



Concept of Doctor's Immunity Rights in the Settlement of Medical Disputes

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Abstract

The legal relationship between doctors and patients is a common occurrence in the medical world, and hospitals are also a health service that aims for a shelter between the interaction between a patient and a medical worker for the achievement of the right to health care in the medical world. Health services are the rights and foundations of the people given by the government as the responsibility of the state. "Health development was very important in accordance with the 1945 Constitution of the Republic of Indonesia. Health as a human right is realized in various efforts, including through the implementation of medical practices where the role of doctors is very important. In its implementation, it sometimes causes problems that lead to medical disputes. The problem formulation in this study is: How to arrange the settlement of medical disputes between patients/families of patients and doctors based on applicable provisions and How is the process of resolving medical disputes that justice between patients/families of patients and doctors under law number 17 of 2023 on medical practice. The method used in this study is normative jurisdiction. Used to know and get a full picture by looking at the facts related to the problem so that it can prove the problem in order to get a scientific answer. The results of this study show that: Current medical dispute resolution arrangements are still widespread in various legislation resulting in overlapping medical dispute resolution arrangements that may eventually lead to uncertainty and uncertainty in their resolution." In terms of fair medical dispute resolution between patients/families and doctors based on Law No. 17 of 2023 on medical practice, the medical professional is initiated by the Honorary Council of Medical Ethics (MKEK) or the Honorary Council of Indonesian Medical Discipline (MKDKI).

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Introduction

The problem of malpractice in health services is widely discussed by the public from various countries Group (Handoyo, 2020). This is indicated by the number of complaints about malpractice cases which is proposed by the community to the profession of doctors who are considered to have harmed patients in Performing treatment (Fadhlan, Adil Akhyar, 2023) Actually, with the increase in the number of complaints proving that people are becoming aware of their rights in their efforts to protect themselves He is also responsible for the actions of the other party who harmed him (Rosdi, 2018). Health services are inseparable from partnership or partnership relationships between a doctor and his patient (Tsaabitah Aadilah. Siregar Adelina Rospita, 2024), if likened to a doctor's job as a mechanical work that seeks to repair the patient's body while against patients as health care users who want and need assistance Medical to heal himself by using the expertise of a doctor. Relationship The partnership between doctors and patients has also brought about a link in terms of safety patients and risks that arise so that it is not uncommon to cause misunderstandings between doctors and his patients during the medical measures given.

The implementation of medical practice, which is the core of various activities in the implementation of health efforts, must be undertaken by physicians and dentists with high moral and ethical standards, expertise and authority that must be continuously improved through continuous education and training, certification, and training. registration, license, and guidance, supervision, and monitoring to ensure the implementation of medical practices is consistent with the development of science and technology (BPHN, 2004). Doctors and dentists with their own scientific devices have distinctive characteristics. This characteristic can be seen from the justification given by the law, which is the permission of taking medical action against the human body in an effort to maintain and improve the degree of health. On the other hand, medical actions against the human body committed not by doctors or dentists can be classified as criminal acts.

In practice, medical treatment of the human body by doctors or dentists sometimes leads to problems that result in medical disputes. Usually, disputes include: "Violations of medical ethics; violations of medical discipline; violations of other people's/patients' rights or violations of public interest so that physicians and dentists are held accountable ethically, medical discipline and legal responsibility both civilly, and physically (Sinaga, 2021). criminal and state administration As a result, public confidence in doctors and/or dentists can be reduced, even lawsuits filed by the public today are rampant. This can happen because of the failure of healing efforts made by doctors and dentists. On the other hand, if a medical action is successful, it is considered excessive, when physicians and dentists with the tools of science and technology that they possess only attempt to cure, and the failure of medical and dentistry applications is not always synonymous with failure in action. In addition, there are also times when there are several conditions that result in health services provided by the Doctor to the Patient does not match or fall far from what both parties have expected, where this can be referred to as medical risk, and there are also those that occur due to medical negligence." Doctors try to make maximum efforts to cure patients, so there is a possibility of medical risks outside the doctor's or patient's will, so they should have been informed of patients and/or families in advance. In the case of a medical dispute between a patient and a doctor, these include:

