

The Role of Professional Organizations and The Indonesian Medical Council in Resolving Medical Disputes

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Abstract. In conducting their profession, every doctor will be guided and guarded by 2 (two) rules or norms, namely ethical norms and discipline. Ethical norms are more concerned with the morals and behavior of doctors, while disciplinary norms are based on the aspect of "competence" which concerns knowledge and skills in the field of medical science. If a doctor is deemed to have made a mistake in the form of negligence or medical malpractice, there is an institution that is authorized to receive and examine complaints from patients who feel disadvantaged after receiving medical services from a doctor, as mandated by Article 66 paragraph (1) of Law Number 29 of 2004 regarding Medical Practice, the Indonesian Medical Discipline Honorary Council (MKDKI) is an independent institution under the Indonesian Medical Council (KKI). These channels are institutions that have the capability and are credible in resolving medical disputes elegantly, rather than directly through legal institutions, such as the Police, and Prosecutor's Office which end up in the Courts. This type of research is Juridical-Empirical-Normative research with analytical descriptive specifications. The type of data used is primary data in the form of hearings at professional organizations (IDI-MKEK), MKDKI, and Police (Polda Metro Jaya), and also secondary data obtained through searching legal literature and publications and then analyzing the data qualitatively.

Keywords: Settlement, Medical Dispute, Doctor Professional Organization (IDI-MKEK), MKDKI

1 Introduction

Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that "Every person has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and the right to receive health services". The mandates the government to carry out development in the health sector as one of the national development efforts to achieve awareness, willingness, and ability to live healthily for the entire population so that they can enjoy optimal levels of health. To achieve optimal health, 4 aspects of comprehensive health must be fulfilled by the government and the Indonesian people together, namely improving health (promotive), prevention (preventive), healing (curative), and recovery (rehabilitative) in a comprehensive, integrated, and sustainable manner.[1]

In 2004 the government issued Law Number 29 of 2004 concerning Medical Practice as a special law or *lex specialis* which regulates medical practice in Indonesia. "Medical practice is carried out based on Pancasila and is based on scientific values, benefits, justice, humanity, balance, as well as patient protection and safety." [2] The objectives of regulating medical practice include:

- a. protect patients;
- b. maintain and improve the quality of medical services provided by doctors and dentists; And
- c. provide legal certainty to the public, doctors and dentists.

The enactment of Law Number 29 of 2004 concerning Medical Practice in Indonesia has had a positive impact so that medical practice runs better than before the law, where at that time it was alleged that many doctors were doing bad things by fooling patients, lying to them, or doing wrong things. profanity, carrying out substandard medical practices, etc. [3] which have negative consequences for the health and safety of patients and even result in death. In addition to Law Number 29 of 2004 concerning Medical Practice 2004 mentioned above, the executive and legislative institutions have added several statutory regulations relating to health services and medical practice in Indonesia, including:

1. Law Number 36 of 2009 concerning Health.
2. Law number 44 of 2009 concerning Hospitals.
3. Law number 36 of 2014 concerning Health Workers
4. Other laws that are indirectly related to health issues, such as regarding medicines, the environment, occupational health, etc.
5. Several regulations under the Law as implementing regulations relating to health issues and medical practice.

The implementation of the various laws and regulations above is aimed at further improving the quality of health services in Indonesia as one part of national development in the health sector to realize prosperity for all levels of society (*Das Sollen*). However, in reality on the ground, one of the impacts that has occurred since the enactment of the various laws mentioned above is an increase in lawsuits by patients or their families who feel dissatisfied with the results of medical services provided by doctors or dentists, resulting in a decline in the quality of health services (*das turn signal*).

In practice, there is often a difference in perception (*misperception*) between doctors and patients, who assume that they come for medical treatment of their illness. Moreover, those who go to well-known hospitals and are treated by doctors who are considered great and well-known, incur huge costs, of course with the full hope that the disease they suffer can be cured. If the results do not match expectations, perhaps even the opposite, then the doctor is deemed to have made a mistake or medical malpractice.

