

LEGAL RESPONSIBILITY OF DOCTORS WHO WITH HOLD THERAPY IN PATIENTS WHO DO NOT PAY FOR MEDICAL TREATMENT IN THE HOSPITAL

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Abstract

Every year in Indonesia, hundreds of patients run away due to medical financing. No payment for medical services, consumables, and infrastructure costs used for the treatment of these patients causes material and immaterial losses for health workers and hospitals. As a result of this rampant, several hospitals, especially private hospitals, have implemented a down payment system. The problem and purpose of this study is to analyze the legality and legal responsibility of doctors who stop therapy for patients who do not pay for medical treatment. This study uses normative research methods with statutory approaches, conceptual approaches and comparative approaches. Doctors in carrying out their medical practice have the right to receive compensation for services and patients have the obligation to pay fees for the services they receive in accordance with the Medical Practice Law. If the patient does not fulfill his obligations to pay for the services he has received, the hospital and the doctor can sue the patient for default. If the patient does not fulfill his obligations to pay for the services he has received, the hospital and the doctor can sue the patient for default. If in the process of discontinuing therapy causes the patient to fall into a state of serious injury, disability or death, doctors and hospitals may be subject to criminal responsibility, civil and administrative liability. If the patient does not fulfill his obligations to pay for the services he has received, the hospital and the doctor can sue the patient for default. If in the process of discontinuing therapy causes the patient to fall into a state of serious injury, disability or death, doctors and hospitals may be subject to criminal responsibility, civil and administrative liability.

Keywords: legal responsibilities of doctors; termination of medical therapy; costs of medical care

INTRODUCTION

Health is a fundamental right of every individual and every citizen has the right to receive health services. In the context of human rights, health is a right that must be respected, upheld and protected for every citizen. Therefore, all activities and efforts to improve public health must be carried out with the principles of non-discrimination, participation, protection and sustainability. These principles have a very important role in the formation of human resources in Indonesia.¹

The 1945 Constitution of the Republic of Indonesia mandates that health insurance for the community, especially for citizens who are poor and unable to afford, is a responsibility of central and regional governments. In the 1945 Constitution of the Republic of Indonesia, Article 34 paragraph 2 states that the state is developing a Social Security System for all Indonesian people. The government implements the 1945 Constitution of the Republic of Indonesia by issuing Law No. 40 of 2004 concerning the National Social Security System (SJSN) to provide comprehensive social security for everyone in order to meet the basic needs of a decent life towards the realization of a prosperous, just and prosperous Indonesian society. Law No. 36 of 2009 concerning Health also emphasizes that everyone has the same rights in obtaining access to resources in the health sector and obtaining safe, quality and affordable health services.

In accordance with Law No. 40 of 2004, SJSN is implemented with a social insurance mechanism where each participant is required to pay contributions to provide protection against socio-economic risks that befall participants and/or their family members. In SJSN, there is National Health Insurance (JKN) which is a form of government commitment to implementing health insurance for the entire Indonesian people. The problem is, not all citizens are able to pay the national health insurance contributions. The government itself is committed to helping underprivileged residents with the JKN program consisting of Contribution Assistance Recipient Participants (PBI). In Government Regulation Number 101 of 2012 concerning Recipients of Health Insurance Contribution Assistance, Among others, it was stated that data on the results of data collection on the poor and disadvantaged citizens which was carried out by the institution that organizes government affairs in the field of statistics (BPS) was verified and validated by the Minister of Social Affairs to be used as integrated data. The unified data stipulated by the Minister of Social Affairs is broken down by province and district/city and forms the basis for determining the national number of PBI Health Insurance. The Minister of Health registered the national number of PBI Health Insurance as participants in the Health Insurance program with BPJS Health. The unified data stipulated by the Minister of Social Affairs is broken down by province and district/city and forms the basis for determining the national number of PBI Health Insurance. The Minister of Health registers the national number of Health Insurance PBIs as participants in the Health Insurance program with BPJS Kesehatan. The unified data stipulated by the Minister of Social Affairs is broken down by province and district/city and forms the basis for determining the national number of PBI Health Insurance. The Minister of Health registered the national number of PBI Health Insurance as participants in the Health Insurance program with BPJS Health.

