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LEGAL LIABILITIES OF DOCTORS IN MEDICAL LAW PERSPECTIVE

M Adnan Lira
Faculty of Law, Muslim University Indonesia Yogyakarta, Indonesia
adnan.lira@umi.ac.id

Abstract: Doctors are a noble profession that must be protected from wrongful criminalization because of their duty to save human lives. This does not mean that doctors have absolute legal immunity and cannot be prosecuted if it is proven that they violated the patient's rights. The goal of this article is to examine the doctor's legal liabilities through the perpespective of medical law. Through library research, the issues are analyzed using a normative and conceptual approach to primary and secondary legal materials. As a type of contract, the relationship between doctors and patients is governed by law. As a result, a doctor can face legal consequences under both criminal and civil law. In terms of criminal law, a doctor who fails to perform his duties and profession in accordance with procedures may be subject to a number of Criminal Code provisions, particularly if the patient dies as a result of his negligence. Furthermore, any unlawful act that harms a third party gives rise to a civil law obligation on the person who unintentionally caused the injury to make up for the harm. If an intentional or negligent act results in a damage to or disability of a limb, the victim is entitled to compensation for the costs of healing as well as compensation for losses brought on by the injury or disability.

Keywords: Doctor; Criminal Liability; Civil Liability; Medical Law.

INTRODUCTION

Today's society's development is always accompanied by legal rules, both as rules and in the form of human behavior. In general, the rules that exist in all aspects of human life cannot guarantee the creation of the expected order in society. This demonstrates the need for rules to govern human life so that their interests do not conflict with those of their fellow citizens. The rule of law is one of the rules compiled by society that regulates human relations in order to achieve peace through harmony between order and peace (Utama, 2021).

In general, law is dynamic, evolving in response to societal changes and technological advances. The emergence of health law is one of the positive aspects of this development. In the case of Indonesia, the individual right to health as the basis of Public health is equally important as the people's right to education in the constitution. Article 28H paragraph (1) of 1945 Constitution of The Republic of Indonesia stated that "Everyone has the right to live in physical and mental prosperity, to live, and to have a good and healthy living environment and the right to obtain health services" (Ramadani, Hamzah, & Mangerengi, 2021). Besides the constitution, there are other binding rules that govern the rights and responsibilities of governments, health workers, companies, civil society, and a country's population in all aspects of health. These rules constitute the legal framework, or legal architecture, for health. Statutory laws, regulatory and administrative laws, contracts, case law, and customary laws are some examples. Who makes these rules and what form they take varies by country.

The academic and judicial literature on the intersection of law and health is extensive. Law and health is widely taught (in law schools, medicine schools, public health schools, and health administration schools), practiced (by "health lawyers"), and analyzed (by scholars in the related fields of health law, bioethics, and health policy). These fields of study are known as health law, health care law, law and medicine, forensic medicine, and public health law (Gostin, 2007). However, by default, the courts are inventing health law. The law governing the American health system arises from an unruly mix of statutes, regulations, and judge-crafted doctrines conceived, in the main, without medical care in mind (Bloche, 2003).

Following the review of literature, there are open questions about the similarities and differences of medical and health law, particularly in terms of practical implementations. According to Nikola Todorovski, health law, or medical law, is the branch of law that deals with the rights and responsibilities of medical professionals and patients (Boozang, 2000). The scope of medical law includes the application of criminal law and civil law which correlate with legal relations in health services.

Basically, health law is a branch of law that is interdisciplinary in nature with an emphasis on aspects of the responsibilities of a doctor in carrying out his profession. In this context, medical law encompasses both criminal and civil law. People's knowledge of these aspects of

community life, including aspects of the way of life in the world of medicine, cannot be denied as the field of medical science develops at the same rate as other scientific disciplines. Specifically, an understanding of a doctor's authority and responsibilities in relation to the profession he practices.

Even though the medical world is rapidly evolving, it is possible for a doctor to perform actions that are harmful to society (patients) while carrying out their duties. An example of this is the widespread practice of imprisoning doctors (the accused) due to their negligence, which harms the patients they serve. In this case, health law seeks to determine and analyze whether the indicators used to label a doctor as negligent and harmful to a patient are legal and proportionate.

