

## JURIDIC REVIEW ON CRIME OF MEDICAL MALPRACTICE

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### Abstract

Research objectives are certain things to be achieved in a study. The research objectives will provide direction in the implementation of the research. The objectives of this research are 1). To find out the regulation regarding medical malpractice in the Indonesian legal system. 2). To obtain answers to problems regarding the juridical provisions on the occurrence of medical malpractice in accordance with the Indonesian legal system. The results of this study are the implementation of granting remissions for prisoners of criminal acts of corruption in Correctional Institutions has been carried out properly in accordance with applicable laws and regulations, but with the policy of the Minister of Law and Human Rights of the Republic of Indonesia concerning a moratorium on granting rights to prisoners of criminal acts of corruption, which was followed up by the issuance of a letter Circular of the Director General of Corrections, it can be concluded that remissions for convicts of criminal acts of corruption will be eliminated. However, the Penitentiary still proposes general remission (August 17) and special remission (Eid Al-Fitr) in 2012 on the grounds that the inmates have fulfilled the requirements. the requirements are in accordance with the provisions of Government Regulation Number 28 of 2006 concerning Terms and Procedures for the Implementation of the Rights of Correctional Inmates. The moratorium on granting remissions for convicts of criminal acts of corruption is contrary to the correctional system. Remission is a right for every convict and criminal child, remission is a form of government responsibility in fulfilling the rights of prisoners in prison.

Keywords: *Juridical Review, Crime, Medical Malpractice*

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### 1. INTRODUCTION

Indonesia is the largest archipelagic country in the world consisting of 17,508 islands, with a population of 222 million in 2006, and the fourth most populous country in the world. Indonesia's territory stretches for 3,977 miles between the Indian Ocean and the Pacific Ocean. Indonesia's land area is 1,922,570 km<sup>2</sup> consisting of non-water land: 1,829,570 km<sup>2</sup> and watery land: 93,000 km<sup>2</sup> and has a water area of 3,257,483 km<sup>2</sup> ([http://id.wikipedia.org/wiki/Geografi\\_Indonesia](http://id.wikipedia.org/wiki/Geografi_Indonesia)).

The essence of national development is the development of Indonesian people as a whole and the development of Indonesian society as a whole. National development is development of the people, by the people, and for the people carried out in all aspects of the nation's life, including comprehensive and integrated health development supported by the national health system. To achieve this health development, a sustainable development effort is carried out which is a series of development that is comprehensively directed and integrated in the field of health services.

### Research purposes

Research objectives are certain things to be achieved in a study. The research objectives will provide direction in the implementation of the research. The objectives of this research are:

1. Objective Objective

- a) To find out the regulation regarding medical malpractice in the Indonesian legal system.
- b) To obtain answers to problems regarding the juridical provisions on the occurrence of medical malpractice in accordance with the Indonesian legal system.

#### 2. Subjective Goals

- a) To increase the author's knowledge in the field of State Administrative Law, especially medical malpractice in the Indonesian legal system.
- b) To complete the requirements to obtain a bachelor's academic degree in the field of Law at the Faculty of Law, Sebelas Maret University, Surakarta.

## 2. LITERATURE REVIEW

### 2.1. Medical Malpractice

The implementation of medical practice faces many obstacles, one of which is known as medical malpractice. The absence of a normative law (Law) that regulates medical malpractice makes it difficult to prove medical malpractice which of course causes harm to the victim. This is also detrimental to the health workers, because there are no clear provisions on how the criteria for medical treatment are declared as medical malpractice. In principle, medical malpractice can be prevented if the health workers comply with the rules of medical practice properly. According to Patricia M. Danzon,

### 2.2. Juridical Provisions for the Occurrence of Medical Malpractice in accordance with the Indonesian Legal System

Medical malpractice in addition to being criminally prosecuted can also be prosecuted civilly in the form of compensation payments. The legal basis for civil or civil malpractice is a therapeutic transaction or contract between a doctor and a patient, namely the doctor-patient relationship, where the doctor is willing to provide medical treatment or care to the patient and the patient is willing to pay a fee to the doctor. The provisions related to the Civil Code are Article 1366 of the Civil Code . " Everyone is legally responsible for only losses caused by his actions, but also losses caused by negligence or carelessness" (Kayus Kayowuan Lewolebah, 2008:185)

## 3. RESEARCH METHODS

Legal research is a process to find the rule of law , legal principles, and legal doctrines in order to answer the legal issues faced (Peter Mahmud Marzuki, 2005:35). Legal research is conducted to find solutions to legal issues that arise. Therefore, legal research is a research within the framework of know-how in law. The results achieved are to provide prescriptions in solving problems encountered (Peter Mahmud Marzuki, 2005:41). In this study the authors used the following research methods.