An autonomous and independent institution, namely the Indonesian Medical Discipline Honorary Council (MKDKI) which is part of the Indonesian Medical Council (KKI), is given the task and function of receiving and examining complaints from patients who feel disadvantaged after receiving medical services from a doctor as mandated by article 66 paragraph (1) UPC 2004. Based on the background description of the problem above, the problem formulation discussed in this paper is "What is the process for resolving medical

disputes by Professional Organizations and/or the Indonesian Medical Discipline Honorary Council (MKDKI)?"

2 Research Method

This type of research is juridical-normative research, namely research that refers to legal norms contained in statutory regulations, as well as norms that apply and are binding in society [4] which are supported by empirical data. The research specification is analytical descriptive research, namely describing the applicable laws and regulations linked to legal theories and the practice of implementing positive law regarding the problems that have been formulated.[5] The type of data is secondary data which was obtained to support research through searching legal literature and libraries, and supplemented with empirical data in the field. Secondary data includes official documents, books, and research results.[6] In this writing, the author uses qualitative data analysis.

3 Discussion

Medical malpractice is defined as all medical actions carried out by doctors or by people under their supervision, or by health service providers carried out on their patients, whether in terms of diagnosis, therapy, or disease management, which are carried out in violation of law, propriety, decency, and professional principles, whether carried out intentionally or carelessly, which causes wrongdoing, pain, injury, disability, death, damage to body and soul, or other losses to patients in their care.[7]

Ethical malpractice is a violation committed by a doctor from a moral and behavioral aspect. In carrying out his practice, a doctor is also required to always comply with moral and ethical values, as regulated in the articles contained in the Indonesian Medical Code of Ethics (KODEKI), which consists of 21 articles:

1. General obligations of 13 articles.
2. Obligations towards patients in 4 articles.
3. Obligations towards colleagues in 2 articles.
4. Obligations towards yourself in 2 articles.

If a doctor violates the provisions set out in the articles mentioned above and is complained about by a patient who feels disadvantaged, the doctor will receive ethical sanctions decided by the Indonesian Medical Ethics Honorary Council (MKEK). The MKEK institution itself is an independent institution under the professional organization of the Indonesian Doctors Association (IDI). Some examples of ethical violations committed by doctors or dentists, which could be considered violations in the category of ethical malpractice, include:

1. Charging medical services to patients in excessive amounts.
2. Giving excessive types and quantities of medicines to patients (overtreatment)
3. Carrying out various medical examinations and supporting examinations (X-rays, laboratories, CT scans, etc.) that are not necessary for the patient.
4. Acts in self-praise or advertises himself openly.

5. Providing medical information to the patient, without carrying out a previous examination.

The types of ethical sanctions imposed by MKEK for ethical violations by doctors or dentists include:

1. Category 1, coaching in nature.
2. Category 2, is coaching and enlightening.
3. Category 3, like conviction, guidance, and temporary dismissal from IDI membership.
4. Category 4, in the form of permanent termination of membership.

Since the enactment of the 2004 UUPK, the task of coaching and supervising doctors regarding ethics remains under the authority of the professional organization (IDI). Meanwhile, medical discipline issues are more related to the competency aspect, carried out by the Indonesian Medical Discipline Honor Council (MKDKI). Violations of medical discipline are more related to the knowledge and skills of each doctor, which are stipulated in 28 signs or prohibitions, including:

1. Practicing medicine outside of your competence.
2. Carrying out therapy and medical procedures outside of professional standards and standard operational procedures that have been determined.
3. Carrying out practices without being accompanied by an attitude of accuracy and caution.
4. Carrying out practice without formal legal requirements, such as a Registration Certificate (STR) and Practice Permit (SIP).
5. and so on.