The Social Security Administering Body (BPJS) for Health noted that there were 248.77 million National Health Insurance (JKN) participants as of December 31 2022. This number is equivalent to 90.73% of Indonesia's entire population of 274.20 million in

¹Kyagus Badius Sani, Legal Review of Dentistry Professional Education in the Implementation of Health Services, *Journal of Health Law and Ethics*, Volume 2 Number 1, 2022, p.15-31.

2022.² So there are still around 28.01 million Indonesian citizens who do not have health insurance/health insurance. However, if you count the number of participants who died and cards that are no longer active, based on data from the Central Statistics Agency (BPS), only 69.62% of Indonesia's population will have health insurance in 2022.³ This means that in reality there are 91.84 million citizens who do not have health insurance.

Health services itself can be provided by private hospitals and government hospitals. Private services are generally of better quality, but the costs are higher and sometimes unaffordable. Meanwhile, services provided by the government are cheaper, but often have overcapacity, which sometimes affects the quality of service. However, the principle that must be adhered to is that health must remain oriented towards humanitarian services and the government must fulfill this. With the still high number of citizens who do not have national health insurance, it is not uncommon to encounter cases where patients are unable to pay for medical care when they go to hospitals, both public and private hospitals. This has led to an increase in cases of patients running away from hospitals because they are unable to pay for medical treatment.

The majority of patients who escaped were general patients who were not included in the criteria for Contribution Assistance Recipients (PBI). Every year, in every province in Indonesia, hundreds of patients flee because of medical funding. This case of a patient running away results in losses for the doctor, medical personnel who handle it, and the hospital. No payment for medical services, consumables and infrastructure costs used for the treatment of these patients causes material and immaterial losses for health workers and hospitals. For example, at the Dr. Mohammad Hoesin Central General Hospital (RSMH) Palembang, losses in 1 year due to 300 patients fleeing reached IDR 1.3 billion. The majority of patients who escaped were general patients who were not included in the criteria for Contribution Assistance Recipients (PBI). Every year, in every province in Indonesia, hundreds of patients flee because of medical funding.

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² Sarnita Sadya, "BPJS Health Participants Reach 248.77 Million People in 2022", in <https://dataindonesia.id/ragam/detail/peserta-bpjs-kesehatan-reach-24877-juta-jiwa-pada-2022>, Accessed on February 26, 2023 at 08.00 WIT

³ Shilvina Widi, "Almost 70% of Indonesia's Population Will Have Health Insurance by 2022", in <https://dataindonesia.id/ragam/detail/hampir-70-penduduk-indonesia-punya-jaminan-kesehatan-pada-2022>, Accessed on February 26 2023 at 08.30 WITA

immaterial losses for health workers and hospitals. For example, at the Central General Hospital Dr. Mohammad Hoesin (RSMH) Palembang, the loss for 1 year as a result of 300 patients running away reached IDR 1.3 billion. In every province in Indonesia, hundreds of patients have fled because of medical funding. This case of a patient running away results in losses for the doctor, medical personnel who handle it, and the hospital.

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As a result of this rampant, several hospitals, especially private hospitals, apply a system of prepayment / *systemdown payment*. This is intended to avoid losses to the hospital caused by the escape of patients. So it is not uncommon to find cases of stopping and delaying therapy in non-emergency patients who are not in critical condition/need immediate treatment, if they cannot pay for medical treatment/down payment for medical therapy.

Similar cases are also experienced in developing countries where the national health system is not comprehensive, for example in India it is also common to find patients who run away after their medical treatment is over. As a result, in several regions in India several different policies have been implemented to prevent this. There are hospitals that cannot carry out surgery/medical therapy if there is no payment in advance, there are also those that detain and bind patients who have recovered in the hospital until payment is paid, even the most extreme cases where there are cases of patients in India dying but His body cannot be retrieved until the family can pay the costs of his care while he is in care.⁵ This is where the conflict arose, even though health is the right of every human being, on the one hand not all Indian citizens have insurance policies or sufficient health funds to pay for their medical care so there is great concern about the escape of their patients. However, on the other hand, if the medical costs are not paid, of course health workers and hospitals in India will suffer losses.⁶

With the enactment of this policy in Indonesia and other developing countries where the national guarantee system is not yet comprehensive, of course there are several conflicting human rights conflicts. On the one hand, health is the basic right of every human being and all citizens have the right to obtain health services. But on the other hand, deep Article 50 letter d and Article 53 letter d of the Medical Practice Act) also states that doctors or dentists in carrying out their medical practice have the right to receive fees for services and patients have the obligation to pay fees for the services they receive. The aim of this research is to analyze the legal responsibility of doctors who stop therapy for patients who do not pay the cost of medical care.

