



Legal Responsibility Of Medical Personnel In Carrying Out Medical Procedures

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Abstract : Informed consent is a statement given by a patient to a doctor that he agrees to a medical procedure. Apart from that, informed consent itself is a form of communication between the patient and the doctor with the aim of providing information regarding surgical and/or treatment plans, surgical risks, surgical benefits, disease prognosis and etc. The aim of this study is to analyze the medical responsibility of medical personnel for medical procedures through informed consent. This research uses empirical juridical research. The results of this study explain the important role of informed consent in the practice of medical procedures in hospitals by medical personnel and the responsibility of medical personnels when there are allegations of malpractice committed due to negligence by medical personnel in carrying out their obligations to carry out medical procedures on patients.

Key words: Legal Responsibility, Medical Personnel, Medical Procedure

1. Introduction

Health services at hospitals are always related to the presence of patients and medical personnels. If there are no patients and no medical personnels, health services at the hospital cannot be implemented. Therefore, medical personnel and patients need to be protected. Protection for Patients is contained in article 3 of Law No. 44 of 2009 which states that the existence of hospitals aims to provide convenience for society, provide protection for patient safety and improve the quality and defense of hospital service standards as well as provide legal certainty for all societies and hospital human resources (Asyiafa, 2019).

Hospitals as organizations that provide health services have an important role in realizing health status. Therefore, hospitals are required to be able to manage their activities by prioritizing the responsibilities of professionals who are competent in their fields. As an organization that provides health services, hospitals are responsible for all losses suffered by patients due to malpractice acts committed by medical personnel (Daeng et al., 2023).

The emergence of various interpretations regarding home legal responsibility as regulated in the Hospital Law and the development of the Vicarious Liability Doctrine, in several cases have caused inconsistencies in court decisions. Certainly, this is a

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burden, especially for justice seekers. Therefore, it is necessary to reconstruct the legal responsibility pattern of hospitals in Indonesia. Technology is in the form of various tools related to the human body such as telephones, glasses, medical tools. A hospital is a business that provides accommodation and provides short-term and long-term medical services consisting of observation, diagnostic, therapeutic and rehabilitative treatment for people who are sick, injured and for those who are giving birth (WHO). Hospitals are also health facilities that carry out health service activities and can be used for education of medical personnel and research. The legal basis for hospital regulation is regulated in Law No. 44 of 2009 concerning Hospitals, in Article 1 paragraph (1) it is stated that hospitals are health service institutions that provide comprehensive individual health services that provide inpatient, outpatient, and emergency care services. (Ismail Koto, 2021) .

In terms of administrative regulations, the government has fulfilled its responsibility for the needs of society in fulfilling Health Human Resources in the field of Work Accident Insurance for assessing and determining disabilities resulting from work accidents through the Regulation of Minister of Manpower Number 28 of 2015 by appointing an advisory doctor. Thus with the stipulation of the functions and duties of medical advisors in this regulation, in terms of government administration, responsibility for the government's obligations in Work Accident Insurance is technically delegated to medical advisors (Kusuma & Triana, 2024).

By *ius constitutum*, medical personnels who have the authority to determine disability resulting from work accidents are medical advisor. In accordance with the first article of the Minister of Manpower Regulation Number 28 of 2015, an Medical Advisor is a doctor appointed by the Minister, who has the responsibility to provide medical considerations in the diagnosis of occupational diseases. Their expertise includes assessing the level of disability arising from work accidents or occupational diseases, as well as determining work inability. In addition, they are given the noble task of suggesting appropriate recovery procedures, as well as providing recommendations for returning to work (Abdillah, 2015).

In Indonesia, many cases have occurred in the medical field, whether brought to court or not. Among the many cases that exist, the number of cases that were not brought to court cannot be known because cases in the medical field are difficult to know. In addition, the patient as the victim in this case is not yet aware that the case he is suffering from is a case resulting from misdiagnosis and mistherapy by a doctor which can actually be prosecuted in court (Tendean, 2019) .