If in carrying out his practice a doctor is suspected of violating medical discipline and is then complained about by the patient or his family by the provisions of Article 66 paragraph (1) UUPK, then the MKDKI will conduct an examination and investigation of the complaint. Article 66 paragraph (3) UUPK explains that complaints as stated in Article 66 paragraph (1) UUPK do not eliminate the right of every person to report suspected criminal acts to the authorities and/or sue for civil losses to the Court. After going through the trial process, the MPD Council from MKDKI will give a decision with 2 possibilities:[8]

- (a) The doctor is declared not guilty or has not violated discipline
- (b) The doctor is declared to have committed a disciplinary violation, accompanied by sanctions for the disciplinary violation as follows:
 1. Written warning for minor disciplinary violations.
 2. Revocation of STR and SIP within a certain time for moderate and serious disciplinary violations.
 3. Required to do special education (reschooling)

The MKDKI decision is final and binding and only applies as an internal professional sanction where there is no appeal mechanism and cannot be used as evidence if the case is continued into the realm of criminal law or civil law. The occurrence of patient dissatisfaction with the services of doctors or hospitals and other health workers as a result of:

1. The higher the average level of education in society, the more legally literate they are, thus making them more knowledgeable about their rights and more assertive;
2. Increasing public expectations for medical services as a result of the wide flow of information;

3. Commercialization and high costs of medical services, so that society is increasingly intolerant of imperfect services;
4. Provocation by legal experts and by health workers themselves.

This dissatisfaction is due to violations that contain the nature of unlawful acts in carrying out the medical profession which causes harm to the patient, where this occurs if there is an opinion that the contents of the therapeutic agreement (therapeutic contract) are not fulfilled or violated by the doctor.[9] Violations committed by doctors in carrying out the medical profession can be in the form of ethical violations, disciplinary violations, administrative violations, or legal violations (criminal, civil, and administrative).

The causes of medical practice violations can be ordered into system factors and doctor and society factors. System factors, in general, are a system that is weak in supervision (social control), closed, monopolistic/oligopolistic, elements of the state that are too strong compared to society, and liberalism, especially in health services. Meanwhile, the factors of doctors and society that foster violations are hedonistic, hypocritical, full of KKN, and justifying any means, not as a civil society.[3]

Medical disputes between patients or their families and health workers or patients and hospitals/health facilities usually issue the outcome or result of health services without paying attention to or ignoring the process. In fact, in health law, it is recognized that health workers or those implementing health services when providing services are only responsible for the process or efforts made (inspaning verbintenis) and do not guarantee/guarantee the final results (resultalte verbintenis).[10] Therefore, before there is a decision from the professional court or a discrepancy in medical logic between the patient and the doctor/hospital, the correct term is a medical dispute, not medical malpractice. This is related to whether or not there is a decision and considerations of medical logic and legal logic to determine whether the medical act/action carried out by the doctor falls into the category of medical malpractice.[7]

Medical disputes in practice are often an intertwined issue of professional ethics, professional discipline, and law in general. Coincidentally, whether patients/society, doctors/hospitals are aware or not, often confuse the three. This may be due to practical ignorance itself or because their way of working wants to be completely practical, and it is not their job to sort out academically whether the case is a violation of pure ethics, professional discipline, administrative law, civil law, or criminal law.

The characteristics of medical disputes that occur between doctors and patients include:[8]

1. Disputes occur in the relationship between doctors and patients;
2. The object of the dispute is the healing efforts carried out by the doctor;
3. The party who feels disadvantaged in a medical dispute is the patient, whether the loss is in the form of injury disability, or death;
4. Losses suffered by patients are caused by alleged negligence or medical errors on the part of doctors, which are often called "medical malpractice".

In the implementation of medical practice, the implementation of medical procedures is often the cause of disputes due to several reasons, namely as follows:[7]

1. The content of the information (about the disease the patient is suffering from) and the alternative therapy chosen are not conveyed completely;
2. When was the information conveyed (by the doctor to the patient), was it before the therapy in the form of a particular medical action was carried out? Information must be provided (by the doctor to the patient), whether requested or not (by the patient) before therapy is carried out, especially if there is a possibility of expanding therapy;

3. The method of conveying information must be verbal and complete and given honestly and correctly unless in the doctor's opinion conveying the information will be detrimental to the patient, the same applies to information that must be given to the doctor by the patient; The patient concerned has the right to information, and the next of kin if according to the doctor's judgment the information provided will be detrimental to the patient, or if there is an unforeseen extension of therapy that must be carried out to save the patient's life.

