

DOCTOR'S LEGAL RESPONSIBILITY FOR UNLAWFUL ACTIONS AGAINST MEDICAL ACTION ERRORS

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Abstract: *This study analyzed the responsibility of a doctor who commits an unlawful act when giving a medical error to his patient. This study examined how a doctor's action qualifies as an unlawful act in a medical action error and the doctor's legal responsibility in a medical action error from a civil, criminal, and administrative perspective. Metode This research is a doctrinal legal research, with a statute approach and an analytical approach. The results of the study showed that an unlawful act occurs when a doctor performs a medical action contrary to law, or contrary to medical science, and the medical action does not get the patient's consent. Medical action errors are seen from the perspective of civil law from two theories, namely breach of contract (default) and negligence, as well as from the perspective of criminal law in committing a medical action error. Generally, errors can be defined by the intent (dolus/opzet) and negligence/omissions (culpa) that are also considered elements of not meeting medical professional standards, service standards, and standard operating procedures. Then the perspective of administrative law; Judging from administrative violations committed by doctors, this legal violation can be seen from administrative violations regarding the authority to practice medicine and administrative violations regarding medical services. Based on Law 36 of 2009 concerning health, namely in the form of granting rights to victims of malpractice to hold doctors responsible for medical malpractice, in order to compensate for loss caused by doctor's errors or negligence, civil compensation claims may be filed or combined criminal prosecutions pursued. Additionally, the Indonesian Medical Discipline Honorary Council (MKDKI) may issue decisions imposing disciplinary sanctions on doctors who are proven guilty, allowing the council to make compensation claims in criminal proceedings before the court.*

Keywords: *Doctor's Responsibilities; Unlawful act; Medical action.*

Table of Contents

INTRODUCTION

1. RESEARCH METHOD

2. DISCUSSION

2.1 Actions of Doctors Who Meet the Elements of Unlawful Acts in Medical Action Errors

2.2 The responsibility of doctors in medical action errors based on a legal perspective both civilly, criminally and administratively.

3. CONCLUSION

INTRODUCTION

Health is one of the basic human needs besides clothing, shelter, food and education, which can be regarded as a basic social right (the right to health care) and individual rights (the right of self-determination) which must be realized in the form of providing safe health services quality and affordable by the community (Paramartha et al., 2021) (Fitriyono et al., 2016). Because health is a Human Right mandated in Article 34 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, one of which states that the State is responsible for providing proper health service facilities and public service facilities (Riza, 2018). Through the national health system, the government should organize health that is comprehensive, integrated, equitable, acceptable, and affordable to all levels of society at large to achieve optimal health status (Hidayat, 2016, Suwadi, 2022).



One form of public health service in hospitals is the provision of medical services for patients who need care and treatment by health workers. Medical service is an effort or activity to prevent, treat disease, and restore health based on the relationship between medical services and individuals in need. The doctors who are integrated with the hospital are to provide medical services (Ujianto, 2020). The practice of medicine by doctors is based on two principles, namely, sincerity towards the patient and no intention of hurting or injuring them. As part of their sense of responsibility and as a manifestation of these two main behaviors, health workers must respect patient rights, namely the right to be protected in terms of health services (Ujianto, 2020). The primary mission of medical personnel, including a doctor, is to provide preventive, promotion, curative, and rehabilitative services that are integrated, comprehensive, and sustainable (Kondoy et al., 2017). Must include therefore adequate legal provisions to provide legal certainty and comprehensive protection for health providers and community members (Hidana et al., 2020).

Initially, doctors and patients were known to have a paternalistic relationship, in which a patient was only allowed to obey their healer. However, at present, there is a paradigm shift in interpersonal relations which was previously based on a paternalistic vertical relationship pattern to a horizontal contractual relationship pattern. With this, all medical actions that the doctor will perform on the patient must obtain the patient's consent, after the patient has received an explanation about the disease and the efforts to take medical action (Hadi, 2018).