Malpractice (malpractice) is carrying out a profession incorrectly or wrongly, which can only create legal liability for the maker if it results in a loss that is desired or regulated by law. Malpractice can occur in carrying out all kinds of professions, including the medical profession. Mistakes in carrying out the medical profession will result in criminal or civil legal liability (depending on the nature of the resulting loss) containing 3 (three) main aspects as an inseparable unit, namely treatment that does not comply with norms, done with negligence (*culpa*), and contains legal consequences (Sartika Damopolii, 2017).

Alleged acts of malpractice committed by health workers in medical procedures are acts against the law which will have an impact on aspects of civil and administrative criminal law. This will cause legal problems if not done carefully. This research will discuss medical actions by health workers so that when carrying out medical actions they pay attention to patient safety aspects that are carried out to maintain patient safety. This effort was made to provide many benefits to patients and medical personnel in hospitals in one of the cities in Central Java, by considering patient safety, thereby minimizing allegations of malpractice by health personnel.

2. Materials and Methods

This study uses descriptive research. Descriptive research is research that attempts to describe phenomena that occur realistically, real, and contemporary, because this research consists of making systematic, factual and precise descriptions, drawings or paintings regarding the facts, characteristics, and relationships between the phenomena being studied (Ajat, 2018). This study uses the Empirical Juridical legal research method, empirical juridical research which in other words is a type of sociological research and can be called field research, which examines the legal provisions that apply and what has happened in people's lives (Waluyo, 2002). This study used primary data. Primary data is data obtained directly from objects studied in the field (Noer Triyanto Rusli, dan Trihoni Nalesti Dewi, 2023) and Secondary data obtained from the literature. Primary data was obtained by interviews medical personnel in one of the hospitals in Central Jawa by conducting an assessment of the work implementation mechanism. Secondary data in this study is a literature review in the form of books, journals and legal documents in Law No. 17 of 2023. Data collection is carried out by collecting data on the data that has been obtained, then analyzing the data obtained with comparative data through applicable regulations and reviewing journals and books. After analysis, the resulting hypothesis will be studied using patient safety theory to examine the validity of the research to produce research that is ready for publication.

3. Results and Discussion

3.1. Legal Liability of Medical Personnel in Medical Procedures

a. Patient Safety : Implementation of Informed Consent for Medical Procedures

Patient safety is the main thing for doctors in carrying out their duties (*solus aegroti salus suprema lex*), because this is a doctor's obligation to provide medical services to the patients, in accordance with the Hippocratic Oath, which is used as a basic guideline for doctors to this day. Medical services are a complex system and are prone to accidents, thus patients must be carried out with great care by people who are competent and have special authority to accomplish it. Efforts to minimize lawsuits against hospitals and their staff are primarily an effort to prevent Preventable Adverse Events caused by medical errors, it involves all efforts to manage risk by prioritizing patient safety. The primary objective of efforts to minimize lawsuit against hospitals and their staff is to prevent Preventable Adverse Events caused by medical errors, it involves all efforts to manage risk by prioritizing patient safety (Riska Andi Fitriono, dan Budi Setyanto, 2016).

In medical field, medical malpractice refers to the harmful actions committed by professional medical personnel while providing treatment to their patients. This is part of a violation of the code of ethics committed by medical personnel while fulfilling their duties to provide medical services to patients. Meanwhile, the definition of malpractice is:

an error or negligence committed by a medical personnel or medical staff in carrying out their profession which is not in accordance with standard of professional and operational procedures. This negligence or error can lead to severe injury, disability, or even death of the patient. In Indonesia's current development, if we look at malpractice cases committed by medical personnel, the perpetrators who commit violations could be criminal, civil, and administrative. Thus, malpractice is divided into three major groups, namely medical malpractice, ethical malpractice, and juridical malpractice. Juridical malpractice is divided into three: civil malpractice, criminal malpractice, and administrative malpractice, each of which has the same characteristic of harming other people and violating standard operating procedures (Julius Roland Lajar, Anak Agung Sagung Laksmi Dewi, 2020).

The percentage of Central Java residents who had health complaints in the last month was 35.34 percent. Urban and rural communities have used medical personnel to assist in the birth process by 99.09 percent, although this appears to be decreasing compared to 2021. The use of medical personnel as assistance in the birth process is above 90 percent, indicating high public awareness of the importance of the safety and health of mothers and children. The medical personnel referred to obstetricians, general practitioners, midwives, and nurses. Urban residents who choose Government Hospitals/ Private Hospitals/RSIA and Maternity Homes/Clinics, and others as a place to give birth were more than residents who live in rural areas by 51.22% (Dinas Kesehatan Provinsi Jawa Tengah, 2022).

