

MEDICAL DISPUTE RESOLUTION BETWEEN PATIENTS AND MEDICAL PERSONNEL POST

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Abstract

The relationship between a doctor and a patient lies in the existence of an agreement on medical treatment and a therapeutic agreement. Violations of medical treatment agreements or therapeutic agreements can constitute unlawful acts or breaches of contract. Doctors in carrying out medical procedures are not free from errors or negligence. This doctor's error or negligence can also be qualified as an unlawful act. To determine whether or not a doctor made a mistake in carrying out a medical procedure, the patient, based on the provisions of Article 304 in conjunction with Article 305 paragraph (1) of Law Number 17 of 2023 concerning Health, can complain to the Disciplinary Enforcement Council for Medical and Health Personnel formed by the Minister of Health. However, until now the assembly has not been formed as intended in Article 304 paragraph (5). Furthermore, after going through the process at the Medical and Health Personnel Disciplinary Enforcement Council, patients or their families who experience losses due to medical procedures or actions of health personnel must resolve disputes through alternative dispute resolution outside of court. Alternative procedures for resolving medical disputes have not yet been regulated in government regulations. The research method used is normative juridical research. Settlement of medical disputes must be carried out in accordance with the provisions of Articles 304 and 310 of Law Number 17 of 2023 concerning Health. Meanwhile, legal protection for patients in hospitals is carried out based on the provisions of Article 184 in conjunction with Article 189 of Law Number 17 of 2023 concerning Health. If a dispute occurs between the hospital, doctor and patient, the dispute must be resolved through the Professional Disciplinary Enforcement Council for Health Personnel and Medical Personnel and the dispute must be resolved first before going to court. The provisions of Article 310 open up opportunities for various health mediation and arbitration institutions.

Keywords: medical dispute; patients; personnel post

INTRODUCTION

After the end of the Covid-19 pandemic in Indonesia, which was declared through Decree of the President of the Republic of Indonesia Number 17 of 2023 concerning Determination of the End of the Corona Virus Disease 2019 (Covid-19) Pandemic dated 21 June 2023, Law Number 17 of 2023 concerning Health was also issued. This law has regulated several provisions regarding the resolution of medical disputes between doctors and patients and between hospitals and patients. In the case of Benedict Alvaro Darren (7 years) who died due to a suspected diagnosis of brain stem death after undergoing tonsillectomy at Kartika Husada Hospital, Bekasi. It is known that there were eight doctors who were reported by the victim's family through their legal representatives to Polda Metro Jaya regarding alleged malpractice. This happens because until now Bekasi City is still hampered by limited medical personnel, especially specialist doctors. In fact, Bekasi does not have a specialist in pediatric neurology, pediatric surgery or pediatric cardiology. This condition becomes an obstacle when a patient comes to the hospital, but the hospital does not have medical personnel who are able to treat him. This reflects the case of Benedict Alvaro Darren, who had to wait and eventually died.

Based on the provisions of Article 189 Paragraph (1) letter j of Law Number 17 of 2023 concerning Health, hospitals have an obligation to implement a referral system. In the case of Benedict Alvaro Daren, who died at Kartika Husada Jatiasih Hospital, Bekasi City, there was no referral system so there were violations committed by the hospital. This gives rise to conflicts regarding allegations of malpractice.

Conflict usually occurs when the parties do not carry out their roles as expected by the other party. The patient as the party who needs help is in a weak position so that he often does not have a profitable bargaining position for himself. On the other hand, health service providers such as hospitals are often unable to establish good communication with patients and their families, as a result medical procedures are not carried out properly.

From a legal aspect, the relationship between a doctor and a patient is a relationship between a legal subject and a legal subject regulated by civil law rules which is basically carried out based on a mutual agreement, so in this relationship there are rights and obligations that are reciprocal in nature. The doctor's rights are the patient's obligations and the patient's rights are the doctor's obligations. A doctor, in carrying out his obligations towards patients, is always not free from errors and mistakes which can have negative consequences for the patient. In this case, the provisions on obligations and rights for hospitals apply.

