

## **Jurisdictional Consequences of Hospital and Doctor's Error in Handling of Patients' Health**



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**ABSTRACT:** This study aims to examine how the juridical consequences of errors on the part of hospitals and doctors in handling health care for patients. As for the subject of this study is how the legal relationship between Hospitals, Doctors and Patients in the health treatment agreement, and the legal consequences of errors and omissions in health care. The research method used in this study is normative juridical using secondary legal data consisting of primary legal materials and secondary legal materials. Based on the results of the study, it is known that the legal relationship between the patient and the doctor is a "joint participation" relationship where the patient already feels equal to the doctor. Delay in treatment by a doctor is a form of default, namely being late in doing what was promised to be done. Hospitals can also be responsible in this case committing acts against the law, because they do not provide safe, quality, anti-discriminatory, and effective health services by prioritizing the interests of patients in accordance with hospital service standards, resulting in fatal outcomes for patients.

**KEYWORDS:** Juridical Consequences, Doctors, Hospitals, Patients

### **I. INTRODUCTION**

Indonesia has a large population, therefore public health services are developing together with the government's responsibility to improve the welfare of the Indonesian people from health problems (Kaur et al., 2019). Health is a human right that is stated in Article 28H of the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated to the 1945 Constitution) which states that everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a healthy living environment and to receive services. health. The birth of a child is synonymous with hope, for parents of course the baby has hopes, ideals, and dreams for the child. Similar to the birth process, everyone hopes that this process will run smoothly so that it does not endanger the lives of the mother and child.

The health workers involved in the process are doctors and nurses. According to Article 1 number 2 of the Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice (hereinafter abbreviated as the Medical Practice Law), what is meant by doctors are doctors, specialists, dentists, and specialist dentists who have graduated from medical or dental education either in domestically and internationally recognized by the Government of the Republic of Indonesia in accordance with the laws and regulations.

Meanwhile, what is meant by Law Number 38 of 2014 concerning Nursing (hereinafter abbreviated as the Nursing Law) is someone who has passed higher nursing education, both at home and abroad recognized by the Government in accordance with the provisions of the legislation. the relationship between the hospital and the doctor, there are two patterns of legal relationship, the first pattern of legal relationship is a doctor who is a permanent employee of the hospital. The pattern of the relationship between the hospital and the second doctor is a non-permanent doctor, the relationship is formed based on an agreement, all of which are regulated by the regulations contained in the Civil Code, this doctor only uses existing facilities in the hospital, for example facilities outpatient and or inpatient facilities owned by the hospital (P.Colin Bolger, 2019).

Doctors in carrying out their profession as health workers according to Article 45 of Law Number 29 of 2004 concerning Medical Practice states that every medical or dental action to be carried out by a doctor or dentist on a patient must obtain approval. Article 45 paragraph 2 states that consent is given after the patient has received a complete explanation. Article 45 paragraph 3 states that the explanation as referred to in paragraph 2 at least includes a diagnosis and procedure for medical action; the purpose of the medical action taken; alternative courses of action and their risks; possible risks and complications; and prognosis of the actions taken.

According to (Bahder, 2005) the doctrine of respondeat superior, where between a doctor or dentist and a hospital there is a working relationship in accordance with the tasks assigned to him, implies that the hospital cannot escape from the responsibility of the work carried out by its employees on orders given. to him. Therefore, the application of this doctrine is intended to guarantee that compensation is paid to patients who suffer losses due to doctors' medical actions.

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According to (CST Kansil, 1991) several notions of doctor's error, among others, are any professional mistakes made by doctors when doing their professional work, not checking, not judging, not doing or leaving things that are checked, judged, done or done. by doctors generally in the same situation; Every mistake a doctor makes because he does medical work below the actual average and reasonable standard can be made by every doctor in the same situation; Every professional error made by a doctor which includes errors due to unreasonable acts, as well as errors due to lack of skills in carrying out professional obligations or beliefs. As a service provider that provides various kinds of services for consumers, customer satisfaction is the main goal that must be fulfilled by the company. Consumer satisfaction is the level of one's feelings after comparing the performance / results he feels with his expectations. So to increase patient satisfaction, the role of doctors and nurses greatly determines the patient's perception of the services provided. In this case, the researcher is interested in writing about cases where doctors and hospitals provide slow service, resulting in the death of the baby in the patient's womb.

