
LEGAL PROTECTION FOR DOCTORS IN PROVIDING MEDICAL SERVICES

Dedet Steavano¹, Boy Nurdin², Zudan Arief Fakrulloh³

Universitas Borobudur, Indonesia

dedetsteavano715@gmail.com¹, Drboynurdin_ppslaw@yahoo.com², cclsis@yahoo.com³

Abstract

The rampant was reported in the mass media mass related to the doctor's profession, that many malpractices were found by doctors in Indonesia and according to the report of the central health legal aid institution, there were approximately 150 cases of malpractice even though most did not reach the court. Likewise, public reports to the Indonesian Doctors Association (IDI) from 1998 to 2004 were 306 cases of complaints of alleged malpractice. This condition causes anxiety or concerns among doctors, because if it does not help it is declared wrong according to law and when helped at risk, the patient or family is prosecuted if it is not in accordance with his expectations. Because of that, in addition to the obligations that must be met, doctors are also equipped with doctors' rights. Normatively these rights have been listed in the legislation which can be demanded its existence, especially regulated in Article 50 of the UUPK.

Keywords : *Legal Protection, Doctor, Medical Services.*

INTRODUCTION

Health development is part of national development in increasing awareness, willingness, and ability to live a healthy life for everyone so that the highest degree of public health is realized. The health development is an effort of all Indonesian people, so various facilities are needed, one of which is a doctor. The doctor is a "leader" in health services; however the existence of other health workers still has a specificity that cannot be replaced.

A doctor in holding his profession must be based on the Medical Practice Act (Medical Practice Law No. 29 of 2004). It aims to provide a sense of security for the parties because the relationship formed between patients and doctors or other health workers, or the relationship between patients and hospitals, the patient's position is always in a weaker position.

The position of the patient in a state requires help makes the patient's position weak under the position of health workers. This imbalance makes patients vulnerable to being unfair treatment, so according to the law, the patient's position needs to be escorted so as not to suffer losses or get justice and protection.

Conversely, as well as health workers, the position of health workers with the existence of the medical practice law, so that patients cannot arbitrarily commit accusations to doctors or other health workers in the event of unwanted events. (F.Tenke, 2003)

The study of medical law from the perspective of normative law implies that medical law can be seen from 3 points of view, namely:

1. Criminal aspects of medical law,
2. Civil aspects of medical legal, and
3. Administration aspects of medical law. These three aspects bind the doctor's behavior in carrying out his profession, besides that a doctor must complete his behavior in accordance with the rules so as not to be said to do "malpractice" (J. Guwandi, 2005)

In general, it can be said that medical law is administrative law, because this is a branch of state administrative law, as referred to in state administrative law, the existence of medical law is shown in order to create a doctor's order in dealing with other communities (patients, nurses, hospitals, etc.),

then justice, peace, and harmony will be created for all those involved in these health services (F. Tenke, 2003)

In connection with this medical profession, it was recently reported in national media mass, both through electronic media and print media, that many malpractice practices were found by Indonesian doctors even according to reports in the central health legal aid institution there were approximately 150 cases of malpractice in Indonesia, although most of it does not reach a green shirt. Likewise, public reports to the Indonesian Doctors Association (IDI) from 1998 to 2004 were 306 cases of complaints of alleged malpractice (*Harian Sinar Harapan*, 29 April 2005., 2005).

This kind of news has caused anxiety or at least concern among doctors, because the medical profession is like eating simalakama fruit, eaten by dead fathers not eaten by dead mothers, not helping to be declared wrong according to law, being helped risk being sued by the patient or his family if it is not in accordance with his expectations.

Humanistically, doctors as ordinary people certainly cannot be separated from negligence and negligence and even intentional. Negligence that occurs while performing their professional duties can lead to medical malpractice. However, even so in the eyes of the law the guilty are still guilty and as we know everyone must have the same position before the law regardless of status, lineage, gender, or position and social status, in accordance with the principle of Equality Before The Law, while in society there are also people with bad intentions, who deliberately attract doctors to litigation. Malpractice in practice is sometimes obscured from what is called medical risk, so it is not uncommon for a doctor who has worked very professionally, namely in accordance with medical professional standards, medical service standards, and Standard Operating Procedures (SOP) is still charged with malpractice (Koeswadi Hermien Hadianti, 1986). A doctor will find out the final result of the treatment process if the patient dies or is a disability, will receive a response from the patient's family that a malpractice has occurred.