The agreement provides reciprocal rights and obligations. The therapeutic agreement has special characteristics and characteristics, namely the object of the therapeutic agreement is not the patient's recovery or results (*Resultaatverbintenis*), but the effort (*Inspaningsverbintenis*) given to the patient's recovery. Most patients do not understand that there are several factors that can affect the results of medical efforts, such as the patient's disease stage, patient compliance, and the patient's physical condition. Consequently, medical efforts cannot be determined with certainty and their results are uncertain. Errors or negligence committed by doctors in treating patients are known in medical science as Medical Malpractice (Riza, 2018).

Based on Law Number 36 of 2009 concerning Health as a government effort to create a better health service for the community. Where medical personnel and hospitals are required to participate in improving optimal health services for the community. Standard operating procedures (SOP) must be accompanied by a patient's rights and responsibilities when implementing a health service (Hadi, 2018). Medical actions carried out by doctors will always result in two possibilities, namely success and failure. It is possible for a medical procedure to fail because of two things: the first being overmatch (forced circumstances), the second is doctors carrying out medical actions that violate the standards of medicine or are deemed to be errors or negligence by the public.

Unlawful acts are regulated in Civil Law in Article 1365 of the Civil Code which gives authority to parties who feel aggrieved by other parties because of their mistakes to claim compensation for the losses they have experienced. According to Moegni Djodjodirjo, Article 1365 of the Civil Code provides the possibility of several types of prosecution, including compensation for losses in money; a refund of loss in the form of an equivalent or return to its original condition; an explanation of the fact that the act committed is unlawful; an order prohibiting the person from performing the act; a decision to invalidate something unlawfully held; an announcement of a correction (Winastri et al., 2017). As a result of an unlawful act legally, has consequences for the perpetrators and people who have a legal relationship in the form of work that causes unlawful acts to arise. As a result, the victim who suffered losses as a result of an unlawful act will receive compensation.

According to Article 1365 of the Civil Code, doctors may commit medical malpractice by intentionally (*dolus*) or negligently (*culpa*) treating patients improperly. A claim for damages based on an unlawful act must meet certain conditions specified in Article 1365 of the Civil Code, including: 1) There must be an act (*daad*) which qualifies as an unlawful act, 2) There must be an error (*dolus* and/or *culpa*), and 3) There must be a loss (*Schade*). Improper treatment constitutes a breach of agreement (default) or an unlawful act (*onrechtmatige daad*). A new doctor must fulfill certain conditions or elements in order to be considered to have committed an unlawful act in accordance with Article 1365 of the Civil Code. These conditions include (a) an act which is unlawful (*onrechtmatige daad*), (b) an error, (c) a loss that has occurred, (d) a causal relationship between the act and the loss (Novianto, 2015).

As a result, this article examines the liability of a doctor who commits an unlawful act when giving a medical error to a patient. In this case, the question is how does a doctor's action fulfill the element of an illegal act? and what is the doctor's responsibility in medical action errors from a legal perspective both criminally, civilly, and administratively?

1. RESEARCH METHOD

This research is a doctrinal law, according to Peter Mahmud Marzuki, legal research is done to provide answers to legal issues encountered, to provide legal rules, principles, and doctrines with the goal of achieving results through prescriptions about what should be done (Marzuki, 2016, Pujiyono, 2020). The approach used is a statute approach and an analytical approach (Marzuki, 2011). Analysis was carried out on secondary data obtained from library research, which consists of primary legal materials in the form of mandatory sources such as laws and regulations. Secondary legal materials consist of journals, books, and previous research results. The data is then analyzed and presented in a descriptive-qualitative manner.

2. DISCUSSION

2.1 Actions of Doctors Who Meet the Elements of Unlawful Acts in Medical Action Errors

Medical action is action by a doctor who aims to improve, restore, or eliminate suffering for a patient. Medical action is an action that should only be carried out by medical personnel, because the action is intended especially for patients who experience health problems (Tajuddin & Pieter, 2021). A medical action may not violate the law if it is carried out without following the provisions in force in medical science and without the consent of the patient.

Medical action in the criteria for when a medical/medical action is said to have violated the law, it is clear that a doctor who has made a mistake in carrying out a medical/medical action, the doctor's action has been classified as an 'action against the law'. According to Article 1365 of the Civil Code, an unlawful act is an act committed by a person who, through his fault, causes harm to another. From the formulation provided by Article 1365 of the Civil Code, to be able to prosecute someone based on an unlawful act, four (4) conditions must be met as follows (Ujianto, 2020):

1. The patient must experience a loss;
2. There is a mistake;
3. There is a causal relationship between mistakes and losses;
4. This act is against the law.