### **II. RESEARCH METHODS**

The research method used is normative juridical by basing the analysis on the laws and regulations (Amirudin, 2012) related to health services in Indonesia. The legal data used in this study is secondary legal data consisting of primary legal materials, namely legislation on health services and secondary legal materials, namely literature related to research problems.(Depri Liber Sonata, 2014). The data and legal materials were obtained from the literature study, to be further analyzed descriptively analytically to answer research problems and draw conclusions.

### **III. DISCUSSION**

#### **A. Legal Relations of Doctors, Patients and Hospitals**

In the past, doctors as providers of health services were considered to know everything (father knows best) by recipients of health services or patients. Thus giving birth to a paternalistic relationship between doctors and patients as recipients of health services. This paternalistic relationship pattern is identical to the vertical relationship pattern where the position or position between the doctor and the patient is not equal. Therefore, in this paternalistic relationship, the patient surrenders his fate completely to the healer (Mannas, 2018). With the rapid development of information facilities through various media, the confidentiality of the medical profession has begun to be opened, while the patient's awareness of health has changed towards an educated society in the health sector. The increasing knowledge and awareness of the community towards responsibility for their own health, has resulted in a paradigm shift in effect from the belief that was originally focused on the ability of doctors personally to shift towards the ability of science and the healer.

Juridically the emergence of a legal relationship includes the legal relationship between a doctor and a patient, according to Article 1233 of the Civil Code based on 2 (two) things, namely based on an agreement (*ius contracto*) and based on the Act. What is meant by an agreement is an agreement that can arise from an agreement or agreement that issues an engagement between the parties who make it, in the form of a series of words containing promises/commitments that are spoken or written..

An agreement is also called an agreement, because two parties agree to do something or agree to refuse to do something. Therefore, the two words, namely agreement and agreement, have the same meaning. Whereas what is meant by law (*ius delicto*) is when an agreement can be formulated as an act or legal act carried out voluntarily by two or more people, who agree to give one achievement to the other (Busro, 2018).

The relationship that occurs between doctors and patients at this time is a horizontal relationship or joint participation where the patient has realized that he is equal and equal to the doctor. The patient contributes to the health services he will receive, the patient no longer surrenders all his trust to the doctor to take action because the patient is aware of the interests of his rights as a patient so that rights and obligations arise on the part of patients and doctors which have been regulated in the Act. Medical practice.

The relationship between the patient and the doctor is also called a therapeutic transaction, which is an agreement between the patient's doctor where the doctor performs therapy (treatment) to the patient based on the agreement. The object of the agreement in a therapeutic transaction is an effort to heal the patient maximally whose results cannot be ascertained so that therapeutic is included in *Inspanningverbintenis* or an effort agreement, because doctors do not promise certainty of healing to patients, what doctors can do is provide health services as an effort to cure patients (Barzegarzadeh et al., 2016).

In carrying out this effort, doctors must do so with full sincerity by mobilizing all their abilities and skills based on professional standards. In a therapeutic transaction, there is no guarantee that a medical action that will be carried out will be successful. It is undeniable that the hospital as a person who is given the status of a legal entity can act as a legal subject. In relation to the responsibility for health services carried out by hospitals as "*rechtspersoon*" it is often a problem when it is associated with claims for compensation and so on.

The patient does not have a direct legal relationship with the hospital, the one who has a direct relationship with the hospital is the doctor. When viewed from the employment status, in a hospital there are 2 types of doctors, namely: out doctor and in doctor. Out doctor is a doctor who is not a permanent employee in a hospital but only "borrows" tools, nurses and all hospital

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facilities where he takes medical action so that if an out doctor commits a violation in carrying out his profession, the hospital is not responsible. While what is meant by this doctor is a doctor who is a permanent employee in the hospital so that if this doctor commits a violation in carrying out his profession, the hospital can be sued under Article 1367 of the Civil Code which states that: Everyone is not only responsible for losses caused his own actions, but also for the actions of people who are his dependents or caused by goods that are under his control.

