

Legal Protection Against Doctors Suspected of Medical Malpractices in Hospital

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Abstract. The relationship between doctors and patients, which was originally paternalistic, was both parties who agreed to have a legal relationship in the form of a therapeutic contract. Therapeutic Agreements or Therapeutic Transactions, or Therapeutic Contracts are agreements between doctors and patients that authorize doctors to perform out efforts supply patient care relying on the doctor's knowledge and skills, Entitlements derive from the treatment item's legal connection. Each party, the patient has the rights and obligations, and vice versa with the doctor. The problems that can be raised in this paper; What legal immunity does a doctor have at a hospital if he or she is suspected of committing misdiagnosis? As for the research method in order to solve the problem, Tools of normative research are used in literature, Specifically, study on legal concepts undertaken by reviewing library documents or internet sources. Furthermore, the results of the study were analyzed using a qualitative descriptive method. The results of the discussion of the existing problems, that the patient or his representative does not understand what is meant by medical malpractice and about what is meant by medical risk. All reported as a form of malpractice of other doctors/health workers, or in other words as if all faults belonged to the doctor and/or hospital. Under such conditions, legal protection is required for doctors who are suspected of having committed malpractice acts.

Keywords: Legal Protection Against Doctors

1 Introduction

Health for human life is one of the parameters to measure the success of human In the field of health, there has been a lot of progress. Without health, humans will not have the power to live a decent and good life. Therefore, Wellbeing is a civil right since one of the components of well-being that must be achieved in line with Indonesian national aspirations. The point following a benefits system for all citizens and enables the weak and unproductive in line with the ethical decency, according to Article 34 section (2) of the constitution Act; article 34 paragraph (3) The state is responsible for the provision of health service facilities and proper public service facilities. [1] Health services are efforts that are being performed alone or in a group within a body or organization that are useful for preventing, maintaining, and restoring the health of a person or group.

Supporting the provision of health insurance to the community, A hospital is a treatment center that coordinates health-care services. The definition of a hospital according to Law No.

44 of 2009 in relation to hospitals, Hospitals are health-care establishments that will provide hospitalization, clinic, and rescue services to individuals. [2]

In practice, the provision of health-care facilities are offered individually by doctors/practicing midwives or in groups, sometimes various problems are found, including allegations of medical malpractice actions by health workers against users of health services in hospitals. Each hospital is a professional health care institution in which there are various educational backgrounds such as doctors, nurses, midwives, radiology, laboratories, pharmacy, health, economics, management, information technology, and others, and each interacts with each other.

In the field of health services, conflicts can occur whether it is in the patients' mutual benefit are damaged as a result of a doctor's or dentist's acts or by other health workers. A conflict will turn into a dispute, and a dispute will turn into a dispute if the dispute is not handled immediately so that the dispute becomes a lawsuit through the judiciary. The relationship between doctors and patients, which was originally paternalistic, was between both parties who agreed to have a legal relationship in the form of a therapeutic contract. What is meant by a therapeutic transaction is a relationship between a doctor and a patient that is carried out in an atmosphere of mutual trust (confidential) and is always filled with all emotions, hopes, and concerns of human beings.

Therapeutic Agreements or Therapeutic Transactions, or Therapeutic Contracts are agreements between doctors and patients that authorize doctors Rights and liabilities originate from the legal connection in the medical exchange while carrying out actions to give health services to patients based on the doctor's experience and skills. Each side, the consumer, has rights and responsibilities, and the doctor has the same. Regarding allegations of malpractice cases carried out by doctors in hospitals, people can lose confidence in doctors, other health workers, hospitals, or anyone who provides health services. If this continues without a concrete and appropriate solution, it can actually harm people who actually need help to seek health for their better lives.

The presence of public litigation is frequently linked to the failing of doctors' and other general practitioners' therapeutic attempts. On the other side, disagreements arise due to doctors'/other health workers'/hospitals' lack of awareness of legalities. The demands put forward by patients are often unfounded and seem fault-finding. Hospital services, for example, are related to patient complaints about doctor delays, even though the hospital has informed that the doctor will be late because the doctor in question is performing a sudden operation, an emergency in another place, or the case of a patient who comes to the Emergency Room (IGD) because stomach pain that is not immediately treated by the doctor because the doctor is treating patients with serious and emergency conditions that endanger their lives.

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2 Research Methods

The difficulty that can be raised in this article is how is the statutory safeguards for doctors suspected of committing medical malpractice in hospitals. As for the research method, in order to solve the problem, Writing takes a go at traditional legal research procedures, such as reviewing digital library or qualitative sources, which includes research on legal principles. Furthermore, the results of the study were analyzed using a qualitative descriptive method.

3 Results and Discussion

As a starting point for the study related to this paper, the author begins a review of Healthcare actions require parental consent between doctors and patients. Furthermore, to facilitate understanding related to the activities of the relationship between the parties, the author will use a more appropriate term, Specifically, full consent. Informed consent is defined as assent granted by a person or his families after being told of the medicinal act that will be conducted against him because the hazards involved. Agree with knowledge is an approach to correctness and patient involvement in decisions about their treatment.