Patient Safety was a system where hospitals make patient safer, prevent injuries that caused by errors due to carrying out an action or not taking action that should be taken. In principle, patient safety did not mean that there must be no risk at all so that all medical procedures can be carried out. Safety was a system that made patient safer, including risk assessment, identification and risk management of patient, incident reporting and analysis, the ability to learn from incidents and follow up, as well as implementing solutions to minimize risks and prevent injuries caused by errors in taking an action or not taking an appropriate action. A guarantee that all actions and activities related to patients carried out by medical personnel would take place safely. Providing a great image, social moral responsibility and the performance of medical personnel thus the quality became better. Patient safety would always had good improvement which is defined as the maximum effort made by hospitals to provide services to patients through the application of legal methods and regulations as well as through measurable standards to minimize medical errors (Ningsih & Endang Marlina, 2020).

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safety was the responsibility of all parties related to medical personnel. In achieving goals oriented towards patient satisfaction and aspects of hospital facilities, the role of doctors, paramedics and non-medics is very important because their performance will determine the patient's perception and performance of the services provided. Patient safety was an indicator of the quality of medical service (Sulistyaningrum, 2021).

There were 2 forms of permission for medical procedures, namely (Amril Amri, 1997):

a. Implied Consent

Generally, implied consent was given in normal circumstances, which meant that the doctor could capture permission for the medical procedure from the signals given/carried out by the patient. Likewise, in emergency cases whereas the doctor required immediate action while the patient was unable to give consent and their family was not there, the doctor can take the best medical procedure according to the doctor.

b. Expressed Consent

It can be stated verbally or in writing. In medical procedures that were invasive and contain risks, the doctors should obtain written permission, or what was generally known in hospital as an operating permit letter.

Authority was the main requirement for carrying out medical procedures in carrying out practice as in Article 285 of Law No. 17 of 2023 concerning health. The provision of quality services in the medical field certainly could not be separated from the quality of human resources who provide medical service as referenced in Article 210 of Law Number 17 of 2023 concerning health, that the medical personnel; must have and fulfil minimum qualifications in providing medical service to patients. In Article 26 of Law No. 17 of 2023 concerning health, which stated that medical service consisted of primary medical service and secondary medical service. Furthermore, primary, and secondary medical services were provided based on policies determined by the central government which considered input from regional governments and/or society as stated in Article 27 of Law No. 17 of 2023. According to the law, medical service included activities with promotive, preventive, curative, rehabilitative and/or palliative approaches. Medical service was generally carried out jointly in an organization and should include the potential of the society and prevent disease which the main target was society.

The provision of Informed Consent in the hospital was carried out before the patient undergoes surgery. The doctor explained to the patient the risks, goals, and actions that would be taken to the patient. The consent was done in the treatment room, after the doctor explained and signed the Informed Consent form, the patient would be taken to the operating room, after the operation finished. The patient will be taken back to the previous treatment room. If the patient did not understand the explanation or information given by the doctor before carrying out medical service, the doctor must explain it again to the patient, in order to avoid problems in the future (Octaria & Trisna, 2016).

Law 17 of 2023 in Article 293 states that every individual medical service carried out by medical personnel and medical staff must have permission. Permission in providing medical services, which is often called informed consent, is carried out in writing or verbally. Informed consent was given to the patient or the patient's representative family

to obtain permission for medical treatment by providing notification in the form of (Undang-Undang Nomor 17 Tahun 2023): (a) Diagnosis; (b) Indication; (c) Medical treatment carried out and its objectives; (d) Risks and complication possibility; (e) Medical treatment alternatif and its risk; (f) Risk if the medical service is not taken; and (g) Prognosis after receiving treatment