The science of law divides 3 (three) categories of unlawful acts, namely as follows (Sari, 2020):

1. Intentional unlawful act;
2. Unlawful act without fault (without intention or negligence);
3. Unlawful acts due to negligence.

There is a significant difference between an unlawful act with an element of negligence and one with an element of intent. Deliberately, there is an intention in the heart of the perpetrator to cause certain harm to the victim, or at least to know for certain that the consequences of his actions will occur. However, in negligence there is no intention in the heart of the offender to cause harm, there may even be a desire to prevent the loss. In an unlawful act with an element of negligence, what matters is the outward attitude and the act committed, without too much consideration of what is on his mind.

Doctors, as people who carry out public interests, have a moral obligation to carry out their profession to the best of their ability, since in doing their profession a person's life is at risk or their destiny is at stake. It is the duty of those who work as doctors to serve their patients as well as possible. This obligation is contained in Article 51 of Law Number 29 of 2004 concerning Medical Practice namely:

1. Provide medical services according to the professional standards and standard operating procedures as well as medical needs;
2. Refer the patient to a better doctor if the doctor is unable to carry out the examination and treatment;
3. Keep everything he knows about the patient a secret, even after the patient dies;
4. Performed emergency aid based on humanity;

5. Follow the development of medical science.

According to Anny Isfandyarie's book "Medical Malpractice and Risk; In Criminal Law Studies", a doctor who takes medical action contrary to his professional responsibilities can also be regarded as having committed an unlawful act; Violating the patient's rights resulting from his professional obligations; Performing acts that are contrary to decency; Engaging in acts that are unacceptable to society (Widhiantoro et al., 2021). In other words, if a doctor neglects or fails to fulfill his obligations as regards the patient's rights, that is considered an unlawful act.

2.2 The responsibility of doctors in medical action errors based on a legal perspective both civilly, criminally and administratively.

Due to the doctor's obligation to provide medical services, the doctor accepts responsibility for any mistakes made. Medical professionals have two types of responsibilities: ethical responsibilities and legal responsibilities. Legal responsibility can also be divided into civil liability, criminal responsibility, and administrative responsibility.

Doctors in the case of malpractice or medical errors in civil law can be seen from 2 (two) theories that state the source of the malpractice act, namely the theory of breach of contract, in this theory the source of malpractice is a breach of contract (default) and the theory of negligence, this theory states that the source of malpractice is negligence or mistakes. This responsibility aims to obtain compensation for patient losses in the occurrence of medical errors or malpractice.

Default occurs when the doctor fails to comply with the terms of the therapeutic agreement when providing treatment to the patient, such as not fulfilling what was promised, not carrying out the promised action on time, wrongly carrying out what was promised, and doing something that was prohibited in the agreement. According to Bahder Johan Nasution, in the event of default in health services, 3 (three) elements must be fulfilled as follows (Tawaris, 2017):

- a. The relationship between doctor and patient is based on a therapeutic agreement;
- b. The doctor violates the purpose of the therapeutic agreement when acting;
- c. Resulting in harm to the patient because of the doctor's actions.

With the fulfillment of the element of default, the patient can hold the doctor responsible for the loss he has suffered. It is possible for patients to file lawsuits against doctors in District Courts where there is a dispute, but the patient must provide proof that there has been a loss as a result of the default. In Indonesia, the plaintiff must prove the arguments for the lawsuit.

As for compensation for losses due to default in Article 1249 of the Civil Code it is only determined in the form of money. However, in its development, according to experts and jurisprudence, losses can be divided into material and immaterial losses. A material loss is one that is measurable in money, while an immaterial loss cannot be quantified.

According to Article 1365 of the Civil Code, doctors are liable for unlawful acts (*onrechtmatigedaaad*). There is an emerging responsibility for doctors who take action against patients, which violates the principles of decency, thoroughness, and caution expected of them. This is a violation of the principles of decency, thoroughness, and caution he is expected to uphold. If thoroughness, caution, and not carried out by a doctor will cause harm to the patient. Therefore, doctors can be sued for compensation by patients.