⁴ BNJ Kompas, 300 Patients Escape from the Hospital Do Not Want to Pay, in <https://nasional.kompas.com/read/2010/02/02/19553679/~Regional~Sumatera>. Accessed on February 24 2023 at 20.00 WIT

⁵ Times India, Can hospitals detain patients for unpaid bills?, Dalam <https://timesofindia.indiatimes.com/india/can-hospitals-detain-patients-for-unpaid-bills/articleshow/76402589.cms>, Accessed on June 30 2023 at 20.30 WITA

⁶ Sweta Dash, Despite Several Court Orders, Hospitals Stop Patients From Leaving Over Billing Issues, In <https://thewire.in/health/private-hospital-bills-patients-hostage>, Accessed on June 30 2023 at 20.00 WITA

RESEARCH METHODS

This research is normative juridical research. The normative juridical research method is library legal research carried out by examining library materials or secondary data. This research will use a statutory approach, a conceptual approach, and a comparative approach. The statutory approach (Statute Approach) is basically carried out by studying all statutory regulations related to the problem (legal issue) being faced. This approach is research that prioritizes legal materials in the form of legislation as basic reference material in conducting research.⁷

In this study a micro comparison will be used to compare with laws and regulations in India which have many similar cases. Some of the rules that will be compared include Article 21 of the Constitution of India and the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2002. However, due to the limited number of Indian laws that have been translated into English/Indonesian, several comparisons are made. we refer to several journals and books from India which have summarized some of the essence of discontinuing medical therapy in their country. The author does not make a one-to-one comparison, but thoroughly compares the core content of Indian legislation according to literary sources. Besides that, This conceptual approach is carried out when the researcher does not move from Saturn's existing laws. This is done because there is no legal rule for the problem at hand, so researchers need to conduct research on legal concepts originating from a particular legal system.

RESULT AND DISCUSSION

Doctors' responsibilities in carrying out their profession can be viewed from the perspective of ethics, criminal law, civil law, and professional discipline. In carrying out their profession, the medical profession has a code of ethics that must be followed by all members of the profession. The Indonesian Medical Ethics Code (KODEKI) was first drafted by the Indonesian Doctors Association (IDI) in 1969. KODEKI contains rules of professional ethics that are used as guidelines for ideal or optimal behavior, as well as to prevent irregularities in medical practice for practicing doctors. in Indonesia. Enforcement, supervision, and preparation of medical ethics are carried out by the Medical Ethics Honorary Council (MKEK).

MKEK is an important part of the IDI leadership structure at all levels. MKEK functions autonomously and is responsible for fostering, implementing, supervising, and assessing the implementation of medical ethics. Its duties also include handling member actions that violate the code of ethics, as well as maintaining honor and noble traditions in medical practice.⁸Sanctions given by MKEK are divided into four categories, namely:

1. Category 1 (one): Sanctions in the form of coaching only. This action aims to provide understanding and direction to members who violate medical ethics so they can improve their behavior.
2. Category 2 (two): Sanctions in the form of conviction without termination of membership. This sanction is given as an effort to raise awareness and improve the behavior of members who violate medical ethics.
3. Category 3 (three): Sanctions in the form of conviction with temporary termination of membership. In this case, members who violate medical ethics are temporarily suspended

⁷ Irwansyah and Ahsan Yunus, *Legal Research Choice of Article Writing Methods & Practices*, Mirra Buana Media, Yogyakarta, 2021, p.133-138

⁸ Indonesian Doctors Association, *Organizational Guidelines and Management of the Honorary Council Medical Ethics*, Jakarta, 2018, Article. 1 number 3

as a consequence of their actions. The purpose of this sanction is to provide a serious warning to members so that they improve themselves and comply with medical ethics.