In the practice of medical services, the lack of information provided by doctors is partly due to doctors' busy schedules and work routines which take up a lot of time, so doctors do not have enough time to communicate with patients. In addition, the large number of patients who have to be treated causes doctors to experience boredom in providing excessive information and the condition of patients who are physically and psychologically ill makes it difficult for doctors to provide the information provided. If given too much it can cause the patient to become afraid/depressed (depression, frustration), which will worsen the treatment and healing process or even possibly be rejected by the patient. On the other hand, a lack of information can cause misinterpretation by the patient.

Other things that can cause medical disputes are hospital management policy factors, where policies from hospital management can trigger medical disputes, including:[9]

1. Lack of a conducive place and time to allow dialogue or two-way communication between doctors/health workers and patients;
2. There is not enough information consent sheet available as proof of consent (written evidence) that the patient has been given the information and a refusal sheet as proof the patient refuses or cannot accept the information that has been given to him;
3. no risk management always monitors and processes risks that will and have arisen. If the risk is not properly anticipated from the start, it will become wider and wider, resulting in cases of medical disputes being unavoidable;
4. Management does not qualify health responsibilities, which should create and classify various types of responsibilities in the world of medicine so that it is easy to know which party should be responsible if a medical dispute occurs.

The concept of violating norms in the medical profession is grouped into 3 forms, namely ethical violations, disciplinary violations, and legal violations (criminal, civil, and administrative). These three forms of violations have different provisions and settlement procedures. The explanation below will discuss further the resolution of these 3 forms of norm violations in the medical profession.

3.1.1 Ethics Violations

MKEK is a special assembly for medical personnel, so this applies to the medical community. The legal basis for MKEK was established in 1979 based on Article 16 paragraph (1) of the IDI Bylaws. MKEK is an autonomous body within the IDI organization which consists of Central MKEK, Regional MKEK (at the provincial level), and Branch MKEK (at Regency/Municipal level). The composition of MKEK members consists of the Chairman, Deputy Chairman, Secretary, a maximum of 7 permanent members, and non-permanent members. MKEK functions to provide guidance, supervision, and assessment of the implementation of medical ethics by doctors. MKEK's special task is to handle violations (complaints) of medical ethics.[11]

The stages of the complaint handling process are that MKEK receives a letter of complaint originating: Directly by the complainant to the regional MKEK; Delegation from central MKEK or PB IDI; Regional IDI administrator; or the Department of Health. If the complaint is given orally, the complainant is required to amend the complaint in writing. The MKEK chairman invited permanent MKEK members to hold an internal trial meeting. The complaint letter was analyzed at the MKEK hearing to see whether it met the requirements, among others; complaint letter with a clear name and signature; the complainant's address is clear; There was a doctor who was complained about with a clear name and address and it was written that the complaint was addressed to IDI either through the general management, regional management or directly to MKEK. If the requirements are met, the MKEK chairman decides that the complaint is valid, then it is stated in a letter of determination from the MKEK chairman and a letter of notification is made to the complainant that the complaint has been received by MKEK.

A copy of the letter was sent to the regional IDI management, PB IDI, the Chair of the Central MKEK, and the Chair of the Regional BHP2A (Legal Bureau for Member Development and Defense). If the requirements are not met, the MKEK chairman will send it back to the complainant with a request to complete the requirements. MKEK appoints two non-permanent members by directly appointing a person by MKEK and through the same professional organization (specialist association) as the doctor being complained about. MKEK summoned the doctor who complained about it and asked them to: study the complaint letter; study the 1993 KODEKI implementation guidelines; submit medical records and make a chronology of the case as a defense.

MKEK summons the complainant and/or his family if deemed necessary. The presence of the complainant's attorney (if any) will be considered separately. The MKEK hearing discusses the letter of complaint and defense by summoning witnesses if necessary. For cases involving institutions outside IDI, trials are held in stages to hear information from all parties involved. MKEK must be able to decide whether the person concerned is guilty or not in every accusation of ethical violation directed at him by consensus or based on a majority vote. By paying attention to the following five things: the consequences of the action on the honor of the profession, the consequences for the good of the patient, the consequences for the public interest, and external factors including patient factors that contributed to the violation as well as the goals the perpetrator wanted to achieve, cases are classified according to the violation, namely: mild, moderate, or heavy.