The world or health legal institutions that involve doctors, the community as patients, and hospitals as means of carrying out the medical profession are constantly confronted with a variety of issues that lead to legal proceedings (Bernheim, 2003). Because of their duty to save human lives, the doctors as medical profession is a noble profession that must be protected from wrongful criminalization. This does not, however, imply that doctors have absolute legal immunity and cannot be legally prosecuted if it is proven that they have violated the patient's rights. This is where the importance of this article lies: reviewing what a doctor's legal liabilities from the medical law perspective.

METHOD OF RESEARCH

Issues in this article are analyzed using a normative approach using primary legal materials such as laws and regulations and secondary legal materials through a number of previous research conclusions. Based on this, this research is categorized as doctrinal/normative legal research with a statutory and conceptual approach (Ramadani and Rezah, 2021). The collected data was then analyzed qualitatively and descriptively to produce a comprehensive and analytical explanation of the object under study (Moch Andry Wikra Wardhana Mamonto and Andika Wahyudi Gani, 2022).

RESEARCH RESULT AND DISCUSSION

1. Legal Liabilities of a Doctor

Law Number 36 of 2009 is basically intended to improve public health status and meet the demand for health development by replacing laws in the health sector that are deemed no longer appropriate to current conditions. This is of course adapted to the great passion for the development and development of human resources. Health resources according to Law No. 36 of 2009 Chapter V explains that the environment or coverage is Health Workers, Health service facilities, Health supplies, and Health technology and technology products.

The authority of doctors in dealing with sufferers has been emphasized in Law no. 36 of 2009, especially in article 24, article 25, 26, 27, 28 and 29. These articles expressly state that a doctor or other health worker cannot be without going through certain procedures or having certain expertise

in carrying out his duties as a doctor or health worker. health. A concrete example is in article of Law no. 36 of 2009 where it is expressly stated that it is a doctor or health worker who has expertise or authority who can carry out media actions for emergencies as an effort to save the life of pregnant women (sufferers) and/or their fetuses with professional responsibilities based on consideration. expert team and with the approval of the pregnant woman concerned or her husband or other family.

The significance of determining health resources in a law such as Law Number 36 of 2009 is that the provision of health for the Indonesian population will increase. Health workers who were only just. Armed with experience and a diploma alone, with proper management training and development, they gradually increase to experienced and skilled personnel. This certainly encourages efforts to improve health as originally used. Adequate health facilities, such as clinics, health centers, hospitals and others will increase people's enthusiasm to be more careful about things and various symptoms of disease, so that they always support health implementation efforts. On the other hand, poor and unmaintained health facilities are the beginning where people are reluctant to be healthy.

One unique feature of the medical profession is that it is regarded as very noble by society because it is directly related to humans as objects and is concerned with human life and death. People have known since ancient times that a doctor must have certain fundamental characteristics, such as good social integrity and wise behavior. As a result, if an error is made in handling a patient, whether it results in disability or death, the patient/family frequently ignores it because they believe it is all God's will. However, this viewpoint is changing as we hear and learn more about doctors who are being sued/sued by patients or their families.

According to the law, every responsibility must have a basis, namely things that give rise to the legal rights of a person to sue another person as well as things that give rise to the legal obligation of the other person to give accountability. In general, the principles of responsibility in law are distinguished as follows: 1. the principle of liability based on fault; 2. the principle of presumption of responsibility; 3. the principle of presumption of non-responsibility; 4. the principle of absolute liability (strict liability) 5. the principle of limitation of liability (Sulistyani & Syamsu, 2015).

2. Criminal Liability of A Doctor

Doctors' duties and profession do not exclude the possibility of making one or more mistakes. This issue really needs to be discussed or debated because it is quite clear that making mistakes will have more serious consequences, particularly damage to trust in the health profession, the professional group's good name, and those who have used the profession's services.

According to Berkhower and Vorstam, one of Soerjono Soekanto and Mohamad's (1983) writings, a doctor makes a mistake if he does not act in accordance with his professional obligations. The Law emphasizes this formulation further, stating that "a mistake made by a doctor is when the behavior is not in accordance with

general guidelines regarding the expected fairness of fellow professionals in the same circumstances and in the same place." Based on these two formulations, it can be assumed that doctors are inextricably linked to the criminal and civil responsibilities they bear in carrying out their duties.