There was a legal problem regarding the doctor's responsibility in the case at Graha Kedoya Hospital in 2018 where the doctor removed the ovaries and appendicitis of the Selphie patient who was initially only diagnosed with a cyst on his body. The removal of both ovaries and appendicitis was carried out without the patient's consent. This should not happen because the doctor needs to inform the patient first before deciding on the medical intervention action. If it turns out that there are severe complications during cyst removal such as tumor cell spread, then previously the informed consent should list the risks and complications that will occur, for example, that is to remove organs that have been affected by metastasized tumors (Nuris Rindi & Maharani Dian, 2018).

This case states that there is ignorance or incompleteness of the information provided regarding the implementation of operational actions. Generally, a medical measure requires informed consent. "Based on the Minister of Health Regulation No. 290/Menkes/Per/III/2008 on the Approval of Medical Actions, the approval of medical actions is interpreted as the approval given by the nearest patient or family after receiving a full explanation of the medical or dental actions that will be carried out. Medical disputes may occur as a result of doctors not giving the patient/family a full explanation of the procedure to be performed, especially in the event of a medical action resulting in the patient's loss of organs such as this case. Article 6 states that granting approval. The medical act does not remove legal liability in the event that it is found that there is a negligence in performing medical actions resulting in loss to the patient." The presence of negligence in medical action remains the responsibility of the doctor who performs.

Medical action agreements between physicians and patients are not generally agreements. This agreement is based on therapeutic, that is, the patient asks the doctor for help in performing therapy or medical measures aimed at curing the patient himself or the family.

Materials and Methods

The methodology used in this writing are the statutory approach (statue approach) and the conceptual approach (conceptual approach). The approach to legislation is done by approaching legal norms with regulations related to the issues discussed. The legislative approach is taken by examining the content of each legislation and regulation related to the legal issues under discussion. Conceptual approaches are made by referring to principles, views, doctrines that develop in legal science until they can be found by law (Peter Mahmud Marzuki, 2010). Conceptual approach examines the process of thinking framework, concept framework or theoretical basis of the legal issues discussed.

Results and Discussions

Doctor's Immunity Right to Conduct Medical Practices in Hospitals

Health is a very important thing for everyone. If One feels that one's body is not well, so to heal The disease will call Doctor 8 soon or go to the hospital. Such a condition will be established in a therapeutic relationship, namely a relationship paternalistic/family based on trust. a therapeutic relationship as a contractual relationship resulting in a bond between the provider and the recipient medical services. Medical providers are obliged to give their achievements while recipients are obliged to give counter-prestasi, thus In particular, the usual type of bond will be applied, namely inspecting *verbintenis* (doctor) only required to give his achievements in the form of a proper "medical effort" according to medical theory) (Trisnadi, n.d.)

Doctors ' Rights and Obligations

Doctors' rights and obligations have been specifically regulated in Law No. 17 of 2023 on Health. Doctors' rights are regulated in Article 273 of Law No. 17 of 2023 on Health, namely: "a. Obtaining legal protection throughout the performance of duties in accordance with professional standards, professional service standards, operational procedures standards, and professional ethics, as well as patient health needs; b. Obtaining complete and correct information from patients or their families; c. Obtaining appropriate salaries or wages, service rewards, and performance allowances in accordance with the provisions of the regulations; d. Obtaining safety, occupational health, and safety protection; e.g. Obtaining health insurance and employment insurance in accordance with the provisions of the laws and regulations; f. It is protected from treatment that does not conform to human dignity, moral, decency, and social values; g. Rewards in accordance with the provisions of the laws and regulations; h. Acquiring opportunities to develop themselves through the development of competence, scientific and career in their professional fields; i.e. the development of professionals. Rejecting the wishes of a Patient or other party who is contrary to professional standards, service standards, operational procedures standards, code of conduct, or regulatory provisions; and j. Obtain other rights in accordance with the provisions of the law. Meanwhile, the obligation of doctors is regulated in Article 274 of Law No. 17 of 2023 on Health, namely: 1) Providing health services in accordance with professional