The decision of the Medical Ethics Honorary Council is final and binding. The final stage of the MKEK hearing decides: whether there is an ethical violation; identification of the KODEKI articles that have been violated; and formulation of the quality of light, medium, or serious violations. According to the type of violation, MKEK makes written suggestions to the authorized Government Official to revoke the practice permit for 3 months (minor violation), 6 months (moderate violation), or 12 months (serious violation). The MKEK chairman makes a report to the regional IDI chairman containing the type of case, the initials of the doctor being complained about, the initial date of the trial and decision-making, and the abbreviation of the

KODEKI violation (if any). When the case has been completed, the problem is declared closed (considered not an ethical problem) unless there is an appeal process.

The MKEK decision on the complaint is processed (given a number, put on an agenda, the file is sealed to ensure confidentiality, the file is kept for 5 years) by the secretariat to be submitted to the regional IDI Chair with a copy to: the Head of the Central MKEK; Chair of PB IDI and Chair of Regional MP2A. If there is dissatisfaction, both the complainant and the doctor being complained about can submit an appeal to the Honorary Council for Medical Ethics at a higher level.

3.1.2 Disciplinary Violations

MKDKI only applies to medical personnel. MKDKI was formed based on the mandate of Article 55 paragraph (1) UUPK which states "To uphold the discipline of doctors and dentists in carrying out medical practice, the Indonesian Medical Discipline Honorary Council was formed" as an institution that has the authority to determine whether there are mistakes made by doctors and dentists in the application of medical and dental disciplines and determine sanctions.[9]

The objectives of enforcing discipline include providing protection to patients, maintaining the quality of doctor/dentist services, and the honor of the profession of doctors and dentists. The task of the MKDKI is an institution that has the authority to determine whether there are mistakes made by doctors and dentists, in the application of medical and dental disciplines, and to determine disciplinary sanctions. MKDKI is responsible for the Indonesian Medical Council. MKDKI consists of 3 (three) doctors and 3 (three) dentists from their respective professional organizations, a doctor and a dentist representing hospital associations, and 3 (three) law graduates. MKDKI members are appointed for 1 (one) term of office for 5 (five) years.

Indonesian Medical Council Regulation Number 50 of 2017 concerning Procedures for Handling Cases of Violations of Discipline for Doctors and Dentists regulates how to make complaints to MKDKI which can be described as follows:

- a. Complaints are made by anyone who knows or whose interests have been harmed by the actions of a doctor or dentist in carrying out medical practice in writing.
- b. If the complaint is made verbally, the MKDKI Secretariat or MKDKP (Provincial MKDK) can assist in preparing a written complaint request and signed by the complainant or his/her attorney.
- c. Complaints can only be submitted within a maximum period of 3 (three) years from the action of the doctor/dentist being complained about.
- d. No later than 14 (fourteen) working days after the complaint is received and recorded completely and correctly according to the MKDKI or MKDKP verification results, an Examining Panel will immediately be formed.
- e. The Examining Council consists of 3 (three) people or a maximum of 5 (five) people consisting of doctors, dentists, and non-medical legal graduates.
- f. The Examining Council determines the examination date no later than 14 days from the decision of the Examining Council or no later than 28 (twenty-eight) days if the doctor or dentist's residence is far away.
- g. The Examination Council is independent and in carrying out its duties is not influenced by anyone or other institutions.
- h. The Examining Panel only examines the doctor or dentist who is being complained about, while the handling of each patient's compensation claim is not part of the examination and competence of the MKDKI or MKDKP.