There is a principle recognized in the Indonesian legal system, known as the principle of legality. So far, the principle of legality is stated in Article 1 paragraph (1) of the Criminal Code (KUHP), which reads: "There is no act (felt) that can be punished other than based on the strength of the provisions of the criminal law that preceded it" (Situngkir, 2018). This principle implies that an act is a criminal act or a criminal act or an act that violates criminal law, only if an existing criminal provision determines that the act is a criminal act.

In order for a doctor to be punished for medical malpractice, two (2) things must be taken into consideration:

1. There must be an act that is against the law, or in other words there must be an element against the law;
2. The perpetrator is held accountable for acts against the law if there is an element of error in the form of intentional or negligent behavior.



In the Criminal Code, if a human or a doctor violates the provisions of the criminal law, then he can be criminally responsible because of a mistake in his soul and its relation (the mistake) with his behavior that can be punished, and this behavior can be blamed on the doctor's psychology. Errors are divided into 2 (two) forms, namely intentional (*dolus/opzet*) and negligence/omission (*culpa/schuld*) (Muhaling, 2019).

According to Memorie van Toelichting's explanation, the intention is "wanting and realizing" action and its consequences will occur (Erlandic, 2018). This means that someone who commits an action intentionally, must will or be aware of the action he is taking along with the consequences it will cause. Someone who acts because of coercion cannot be said to have done an act because of his own will.

In addition to intent, criminal responsibility is also based on negligence. However, not all negligence can become an offense, only negligence that results in material loss, injury, or even takes the life of another person that can be subject to an offense. The term negligence also does not have a uniform meaning. It is necessary to meet the conditions of negligence, which include not making assumptions as required by law and not exercising caution as required by law.

According to Danny Wiradharma, negligence is divided into two (two) gradations, namely mild negligence (*culpa lata*); This negligence is measured by comparing the actions of the perpetrator to those of other people with higher levels of skill; and gross negligence (*culpa lata*). This negligence was due to a blatant lack of caution (Kumajas, 2016).

Several articles listed in the Criminal Code can be imposed in cases of medical errors or malpractice, namely those related to intent and negligence/negligence. In the Criminal Code, these articles can be used by patients or their families to sue doctors for medical malpractice that they are suspected of having committed. Articles relating to 'intentional', for example:

1. Article 267 of the Criminal Code, concerning fake certificates.
2. Article 294 paragraph (2) of the Criminal Code, regarding obscene acts.
3. Article 304 and Article 531 of the Criminal Code, regarding letting someone who should be helped.
4. Article 322 of the Criminal Code, regarding violations of confidentiality by doctors.
5. Articles 299, 346, 347, 348 and 349 of the Criminal Code, concerning carrying out acts of abortion or assisting in carrying out abortions.
6. Articles 344 and 345 of the Criminal Code, regarding euthanasia.

As a first step to applying the articles above, it must be proven that there has been negligence, carelessness, or recklessness and must also have been proved that not meeting professional standards, service standards, and standard operating procedures has also been proven. Whether a doctor is guilty or not is measured by whether the medical action meets medical service standards, standard operating procedures and whether there is a 'contribution negligence' from the patient. Apart from that, does the doctor's ability meet medical abilities in general (average ability) or professional standards, as well as whether the doctor's actions do not violate the medical code of ethics (Kumajas, 2016).

A doctor may be disciplined administratively for violating state administrative law, such as practicing without a permit, acting contrary to his permit, or if his permit has expired. They may also practice without making clear records of their patients. Administrative law violations in medical practice are basically violations of medical practice administrative law obligations. Administrative obligations in medical practice can be in the form of administrative obligations related to authority before doctors perform medical services and administrative obligations when doctors are providing medical services. Based on the two forms of administrative obligations above, there are also two forms of administrative violations, namely:

1. Violation of administrative law regarding the authority to practice medicine.
- In Law Number 29 of 2004 concerning Medical Practice, several requirements are stipulated for doctors to obtain the authority to practice medicine, including:
- a. Have a registration certificate (STR);
 - b. Specifically for doctors who graduated from abroad who practice in Indonesia, they must pass an evaluation;
 - c. Have a license to practice (SIP).