Regulations governing the rights and obligations of hospitals and patients and doctors regarding health services in hospitals are regulated in the provisions of Article 184, Article 189 and Article 191 of Law Number 17 of 2023 concerning Health. However, the hospital's obligation to be responsible is removed in accordance with the provisions of Article 192, namely: "(1) The hospital is not legally responsible if the patient and/or his family refuse or stop treatment which could result in the patient's death after a comprehensive medical explanation. (2) Hospitals cannot be required to carry out their duties in saving human lives."

According to the provisions of Article 1 number 10 of Law Number 17 of 2023 concerning Health, a hospital is defined as follows: "Hospital is a Health Service Facility that provides complete individual Health Services through promotive, preventive, curative, rehabilitative and/or Health Services. palliative by providing inpatient, outpatient and emergency services." Article 1 number 8 contains the provisions: "Health Service Facilities are places and/or tools used to provide Health Services to individuals or communities with a promotive, preventive, curative, rehabilitative, and/or palliative approach carried out by the Central Government, Regional Government, and/or society".

Hospital, doctor and patient relationships that arise from therapeutic agreements sometimes give rise to disputes. A therapeutic transaction is a relationship between two parties who make an agreement, namely a doctor and a patient, where the doctor has the authority to

carry out medical procedures for the patient's recovery. Meanwhile, hospitals are authorized to provide health services. A therapeutic transaction is an agreement made by two or more people who bind themselves to another person who made the agreement, in accordance with the provisions of Article 1313 of the Civil Code. Therapeutic transactions result in the emergence of rights and obligations for the parties involved in them, namely hospitals, doctors and patients. These rights and obligations must be fulfilled by the three parties entering into the agreement. The basis for the validity of therapeutic transactions is Article 1319 of the Civil Code which states "for all agreements, whether they have a specific name or are not known by a specific name, they are subject to general regulations regarding engagements in general." In this way, therapeutic transactions are considered valid and in accordance with the agreement in Article 1320 of the Civil Code which states "for an agreement to be valid, four conditions are required, namely the parties' agreement, the parties' skills, the existence of a specific aim and the existence of a halal cause."

This research tries to examine the resolution of medical disputes that occur between hospitals and patients. Hospitals are one of the health service facilities regulated in the Health Law.

RESEARCH METHODS

This research is a normative juridical research with a legal principles and legal systematics approach, namely to find out the applicable principles and identify the resolution of medical disputes between patients and hospitals as well as the main meanings in the law of therapeutic agreements, legal rights and obligations. and legal relationships between patients and doctors and hospitals.

RESULT & DISCUSSION

Settlement of Medical Disputes that Occur between Hospitals and Patients

Settlement of medical disputes between patients and hospitals lies in the Health Law and therapeutic agreements between hospitals, doctors and patients. In carrying out therapeutic transactions in order to carry out further medical action regarding the patient's health, prior approval must be obtained. The implementation of therapeutic transactions begins when the patient comes to the hospital and submits a complaint about the illness he is suffering from.

Based on the provisions of Article 276, patients have the right: a. get information about his/her health; b. receive an adequate explanation regarding the Health Services they receive; c. obtain Health Services in accordance with medical needs, professional standards and quality services; d. refuse or agree to medical treatment, except for medical action necessary to prevent infectious diseases and control outbreaks or epidemics; e. gain access to information contained in medical records; f. ask for the opinion of Medical Personnel or other Health Personnel; and g. obtain other rights in accordance with the provisions of statutory regulations. In Article 277, patients have the following obligations: a. provide complete and honest information about their health problems; b. comply with the advice and instructions of Medical Personnel and Health Personnel; c. comply with the provisions applicable to Health Service Facilities; and d. provide compensation for services received.

Medical personnel as consultants will check by diagnosing the patient, whether their illness requires further medical action or not. Doctors taking medical action on patients must have prior approval, which is called informed consent, which is a requirement in carrying out therapeutic transactions.

Article 274 of the Health Law, Medical Personnel and Health Personnel in carrying out mandatory practice: a. provide health services in accordance with professional standards, professional service standards, standard operational procedures, and professional ethics as well as patient health needs; b. obtain consent from the patient or his family for the action to be

given; c. maintain patient health secrets; d. make and keep records and/or documents regarding examinations, care and actions taken; and e. refer patients to medical personnel or other health personnel who have the appropriate competence and authority.