If a doctor is held accountable under criminal law, he must do so in accordance with the provisions of the Criminal Code (Hidayat, 2020). A doctor who breaks the law by committing a crime may be held accountable if he violates one or more of the provisions outlined in Articles 359, 360, and 361 of the Criminal Code. This provision is absolutely valid, which means that if a doctor acts in violation of the said rule of law, he must be held accountable for his actions. It should also be noted that responsibility arises if it can be demonstrated that the doctor violated the terms of a crime.

Criminal acts in the medical field can be categorized in two ways, namely "negligence" (*culpa*) committed by doctors and elements of "intentional" (*dolus*) (Novianto, 2015). Previously, it was important to explain the other side of medical crime, or what is commonly known as "malpractice." Malpractice is the act of a doctor who is not careful in carrying out his professional duties (Komalawati, V. (2018). Basically, we do not find a definite measure of the actions of someone who is considered careless, especially a health worker such as a doctor in the rule of law, but in the freedom of a judge who examines them (Nadriana, L, 2015).

The emergence of malpractice begins with the relationship between the patient and the doctor. This relationship provides an opportunity for the birth of the rights and obligations of both parties between the patient and the doctor. Transactions made between doctors and patients provide instructions that doctors must use their intelligence and knowledge as doctors; in this case, the patient is obliged to pay honoraria to doctors. The existence of a doctor's negligence that causes harm to the patient has consequences for the patient's right to prosecute the doctor. An example of a case of malpractice is, for example, a patient with a diagnosis of *nephrolithiasis sisitra* who agrees to undergo surgery to remove left kidney stones. When the operation was carried out, the x-rays used as a guide for the operation were placed upside down by the doctor so that it appeared that the right kidney contained stones, when in fact it was the left kidney. As a result, the surgeon operated on a healthy right kidney. This was only realized after the surgeon apparently did not find kidney stones in the kidney of the patient who had been operated on, and in the end, the patient died. The doctor's actions above basically violated the provisions in Article 359 of the Criminal Code and had the effect of being an unlawful act.

In general, a doctor who intentionally allows a patient to suffer without providing assistance may face legal action. Doctors may not choose certain conditions under which to carry out medical actions, especially if it involves a person's life. Another aspect that becomes a medical crime issue is an attempt to reveal the

medical secrets disclosed by the patient by recalling the oath of office and the secret of the position he holds (Ridwan, 2019). Medical secrecy is defined in Regulation of the Minister of Health Number 36 of 2012 as data and information about a person's health obtained by health workers while carrying out their work or profession, which includes patient identity, anamnesis, physical examination results, supporting examinations, diagnosis, treatment, and medical action, as well as other matters relating to the patient. The doctor's duty to keep medical secrets is both moral and legal. Moral obligations based on the Indonesian Code of Medical Ethics, as well as legal obligations governed by Law Number 29 of 2004 on Medical Practice and Regulation of the Minister of Health Number 36 of 2012 on Medical Confidentiality (Masri, 2022).

A problem that frequently arises is when a doctor operates on a patient without the patient's consent on the basis of a media indication, or vice versa, without a media indication but with the patient's consent, all of which have negative consequences for the patient. If the act matches the elements of the law, it is said to be unlawful (*wederrechtelijk*). According to P.A.F. Lamintang, Van Hattum has split violations of law in formal and material forms (1984). In a formal sense, an act can only be considered a violation of the law if it satisfies all of the elements contained in the legal formulation of an offense. Meanwhile, an act can be considered a violation of the law or not, not only in terms of written legal provisions, but also in terms of common law and unwritten law (Mulyadi, 2013).

In order to respond to this statement, an in-depth analysis is required. The analysis focuses primarily on the approval function, which can eliminate illegal nature. First and foremost, it is stated that if a doctor performs the act of dissecting a patient based on media indications, then this act is justified. This is due to the fact that surgery is based on the doctor's professional authority, which is recognized by laws and regulations that govern doctors' rights and authority in applying their professional knowledge and skills. In reality, the patient's consent is not a general basis for making an exception to the occurrence of a criminal event. An agreement can only eliminate unlawful nature under certain conditions, such as in violation of public rights, as demonstrated by boxing matches. This situation begs the question: can the act of dissecting be classified as persecution under the Criminal Code? This is dependent on the intention and awareness of the actions taken.

