court Circular in 1982 recommended that cases involving doctors or health workers be given an opinion by the Medical Ethics Honorary Council (MKEK) before being processed through legal channels. Law Number 17 of 2023 also regulates dispute resolution through mediation outside of court.

The Indonesian Medical Discipline Honorary Council (MKDKI) plays a role in determining doctor errors or negligence. This institution is autonomous and its members cover various professions, so it is expected to be more objective compared to MKEK whose members consist of doctors who are bound by an oath of office.

Dispute resolution through mediation outside of court is a provision that is strengthened by law, providing alternative solutions that are more objective and involve various elements of profession and expertise.

2. Medical Crime

Medical Crime is not yet fully agreed upon by scholars. Prof. Moeljatno defines criminal acts as actions that are prohibited by legal regulations, with the threat of criminal penalties for those who violate them. Moeljatno's dualistic view differentiates between whether an act can be punished and whether a person can be punished.

Law Number 17 of 2023 concerning Health does not explicitly mention Medical Crime, but implicitly mentions the term Criminal Offense. Article 302 paragraph (13) states "In the case of Medical

Personnel and Health Personnel who know or reasonably suspect that there has been a criminal act committed against a patient who is being provided with health services, they have the right to report it to law enforcement officials", then stated in Article 308 paragraph (8); "In the event that the disciplinary panel does not provide a recommendation within 14 working days of the application being received, the panel is deemed to have provided a recommendation so that an investigation into the criminal act can be carried out." Regarding investigations, it is stated in article 424 paragraph (1); "The Investigating Officer of the Republic of Indonesia National Police has the authority and responsibility to carry out investigations of criminal acts in the health sector based on the Criminal Procedure Code."

The word "Medik" is taken from the English-Indonesian dictionary and is defined as "medicine." Medical Crime is a crime between users of medical services (patients) and perpetrators of medical services (doctors) in the context of medical practice.

Based on the meaning of criminal and medical acts, according to Beni Satria (2018), medical crimes can be defined as acts that are contrary to the law that occur between medical service users and medical service providers (doctors), carried out with errors by people who can be responsible.

3. Errors in Medical Practice: Medical Malpractice Actions

Medical malpractice is a form of error in the health profession, involving doctors and health workers. This type of error includes incorrect diagnosis, inappropriate treatment, or failure to provide thorough care. The term "medical malpractice" is often used to refer to criminal acts by health care professionals.

According to Jusuf Hanafiah (1999), medical malpractice is a doctor's negligence in using skills and knowledge according to standards in treating patients. This involves errors in carrying out the medical profession, not in accordance with professional standards.

Medical malpractice is not always related to negligence alone. J. Guwandi (1996) explains that malpractice includes negligence and actions carried out intentionally, violating the law. If negligence reaches a certain level, such as harming or injuring someone to the point of causing death, it is categorized as gross negligence (*culpa lata*).

Hermien Hadiati (1998) describes malpractice as bad practice in applying medical science and technology, which is closely related to the place of practice and the person carrying out the practice. The term "maltreatment" is preferred to describe this poor medical practice.

Malpractice can include actions that cause measurable injury or disability to a patient. The Black Law Dictionary calls it "any professional misconduct, unreasonable lack of skill or fidelity in professional duties, evil practice, or illegal or immoral conduct."

In recent years, an increase in medical malpractice cases has occurred in Indonesia. These cases often end without appropriate sanctions or punishment for the health workers involved. These errors can be categorized through various standards, such as medical ethical codes, professional standards, and standard operating procedures. In developed countries, such as the United States, cases of medical malpractice also continue to increase every year. In Indonesia, prosecutions of doctors for alleged malpractice increased from 2006 to 2012, with 183 cases recorded. As of January 2013, cases of suspected malpractice reached 183, with variations in the types of cases reported.

2. Method Study

According to Soerjono Soekanto's definition, it is a series of systematic, structured steps to understand a problem. Research is considered a tool that humans use to strengthen, build and develop knowledge through the application of these processes.

1. Research Specifications

The specifications of this research involve the application of analytical descriptive methods. This method is used to analyze applicable laws and regulations, especially those related to legal theories and the implementation of positive legal practices regarding the responsibility of doctors for medical malpractice. Descriptive research aims to provide in-depth details of certain phenomena related to theory and overcome problems that arise.