1. Category 4 (four): Sanctions in the form of termination of permanent membership. This sanction is given if a member seriously and repeatedly violates medical ethics. Termination of membership aims to uphold discipline and maintain the integrity of the medical profession.

With these sanction categories, MKEK has an important role in upholding medical ethics and maintaining the quality and integrity of the medical profession.⁹

Criminal legal responsibility

According to J. Guwandi, medical malpractice can be divided into two groups, namely:¹⁰

1. Done deliberately, regulated by statutory regulations or *dolus*. In other words, malpractice in the narrow sense, for example intentionally having an abortion without a medical indication, performing euthanasia, giving a medical certificate whose contents are incorrect and so on.
2. Done intentionally or negligence or *culpa* or done because of negligence, for example neglecting patient treatment due to forgetfulness or carelessness so that the patient's disease gets worse or even dies.

The second group is more often interpreted as being careless, reckless, and not caring about the interests of other people. In fact, in a general sense, negligence is not considered unlawful unless it causes other people to suffer harm. As is the case in this thesis, if in the process of discontinuing therapy a patient causes the patient to fall into a state of serious injury, disability, or death, doctors and hospitals can be subject to criminal sanctions. In the Criminal Code, acts that cause other people to be seriously injured or die that are committed accidentally are formulated in Articles 359-360 of the Criminal Code, namely:

1. There is an element of negligence (*culpa*)
3. There are certain actions
4. There is a result of serious injury or death of another person
5. There is a causal relationship between the action and the result of the injury.

If the 4 (four) elements are compared with the elements of murder in Article 338 of the Criminal Code, it can be seen that the elements in numbers 2, 3, 4 of Article 359 are no different from the elements of murder in Article 338 of the Criminal Code. The only difference is in the element of error, namely in Article 359 the error is caused by a form of carelessness (*culpa*) while the error in Article 338 is murder in the form of intent (*dolus*).¹¹

Article 66 of the Medical Practice Law implicitly explains that, every person who experiences loss due to the actions of a doctor or dentist while practicing medicine can complain in writing to the Chairman of the Indonesian Medical Discipline Honorary Council (MKDKI) and at the same time does not eliminate each person's right to sue. civil damages to court. The interests of patients who are harmed by the doctor's actions can give rise to medical disputes. A doctor's legal liability arises when a medical dispute occurs due to the doctor's negligence. Medical negligence can be interpreted as the act of having to do or not do something. This difference in point of view can lead to a dispute between the patient and the doctor with a lawsuit or demand for rights against the doctor who has committed medical negligence. Negligence includes 2 (two) things, namely doing something that should not be

⁹ Indonesian Doctors Association, *Organizational Guidelines and Administration of the Medical Ethics Honorary Council*, Jakarta, 2018, Article. 29 number 1.

¹⁰ Sutarno, *Health Law: Euthanasia, Justice, and Indonesian Positive Law*, First Printing, Setara Press, Malanah, 2017, p.40-41

¹¹ Isfandarie Anny, *medical Malpractice And Risk*, Library Achievement, Semarang, 2005

done or not doing something that should be done. According to Keeton, negligence is an attitude that is considered by society to cause unreasonable danger and is classified as such because the person can imagine or should imagine that the action could result in another person having to bear the risk, and the nature of the risk is so serious, that it should be he acted in a more cautious manner. namely doing something that should not be done or not doing something that should be done. According to Keeton, negligence is an attitude that is considered by society to cause unreasonable harm and is classified as such because the person can imagine or should have imagined that the action could result in other people having to bear the risk, and the nature of the risk is so severe that it should he acts in a more cautious manner. namely doing something that should not be done or not doing something that should be done. According to Keeton, negligence is an attitude that is considered by society to cause unreasonable harm and is classified as such because the person can imagine or should have imagined that the action could result in other people having to bear the risk, and the nature of the risk is so severe that it should he acts in a more cautious manner.¹²