Apart from negligence, negligence and could be the intentional of a doctor, the doctor must also get the same treatment as the patient or the patient's family in defending his rights. In the process of medical servants not the doctor who caused the deterioration of the patient's deteriorating or death, but this could also be due to other factors such as the patient's family did not heed the recommendations of the doctor, nurses' mistakes or maybe hospital facilities (Lachs & Pillemer, 1995).

This is very detrimental to the doctor even though the community actually does not understand very well about what is meant by malpractice. So that every medical or medical service by a doctor who does not meet the expectations of the patient or family, it is considered a malpractice. In this case medical services performed by doctors are considered by the patient or patient's family as a disprofession and even considered a complete doctor's fault.

METHOD RESEARCH

The normative juridical approach is used in this research, according to Soerjono Soekanto. The normative juridical approach is legal research carried out by examining library materials or secondary data as the basic material to be studied by conducting a search on regulations and literature related to the problems studied (Ronny Hanitjo Soemitro, 1990). In this legal study, the author tries to examine the laws and regulations relating to the problems being studied, namely related to the rejection of BPJS patients by the hospital.

Normative juridical research uses secondary data sources. Secondary data in the type of normative juridical research is data sourced from legal materials, consisting of primary legal materials, secondary legal materials, and tertiary legal materials. (Peter Mahmud Marzuki, 2005).

Legal materials as secondary data used to analyze legal issues in this thesis are as follows.

1. Primary Legal Materials, namely binding legal materials, in the form of statutory regulations, jurisprudence, treaties, civil agreements of the parties, and others related to sale and purchase agreements (Nasution, 2008). The primary legal materials used in this study include:
 - a. 1945 Constitution of the Republic of Indonesia
 - b. Law No. 36 of 2009 concerning Health,

- c. Law No. 29 of 2004 concerning Medical Practices
- d. Law Number 29 of 2004 concerning Medical Practices
2. Secondary Legal Materials, namely materials that provide an explanation of primary legal materials, such as the draft law, research results, or the opinion of legal experts (Amarudin dan Zainal Asikin, 2010).

Tertiary legal materials, namely legal materials that provide instructions and explanations of primary legal materials and secondary legal materials, for example dictionaries (law, English, and Indonesian), encyclopedias and others (Soerjono Soekanto dan Sri Mamudji, 1985).

RESULTS AND DISCUSSION

1. The Need for Legal Protection for Doctors

The legal relationship between doctors and patients is actually a health service relationship (medical service) or in other terms a medical action between a Health Provider (health care provider) and a Health Receiver (health care recipient).

According to Leenen as quoted by Danny Wiradharma (Danny Wiradharma, 2002), doctor's obligations in carrying out health services. Obligations arising from the nature of medical care where doctors must act in accordance with the standard of the medical profession or carry out medical practices in a lege.

Doctors' obligations in Article 51 of Law Number 29 of 2004 concerning Medical Practices, namely:

- a. Providing medical services in accordance with the professional and standard operational procedures and medical needs of the patient.
- b. Refer to patients to other doctors who have better expertise or ability, if unable to do an examination or treatment.
- c. Keep everything he knows even after the patient died.
- d. Conduct emergency help on the basis of religion unless he believes there is someone else who is on duty and able to do it.
- e. Add knowledge and follow the development of medical science.

A doctor who is suspected of doing malpractice medical or acts of violation of the law in the medical profession, then he can be prosecuted administratively, civil law, or criminal law, regardless of whether or not a doctor has been accused of doing malpractice medical medical. Through the mass media, the career has been destroyed so far.