standards, professional services standards, operational procedures standards, and professional ethics and health needs of patients; 2) Obtain approval from patients or their families for the actions to be given; 3) Maintain patient health confidentiality; 4) Create and maintain records and/or documents on examination, care, and actions taken; and 5) Refer patients to medical personnel or other health workers who have competence and authority in accordance with the provisions of the laws and regulations.”

Hospital Rights and Obligations

Hospitals also have the rights and obligations stipulated in Law No. 17 of 2023 on Health. According to Article 191 of Law No. 17 of 2023 on Health . Hospital rights include: “1) Determining the number, type, and qualifications of human resources according to Hospital classification; 2) Receiving service rewards and determining remuneration, incentives, etc. and awards in accordance with the provisions of laws and regulations; 3) Cooperation with other parties in developing services; 4) Receiving assistance from others in accordance with the provisions of laws and regulations; 5) Filing a loss; 6) Obtaining legal protection in the implementation of health services; and 7) Promoting existing health services in hospitals in accordance with the provisions of the laws and regulations. Meanwhile, the obligation of doctors is stipulated in Article 274 of Law No. 17 of 2023 on Health, namely: 1) Providing correct information about hospital services to the community; 2) Providing safe, quality, anti-discriminatory health services, and effective by prioritizing patient interests in accordance with hospital service standards; 3) Providing emergency services to patients in accordance with their service capabilities; 4) Being active in providing health services to disasters in accordance with their service capabilities; 5) Providing facilities and services to the community poor or poor; 6) Performing social functions includes providing service facilities for poor or poor patients, emergency services without down payment, free ambulances, services for disaster victims and KLB, or social services for humanitarian missions; 7) Creating, carrying out, carrying out, and maintain the quality standards of hospital health services as a reference in serving patients; 8) Conducting medical records; 9) Providing appropriate public facilities and infrastructure, including worship facilities, parking lots, waiting rooms, facilities for people with disabilities, nursing women, children, and the elderly; 10) Implementing a referral system; 11) Rejecting the wishes of patients who are contrary to the standards profession and ethics and provisions of legislation; 12) Providing correct, clear, and honest information about the rights and obligations of patients; 13) Respecting and protecting the rights of patients; 14) Implementing hospital ethics; 15) Having an accident prevention and disaster management system; 16) Implementing government programs in the health sector, both regionally and nationally; 17) List of medical personnel engaged in medical or dentistry and other health workers; 18) Compiling and implementing internal hospital regulations; 19) Protecting and providing legal assistance to all hospital officials in the course of duties; and 20) Enforcing all medical personnel. hospital environment as a non-smoking area.”

Malpractice

Malpractice (malpractice) has the original word "mal" that has a bad meaning and the word "practice" is action or practice. Thus, malpractice refers to none other than medical (medical) and/or poor medical practice (Bryan A. Garner, 2006).

The Blackslaw Dictionary has proposed the notion of malpractice as "Professional misconduct or unreasonable track of skill". This is especially applied to such by doctors, lawyers and accountants. Failure of one rendering professional services to exercise that degree of skill and learning commonly applied under all circuits in the community by the average reputable member of the profession with the result of injury, loss or damage to the recipient of those services or to those enticed to actual upon them is any professional misconduct, unreasonably traceable of skill or fiduciary in professional duties, evil practice, or illegal immoral conduct. He is also a professor of medical malpractice, negligence is the predominant theory of liability". Which means malpractice is a professional offense or a lack of unreasonable skills. The term is usually applied by doctors, lawyers, and accountants. Failure of an individual who provides professional services to carry out a level of skill and learning that is commonly applied in all circumstances in society by the average wise and reputable professional member who has caused injury, loss or damage to the recipient of the service or to those eligible. Relying on such matters is any professional misconduct, lack of unwarranted skill or fidelity in professional or fiduciary duties, malicious practices, or illegal or immoral conduct. In medical malpractice, negligence is the dominant theory of responsibility.”