According to the Criminal Code, persecution is an intentional act to cause harm that is not motivated by permissible goals. While surgery is a medical procedure performed in accordance with the methods and goals of the medical profession (Siahaan, 2018). On that basis, the act cannot qualify as persecution. This argument in itself proves that a doctor need not feel restless and worried because a normal operation is not a crime, even if the results are not beneficial to the patient. professional authority Recognized by law is an unwritten exception for a doctor: that

he can only be prosecuted if he commits violence related to the circumstances without the patient's consent. In other matters, doctors cannot be sued even if there is no patient consent, as long as the actions they take are sufficient to protect the patient's interests. One thing that needs to be known is that medical actions carried out by doctors, even though they have received consent from the patient, if there is no medical indication for the actions they take, are still classified as criminal acts. This is because the action does not have a specific purpose that is considered appropriate.

The existence of criminal responsibility can be seen or proven by the existence of professional errors, for example, misdiagnosis or errors in healing and treatment. Determining the existence of a professional error by itself requires the opinion or verification of experts who can provide professional data to the judge handling the case. According to medical science, in order to find out whether a doctor has made a mistake, there must first be a stipulation regarding the mistake, which is then determined by law as to whether the mistake resulted in criminal responsibility (Dakhi & Telaumbanua, 2022). The mistake should have a causal relationship with the result, and the mistake also gives rise to criminal responsibility. Professional misconduct need not be accompanied by criminal responsibility, because death or disability is not always caused by it. In this case, doctors cannot be punished. Other circumstances where the professional implementation is carried out in a team, then the one who bears the responsibility is wrong because with the wrong order the mistake is there.

1. Civil Liability of a Doctor

In Indonesia, until now, perhaps only a few realized how many problems would be returned to the civil responsibility of a doctor. Civil liability for a doctor occurs when a patient sues the doctor to pay compensation for actions that harm the patient. (Aji & Marbun, 2022). Based on the prevailing interaction pattern, a patient can enter into a certain relationship with the doctor as long as their health needs are met. The fulfillment of the health needs in question is that the patient, in this case the person with the disease, goes to a clinic or hospital or a place there where to practice which is open to the public. which in this case is based on several possibilities, namely:

a. Health consultation
b. prevention of certain diseases (immunization)
c. Medical Checkup
d. treatment of certain diseases.
e. And so on

Seeing some of the possibilities above, the authors only limit themselves to the possibility of point (d), namely in the context of treating certain diseases suffered by the patient in question. the author put forward an example, namely a patient (A) contacted doctor B at the practice site to ask for help so that treatment was carried out and taken. The question arises: as long as he is practicing medicine, what is the legal relationship between the patient (A) and doctor (B)? Questions like this can be observed from two sides, namely, from the point of view of medicine and law.

According to medical science, the term "informed consent" is an agreement based on an explanation where the consent in question is based on a principle that also states that every human being has the right to participate in making decisions that concern him Faden, & Beauchamp, 1986). The above principles are independent of the following conditions: 1) the patient must have sufficient information to make decisions regarding his/her own treatment; 2) The patient must give consent regarding the treatment of him, either orally. or written explicitly or implicitly (Listyaningrum, 2016).

As for the aspect of legal science, the principles and conditions based on the first point above are based on two things, namely: first, the relationship between patients and doctors is fiducier (Sihaloho, 2017), namely, a relationship based on the belief that doctors have a high professional ability to treat people who are sick or whose health is impaired. The party who gets the trust in this matter, the doctor, must be able to carry out his obligations in an elemental, careful manner and must keep the media data confidential for the patient. Second, people who are mentally healthy have the right to make decisions about themselves and the fate of their bodies; in other words, a patient may not be forced to accept a certain way of treatment, even if this is an action considered the best by the doctor who does it.

Regardless of the principles and conditions described above, according to civil law, an agreement is known as an agreement because two parties have agreed or promises each other to do something. An agreement is a legal relationship between two people or parties based on which one party has the right to demand something from the other party and the other party is obliged to comply with these demands. For example, if a patient enters into an agreement with a doctor, then that agreement is also a contract for them. The involvement of the medics and the hospital in this matter is as a party and a means of helping the implementation of the agreement between the doctor and the patient.

Civil law basically regulates the interests of one individual to another in the order of social life (Hidayat, 2019). This is in accordance with the limitations specified in civil law, which govern legal relationships between two people. An agreement will issue or give rise to an agreement between a patient and a doctor as a result of the consultation and treatment requested by the patient from the doctor. The patient-doctor relationship can be classified as an engagement to do or do something.