2. Administrative violations regarding medical services.

According to Article 51 of Law Number 29 of 2004, concerning Medical Practice, doctors are required to fulfill 5 (five) obligations when practicing medicine:

- a) provide medical services following professional standards and standard operating procedures as well as the medical needs of patients.
- b) refer the patient to another doctor who has better expertise or ability, if he is unable to carry out an examination or treatment.
- c) keep everything he knows about the patient a secret, even after the patient dies.
- d) carry out emergency assistance based on humanity, unless he is sure that someone else is on duty and can do it.
- e) increase knowledge and follow the development of medical science.

This is following the doctor's obligations to himself contained in the Indonesian Code of Medical Ethics. This obligation is indirectly related to medical malpractice. Doctors can make practice mistakes due to a lack of knowledge as well as carelessness or carelessness or carelessness (Haiti, 2017).

Specifically, Article 64 of Law no. 29/2004 states that the Indonesian Medical Discipline Honorary Council (MKDKI) receives complaints and is tasked with examining and deciding whether a doctor violated medical disciplines and imposing sanctions for it. The MKDKI will forward the complaint to the Indonesian Doctors Association (IDI) if a violation of medical discipline is found, and the IDI will take action against the doctor. According to Article 69 paragraph (3) of Law Number 29 of 2004, disciplinary sanctions imposed by MKDKI include written warnings and recommendations for the revocation of registration certificates or practice permits.

There is legal protection for victims of medical errors or malpractice under Law Number 8 of 1999 concerning Consumer Protection. The arrangement requires doctors to provide compensation to consumers who have been victims of malpractice. As a result of errors or negligence in their health services or malpractice perpetrated by doctors as business actors and arrangements for the application of criminal law provisions accompanied by additional punishment.

The right to claim compensation for malpractice victims aims to protect everyone from the consequences both physical and non-physical of errors or negligence by health personnel (in this case doctors). This protection is very important because the negligence or error of the doctor may cause pain, injury, disability, death, or damage to body and soul. The form of legal protection for victims of medical malpractice is regulated by Law 36 of 2009 concerning Health, which namely grants victims of malpractice rights to hold doctors accountable for committing medical malpractice. It provides compensation for losses arising from doctor's errors or negligence, through civil lawsuits for damages or through a combination of criminal prosecution and compensation claims in the criminal court process.

The form of legal protection for victims of medical errors or medical malpractice is regulated in Law Number 29 of 2009 concerning Medical Practice, namely in the form of granting rights to victims of malpractice to make legal efforts to complain to the Chairman of the Indonesian Medical Discipline Honorary Council, which can also simultaneously take legal action in criminal law or civil law to court and grant authority to the Indonesian Medical Discipline Honorary Council (MKDKI) to issue decisions imposing disciplinary sanctions on doctors who are proven guilty.

3. CONCLUSION

A doctor is considered to be engaging in an unlawful act if he or she performs a medical action contrary to the law without the consent of the patient. The doctor's obligation to provide medical services to patients means that the doctor accepts responsibility if something goes wrong. In general, the medical profession has two types of responsibilities: ethical responsibilities and legal responsibilities. Medical action errors are seen from the perspective of civil law from two theories, namely breach of contract (default) and negligence, as well as from the perspective of criminal law in committing a medical action error. Generally, errors can be defined by the intent (*dolus/opzet*) and negligence/omissions (*culpa*) that are also considered elements of not meeting medical professional standards, service standards, and standard operating procedures. Then the perspective of administrative law; Judging from administrative violations committed by doctors, this legal violation can be seen from administrative violations regarding the authority to practice medicine and

administrative violations regarding medical services. Based on Law 36 of 2009 concerning Health, namely in the form of granting rights to victims of malpractice to hold doctors responsible for medical malpractice, in order to compensate for loss caused by doctor's errors or negligence, civil compensation claims may be filed or combined criminal prosecutions pursued. Additionally, the Indonesian Medical Discipline Honorary Council (MKDKI) may issue decisions imposing disciplinary sanctions on doctors who are proven guilty, allowing the council to make compensation claims in criminal proceedings before the court.

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