In Article 274 letter b, there are provisions for approval of medical treatment or informed consent which is notification or approval from the patient or his family or other entitled person. There are several rules that must be considered when providing informed consent so that therapeutic transactions are not legally flawed, namely:

1. Not deceptive.
2. Do not try to pressure or there is no pressure from any party.
3. Does not create fear.

Medical personnel, namely doctors and dentists, must implement the provisions in Article 280 of the Health Law, namely: (1) In carrying out practice, Medical Personnel and Health Personnel who provide Health Services to Patients must carry out their best efforts. (2) The best efforts as intended in paragraph (1) are carried out in accordance with norms, service standards and professional standards as well as the patient's health needs. (3) Best efforts as referred to in paragraph (1) do not guarantee the success of the Health Services provided. (4) The practice of Medical Personnel and Health Personnel is carried out based on an agreement between Medical Personnel or Health Personnel and Patients based on the principles of equality and transparency.

Meanwhile, the rights of medical personnel and health workers are regulated in Article 273 of the Health Law, namely paragraph (1) Medical Personnel and Health Personnel in carrying out their practice have the right to: a. obtain legal protection as long as they carry out their duties in accordance with professional standards, professional service standards, standard operational procedures and professional ethics, as well as the patient's health needs; b. obtain complete and correct information from patients or their families; c. receive appropriate salaries/wages, service benefits and performance allowances in accordance with statutory provisions; d. obtain protection for safety, occupational health and security; e. obtain health insurance and employment guarantees in accordance with statutory provisions; f. receive protection from treatment that is not in accordance with human dignity, morals, decency and socio-cultural values; g. receive awards in accordance with statutory provisions; h. get the opportunity to develop themselves through competency, knowledge and career development in their professional field; i. refuse the wishes of patients or other parties that conflict with professional standards, service standards, standard operational procedures, codes of ethics, or statutory provisions; and j. obtain other rights in accordance with the provisions of statutory regulations. Paragraph (2) Medical personnel and health workers can stop health services if they receive treatment that is not in accordance with human dignity, morals, decency and socio-cultural values as intended in paragraph (1) letter f, including acts of violence, harassment and bullying.

Article 184 paragraph (1) of the Health Law states that hospitals carry out individual health service functions in the form of specialization and/or subspecialty. The rights and obligations of hospitals are regulated in Article 189 and Article 191. Article 189 paragraph (1) states that every hospital has the obligation to:

- a. provide correct information about Hospital services to the community;
- b. provide safe, quality, anti-discriminatory and effective health services by prioritizing the interests of patients in accordance with hospital service standards;
- c. provide emergency services to patients according to their service capabilities;
- d. play an active role in providing Health Services during disasters in accordance with their service capabilities;
- e. provide facilities and services for disadvantaged or poor communities;

- f. carry out social functions, among others, by providing service facilities for indigent or poor patients, emergency services without down payment, free ambulances, services for disaster and outbreak victims, or social services for humanitarian missions;
 - g. create, implement and maintain quality standards for Health Services in Hospitals as a reference in serving Patients;
 - h. maintain medical records;
 - i. provide adequate public facilities and infrastructure, including prayer facilities, parking lots, waiting rooms, facilities for people with disabilities, breastfeeding women, children and the elderly;
 - j. implementing a referral system;
 - k. refuse the patient's wishes which are contrary to professional and ethical standards as well as statutory provisions;
 - l. provide correct, clear and honest information regarding the patient's rights and obligations;
 - m. respect and protect the rights of Patients;
 - n. implement Hospital ethics;
 - o. have an accident prevention and disaster management system;
 - p. implementing government programs in the health sector, both regionally and nationally;
 - q. make a list of Medical Personnel who practice medicine or dentistry and other Health Personnel;
 - r. prepare and implement internal hospital regulations;
 - s. protect and provide legal assistance to all Hospital officers in carrying out their duties;
- And
- t. enforce the entire hospital environment as a smoking-free area.

Paragraph (2) states that violations of the obligations as referred to in paragraph (1) are subject to administrative sanctions in accordance with the provisions of statutory regulations.