According to (Soekanto, 2019), Medical Malpractice is any action that causes responsibility. The attitude of these actions is based on the professional scope of health care. Basically malpractice has meaning, which can be described as follows: "1) In the general sense: a bad practice (especially a doctor's practice), which does not meet the standards set by the profession. 2) In a special sense (in terms of patients) malpractice can occur in: a) Determining diagnosis, for example: diagnosis of ulcer disease, but apparently dangerous liver patients;" b) Performing surgery, for example: supposed to perform surgery on the right eye, but that which is done in the left eye; c) During the course of treatment; and d) After treatment, of course, within the prescribed time limit. In 2022 the Act on Malpractice Law was established in Law No. 1 of 2021. 36/2009 on Health, Law No. 1 44/2009 on Hospitals and Law No. 1 29/2004 on Medical Practice and Law No. 36/2014 on Health Workers, but by 2023 (four) the Act was already invalidated due to the existence of Law No. 36/14 on Health Workers. 17 of 2023 on Health.

Responsibilities in Malpractice Cases

In the case of malpractice, if the patient feels disadvantaged after the treatment performed by the doctor (Putu Yudiq Maya Lestari, 2010). The patient can hold the patient accountable. Responsibilities in malpractice cases are divided into four: Responsibilities of medical personnel or health workers by administrative law, Responsibilities of medical personnel or health workers by criminal law, Responsibilities of hospital health facilities and Responsibilities of medical personnel or health workers by civil law.

Responsibility of medical personnel or health workers by administrative law

The responsibility of medical personnel or health workers under the country's administrative law in question is that medical personnel or health workers as citizens who carry out their professions must be guided by the state's administrative law. In administrative law, medical personnel, namely doctors, can be held accountable for practicing medicine without permission, performing medical actions that do not comply with their permission and the practice of using licenses that have expired, and not establishing medical records.

Responsibility of medical professionals or health workers by criminal law

An act can be categorized as a criminal malpractice if it meets the criminal conviction formula namely: The act must be a misconduct and a wrong inner attitude which is in the form of willfulness, carelessness or negligence (Mariyanti, Ninik, 1988). Errors or omissions of medical personnel or health workers may occur in the field of criminal law, "including: Articles 263, 267, 294 paragraph (2), 299, 304, 322, 344, 347, 348, 349, 351, 359, 360, 361, 531 of the Code of Law Criminal. The responsibility of this doctor is also stipulated in Article 440 paragraph (1) of Law No. 17 of 2023 on Health, which states that doctors who cause severe injury due to intentional or negligence may be subject to a maximum prison sentence of 3 years or a maximum fine of Rp250,000,000.00 (two hundred and fifty million). Article 440 paragraph (2) of Law No. 17 of 2023 on Health also re-explains that doctors who cause death due to accidental or negligence can be sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of Rp500,000,000.00 (five hundred million rupiah)."

Hospital healthcare responsibility

The scope of responsibility of hospitals is in health care facilities. Health care facilities are places used to organize health care efforts, both promotional, preventive, curative, and rehabilitative services provided by the government from the central to regional levels. The responsibility of the hospital is set forth in Article 193 of the Hospital Act (Act No. 17 of 2023 on Health), "all losses incurred by negligence imposed by the Hospital's Health Human Resources".

Responsibility of medical personnel or health workers by civil law

The civil law referred to in a medical action accountability is the existence of a loss-replacement element if there is an omission or error made by a medical personnel or health worker.