Even though the doctor is this doctor, the hospital does not bear compensation for all violations committed by health workers but only if there is an element of negligence committed by the personnel. This is regulated in Article 46 of the Hospital Law which states that hospitals are responsible for all losses caused by negligence of health workers in hospitals. (Anny Isfandyarie, 2006) states in the legal responsibility of a doctor as a professional bearer, a doctor must always be responsible in carrying out his profession because the doctor's responsibility in the law is so broad, then a doctor must also understand and understand the legal provisions that apply in the implementation of his profession, including understanding rights and obligations in carrying out the profession as a doctor.

The legal obligations of doctors include legal obligations arising from their profession and obligations arising from therapeutic contracts (healing) carried out in the doctor-patient relationship. The legal awareness of the doctor must play a role in the doctor to be able to control himself so that he does not make a professional mistake, in order to avoid the sanctions imposed by the law.

### **B. Legal Consequences of Errors and Negligence in Health Handling**

According to civil law, a person can be deemed to have defaulted if; not doing what one is supposed to do; late in doing what was promised to be done; carry out what was promised, but not in accordance with what was promised; do something that according to the agreement cannot be done (Al-Fatih, 2019). Doctor errors arise as a result of inappropriate actions or not fulfilling proper medical procedures. This could be due to the intentional or negligence of a doctor. Errors are always directed at inappropriate actions, namely doing something that should not be done and or not doing something that should have been done.

According to (Bahder, 2005) error is the psychological state of the person who commits the act and its relationship with the act that is carried out in such a way that that person can be reproached because of the act. Mistakes mean not only the actions committed, but also can be blamed on the perpetrators because of these actions. The medical professional standard is the minimum knowledge, skill and professional attitude that must be mastered by an individual to be able to carry out his professional activities in society independently made by professional organizations (Article 50 of the Medical Practice Law). In the explanation of the article it is stated that, if the doctor or dentist who practices medicine or dentistry is in accordance with professional standards and standard operating procedures, the doctor or dentist is entitled to legal protection. Professional standard is a measure or guideline that has been determined previously by the relevant professional organization. These standards must be as much as possible to be fulfilled in carrying out their professional duties.

A doctor who deviates from the standards of the medical profession is said to have made an omission or mistake, ie if the negligence or error is intentional or dolus and causes serious or fatal consequences to the patient. A doctor who violates or deviates from the standards of the medical profession is said to have committed a professional error or medical malpractice, but it is not necessarily a malpractice that leads to malpractice that can be punished. For the punishment of a malpractice, it is necessary to prove that there is an element of gross negligence or culpability with fatal or serious consequences.

A health worker commits an error or omission if he fulfills the elements, Inability to be responsible that a health worker as a person who complies with the law, must be able to take responsibility for all his actions; There is no mental relationship between the act and the maker, namely that a health worker must know the consequences that can result from his actions; There is no excuse for forgiveness, namely there is no justification whatsoever that can be justified by health workers to protect their irresponsible medical actions; There is a loss both materially and immaterially; Material losses are losses that are felt directly by the sufferer and immaterial losses are losses that cannot be valued in money, because losses can be in the form of mental suffering. In connection with that, in the medical profession applies the *Primum Non Nocere* Principle which means that the main thing is not to harm. Patients are entitled to compensation due to medical actions taken by doctors. This is confirmed in Article 58 paragraph 1 of the Juncto Health Law Article 23 of Government Regulation Number 32 of 1996 concerning Health Workers.

Medical actions that harm other people are not only a violation of the obligations of the health workers themselves, but also violate the rights of others, so that such actions can be considered as unlawful acts, with evidence of the health worker's fault. As a professional in the field of medicine, in carrying out medical services, you must meet professional standards. Veronica Komalawati (2002, p. 177) explains about professional standards, namely guidelines that must be used as guidelines in carrying out the profession properly. With regard to medical services, the guidelines used are medical service standards which are mainly focused on the process of medical action.

Various supervisory bodies/institutions have been established by the government to ensure that the implementation of these health services is in accordance with applicable legal provisions and to improve the quality of health services from doctors and hospitals, including the Indonesian Medical Council (KKI), the Indonesian Doctors Association (KKI), and the Indonesian

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Doctors Association (KKI). IDI), the Indonesian Medical Discipline Honorary Council (MKDKI), and the Medical Ethics Honorary Council (MKEK).