Likewise, if we compare medical risk with medical malpractice. Both medical risks and medical malpractice contain elements 2,3, 4 in Article 359, namely: There are certain forms of acts committed by doctors against patients, these actions both result in serious injury or death of other people, there is a causal relationship. However, there is one element that is different from medical risk and medical malpractice, that is, in medical risk, an element of negligence is not found, while in medical malpractice, an element of negligence is clearly found. In addition, specifically in health services, negligence is also associated with services that do not meet professional standards which in practice also need to be used to distinguish between medical risk and medical malpractice.¹³

We need to know that medical procedures do not always produce the results desired by both doctors and patients, even though doctors have tried their best. Because almost all medical actions are essentially abuses justified by law, it is very difficult to avoid the possibility of risk of injury or even death, especially with regard to anesthesia and surgery.

As explained above, criminal law adheres to the principle of "no crime without error". Furthermore, in Article 2 of the Criminal Code it is stated that "criminal provisions in Indonesian legislation are applied to anyone who commits a mistake". The formulation of this article determines that every person can be held criminally responsible for mistakes made. Based on this provision, the medical profession cannot be separated from the provisions of this article. What's more, a doctor in his daily work is always involved with actions regulated in the Criminal Code.¹⁴

Error comes from the word "*schuld*", which until now has not been officially recognized as a scientific term with a definite meaning, but has often been used in writings. The definition of error according to Pompe, is that an error has the mark of being reprehensible (*verwiltbaarheid*) which in essence does not prevent behavior that is against the law (*der wederrechtelijke gedraging*). Then the law is also explained in the formulation of positive law, where it means intentionality and negligence (*opzet en onachtzaamheid*), and the ability to take responsibility (*toerekenbaarheid*).¹⁵

The element of error is so important and becomes the main concern that there is an adage that developed in the Netherlands as the birthplace of the Indonesian Criminal Code (KUHP), namely "*geen straf zonder schuld*" which in Indonesian is translated as "no crime without guilt", and also the adage "*actus non facit reum, nisi mens sit rea*" which means that

¹² J. Guwandi, Medical Law, FKUI Publishing House, Jakarta, 2005.

¹³ Dhimas Panji. DOCTORS' LEGAL RESPONSIBILITIES IN PROVIDING HEALTH SERVICES TO PATIENTS. MAKSIGAMA Journal, Volume 13 Number 2 period November 2019 p. 125-137

¹⁴ Nasution, Bahder Johan, Doctor's Responsibility Health Law, Rineka Cipta, Jakarta 2005

¹⁵ Bambang Poernomo, Principles of Criminal Law, Ghalia Indonesia, Yogyakarta, 1982, p.135.

an action cannot make a person guilty, unless there is a wrong mental attitude, so that the mind is wrong or *mens rea* is the subjective error of a criminal offense, because it resides in the perpetrator of the criminal offense.¹⁶

Mistakes in a broad sense include intentional, negligent and accountable. All three are subjective elements of the terms of punishment or if we follow the group that includes the element of error in a broad sense into the definition of offense (*strafbaar feit*) as a subjective element of the offense, it is also added, that the absence of excuses is also the fourth part of the offense. Pompe and Jonkers also included "unlawful" as an error in a broad sense in addition to "intentional" or "error" (*schuld*) and can be accounted for (*toerekeningsvatbaarheid*) or Pompe's term *toerekenbaar*. But according to Pompe, breaking the law (*wederrechtelijkheid*) lies beyond breaking the law while intentional, negligence (*onachtzaamheid*) and being accountable lies within breaking the law. Then intentionally and negligently (*onachtzaamheid*) must be carried out unlawfully in order to fulfill the element of "mistake" in the broadest sense. Since 1930, the principle of "no crime without fault" (German: *Keine Strafe ohne Schuld*) has been introduced.¹⁷

Sometimes the content of the error above can be concluded to have 3 (three) parts, namely:

- 1) Regarding the ability to take responsibility (*toerekeningsvatbaarheid*) of the person who committed the act;
- 2) Concerning certain mental relations of the person who commits an act that is intentional or negligent (*dolus* or *culpa*);
- 3) About the absence of excuses/forgiveness (*schuld ontbreekt*).¹⁸