In line with that, informed consent applied the legal principle of agreement, namely an agreement that functions as an application of the principle of consensualism which means that since an agreement (consensus) was reached between the parties regarding the main contents of the agreement, an agreement has occurred. Both parties were bound from the moment the agreement was reached, to fulfill the obligations arising from the agreement and obtain their rights in accordance with the agreement or according to the applicable legal provisions. A number of legal principles or principles were foundation for contract law. The principles or basis were considered as the fundamental basis in contract law, which provides an overview of the background of the way of thinking that forms the basis of contract law. It happened because the fundamental characteristic itself, thus these main principles were also referred to be basic principles (Herlien Budiono, 2001). The implementation of informed consent was protected by the following rules:

a. Code of Civil Law

In articles 1313, 1320, 1321, 1333, 1334, 1339, and 1354.

b. Minister of Health Regulation Number 290/MENKES/PER/III/2008

In articles number 1, 2, 4 dan 17.

3.2 Forms of Legal Responsibility

In providing medical services by hospitals, doctors and nurses are medical personnel who play an important role. Doctors have the authority to carry out certain medical procedures based on medical science, while nurses are people who are trained to be paramedics to provide care for patients or specifically to study certain areas of care, such as anesthesiologists and emergency room care experts (Putra, 2020).

Doctor procedure in providing medical procedure to the patient was carried out with the agreement of the patient or patients' family. Informed consent was given as a form of protection to patient and medical personnel who were carrying out medical procedure due to an accident that required medical procedure in hospital. This is done as a form of responsibility of medical personnel that carried out the administration and legal regulation as a guidance. Hospital must has informed consent as a form of hospital legalizatin to give information regarding the patient condition and medical procedure. Although informed consent was not a barrier when medical personnel did a negligent accident which caused malpractice towards the patient, informed consent had been delivered that there was a high risk in medical procedure that was an agreement towards patient or patients' family to operate medical procedure. This was done to patients who were in emergency conditions and needed immediate medical procedure which didnt need to ask for patient agreement to rescue patients. This informed consent was given by medical personnel as a doctor or a dentist. In this case, every medical personnel who would like to give medical service was required to have Registration Certificate (STR). If a person did not have authority but gave informed consent, the informed consent would be invalid which mean

there was no engagement carried out by medical personnel in carrying out medical procedures.

Medical risks can occur because the risk of a medical procedure arises suddenly beyond the doctor's expectations and cannot be avoided by the doctor and there are also those that arise because the medical action is prohibited or limited by law because the medical action contains a large risk. The risks of medical procedures carried out by doctors vary in size. Doctors are asked to carry out medical procedures that are appropriate to the patient's condition even though the risks associated with these medical procedures are large (Mohd. Yusuf DM, Hanifal Yunis, Herdiansyah Hasibuan, 2023).

Good healing efforts will not be realized if they are not supported by good service from a health service facility. Good criteria are not simply marked by the involvement of many experts, but must be based on a good medical service system from the health service facility. By carrying out every medical action in accordance with the Standard Operating Procedure (SOP) by paying attention to every aspect that is the patient's right so that nothing outside the specified SOP occurs which could result in malpractice (Fitriyono et al., 2016).

The legal consequences are when a person suffers a loss due to malpractice, the person, because of his or her fault, issues the loss to compensate for the loss, from a juridical perspective, compensation in law has two things, including the concept of compensation due to default and the concept of compensation due to an agreement based on law. The law includes unlawful acts, the loss must be proven so that someone is obliged to pay for it, where in unlawful acts it can be in the form of material and non-material compensation (Lajar et al., 2020).

Within the scope of responsibility, the Hospital is fully responsible for all activities carried out by both medical and paramedical personnel. The burden of responsibility is given to the head of the hospital or hospital director who has received a delegation of authority from the hospital owner to carry out all activities related to health services. Liability accepted by the Hospital can also arise due to negligence on the part of medical personnel. The form of civil liability for hospitals is in the form of compensation for losses as intended in Article 1243 of the Civil Code. Meanwhile, administrative responsibility imposed on the Hospital can be in the form of a warning letter and revocation of the permit to establish the Hospital (Muhlis, Syamsul Rijal, Indar Nambung, 2020).