MKDKI as one of the institutions formed with the function of supervising the implementation of health services was formed based on the mandate contained in the Medical Practice Law with the aim of enforcing the professional discipline of doctors and dentists in Indonesia. Discipline enforcement in question is an act of enforcing the rules and/or provisions for the application of science in the implementation of medical practice that must be obeyed and followed by doctors and dentists.

Judging from the existing legal provisions, it is clear that the MKDKI is an institution which in carrying out its duties and authorities cannot be influenced by anyone. MKDKI has a very important role in enforcing the professional discipline of doctors and dentists in Indonesia. The enforcement of the discipline of doctors and dentists carried out by MKDKI aims to protect the public from actions taken by incompetent doctors or dentists, as well as to improve the quality of health services and maintain the honor of the medical and dental professions.

The MKDKI enforces professional discipline for doctors and dentists, of course, there are guidelines/references. The guidelines/references used by the MKDKI are the Decree of the Indonesian Medical Council Number: 17/KKI/KEP/VIII/2006 concerning Guidelines for Enforcement of the Discipline of the Medical Profession, which was later replaced by the Regulation of the Indonesian Medical Council Number 4 of 2011 concerning the Professional Discipline of Doctors and Dentists. There are at least 28 (twenty eight) types of violations of the professional discipline of doctors and dentists as regulated in the Indonesian Medical Council Regulation Number 4 of 2011.

According to the provisions of Article 66 of the Medical Practice Law and Article 3 of the Regulation of the Indonesian Medical Council Number 3 of 2011, in order to enforce the professional discipline of doctors and dentists, MKDKI has the duty to receive complaints, examine, and decide cases of alleged violations of the professional discipline of doctors and dentists. Based on various legal provisions obtained (both the Law and the Indonesian Medical Council Regulations), it is clearly stated that the MKDKI is the institution authorized to decide whether or not there is a violation of the professional discipline of doctors and dentists, as well as to determine the sanctions for such violations. Decisions regarding whether or not there is a violation of the professional discipline of doctors and dentists, along with the sanctions imposed on doctors, are contained in the MKDKI decision letter.

Article 46 of the Hospital Law states that hospitals are responsible for all losses caused by negligence of health workers in hospitals. The negligence in question is the negligence of health workers which causes havoc; such as disability, paralysis or even death. If that happens, then the patient or the family can claim compensation. This request for compensation is due to the consequences that arise, both physical and non-physical. Physical (material) loss, for example with the loss or non-functioning of all or part of the body's organs. Non-physical (immaterial) losses are losses related to one's dignity.

Meanwhile, according to article 19 paragraph 2 of the Minister of Health concerning Approval of Medical Actions, it only regulates administrative sanctions for doctors or dentists who commit violations, namely administrative sanctions in the form of verbal warnings, written warnings, up to the revocation of the Practice License by the Minister, Head of the District Health Office. /City. Because civil sanctions are not regulated in special laws and regulations, the compensation arrangement again refers to the regulations stipulated in the Civil Code.

### IV. CONCLUSION

The legal relationship (therapeutic agreement) between the patient and the doctor is a joint participation relationship where the patient already feels equal to the doctor. The object of the legal relationship is an effort to heal patients maximally whose results cannot be ascertained so that therapeutics are included in *Inspanningverbintenis* or an effort agreement, because doctors cannot promise certainty of healing to patients, what doctors can do is provide health services as an effort to cure patients. If the doctor delays the treatment, the doctor fulfills one form of default, namely being late in doing what he promised to do, which in the example states that the doctor was late in coming and handling the delivery which resulted in the death of the baby in the womb. Doctors should also have an obligation under Article 40 of the Medical Practice Law, to appoint a substitute doctor if they are unable to violate medical practice. Hospitals can also be responsible in this case committing acts against the law, because they cannot fulfill the provisions of the Regulation of the Minister of Health Number 4 of 2018 concerning Hospital Obligations and Patient Obligations Article 2 letter b, namely providing safe, quality, anti-discriminatory, and effective health services. by prioritizing the interests of the patient in accordance with hospital service standards, so that the baby in the patient's womb dies. It is better if the party with the problem can solve this problem through the MKDKI first, so that through the MKDKI decision later the doctor can be declared guilty or not, and can be followed up through legal channels. The mediation stage before going to court, if the mediation has been carried out and still no results are agreed upon by both parties, the attorney for the injured patient can file a lawsuit to the court.

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