A Partnership Agreement between Physicians and Hospitals

A partnership agreement between a physician and a hospital is a partnership in business relationships, both directly and indirectly implemented on the basis of the principle of mutual need, trust, strengthen and mutual

benefit (Peraturan Pemerintah Nomor 7 Tahun 2021 Tentang Kemudahan, Perlindungan, Dan Pemberdayaan Koperasi Dan Usaha Mikro, Kecil, Dan Menengah, 2021).

The partnership agreement between doctors and hospitals must be based on 1320 KUHP, namely: a. the deal they had tied him up; b. ability to make a bond; c. a particular subject matter; and d. an off-limits cause. The first and second conditions are called subjective conditions because they concern the parties to the treaty. Meanwhile, the third and fourth requirements are called objective requirements because they concern the object of the agreement. If an agreement does not meet subjective requirements (agreement and/or qualification), the agreement may be cancelled. Meanwhile, if an agreement does not meet objective requirements (a certain matter and/or a lawful cause), the agreement is null and void.

In addition, the legal position between doctors and hospitals in the partnership agreement is equivalent. Equivalently, in the sense that the parties to the partnership agreement have the same legal position as the rights and obligations that are appropriate to perform.

Honorary Council on Medical Ethics (MKEK)

The Honorary Council for Medical Ethics (MKEK) is a special assembly of medical personnel, so this applies to medical circles. The legal basis of the Honorary Council on Medical Ethics (MKEK) was established in 1979 (Muktamar et al., 2018) "based on Article 16 paragraph (1) of the Household Budget of the Indonesian Doctors Association (IDI). MKEK is an autonomous body within the IDI organization consisting of the Central MKEK, Regional MKEK "at the provincial level" and Branch MKEK "at the regency/municipality level". The MKEK membership consists of 7 permanent members and non-permanent members, 7 permanent members, and 7 non-permanent members. The MKEK functions to conduct the guidance, supervision and assessment of the implementation of medical ethics by doctors. The special task of the MKEK is to deal with violations "complaints" of medical ethics. MKEK is under the Indonesian Doctors Association (IDI) and serves to enforce medical ethics for members of professional organizations (IDI). In accordance with the severity of the violation, the MKEK can impose sanctions in the form of written reprimands, temporary suspension of membership, dismissal from membership, and revocation of recommendations for practicing permits for a period of three years.

With the enactment of the Medical Practice Law, MKEK should conduct an examination of medical ethics violations after receiving an abundance of cases from MKDKI. As stipulated in Article 68 of the Medical Practice Law, if an ethical violation is found in the examination, MKDKI continues complaints to professional organizations. Given the limited access to MKDKI, in practice "particularly in areas far from the capital" the MKEK is often positioned as the first door of the examination of medical malpractice complaints. In the investigation process, for example, the investigator's party often asks the opinion of the Honorary Council for Medical Ethics. MKEK was established under Article 16 of the Basic Budget of the Indonesian Doctors Association. The main task of the MKEK is to foster, supervise and assess the implementation of the medical code of ethics. Reports of violations of medical ethics may come from various parties including members of the association themselves.

The MKEK shall examine the case no later than one month from the date of receipt of the report. The MKEK trial is closed. Only certain people are allowed to be in the MKEK courtroom. In proving the reported mistakes, the MKEK can present witnesses as well as experts to provide information according to known or according to their expertise. Witnesses can be from doctors, other health workers, hospital management or other related parties. An expert is a doctor who has similar skills but does not have a family or service relationship with a conjoined person. If ethical violations are found, the MKEK can impose sanctions according to the degree of violations. There are several qualifications for ethical violations: severe, moderate and mild violations. Sanctions that can be imposed vary between written reprimands, temporary suspension, dismissal of membership, and recommendation for a three-year revocation of a practicing permit. If the doctor who was sentenced objected to the sanctions imposed, the person concerned could appeal to a higher MKEK. MKEK is present at the regency and city levels, provinces and central levels. Appeals can be filed from the district level to the provincial level and beyond. The decision of the central MKEK was final. MKEK to get an idea whether the doctor reported to the investigator is indicated to have committed a violation of the law or not. MKEK has not been utilized optimally by both doctors and the general public.