If in the process of discontinuing medical therapy due to the absence of payment for medical services to doctors and hospitals, elements/conditions that are at risk of causing disability and increasing the risk of death are found, then discontinuation of therapy may not be carried out. If the discontinuation of therapy is still carried out resulting in a record or death of the patient, the doctor may be subject to criminal articles due to intent or negligence (*dolus* or *culpas*). However, to determine the criteria for doctors to commit medical errors, do not only rely on errors in criminal law. Due to the criteria for determining a doctor's medical error, a series of proofs must first be passed within the scope of medical disciplines and medical ethics, all of which are carried out by way of a medical audit carried out by the Medical Committee at the Hospital, as stipulated in Article 49 of Law Number 29 of the Year 2004 concerning Medical Practice, as well as Minister of Health Regulation Number 755 of 2011 concerning the Implementation of Medical Committees in Hospitals. Apart from that, Indonesian Medical Council Regulation Number 4 of 2011 concerning Professional Discipline of Doctors and Physicians,

Therefore, before deciding to stop therapy for patients who do not pay for medical care, doctors and hospitals must determine whether there is urgency or emergency in the patient's condition. If discontinuation of therapy is carried out in these conditions, so that the patient falls into a state of disability, deteriorating, to death, of course, criminal sanctions can haunt doctors and hospitals.

Civil law responsibility

Civil law regulates medical treatment by doctors on patients based on a bond or relationship in an agreement called *inspanings verbentenis*. *Inspanings verbentenis* is an obligation to try optimally and earnestly in the process of treating or healing a patient's

¹⁶ Hasrul Buamona, Doctor's Criminal Responsibility in Medical Mistakes (215-238). Al-Mazahib, Volume 2, No. 2, December 2014

¹⁷ Andi Hamzah, Principles of Criminal Law Revised Edition, Rineka Cipta, Jakarta, 2008 p. 111-112.

¹⁸ Bambang Poernomo, Op.Cit. page 138

health. Mistreatment that causes harm is an unlawful act (*onrechtmatige daad*). This relationship is within a framework of legal (civil) engagement, so the doctor's treatment of patients forms civil liability.¹⁹

In essence, there are two forms of legal liability for hospitals in the civil sphere, namely liability for losses caused by default and liability for violating the law. Default is a situation where someone does not fulfill obligations based on an agreement. While acts against the law include the notion of doing or not doing something that violates the rights of others and is contrary to legal obligations or propriety in society, either to oneself or to other people's property. It can be concluded that the responsibilities of doctors and hospitals in civil law are:

1. The default regulated is regulated in Article 1239 of the Civil Code which reads "Every agreement to do something, or not to do something, must be resolved by providing reimbursement of costs, losses and interest, if the debtor does not fulfill his obligations."
 6. Unlawful acts under Article 1365 of the Civil Code which reads "Every act that violates the law and brings harm to another person, obliges the person who caused the loss because of his mistake to compensate for the loss."
 7. Neglecting obligations under Article 1367 paragraph (3) of the Civil Code.²⁰
- a. Civil Law Responsibilities for Default

Basically, civil law responsibility aims to obtain compensation for losses suffered by patients due to default or unlawful acts of doctors. According to civil law, a person can be considered to have committed a breach of contract if he did not do what he was promised to do, did what was done but was late, and carried out what was promised but not as promised. In connection with this problem, the default referred to in the civil liability of a doctor is not fulfilling the conditions stated in an agreement that has been made with the patient. Claims to pay compensation based on agreements or agreements that occur can only be made if there is indeed a doctor's appointment with the patient. The agreement can be classified as an agreement to do or do something. The agreement occurs when the patient calls the doctor or goes to the doctor and the doctor fulfills the patient's request to treat him. In this case the patient will pay an honorarium. Meanwhile, doctors actually have to perform a feat of curing patients from their illnesses. But healing is not certain that it can always be done, so a doctor only binds himself to provide assistance according to science. Meanwhile, doctors actually have to perform a feat of curing patients from their illnesses. But it is not certain that healing can always be achieved, so a doctor only commits himself to providing assistance according to science. Meanwhile, doctors actually have to perform a feat of curing patients from their illnesses. But healing is not certain that it can always be done, so a doctor only binds himself to provide assistance according to science.²¹