### Types of research

The type of research used by the author in compiling this research is normative legal research or library law research. Normative legal research has the same definition as doctrinal research, namely research based on legal materials that focuses on reading and studying primary and secondary legal materials (Johnny Ibrahim, 2006:44). So the authors in this study will examine the juridical review of medical malpractice in the Indonesian legal system.

## **4.RESULTS AND DISCUSSION**

### **4.1 Malpractice in General in the Criminal Code and the Law**

The term malpractice comes from the word "mal" which means bad and the word "practice" which means action. Thus it can be argued that malpractice means an act or bad practice, in other words it is a negligence (bad practice) of the professions who carry out their profession. J. Guwandhi, formulating medical malpractice is the negligence of a doctor or nurse or other health worker to apply his level of skill and knowledge in providing treatment and care services to a patient which is usually applied in treating and caring for sick or injured people in the same area. According to J. Guwandhi, the arrangements related to medical malpractice contained in the Criminal Code include:

- Article 322 of the Criminal Code, namely divulging medical secrets complained of by patients.
- Article 359 of the Criminal Code, namely because a mistake causes the death of a person.
- Article 360 of the Criminal Code, namely because of his mistake causing someone to be seriously injured and injured in such a way that he becomes sick.
- 361 of the Criminal Code, namely if the crime is committed in carrying out a position or job.
- Article 386 of the Criminal Code provides or manufactures counterfeit drugs.
- Article 531 of the Criminal Code, namely not providing assistance to people who are in a state of death.

### **4.2. Legal Position in the Relationship between Health Workers and Patients**

Mulyohadi Ali stated that patients (medical service clients) are people who need the help of doctors or health workers because of their illness, and health workers are people who are asked for help because of their professional abilities which are considered capable of treating diseases. Judging from the aspects of the legal principles that apply in Indonesia, the relationship between doctors or health workers and patients themselves is based on the relationship of balance, justice, benefits, and the protection and safety of the patients themselves. Based on Law Number 29 of 2004 concerning Medical Practice, in the provisions of Article 2 it explains that: "The implementation of medical practice is carried out based on Pancasila and is based on scientific values, benefits, justice, humanity, balance, and patient protection and safety."

Changes in the pattern of relationships between doctors or health workers which were originally vertical-paternalistic (positions or positions that were not balanced between doctors or health workers and patients) being a horizontal-contractual relationship (the relationship between doctors and patients having the same or equal position) also makes the position between patients and health workers balanced, in the sense of equality of position which is a pattern of behavior. The relationship between health workers and patients in terms of criminal law is based on actions taken by health workers, which actions will give birth to a legal relationship, on the one hand it gives rise to rights, and on the other hand requires the fulfillment of obligations, namely in the form of demands for accountability.

**Rights and Obligations of Health Workers and Patients** The rights and obligations of a person are determined and attached based on the duties and authorities that exist in a person. Duties and authority are not only defined in relation to the work environment in an

institution, but can also be interpreted as existing and inherent in a person as a creature created by God Almighty.

Responsibilities of Health Workers The responsibilities of health workers themselves are divided into 2 (two) namely:

**a. Responsibilities of the medical profession**

Charged on every medical personnel, including the doctor's responsibility. Regarding errors in the form of intentional and omission by medical personnel, including doctors, in providing health services, it is not the responsibility of the hospital, because hospitals are not directly involved in carrying out medical actions, those who act directly in carrying out medical actions are medical personnel, including doctors. Medical actions carried out by medical personnel, in this case doctors, are personality person relationships between each party (doctor-patient), where the risks and consequences of actions that have been agreed upon by both parties are entirely the responsibility of each.

**b. Nursing Responsibilities**

An action will be the responsibility of a nurse who carries out her professional duties if there are errors and omissions that can result in losses suffered by the patient, both physically and non-physically, fully carried out by the nurse. This is not the responsibility of the hospital or the doctor, except in the case of the doctor who gave the order. If so, then there are two possibilities that can be imposed on the doctor concerned. First, in the event that a nurse takes medical action on a patient on the orders of a doctor, and the action of the nurse results in a loss, both physical and non-physical, the doctor concerned can only be charged as an act of participation, as regulated in the provisions of Article 55 of the Criminal Code. Second, a doctor can be qualified as an intellectual actor when the nurse's actions are only following orders from the doctor concerned, without any other efforts being made. The implementation of criminal law aspects in health service efforts by nurses is related to the nurse's responsibilities in health service efforts in hospitals.