Medical malpractice is indeed possible, whether due to intent or due to negligence, however as a human being a doctor cannot be separated from the possibility of making mistakes and mistakes because it is the nature of human nature (Davis, 2002). In the facts that occurred in the field from the results of the interview with the Chairperson of the Makassar Branch of the Indonesian Doctors Association, there were several reasons so that a doctor should receive legal protection for these causes or things. Including:

- a. Doctors who are sometimes considered unprofessional, even though a doctor who has carried out medical services that are in accordance with professional standards, medical service standards and operating procedures. If a doctor has carried out medical services or medical practice, it has been in accordance with professional standards and operating procedures standards, the doctor cannot be prosecuted, both administrative law, civil law and criminal law.
- b. Patients or families of patients who do not accept the failure of treatment efforts, even though a doctor who has then provided an explanation to the patient and or his family about the diagnosis and procedures for medical actions, the purpose of medical actions taken, other alternative actions and the risks and complications that might occur. After the patient approves the medical action based on the clear and bright information, and the medical action has been in accordance with the standard of medical service, the doctor cannot be blamed if there is a failure in the effort.
- c. The doctor who was blamed by the patient, due to the actions carried out by the patient himself who did not explain to the truth about the history of the disease he

had suffered and the medicines he had eaten during illness or did not obey the instructions and instructions of the doctor or reject the agreed treatment method, This is considered as a patient to be guilty of honesty and obey the advice and instruction of this doctor is considered as an obligation of the patient to the doctor and against himself.

- d. The doctor who is considered negligent, even though a doctor is not considered negligent if he chooses one of the many ways of treatment that is recognized where the medical action choices from the doctor have been based on professional standards such as in terms of diagnosis that use scientific methods and facilities which is available to further be sure and confident of the diagnosis it prefers, which then after that it turns out the choice is wrong.
- e. Returning forced, a patient who decided to go home for his own will even though the doctor had not allowed it, and if a complete explanation had been carried out and it turned out that the patient and or family of the patient agreed if there was a risk that had been previously suspected, the doctor could not be accounted for on his medical action and this Such is also freeing doctors and hospitals from lawsuits.

In addition to the doctor's obligations that must be met in carrying out health services, the doctor is also equipped with a series of doctors' rights. Normatively these rights have been listed in the legislation which can be demanded its existence, especially regulated in Article 50 of the UUPK which states as follows: (*Undang-Undang No. 29 Tahun 2004 Tentang Praktek Kedokteran, Pasal 50., n.d.*)

- a. Obtain legal protection as long as carrying out the duties according to the profession and standard of operational procedures.
- b. Providing medical services according to professional standards and operational standards.
- c. Get complete and honest information from the patient or family, and
- d. Receive service rewards.

From the rights of the doctor as stipulated in Article 50 above, that doctors are entitled to get legal protection from medical actions that have been done, as long as what the doctor has done in accordance with professional standards and operating procedures standards. If the doctor takes medical actions in accordance with professional standards and operational procedures standards cannot be prosecuted in court.

2. Legal Protection for Documents in carrying out their duties.

A doctor in carrying out his duties must be based on the applicable medical code of ethics. The main thing in protecting doctors if there is a doctor suspected of doing malpractice is in the mediation process, because most of the resources of disputes are the absence of communication. This is contained in Law No.36 of 2009 concerning Health, continued explained by him that the mediation stage is faster in solving problems, more effective losses will be reduced in the settlement of disputes what else we know the principles that are always there, namely "the principle of presumption does not Guilty "until the person concerned was truly proven guilty from the court's decision. The settlement of cases of legal services legally (litigation) often has a negative impact on health workers, because the future of health workers is already bad, which is not necessarily guilty. He might lose the trust of the patient and the shame of both himself and his family is a prolonged moral burden.

A doctor can carry out the code of ethics well so it must start from becoming a medical student to become a doctor and carry out activities as a doctor's profession (Cox, 2012), while what is meant is as follows:

- a. Conduct under graduate education at the Faculty of Medicine (S1) Introduction, appointment and understanding of the medical code of ethics needs to be done as

early as possible, namely through under graduate education at the Faculty of Medicine

- b. Carry out structural, scientific training courses and Arara that are accredited by the Indonesian Doctors Professional Organization (IDI) so that the medical code of ethics can be remembered by doctors, it is necessary to hold structured training/courses regarding the medical code of ethics.
- c. Doctors must be happy to be careful in announcing or applying new techniques or treatment that have not been tested for truth and to things that can cause community unrest.
- e. Requires doctors to be open to talking properly, factual and manners professionally when communicating with members with patients and with the wider community.
- f. Requires doctors to be able to follow the development of science and medical/health technology as referred to in the scope of Article (1) is carried out by; 1) Reading various literature in books, scientific magazines for electronic literature, brochures and so on, 2) participating in scientific activities such as; Seminars, workshops, training and so forth, so that knowledge and skills remain recognized and trusted, 3) actively conduct medical or health research.
- g. Requires every doctor to always maintain his health, so that it can work well.
- h. Providing proper legal protection, in the case of a lawsuit or lawsuit from patients or families of patients who are not satisfied with the performance of the doctor.