According to Wahyu Wiriadinata, a lawsuit based on breach of contract must first be proven that the doctor has actually entered into an agreement and then the doctor did not do what was agreed in the therapeutic transaction, such as: doing something that was prohibited from being done in the agreement; late in carrying out the agreed action; and mistakes in carrying out what has been agreed.²²

In a lawsuit for breach of contract, the patient must have proof of losses incurred due to failure to fulfill obligations (performance) in accordance with professional standards and

¹⁹ Zulhasmar Syamsu, et al, Civil Liability of an Internal Doctor Medical Practice Mal Case, *Lex Jurnalica*, 2015, 12(2), 268-455.

²⁰ Fred Ameln, *Capita Selecta Medical Law*, Graphicatama Jaya, Jakarta, 1991, p.71-72.

²¹ Aziz, Noor M, Legal Research Report on the Relationship between Medical Personnel, Hospitals and Patients, Ministry of Law and Human Rights, Jakarta, 2010

²² Wahyu Wiriadinata, "Doctors, Patients and Malpractice". *Journal of Legal Pulpit*. Volume 26 Number 1. February 2014, Gajah Mada University, Yogyakarta

standard medical operational procedures that apply in a therapeutic transaction. However, in practice, it is difficult to implement because patients do not have sufficient information regarding what medical actions should be the doctor's obligations in a therapeutic transaction. Apart from that, remembering that the therapeutic transaction between the doctor and the patient is an agreement based on maximum effort or effort (*inspanningverbintenis*).²³

b. Civil Legal Liability for Unlawful Actions

Lawsuits based on unlawful acts occur when doctors make mistakes or negligence in medical treatment which causes harm to patients. Article 1365 of the Civil Code states that any unlawful act that causes harm to another person requires the perpetrator responsible for the loss to compensate. Unlawful acts in its development can be expanded into four criteria. First, the act violates the rights of others. Second, the act is contrary to the legal obligations of the perpetrator. Third, the act violates the norms of morality. Fourth, the act is contrary to the principles of decency, thoroughness,²⁴

If a patient whose interests feel aggrieved wants to file a lawsuit based on an unlawful act against a doctor, the patient must prove that an unlawful act has occurred in accordance with the criteria mentioned above. In addition, the patient must also prove that there is a causal relationship between the unlawful act and the loss it has suffered. Lawsuits based on unlawful acts can be directed at the perpetrator of the act itself, if he made a mistake, negligence, and was not careful enough to cause harm to other people. In a lawsuit process, the basis of the lawsuit is deemed inappropriate if it is only based on Article 1365 of the Civil Code which reads "Any unlawful act that brings harm to other people,, but must also be based on Article 1366 of the Civil Code which reads "Every person is responsible not only for losses caused by his actions but also for losses caused by negligence or carelessness". This is due to the existence of theories or doctrines regarding medical malpractice acts carried out especially by doctors.²⁵

In Article 1367 of the Civil Code it is stated "Every person must provide accountability not only for losses resulting from their own actions but also for losses arising from the actions of other people under their supervision." In this case, a doctor must also be responsible for the actions carried out by nurses, midwives and so on.

There are 3 (three) theories relating to responsibility for unlawful acts committed by other people. First, theory of superior responsibility (*respondeat superior*, a superior risk bearing theory). Second, the theory of substitute responsibility that is not from superiors for people under their care. Third, the theory of vicarious responsibility for the goods under one's care.²⁶ In the Criminal Code, responsibility for unlawful acts committed by other people is regulated in more detail in Article 1367 paragraph (2) to (4) and Articles 1368 and Article 1369 of the Civil Code by mentioning parties who can be responsible for other people's losses, that is:

- 1) Parents and guardians of children who are minors, still living together, and over whom they exercise parental or guardian authority;
- 2) Employers and people who appoint others to represent their affairs, to their subordinates in carrying out the work assigned to them;
- 3) School teachers towards their students while under their supervision;

²³ Uswatun Hasanah. Loc city

²⁴ Widodo Tresno Novianto, "Legal Interpretation in Determining Elements- Elements of Medical Malpractice Negligence (Medical Malpractice)". Yustisia, Volume 4 Number 2. Surakarta Sebelas University March, 2015

²⁵ Aviyado Surya, JURIDICAL REVIEW OF CIVIL RESPONSIBILITY DUE TO DOCTOR'S MALPRACTICE IN THERAPEUTIC TRANSACTIONS UNDER LAW NUMBER 29 OF 2004 CONCERNING MEDICAL PRACTICE, Thesis, Faculty of Law, Sebelas Maret University, Surakarta 2021.