If these provisions are applied to nurses who work in hospitals, the age requirement of 18 years must be fulfilled because nurses with SPK education are generally 18 years old at the time of graduation with the assumption that they enter elementary school at the age of 16 years. Associated with the function as a nurse, the nurse has the ability to be responsible in carrying out an independent function in nursing care, while in a collaborative function the responsibility is on the head of the health team and in a dependent function the responsibility lies with the doctor who is authorized to perform certain medical actions on the patient.

**5.CONCLUSION**

Based on the results of the research that the author did, the following conclusions can be drawn:

- a. Until now, Indonesia does not yet have a law that implicitly regulates medical malpractice, there are regulations regarding doctor errors that cause prohibitions and forms of doctor actions that can be subject to criminal, civil and administrative sanctions for causing harm to patients. Causes health workers and recipients of health services not to know the clear criteria for medical malpractice so that if there is a loss, both parties do not get legal protection.
- b. From the Indonesian legal system above, not all Indonesian legal systems are related to medical malpractice. Only a few legal systems regulate it, namely Civil Law listed



in the Civil Code, Criminal Law listed in the Criminal Code and Administrative Law. Judging from the hierarchy of the Indonesian legal system, not all of them are related to medical malpractice. In the 1945 Constitution there is nothing about medical malpractice. While the existing laws do not regulate explicitly and clearly, but some describe the mistakes of doctors that cause harm to patients, including: Law No. 23 of 1992, Law No. 29 of 2004, Law No. 36 of 2009, Law No. 44 of 2009 The UUPK provides legal remedies for patients who are victims of medical malpractice who can sue for legal remedies to obtain justice. Regulations that are not included in the hierarchy of the Indonesian legal system but are related to medical malpractice include: Ministerial Regulation Number 585/Menkes/Per/IX/1989 concerning Approval of Medical Actions, Regulation of the Minister of Health of the Republic of Indonesia Number 512/Menkes/Per/IV/2007 concerning Practice License and Implementation of Medical Practice, Regulation of the Minister of Health of the Republic of Indonesia Number 269/Menkes/Per/III/2008 concerning Medical Records.

- c. There is no specific regulation regarding medical malpractice to date, so the legal system that can be used to ensnare allegations of medical malpractice is Law Number 8 of 1999 concerning Consumer Protection. By basing on patients as consumers and doctors, hospitals as health service providers or producers. If the producer violates the patient's rights, a claim for compensation can be made to the producer who has caused consumer losses.
- d. From the law above, there is a law that is no longer valid, namely Law No. 23 of 1992 concerning Health. This is based on Article 85 of Law Number 29 of 2004 concerning Medical Practice which provides the formulation: "With the ratification of this Law, Article 54 of Law Number 23 of 1992 concerning Health relating to doctors and dentists is declared no longer valid." And the enactment of Law Number 36 of 2009 concerning Health, in Article 204 reads: "At the time this Law comes into effect, Law Number 23 of 1992 concerning Health (State Gazette of the Republic of Indonesia of 1992 Number 100, Supplement to the State Gazette of the Republic of Indonesia Number 3495) is revoked and declared invalid.

## REFERENCES

- Adam Chazawi. 2007. *Medical Malpractice* . Malang: Bayumedia.
- Agus Irianto. 2006. *Juridical Analysis of Physician Liability Policy In Malpractice*. Surakarta: Faculty of Law, Sebelas Maret University.
- Amiek Sumindriyatmi, 2007. *Introduction to Indonesian Law* . Surakarta: Faculty of Law, Sebelas Maret University, Surakarta.
- Amin, M. (2022). Toward the Specific Criminal Procedures for Disabled Persons in Indonesia. *International Journal of Social Science, Education, Communication and Economics (Sinomics Journal)*, 1(2), 131–140. <https://doi.org/10.54443/sj.v1i2.13>
- Anonymous. Indonesian Geography. ([http://id.wikipedia.org/wiki/Geografi\\_Indonesia](http://id.wikipedia.org/wiki/Geografi_Indonesia)) [5 October 2010 at 16.00].
- library.uns.ac.id digilib.uns.ac.id commit to user
- \_\_\_\_\_. ([http://www.google.co.id/search?q=\"pengertian+system\"](http://www.google.co.id/search?q=\)) [October 5, 2010 at 16.05].
- \_\_\_\_\_. ([www.indosiar.com/tags/malpractice](http://www.indosiar.com/tags/malpractice)) [5 October 2010 at 16.23].
- \_\_\_\_\_. [http://id.wikipedia.org/wiki/Indonesian\\_Law](http://id.wikipedia.org/wiki/Indonesian_Law). [October 9, 2010 at 7:56 pm].
- \_\_\_\_\_. [pusatmedis.com/medication\\_of\\_medical\\_70.htm](http://pusatmedis.com/medication_of_medical_70.htm)). [October 10, 2010 at 12:40 WIB].
- Bahder Johan Nasution. 2005. *Health Law and Physician Liability*. Jakarta: PT Rineka Cipta.
- Bryan A Garner. 2004. *Black Law Dictionary Eight Edition* . West: Thompson.