In the new health law No. 36 of 2009, the settlement of cases in health services must go through mediation and this is a higher new legal basis (*Undang-Undang No.36 Tahun 2009 Tentang Kesehatan., n.d.*).

The hospital that worked on a doctor in the event of a problem or acts of case with the patient, was carried out by the mediation pathway first with the patient. Mediation is an effort to resolve disputes against the parties by sitting together in order to produce a joint agreement by presenting a mediator who is neutral who is able to bridge dialogue between the parties to create an orderly dialogue peroses, which with the presence of a mediator will direct the parties to be more open and honest in conveying the problem (*Sri Siswati, 2013*).

The mediation process begins in the following ways:

- a. The mediator introduces themselves and the parties.
- b. The mediator ensures the will of the parties to solve problems with the mediation path.
- c. Mediator explains the notion of mediating and the role of mediators.
- d. The mediator explains the mediation procedure.
- e. Mediator explains confidential parameters.
- f. The mediator explains the rules of behavior in the negotiating process.
- g. Indiciting the general topics of the problems that will be discussed and determine the sequence of the sub topics that will be discussed in the negotiating process and compiling a prejudice agenda.
- h. The mediator can reveal the hidden interests that can be done in two ways, namely directly by announcing the questions directly to the parties, or the palat is not directly by listening or re-formulating the statements made by the parties.
- i. The mediator is trying to encourage the parties not to survive in a positionable mind pattern, but must be open and look for alternative solutions to solving problems together.
- j. Analyzing the choice of dispute resolution, where the mediator helps the parties determine the profit and loss if they accept or reject a problem solving. The mediator also reminded the parties to be realistic and not submit demands or unreasonable offers.
- k. The final bargaining process, where at this stage the parties have seen the meeting point of their interests and are willing to give concessions to each other. The

mediator also helps the parties to develop offers that can be used to test whether or not it can be achieved.

1. Reach a formal agreement, the parties prepare an agreement and procedure or implementation of the agreement.

Patients who complain about cases of medical negligence will receive an explanation of the various ways of handling their cases and are invited to choose which mechanism is most appropriate for their case. If he chooses the mediation route, then a mediator will immediately take steps to prepare for mediation. Mediation officers will bridge the patient side and the doctor through mediation, which is expected to get two benefits at once, namely: 1) disputes between patients and doctors or hospitals can be resolved, and 2) doctors and hospitals will get a derrence effect if they do. disciplinary violations.

The process of resolving legal disputes which is carried out through court media to be able to decide who is right and wrong, where each disputing party gets the opportunity to file a lawsuit and rebuttal. Below are some of the divisions that can be taken related to the litigation process.

a. Through the civil court

The legal basis through this civil court can be described as follows: (Sri Siswati, 2013).

- 1) Article 32 letter Q of Law Number 44 Year 2009 concerning hospitals, states that every patient has the right to sue and/or sue the hospital if the hospital is suspected of providing services that are not in accordance with standards, both civil and criminal.
- 2) Article 66 of Law Number 29 of 2004 concerning Medical Practice.
 - a) Anyone who knows or whose interests have been harmed by the actions of a doctor or dentist in carrying out medical practice may submit a written complaint to the chairman of the Indonesian Medical Discipline Honorary Council.
 - b) The complaint must at least contain the identity of the complainant, name and address of the doctor's or dentist's practice and the time the action was taken and the reasons for the complaint.
 - c) The complaints as referred to in paragraphs (11) and (2) do not eliminate the right of everyone to report suspected criminal acts to the competent authorities and/or to file a lawsuit for civil damages to the court.

b. Through the State Administrative Court

The process through the State Administrative Court (PTUN) in principle is the same as the Path of Civil Court, but there is an addition to the State Administrative Court known as the "Dismissal Process". The dispute between the two parties will be assessed by the judge in this process whether this dispute is worthy of being forwarded to PTUN or not. In PTUN Judges more active to explore cases based on Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Council. TUN agencies or officials, both in the center and in the regions, as a result of the issuance of TUN decisions including staffing disputes based on applicable laws and regulations (Sri Siswati, 2013).