²⁶ Krisnadi Nasution, "Application of the Principle of Carrier Responsibility to Public Bus Passengers", Murnal Mimbar Hukum, Volume 26-No. 1, February 2014, p.57.

- 4) Head craftsman towards his craftsmen while they are under his supervision;
- 5) The owner of an animal or someone who uses an animal to carry out an action against the animal, whether the animal is under his or her supervision or not; And
- 6) The owner of a building if the building collapses, either in whole or in part.

Vicarious liability can be used in determining the party responsible or receiving a claim for compensation for an unlawful act. However, there are limitations in imposing responsibility on the basis of vicarious liability. This limitation is regulated in Article 1367 paragraph (5) of the Civil Code, which states that this responsibility ends if parents, school teachers or head craftsmen can prove that they cannot prevent the actions of the party for whom they are responsible.²⁷

With that, it can be concluded that *vicarious liability* is a responsibility imposed on a person for another person who is under their responsibility, which parties are regulated in the Civil Code, namely in Article 1367 paragraph (2) to (4) and Article 1368 and Article 1369. Meanwhile, there are limitations on the imposition of vicarious liability, that is, as long as the party responsible for the person under their responsibility, namely the parents, school teacher or head craftsman, can prove that they cannot prevent unlawful acts committed by the person under their responsibility.²⁸

Administrative legal responsibility

The legal responsibility of doctors in administrative malpractice is in the form of violations of administrative provisions in the implementation of medical practice. 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 violations of administrative law regarding the authority to practice medicine and administrative violations regarding medical services. Regarding the administrative violation, sanctions that can be given are written warnings, recommendations for revocation of registration certificates or licenses to practice; and or the obligation to attend education or training at medical educational institutions.²⁹

It is said to be an administrative malpractice violation if a doctor violates state administrative law. In the context of this thesis, examples of doctor's actions that are categorized as administrative malpractice are carrying out practice without a permit, carrying out medical procedures that are not in accordance with the permit they have, practicing using an expired permit, not making medical records, stopping therapy without going through the subpoena procedure. first.

CONCLUSION

Based on the studies and findings in this study, the authors can conclude that the legal responsibility of doctors who stop treating patients who do not pay medical expenses can be in the form of criminal, civil or administrative responsibility. Doctor's criminal responsibility in Articles 359-360 of the Criminal Code is defined as an unintentional action that results in serious injury or death of another person. The article regulates four elements that must be

²⁷ Anita Mihardja, Cynthia Kurniawan, Kevin Anthony, "Vicarious Liability: Current Perspective", South Tapanuli Education Institute Education and Development Journal, Vol.8-No.1, February 2020, p. 73-74.

²⁸ Anita Mihardja et al, Op cit, h. 77.

²⁹ Diana Haiti, THE RESPONSIBILITY OF A DOCTOR IN THE OCCURRENCE OF MEDICAL MALPRACTICE REVIEWED FROM ADMINISTRATIVE LAW, Bamalam Law Journal, Vol. 2, Issues 2, September 2017, Lampung, p.206

met, namely negligence (*culpa*), the existence of certain actions, the consequences of serious injury or death of another person, and the existence of a causal relationship between the act and the occurrence of the injury. The civil liability of doctors is related to two main concepts, namely default and unlawful acts. Default is regulated in Article 1239 of the Civil Code, while unlawful acts are regulated in Article 1365 of the Civil Code. Therefore, before deciding to stop therapy for patients who do not pay for medical care, doctors and hospitals must determine whether there is urgency and emergency in the patient's condition. If discontinuation of therapy is carried out in these conditions, so that the patient falls into a disabled, deteriorating condition, up to death, of course, criminal, civil and administrative sanctions can haunt doctors and hospitals.

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