2. Approach Method

The method applied in this research is the normative juridical method, a deductive approach that uses theory as a starting point for answering research questions. This research will analyze articles in laws and regulations related to the responsibilities of doctors and malpractice.

In the context of normative research, a conceptual approach is used to understand concepts such as the responsibilities of physicians, hospitals, and medical practice. These concepts are the basis for producing norms in the rule of law.

3. Research Stage

- a) Literature Research: Involves literature study to collect secondary data, including primary and secondary legal materials related to the responsibilities of doctors and hospitals.
- b) Field Research: Conducted by interviews and direct observation of medical malpractice to support literature study.

4. Data Collection Techniques

- a) Primary Legal Material: Involves binding legislation such as the 1945 Constitution. Law Number 17 of 2023, Minister of Health Regulation No. 24 of 2022 concerning Medical Records
- b) Secondary Legal Materials: Involves law books and legal works from various sources.
- c) Tertiary Law Materials: Includes dictionaries, encyclopedias, indexes, and cumulatives.

5. Data Collection Tools

- a) Literature Study: Search for and collect secondary data such as laws and regulations, scientific journals, and scientific articles related to doctor's responsibilities and medical malpractice.
- b) Field Study: Using interview techniques with health workers to obtain primary data.

6. Data Analysis

- a) The choice of analysis must be appropriate to the type, research objectives, and nature of the data collected.

- b) Qualitative descriptive analysis is used to group, select, and connect data from field research with theories and laws that have been studied.

3. Results and Discussion

1. Concept of Malpractice

Malpractice is a wrong implementation or action, especially in the context of the medical profession. This term covers a doctor's negligence, error, or lack of ability to care for a patient, which can lead to poor outcomes. In Indonesian law, the correct term is "malpractice." Medical malpractice can be defined as actions that are not in accordance with medical standards, violate the Health Law and the medical code of ethics.

The criminal aspects of medical malpractice can be regulated by the Criminal Code, the Health Law and the Medical Practice Law. Some examples of criminal acts include deceiving patients, violating modesty, abortion without medical indication, negligence resulting in death or injury, giving or selling fake medicine, making fake certificates, and committing euthanasia.

Administrative action against health workers involved in malpractice can include neglecting obligations, doing things they should not have done, ignoring something they should have done, or violating legal provisions. Several criminal articles in the Health Practice Law also include practicing without a registration certificate, practicing without a practicing license, and practicing using inaccurate or fake degrees.

2. Criminal liability in medical crimes

In the context of criminal liability in medical crimes in Indonesia, positive law has regulated preventive efforts to protect doctors and patients. Medical malpractice is considered against the law because it involves breaking the patient's trust in the therapeutic contract. Until now, medical crimes related to medical malpractice are limited, and only two articles are often applied: Article 359 (death of the victim) and Article 360 (serious injuries to the victim).

Law has three meanings: as a means of achieving justice, as a regulation by the authorities, and as a right for society. Adami Chazawi (2001) considers that not all medical malpractice falls within the realm of criminal law, and there are three conditions that must be met, including the doctor's inner attitude, conditions for medical treatment that violate standards, and conditions for consequences that are detrimental to the patient's health.

In the context of criminal law, several relevant articles include forgery of documents (Article 267 of the Criminal Code), abortion (Articles 346-349 of the Criminal Code), abuse (Article 351 of the Criminal Code), and negligence that causes death or injury (Articles 359-361 of the Criminal Code). These articles provide the legal basis for dealing with medical crimes, especially those related to treatment that does not meet standards and causes death or serious injury. However, exceptions must be made for medical procedures performed in an emergency to save the patient's life.

3. Rights and Obligations of Patients and Doctors

Health Law Number 17 of 2023 in Indonesia regulates the relationship between human rights in the health context. Article 1 Paragraph (1) and Article 4 state the right of every person to achieve optimal

health. Patient rights in health services involve treatment, refusal of certain treatments, selection of health workers and hospitals, information, refusal of treatment without permission, sense of security, restrictions on freedom of treatment, terminating treatment agreements, visitor rights, suing, and legal assistance.