In the rule of law, if someone violated the rule, that person would be asked for legal responsibility. It also happened to the medical personnels if they violated the rule. They must get legal consequences of irregularities. The responsibility of medical personnel was carried out by a doctor which it divided into three things such as:

a. State Administration Law

Every doctor, medical staff or hospital which violated national administrative regulations, practiced without permit, or practiced or did malpracticed based on the provisions of the license or permit that were administrative negligence during the duty, if the permit has expired and was carried out without medical record, this element of suspected malpractice will be proven. The responsibility in this case, medical personnels

who committed maladministration would be given administrative responsibility in the form of revocation of their practice permit.

b. Criminal Law

In this case, legal responsibility referred to responsibility of criminal law. Legal responsibility was determined by the existence of an error in the sense of *dolus* and *culpa*. Thus, in legal studies, an error was always related to the unlawful act carried out by a person who was capable of responsibility. Therefore, every action of a person who was capable of responsibility is defined as an act that can be punished or a criminal offense (*strafbaar feit*). Informed consent aims to reduce the incidence of malpractice and to make a doctor to be more careful in providing information on medical services. Medical malpractice is acts committed by people who have credibility, quality, and a very normal mental condition. Thus, if you committed an act that is not in accordance with the rules (rule of game) that have been determined, either by medical professional ethics as a standard of behavior in providing medical services that must be carried out and obeyed, or legal regulations that have been established through various regulations and applicable laws, and could be sued for the responsibility in accordance with applicable regulations (Muntaha, 2017). Negligence broadly refers to the definition of malpractice; However, malpractice does not always require negligence. Because malpractice includes more than just negligence, the definition is more ambiguous. Actions that are intentionally committed against the law are called malpractice (Suryani Siregar et al., 2024).

The form of criminal liability in Law Number 17 of 2023 is clearly regulated in Articles 427-448. Liability in the Criminal Code is also regulated in Articles 322, 344, 348, 359, 360, and 361.

c. Hukum Perdata

Article 1365 of the Civil Code states that "every unlawful act which caused harm to other people required the persons who caused the loss to compensate for the loss. In unlawful acts, it was presented to protect the rights and obligations when someone committed and act either by a mistake or negligence or carelessness. The element of error itself could be classified into 2 (two), namely errors committed intentionally and errors due to lack of caution which had the same legal consequences. Unlawful acts committed losses in civil law could be divided into 2 (two) clarifications, namely material losses and/or immaterial losses (Safira Lia Ayurini, dan Dr. H.M. Faiz Mufidi, SH., 2023). Article 1366 of the Civil Code explained that liability could be carried out for unlawful acts that were intentional or occurred due to negligence and Article 1367 of the Civil Code regulates liability based on unlawful acts that committed by other people.

Medical personnel and/or medical staff who committed malpractice could be sued by the pretext of a lawsuit against the law in court. This lawsuit was carried out as an effort to prove whether the medical procedure was appropriate or not by seeking compensation due to the negative effects of the medical procedure. There were two types of compensation, namely general compensation which was regulated in Articles 1243-1252 as a form of compensation with other additional costs and special compensation which arisen from certain agreements.

4. Conclusions

Informed consent was a communication process between the doctor and the patient regarding the agreement on the medical procedure that the doctor would carry out on the patient. Signing a written informed consent form was only a confirmation of what has been agreed previously. The aim is to make the patient to decide their own decision according to their own choice (informed decision). The legal principle of informed consent applied in agreements. The agreement was an agreement that applied the principle of deliberation and consensus. It meant that the agreement occurred after the parties had reached an agreement (consensus) regarding the main consents of the agreement. Since the date of this agreement, both parties were obliged to carry out the obligations which arisen from this agreement and obtained their respective rights in accordance with this agreement or applicable legal provisions. Informed consent was an agreement medical procedure that was considered dangerous that was given to the patient or family to obtain information and agreement medical procedure with education by medical personnel. In cases of alleged malpractice committed by medical personnel against a patient, if the examination was proven guilty then there will be three responsibilities, namely state administration, criminal, and civil. This research has implications for the discussion that health workers in carrying out medical duties in hospitals must pay attention to the SPO that apply in hospitals and pay attention to patient safety provisions to minimize suspected malpractice in medical procedures. This research helps provide an overview of health workers in carrying out their profession well and provides an opportunity for hospitals to implement a monitoring system for health services by enforcing strict regulations and imposing sanctions on health workers who legally, deliberately and are proven to have committed malpractice in the hospital.

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