- Danny Wiradharma. 1996. *Medical Law* . Jakarta: Literature Binarupa.
- Faculty of Medicine, University of Indonesia. 2008. *Indonesian Medical Dictionary* . Jakarta: University of Indonesia Press.
- Hans Kelsen, 2007. *Pure Legal Theory Basics of Normative Law* . Bandung: Nusamedia&nuances.
- Wujoso Day. 2008. *Legal Analysis of Medical Action* . Surakarta: UNS Press.
- J. Guwandi. 2006. *Alleged Medical Malpractice and Draft RPP "Therapeutic Agreement Between Doctor and Patient"*. Jakarta: Faculty of Medicine, University of Indonesia.
- Johnny Ibrahim. 2006. *Theory and Research Methodology of Normative Law* . Malang: Bayumedia.
- Kasimin. www.bantuan Hukum.info, malpractice of nursing staff. [October 8, 2010 at 20:00].
- Kayus Koyowuan Lewloba. 2008. "Malpractice in Health Services (Medical Malpractice)". *Build Widya* . Vol. 19, No. 3. Jakarta.  
<http://jurnal.pdii.lipi.go.id/index.php/Search.html?act=tampil&id=53789&idc=21> [March 14, 2011 at 20:00].
- Lilik Purwastuti Yudaningsih. 2007. Juridical Review of Medical Malpractice Seen from the Aspect of Criminal Law. *Forum Law Magazine medicine* . Vol. 15, No. 1. Jambi.  
<http://jurnal.pdii.lipi.go.id/index.php/Search.html?act=tampil&id=53569&idc=21> [14 March 2011 at 20:50].
- library.uns.ac.id digilib.uns.ac.id commit to user
- M. Jusuf Hanafiah. 1999. *Medical Ethics and Health Law*. Jakarta: EGC Medical Book Publisher ..
- Patricia M Danzon. 1991. "Liability for Medical Malpractice". *Journal of Economic Perspectives* . Vol 5, No. 33. Pennsylvania.  
[http://hc.wharton.upenn.edu/danzon/html/CV%20pubs/1991\\_Danzon\\_LiabilityForMedicalMalpractice\\_JEconPerspectives5.3.pdf](http://hc.wharton.upenn.edu/danzon/html/CV%20pubs/1991_Danzon_LiabilityForMedicalMalpractice_JEconPerspectives5.3.pdf). [March 14, 2011 at 19:00].
- \_\_\_\_\_ . 2011. "Tort Reform: The Case Of Medical Malpractice". *Oxford Review of Economic Policy Ltd and Oxford University Press* . Vol. 10 No. 1. Oxford. <http://oxrep.oxfordjournals.org/content/10/1/84.extract>. [ March 15, 2011 At 16.00].
- Peter Mahmud Marzuki. 2005. *Legal Research* . Jakarta: Kencana Prenada Media Group.
- Ridwan HR. 2006. *State Administrative Law* . Yogyakarta: UII Press.
- R. Subekti. 1999. *The Civil Code* . Jakarta: PT Pradnya Paramita.
- Salim HS. 2003. *Contract Law Theory and Contract Drafting Techniques*. Jakarta: Sinar Graphic.
- Satjipto Rahardjo. 2000. *Legal Studies* . Bandung: PT Citra Aditya Bakti.
- Sudikno Mertokusumo. 1999. *Knowing the Law (An Introduction)*. Yogyakarta: Liberty.
- The Development and Development Center for the Dictionary of the Language Center. 1999. *Big Indonesian Dictionary Second Edition* . Jakarta: Balai Pustaka.
- The Development and Development Center for the Dictionary of the Language Center. 2005. *Big Indonesian Dictionary Third Edition* . Jakarta: Balai Pustaka.
- Tutik Quarter Point. 2010. *Legal Protection for Patients* . Jakarta: Achievement of the Publisher Library.
- YES Trianan Ohoiwutun. 2007. *Anthology of Medical Law*. Malang: Bayumedia.  
library.uns.ac.id digilib.uns.ac.id commit to user.