Doctors in this case must make achievements, namely try and try to cure patients and their illnesses but do not promise that the patient will definitely recover and vice versa the patient still has to pay an honorarium to the doctor who treats him. in the event that the doctor is unable to carry out his obligations to the sufferer or patient in accordance with the agreement that has been reached. Together, the doctor can be declared to have committed a default or broken promise and can be held responsible for paying compensation. Compensation for doctors due to default can be traced to Article 1234 of the Civil Code, namely reimbursement of costs, losses, and interest due to

non-fulfillment of an agreement. Only then is it required if the debtor, after being declared negligent in fulfilling the agreement, neglects it, or if something that must be given or made can only be given or made within the grace period that has been exceeded.

Unlawful acts or *onrechtmatigedaad* stipulated in Article 1365 of the Civil Code states: any unlawful act that causes harm to another person obliges the person who, due to the mistake of issuing the loss, to compensate for the loss. Article 1371, paragraph 1, of the Civil Code further stipulates that the cause of injury or disability to a limb is intentional or careless, entitling the victim to compensation for the costs of healing and compensation for losses caused by the injury or disability.

The articles mentioned above confirm that the responsibility of a doctor as a party to an agreement with a patient has been determined by laws and regulations. The civil liability of a doctor occurs when the patient sues the doctor to provide compensation based on actions that are detrimental to the patient. Regarding violations committed by doctors, they should be based not only on violations of formal laws concerning written legal norms but also on non-formal legal norms such as religious norms, customary norms, moral norms, and so on.

Even so, in circumstances where a person has actually caused another person to suffer a loss, the law still provides an opportunity to hold a defense and the obligation to pay compensation by stating certain reasons so that he is released from the obligation to pay compensation. One of the articles indicating the reason for a doctor's defense is Article 1244. of the Civil Code, which states: "If the reason for that is that the debtor must be punished for reimbursement of costs, losses, and interest if he cannot prove that he did not or did not carry out the engagement at the right time," that, because of an unexpected thing, he cannot be held responsible for all of that, even if bad faith was not on his part. Furthermore, Article 1245 of the Civil Code reads: "No loss and interest costs must be reimbursed if, due to circumstances, force, or an accidental event, the debtor is unable to give or do something that is required or, because of the same things, has committed a prohibited act."

A doctor is also responsible for the instructions given to his subordinates, who have equal authority. However, this responsibility can be lost or lost on the doctor giving the order; for example, if a surgeon gives orders to an x-ray expert, the x-ray expert is only responsible for the actions he has taken. An order given by a doctor to a nurse who is his subordinate requires the doctor to supervise the implementation of the order. Routine doctor's orders are automatically accounted for by the nurse herself. The greater the skills and rights of a nurse, the greater the legal responsibility.

The main measure in the event of a default or unlawful act is carelessness in carrying out a professional action. The death of a patient due to a doctor's professional error automatically causes the husband or wife or their heirs to have the right to claim compensation, as stated in Article 1370 of the Civil Code.

In the case of an intentional killing or due to someone's carelessness, the husband or wife left behind, the child or parents of the victim, who usually earn a living, and the victim's occupation have the right to demand compensation, which must be assessed according to the parties' second position and wealth, and according to circumstances.

CONCLUSION

Based on the preceding explanation, it is possible to conclude that the legal relationship between doctors and patients is governed by law as a type of contract. As a result, the doctor is required to carry out the object of the engagement in accordance with his or her field of professional expertise. As a result, a doctor can be held legally liable in both criminal and civil courts. In terms of criminal law, a doctor who does not performs his duties and profession in accordance with procedures may be subject to a number of Criminal Code provisions, particularly for negligence that results in the death of the patient. Meanwhile, under civil law, any unlawful act that causes harm to another person obligates the person who, by mistake, causes the loss to compensate for the loss. The cause of injury or disability to a limb is intentional or careless, entitling the victim to compensation for the costs of healing as well as compensation for losses caused by the injury or disability. Doctors' violations should be based not only on violations of formal laws pertaining to written legal norms, but also on violations of non-formal legal norms such as religious norms, customary norms, moral norms, and so on. The author basically suggests that the civil, criminal, and special regulations outlined in Law No. 36 of 2009 be maintained and improved so that existing procedures and systems can function properly.

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