From the results of the TUN dispute process issued a State Administration Decree (KTUN), which is a written determination issued by the TUN Agency or Officer that contains TUN legal actions based on applicable laws and regulations, which are concrete, individual, and final, which cause legal consequences For someone or civil legal entity.

c. Through the criminal trust pathway

The legal provisions of criminal trial pathways are contained in various laws, both the Criminal Code, as well as in special laws in the health sector such as Law Number 36 of 2009 concerning Health, Law Number 29 of 2004 concerning Medical Practices, Laws -Law Number 44 of 2009 concerning Hospitals and various other health laws that are specifically applicable.

If there is a report or complaint about the existence of a criminal offense carried out by a doctor or health worker, the doctor or health worker can pass the stages in resolving criminal cases. Previously carried out the investigation process, which began with clarification of alleged criminal acts, summons for parties to hear the statement and acts of the minutes of clarification. Furthermore, with this information, witnesses can be called whether the alleged action is true. If the results of the investigation can be concluded that there are allegations of criminal acts, then it continues in the investigation process (in the police), prosecution (at the prosecutor's office), and trial (in court).

CONCLUSION.

A doctor needs to get legal protection, from several factors who are used as patients or from the family to sue, among others: doctors who are considered not professional, patients or families who cannot accept failure from a treatment effort, a doctor who is blamed by patients who were apparently caused by The patient himself, a doctor who is considered negligent, and a request forcibly returning from the patient or family. Until now the doctor has received a pretty good legal protection, even though the doctors on duty also often get a complaint from the patient or patient's family, even though no one has reached a green shirt. This is because the problem can be resolved through the mediation channel and this is one of the efforts in protecting doctors when there is an objection from the patient or patient's family.

REFERENCES

- [Amarudin dan Zainal Asikin](#). (2010). *Pengantar Metode Penelitian Hukum*. PT. Raja Grafindo Persada.
- [Cox, D. J.](#) (2012). From interdisciplinary to integrated care of the child with autism: The essential role for a code of ethics. *Journal of Autism and Developmental Disorders*, 42(12), 2729–2738.
- [Danny Wiradharma](#). (2002). *Penuntun Kuliah Hukum Kedokteran*. Bina Rupa Aksara.
- [Davis, M.](#) (2002). *Ethics and the University*. Routledge.
- [F.Tenke](#). (2003). *Hak Pasien sebagai Penerima layanan kesehatan (HealthResiver)*. Mandar Maju. *Harian Sinar Harapan*, 29 April 2005. (2005).
- [J. Guwandi](#). (2005). *Hukum Medik / Medical Law*. FKUI.
- [Koeswadi Hermien Hadianti](#). (1986). *Hukum Dan Masalah Medik*. Air langga University Perss.
- [Lachs, M. S., & Pillemer, K.](#) (1995). Abuse and neglect of elderly persons. *New England Journal of Medicine*, 332(7), 437–443.
- [Nasution, B. J.](#) (2008). *Metode Penelitian Ilmu Hukum*. Mandar Maju.
- [Peter Mahmud Marzuki](#). (2005). *Penelitian Hukum*. Kencana.
- [Ronny Hanitijo Soemitro](#). (1990). *Metodologi Penelitian Hukum dan Jurimetri*. Ghalia Indonesia.
- [Soerjono Soekanto dan Sri Mamudji](#). (1985). *Penelitian Hukum Normatif*. CV Rajawali.
- [Sri Siswati](#). (2013). *Etika Dan Hukum Kesehatan Dalam Prespektif Undang-Undang*. Rajawali Pers.
- Undang-Undang No. 29 Tahun 2004 Tentang Praktek Kedokteran, Pasal 50. (n.d.)*

Undang-Undang No.36 Tahun 2009 Tentang Kesehatan. (n.d.).

Copyright holders:

Dedet Steavanno, Boy Nurdin, Zudan Arief Fakrulloh (2023)

First publication right:

Injurity - Interdisciplinary Journal and Humanity



This article is licensed under a Creative Commons Attribution-ShareAlike 4.0 International