Patients also have obligations such as providing information, carrying out doctor's advice, being honest about problems with the doctor, providing compensation if their actions are detrimental, and providing compensation for services.

Doctors as profession bearers have the right to complete information from patients, compensation for services, goodwill from patients, defending themselves from claims, and approval of medical procedures. Doctors' obligations include general obligations, towards sufferers, towards their colleagues and towards themselves.

The therapeutic agreement between a doctor and a patient involves an informed consent that includes the diagnosis, purpose of medical treatment, treatment alternatives, risks and complications, and prognosis. Consent can be given in writing or verbally, depending on the risks of the medical action to be performed. Therapeutic agreements have subjective and objective elements that must be fulfilled to be valid.

4. Criminal Sanctions for Malpractice Perpetrators in Positive Law

In the context of criminal law, an act is considered a criminal act if it meets the elements specified in criminal legislation. The principle of legality states that there is no crime without pre-existing legal regulations. Criminal malpractice, especially in the medical context, can be divided into malpractice due to intent, carelessness, and negligence.

In the context of Criminal Malpractice, evidence follows the applicable criminal procedural law, such as the Criminal Code (KUHP). Criminal malpractice can occur if a patient experiences death or disability due to a lack of care or lack of accuracy by a doctor or other health worker. Types of criminal malpractice include intent, carelessness, and negligence.

Criminal malpractice is identified based on deviant treatment, mental attitude (intentional or culpa), and consequences in the form of harm to the patient's health or life. Medical treatment that violates certain articles in criminal law can fall into the category of criminal malpractice. Adverse consequences fall within the field of criminal law, and the type of loss determines whether malpractice falls into the civil or criminal category. Malpractice can be prosecuted with compensation for losses in accordance with applicable law.

5. Objectives of Health Law

Purpose The purpose of health law is to establish a legal framework that protects individual rights, regulates medical practice, and establishes obligations and responsibilities in health services. The primary focus includes protecting patient rights, including the right to information, consent to treatment, privacy, and the right to receive appropriate medical care. In addition, health laws aim to uphold the professional obligations of health care providers and prevent discrimination in access to care.

Overarching oversight of aspects of the health system, such as drug regulation, health facilities, and medical research, is also a focus of health law. Protection against misuse of health information,

through rules for maintaining the confidentiality of patient information, is another important aspect. In handling health law cases, such as medical practices involving malpractice or violations of health professional ethics, health law plays a vital role in upholding justice.

By creating a framework that supports medical innovation and research, health law drives the advancement of medical science by ensuring compliance with ethical and safety standards. Lastly, health law is involved in establishing the actions that can be taken in a public health emergency, including the management of outbreaks and health disasters. Through these goals, health law contributes to the establishment of a just, ethical, and effective health system.

6. Basics of Criminalization for Medical Malpractice

Relevant articles in the Criminal Code (KUHP) related to criminal responsibility in the context of medical malpractice include articles 267, 299, 322, 344, 346, 348, 351, 359, 360 and 361 of the Criminal Code.

- a. Falsification of Doctor's Certificate (Article 267 of the Criminal Code):
 - Doctors who provide false certificates regarding illness, weakness, or disability may be punished by imprisonment.
 - The use of a false certificate with the intent to deceive is also punishable.
- b. Providing Hope for Termination of Pregnancy (Article 299 of the Criminal Code):
 - Punishment for those who give hope of terminating a pregnancy without medical grounds.
 - The penalty can be increased if the aim is to seek profit, or if the perpetrator is a doctor, midwife or pharmacist.
- c. Medical Secrets (Article 322 of the Criminal Code):
 - Violations of medical secrets are punishable by imprisonment or fines.
 - Disclosure of medical secrets is only permitted in the interests of patients, law enforcement, the patient's government, or based on statutory provisions.
- d. Abortion (Article 346 of the Criminal Code):
 - Women who deliberately abort or terminate their pregnancy or tell someone else to do so can be punished.
 - The sentence is valid for six years.
 - Normative issues arise regarding the gestational age at which abortion is prohibited, and the definition of "ordered" raises legal questions.

Regarding medical secrets, Law Number 17 of 2023 emphasizes the obligation of doctors to protect patient secrets. Even though it does not criminalize the keeping of medical secrets, Article 322 of the Criminal Code still applies.