Often the best approach to obtaining informed consent is for the doctor who will be proposing or performing the procedure to explain in detail in addition to asking the patient to read the form. The purpose of this explanation is to ensure that if the patient signs the form, he or she has received complete information. [3] The legal basis for the implementation of informed consent is Article 45 of Law no. 29 of 2004 with relation to Polyclinic Furthermore, based on Law No. 36 of 2009 concerning Health and Law No. 44 of 2009 concerning Hospitals, it is explained that Approval that has been given is a process of dialogue among patients and doctors in which the doctor provides information, then is accepted by the patient, then documented in the informed consent form. In this communication, it is necessary to have a common language. The doctor explains according to the patient's knowledge so that the information received is correct.

Law No. 44 of 2009 concerning governance of hospitals, informed consent is a condition for the occurrence of a therapeutic transaction. In accordance with the consensual principle in the contract, the agreement can be submitted orally or in writing, either by the doctor concerned, a doctor's assistant, or a designated hospital employee. The reception of the telephone is also seen as the beginning of a contractual relationship. [3] In a therapeutic transaction, if the rights and obligations are not fulfilled by one party (doctor or patient), then, of course, the other party who feels aggrieved will sue or sue. In this case, the medical record has a very big role.

That is, it can be used to strengthen a lawsuit (patient) or reject a civil lawsuit (for doctors and/or hospitals) or criminal charges based on errors, whether intentional or due to negligence. This means that the medical record has legal force as an input element in the decision-making process by the judge. Therefore, to fulfill the requirements for a medical record, it must be signed by all medical servants involved as parties in the therapeutic transaction. Medical malpractice is a legal term, which from a literal point of view, means bad or bad medical practice because it is wrong or deviates from what it should be and so on. [4]

Malpractice is negligence committed by health workers in carrying out what is not up to snuff when it comes to medical hospital policies so that the patient suffers injury, disability, or dies. From this definition, the following elements of malpractice can be drawn:

- a. There is negligence
- b. Conducted by Health Workers
- c. Not according to medical service standards and operational procedures.
- d. The patient is injured, disabled, or dies

Doctors who are accused of having gross negligence have protection is basically legal protection given to legal subjects, in this case to doctors and to hospitals that are the parties being contested by patients. Legal protection related to these problems is repressive in nature, both scribbled and unscribbled. To put it another way, A definition of special rights of the legal function where the law can provide justice, certainty, and benefit.

The given nature of the legal protection is repressive. Its form can be linked to the principle of agreement as outlined in the informed consent. The principle of law here is to find out the

principle of law, which can be done by looking for general characteristics in concrete rules or regulations, meaning that it refers to the similarities contained in concrete provisions. The right principle is related then the concept of trustworthiness, as according to "An contract should be followed out even in earnest," says section 1338, line (3) of the Criminal Code. [5]. It can be interpreted that a doctor cannot be based on evil intentions to harm the patient in carrying out his profession.

Agreements that occur between doctors and patients are not only in the field of therapy but, more broadly, cover the fields of diagnostic, preventive, rehabilitative, and promotive, so this agreement A therapy contract or clinical deal is what it's termed. [6] Therapeutic agreements have special properties and characteristics, not the same as the nature and characteristics of agreements in general, Because the goal of a treatment process is to find the best "attempt" for the patient's rehabilitation, rather than to "cure" the sick. The doctor's agreement with the patient is included in an agreement about "efforts" or called *inspanningsverbintenis*, not an agreement about "results" or called *resultaat verbintenis*.

There may be a formal connection between of client and therapist, among others, because the patient himself comes to the doctor to ask for help for the disease he is suffering. In such circumstances, there is an agreement of will between the two parties, and there is a legal relationship that originates from the surgeon's faith in the medical to the client's satisfaction is willing to give informed consent. For this reason, in the context of statutory safeguards for doctors who are convicted of engaging in healthcare misconduct, repressively, legal protection can be given through therapeutic agreements whose position is equal to *inspanningsverbintenis*. This means that in the therapeutic deal, The doctor's main goal is to treat the illness, and his or her actions are not always effective.

Furthermore, the position of the hospital on the existence of legal actions that result in a juridical partnership between doctors and patients, hospitals are not human or "persons" who can act freely, but hospitals are legal entities/*rechtspersons*, and therefore hospitals are burdened with rights. and legal obligations for the actions he takes as a means to facilitate legal relations between Doctors and Patients.

When used in conjunction with a doctor-patient treatment contract, [3] the rights of doctors in health services are as follows:

- a. the authority to get information from patients about their grievances;
- b. the privilege to be paid or given a gratuity;
- c. the ability to discontinue the patient's partnership if he or she does not follow the advise offered;
- d. the right to expect the patient to operate in good faith when carrying out treatment interactions;
- e. the desire to be left alone.