Complaint handling process

The stages of the complaint management process include as follows: MKEK received a complaint letter from: The complainant went directly to the MKEK area; Abundance from the central MKEK or PBIDI; Regional IDI Management; or the Ministry of Health. If a complaint is given orally, the complainant is required to change the complaint in writing. The chairman of the MKEK invited the permanent members of the MKEK to hold an internal court meeting. "The complaint letter was analyzed at the MKEK trial whether it met the requirements, among others; the complaint letter with a clear name and a clear address; the complainant's address was clear; there was a doctor who was complained with a clear name and clearly stated that the complaint was addressed to IDI through a large administrator, regional administrator and directly to the MKEK. If they meet the requirements, the head of the MKEK decides that the complaint is valid and then it is stated in the MKEK chairman's letter of appointment and a notice is made to the complainant that the MKEK has received the complaint. The letter was sent to the regional IDI management, PB IDI, the Chairman of the Central MKEK, and the Chairman of the Regional MP2A. If it has not met the requirements, the head of the MKEK sends it back to the complainant with a request to complete the requirements. The MKEK appoints two non-permanent members in a manner; it directly appoints a person (person) by the MKEK and through the same professional organization (specialist society) as the doctor filed. The MKEK summoned the complainant and asked doctors to: study the complaint letter; study the KODEKI 1993 implementation guidelines; submit medical records and make a chronology of the case in defense. The MKEK calls the complainant and/or his/her family if deemed necessary." The presence of a snitch lawyer (if any) will be considered in its own right.

The MKEK trial discussed complaints and defense letters by calling witnesses if necessary. For cases involving institutions outside IDI, a gradual hearing to hear information from all parties involved in the Honorary Council on Medical Ethics should be able to decide whether or not the person concerned in any allegation of ethical violations directed at him or her by consensus or by a majority vote. "By considering the following five things: the result of this action on the honor of the profession, the consequences for the good of the patient, the consequences for public interest and external factors including patient factors that contribute to violations and objectives that perpetrators want to achieve, are classified as cases according to violations, namely: mild, moderate, moderate, Or heavy. The decision of the Honorary Council on Medical Ethics is final and binding." The final session of the MKEK made a decision on whether there was an ethical violation; identification of the violated KODEKI article; "the formulation of the quality of violations was light, moderate, or severe. According to the type of violation, the MKEK made a written suggestion to the authorized Government Officials to revoke a practicing permit for 3 months (light violation), 6 months (medium violation), or 12 months (severe violation). The head of the MKEK made a report to the head of the regional IDI containing the type of case, the initials of the doctor filed, the start date of the trial and decision-making and abbreviation of KODEKI violation (if any). When the case is settled, the matter is declared settled (not considered an ethical issue) unless there is an appeal process." The MKEK's decision on the complaint was processed (numbered, scheduled, enclosed files to ensure confidentiality, the archives were kept for 5 years) by the secretariat to be delivered to the Head of Regional IDI by paging to: Central MKEK Chairman; PB IDI Chairman and Regional MP2A Chairman. If there is dissatisfaction, both complainant and doctor complained, both can appeal to the Honorary Council for Medical Ethics at a higher level.

Conclusion

Joint regulations must be made between the Ministry of Health, IDI, the Association of Hospitals and the Supreme Court and the National Police Chief and Attorney General regarding the resolution of medical disputes through both professional institutions & litigation and non-litigation. If a medical dispute occurs, it is hoped that the community will first resolve it familyly, if an agreement is not reached, then undergo a settlement through the MKEK and MKDKI professional institutions. If it is not completed, it can also take non-litigation and litigation paths.

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