- i. If deemed necessary, the Examining Panel can ask the patient to attend the hearing.
- j. In examining, the Examining Panel does not carry out mediation, reconciliation, and negotiation between doctors and patients or their proxies.
- k. The Examination Council hearing was held behind closed doors.
- l. The trial decision can be: not guilty, or free from violations of medical discipline; guilt and provision of disciplinary witnesses; or ethical violations are found.
- m. Disciplinary sanctions can take the form of giving a written warning, recommending revocation of the Registration Certificate (STR) or Practice Permit (SIP), and/or the obligation to attend education or training at a medical or dental educational institution.
- n. The decision of the Examining Council is carried out by deliberation, if no agreement is reached, the Chairman of the Examining Council can decide by majority vote. The decision of the Examining Council must be pronounced/read at the Examining Council session which is declared open to the public.
 - i. The decision of the assembly session must contain:
 - 1) The Head of the Decision reads: "For the sake of justice based on Belief in One Almighty God."
 - 2) Name, position, nationality, place of domicile, or position of the doctor or dentist being heard and the complainant.
 - 3) Summary of the complaint and the response of the doctor or dentist being complained about.
 - 4) Consideration and assessment of any evidence submitted and things that occurred during the examination/trial process.
 - 5) Reasons from both technical medical and disciplinary matters that form the basis of the decision.
 - 6) Decision-making and financing.
 - 7) Day, date of decision, names of the chairman of the panel and members of the panel, information about whether or not the doctor or dentist being complained about is present.

3.2 Medical Dispute Resolution

If an unavoidable medical dispute occurs, usually the patient and/or their family assume that there has been negligence or medical malpractice, while the doctor feels that he has worked according to professional standards and operational standards, then what needs to be done is:

- Double check through the Hospital Medical Committee, whether an error occurred in providing health services by the medical personnel or health workers concerned
- Report to the local professional organization, IDI Branch or Region, that the above incident has occurred, and there is a possibility that the patient has reported it to the relevant parties, namely:
 - o MKDKI, and or
 - o General criminal investigator or police
- Branch or Regional IDI, through BHP2A will invite doctors and Hospital management, as well as patients and/or their families, at separate times, for information.

- IDI will make efforts so that the dispute can be resolved by deliberation and consensus, through a mediation process, and it is hoped that as time goes by, the patient's/family's emotions will begin to subside, then the dispute will be successfully resolved with a win-win solution.
- If the dispute can be resolved, a letter of withdrawal of the report or complaint will be issued to both the MKDKI and the police.

4 Closing

4.1 Conclusion

Settlement of medical disputes by medical professional organizations is carried out by the Medical Ethics Honorary Council as an independent institution under the professional organization of the Indonesian Doctors Association when a doctor violates the provisions of the articles in the Indonesian Medical Ethics Code (KODEKI). The types of ethical sanctions imposed by the Medical Ethics Honorary Council for ethical violations by doctors or dentists include: Category 1, coaching in nature; Category 2, is coaching and enlightening; Category 3, like conviction, guidance, and temporary dismissal from membership of the Indonesian Doctors Association; and Category 4, in the form of permanent termination of membership. Meanwhile, medical disciplinary matters relating to the competency aspect of doctors are handled by the Indonesian Medical Discipline Honorary Council. Violations of medical discipline are more related to the issue of Doctor's competence regarding the knowledge and skills of each Doctor. The Indonesian Medical Disciplinary Honorary Council will give a decision with two possibilities: The doctor is declared not guilty or the doctor is declared to have committed a disciplinary violation. The sanctions for disciplinary violations are as follows: Written warning for minor disciplinary violations; Revocation of STR and SIP within a certain time for moderate and serious disciplinary violations; and carrying out special education (reschooling).

4.2 Suggestion

If a dispute occurs between the doctor and the patient and/or their family (Medical Dispute), then the most ideal thing is that the problem is resolved by consensus and deliberation, negotiation, mediation, or conciliation (Alternative Dispute Resolution), through:

1. Professional Organizations, in this case, the Indonesian Doctors Association (IDI), which has a special unit or field, namely BHP2A, where currently many doctors are studying and deepening Legal Science, Mediation Science, etc.
2. The Medical Discipline Honorary Council (MKDKI) under the Indonesian Medical Council (KKI) plays a more important role in assessing whether there are disciplinary violations or violations committed by doctors in carrying out their profession according to their competence, so that in this case it will be more difficult to act in mediation or negotiation, compared to BHP2A members from the Indonesian Doctors Association (IDI)
3. Experienced and certified professional mediators can be involved in assisting BHP2A and MKDKI in negotiating with patients and/or their families to assist

BHP2A and MKDKI so that dispute cases do not escalate into the realm of law or litigation.

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