Doctors' rights, as specified in the healthcare system, must also be met based on the therapeutic agreement. According to the terms of Article 50 of the Medical Practice Law No. 29 of 2004. In the course of their medical activity, doctors and dentists have the right to:

- a. Get special recourse as far as responsibilities are performed according to quality bodies and standing orders;
- b. Offer drug care in accordance with expert guidelines and practices;
- c. Collect accurate and comprehensive health data or their relatives; and
- d. Receiving a service fee". [7]

From the rights of doctors as stipulated in Article 50, it appears that doctors get the ability to seek legal assistance from medical actions that have been carried out, as long as what the doctor or dentist has done is in compliance with industry best practices and standards operating

procedures. Furthermore, normatively, patients in health services are also given rights "Patients while getting goods in healthcare profession has privileges, such as:" per the Section 55 of Regulation No.29 of 2004 Governing Healthcare Activity.

- a. Get a complete explanation of the medical procedure;
- b. Ask another doctor's opinion;
- c. Obtain services in accordance with your symptoms related;
- d. Refusing medical action; and
- e. Obtain the health title's details."

Furthermore, the Indonesian Medical Code of Ethics also mentions several patient rights that need to be considered, including the following: [8]

- a. The freedom, to someone's bodily, and to a dying;
- b. The employee receives ethical healthcare in conformity with medical industry norms;
- c. The right to ask the giving clinician for a description of the treatment;
- d. The freedom to decline preventive and surgical treatments that are scheduled, even to withdraw from a therapeutic contract;
- e. The right to obtain explanations from medical research personnel that will be followed and to refuse or accept their participation in the medical research;
- f. The ability to be forwarded to an expert if indicated and to be back to the supplying doctor for treatment or follow-up following the assessment or surgery;
- g. The right to privacy when it comes to private hospital data;
- h. The right to obtain an explanation of Rules in hospitals;
- i. The right to have contact with family, counselors or clergy, and others as necessary during hospitalization;
- j. The duty to a detailed description regarding the details of hospitalization costs, drugs, laboratory examinations, x-ray examinations, ultrasonography, CT scans, operating room fees, delivery rooms, doctor's fees, and others.

Based on the patient's obligations mentioned above, it can be interpreted that, although the patient's obligations have been explicitly stipulated in the Medical Practice Act, the patient is also morally obligated in the health sector, namely to maintain his health and carry out the treatment rules in accordance with the advice. And the instructions of the attending physician.

Based on a study concerning the partners' duties and responsibilities based on a therapeutic agreement, basically, legal protection for doctors as repression is based on the Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice, the provisions of which are regulated in Article 50 letter a, law No. Number 36 of 2014 concerning Health Workers Article 75, Article 84, and Article 58. Meanwhile, based on Law no. 36 of 2009 concerning health, regulated under Article 58 and Article 29.

The complete legal protection for doctors based on the laws and regulations is as follows.

- a. Depending on Article 50 paragraph of Legal No. 29 of 2004 regulating Clinical Activity. Doctors and dentists who perform medicine have the right to legal protection as long as they follow quality values and standards and guidelines.
- b. Law Number 36 of 2014 concerning Health Workers Article 75, Article 84, and Article 58 are stated as follows:
 1. Article 75 said that people are paid to special rights when practicing their profession in conformity with the law.
 2. Any Physician who acts neglect responsible for serious damage to a Health-care User is sentenced to a maximum of three years in jail, according to Article 84.

3. All have the right to seek reimbursement from a citizen, a thoracic surgeon, or a doctor who creates a loss as a result of a mistake or carelessness in the primary care he or she gets, according to Article 58.
- c. According to Article 58 of Health Reform No. 36 of 2009:
 1. Any individual, medical worker, and/or health supplier who suffers a harm as a result of a mistake or carelessness in the health service he or she gets has the right to seek payment.
 2. The demand for reimbursement referred to in article (1) doesn't quite extend to health personnel who act in an exigency and can save a death or stop someone from becoming disabled.
- d. If a hospital worker is alleged of recklessness in the performance of his or her duties, this is governed, among other things, by Article 29 of Law No. 36 of 2009 on Nutrition, that asserts: If a rescue worker is presumed of neglect in the performance of his or her duties, the malfeasance must be remedied first via consultations.

4 Conclusion

Based on all the discussions related to the problem of this paper, professionals who are involved in criminal activity misdiagnosis on his patients have special recourse, the nature of legal protection for doctors is repressive legal protection. This means that considering that the medical doctor's action against the patient has a legal basis, namely a therapeutic agreement, which is a professional effort, the legal protection is basically given based on Law no. 36 of 2009 concerning health, Built on Thoracic Surgeon Law No. 29 of 2004 and Medical Workers and Treatment Contracts Law No. 36 of 2014.

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