7. Patient Rights:

Patient rights and obligations are two important aspects in the context of health services that are interrelated and need to be considered by all parties involved. Patient rights reflect the basic principles that ensure quality, fair and humane medical services. Some essential patient rights involve aspects of information, consent to medical procedures, security and privacy. These rights include the right to

receive quality medical services, obtain clear information, choose a doctor and class of treatment, and maintain confidentiality of illnesses.

On the other hand, patients also have obligations that need to be complied with in order to ensure a smooth treatment process. These obligations include patient involvement in providing accurate information about their health condition, complying with medical advice and instructions, and complying with hospital rules and regulations. Patients also have a responsibility to provide appropriate compensation as appreciation for the health services received.

In the overall framework of patient rights and obligations, cooperation between the patient and the medical team is the main key. Patients who are active in conveying information and complying with treatment procedures will help ensure effective and optimal medical services. On the other hand, the medical team also has an obligation to provide clear information, listen to patient needs, and provide services with high professional standards. By respecting each other's rights and obligations, the relationship between the patient and the medical team can be maintained as the medical treatment process continues.

8. Negligence causing death

Article 359 of the Criminal Code regulates negligence that causes death. In this article it is stated that a person who, because of his fault (negligence), causes another person to die, can be threatened with a maximum prison sentence of five years or a maximum prison sentence of one year. This article recognizes that the death that occurred was not desired or desirable, but rather was the result of a mistake or negligence.

In criminal law, article 359 of the Criminal Code is used when an act is carried out accidentally but results in the death of another person. To be able to apply this article, there are several elements that must be fulfilled, namely the existence of negligence, the existence of a certain form of action, the existence of a consequence in the form of death or serious injury, and the existence of a causal relationship between the action and the result of the death.

Criminal law is applied to determine liability in cases of death or disability that occur after medical services by doctors or medical personnel. Although not always all problems can be resolved through criminal law, in some cases, the use of health law norms and criminal law is considered relevant. Criminal law is an instrument to prove the extent of wrongdoing and determine who should be responsible, especially in the context of health services to the community.

Thus, criminal law, especially article 359 of the Criminal Code, provides the legal basis for upholding justice in cases of death caused by error or negligence, including in health services provided by doctors or medical personnel.

4. Conclusion

Medical malpractice is a serious issue in medical practice, showing wrongful actions and violating professional standards. Indonesian law does not yet expressly and clearly regulate this matter, but several provisions are regulated through the Criminal Code, Health Law and Medical Practice Law. Penalties are applied to violations such as patient fraud, abortion without medical indications, and ethical violations.

Criminal law in the context of medical procedures in Indonesia aims to protect doctors and patients. The limited articles that can be applied to medical malpractice show the importance of certain conditions, such as the doctor's inner attitude, elements of error/negligence, medical treatment that violates standards, detrimental impacts on patients and elements of causality.

Health Law Number 17 of 2023 discusses the rights and obligations of patients and doctors. Patient rights include information, consent to medical procedures, privacy, and choice of health personnel. The patient's obligations include providing accurate information and complying with the doctor's advice. On the other hand, doctors have the right to complete information and obligations towards sufferers, colleagues and themselves.

Articles in the Criminal Code provide the basis for criminalization of medical malpractice. Abortion, forgery of documents, and negligence that causes death or injury are regulated aspects. Punishment is adjusted to the level of intent, carelessness and negligence.

Health law has several primary goals, including protecting patient rights, regulating medical practice, and establishing obligations and responsibilities in health care. In addition, health laws also aim to enforce the professional obligations of health care providers and prevent discrimination in access to care.

Articles in the Criminal Code, such as forgery of documents, abortion and abuse, are the basis for punishment in medical malpractice cases. Positive law stipulates that the elements of intention, carelessness and negligence must be considered in determining criminal sanctions.

Health law in Indonesia plays an important role in maintaining justice and security in health services. Through strict regulations, clear rights and obligations, and proportional punishment, this system aims to create a medical environment that is fair, ethical, and effective for doctors and patients. Resolving alleged medical crimes through Alternative Dispute Resolution will provide a win-win solution. It is hoped that doctors' compliance with standards and good communication will create high standards of health services and maintain public trust in the medical profession.

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