Article 191 of the Health Law states that hospitals have the right to:

- a. determine the number, type and qualifications of human resources in accordance with the Hospital classification;
- b. receive compensation for services and determine remuneration, incentives and awards in accordance with statutory provisions;
- c. collaborate with other parties in developing services;
- d. receive assistance from other parties in accordance with statutory provisions;
- e. sue the party who caused the loss;
- f. obtain legal protection in implementing Health Services; And
- g. promote health services in hospitals in accordance with statutory provisions.

If a medical dispute occurs between the patient and the hospital, the steps the patient must take are:

1. If a dispute occurs between a patient and medical personnel and health and hospital personnel who are suspected of having committed negligence in carrying out their profession, this negligence must be resolved first through alternative dispute resolution outside of court. This is in accordance with the provisions in Article 310 of the Health Law.
2. If there is an alleged violation of medical personnel discipline, a complaint is submitted to the Indonesian Medical Discipline Honorary Council (MKDKI) because the Professional Disciplinary Enforcement Council for Medical Personnel and Health Personnel as intended in the provisions of Article 304 has not yet been formed. Article 304 of the Health Law reads: (1) In order to support the professionalism of Medical

Personnel and Health Personnel, it is necessary to enforce professional discipline. (2) In order to enforce professional discipline as referred to in paragraph (1), the Minister forms a council to carry out duties in the field of professional discipline. (3) The Assembly as intended in paragraph (2) determines whether there are violations of professional discipline committed by Medical Personnel and Health Personnel. (4) The assembly as intended in paragraph (2) can be permanent or ad hoc. (5) Further provisions regarding the duties and functions of the assembly as intended in paragraph (2) are regulated by Government Regulation.

3. If medical actions carried out by medical personnel or doctors who practice in hospitals cause losses or breaches of contract in the implementation of therapeutic agreements, a lawsuit for unlawful acts or a breach of contract can be filed.
4. If the decisions of the MKDKI and the Indonesian Medical Council (KKI) are detrimental to patients, then the MKDKI and KKI decisions can be challenged at the State Administrative Court.

According to the researcher, with the provisions of Article 310 of the Health Law which states that in the event that a medical worker or health worker is suspected of making a mistake in carrying out their profession which causes harm to the patient, the dispute that arises as a result of the mistake is resolved first through alternative dispute resolution outside of court. . This means that the settlement can be done by mediation between the hospital and the patient or the doctor and the patient. Patients who wish to complain about medical personnel/doctors, health workers and hospitals must first submit a letter of complaint to be followed up in mediation, negotiation or reconciliation as regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. In the past, before the Health Law came into effect, there was a provision in Law Number 44 of 2009 concerning Hospitals where complaints due to negligence that had to first undergo mediation could be addressed to the Hospital Supervisory Board at the provincial level. However, the existence of this agency is not effective and efficient in preventing malpractice, especially during the Covid-19 pandemic.

Legal Protection for Patients Undergoing Hospital Treatment

Legal protection for patients is contained in the provisions of Article 276 and Article 277 of the Health Law which contain the rights and obligations of patients. Furthermore, Article 305 paragraph (1) of the Health Law states that patients or their families whose interests are harmed by the actions of medical personnel or health workers in providing health services can complain to the assembly as intended in Article 304. Paragraph (2) states that complaints are referred to in paragraph (1) must at least contain:

- a. identity of the complainant;
- b. name and address of the practice of the Medical Personnel or Health Personnel and the time the action was carried out; And
- c. reason for complaint.

Article 306 explains:

- (1) Violations of discipline by Medical Personnel or Health Personnel as intended in Article 304 paragraph (3) are subject to disciplinary sanctions in the form of:
 - a. written warning;
 - b. the obligation to attend education or training at an education provider in the Health sector or the nearest teaching hospital that has the competence to conduct such training;
 - c. temporary deactivation of STR; and/or
 - d. recommendation for revocation of SIP.
- (2) The results of the examination as intended in paragraph (1) are binding on Medical Personnel and Health Personnel.

- (3) Medical personnel or health workers who have carried out disciplinary sanctions as intended in paragraph (1) which are imposed on suspicion of a criminal act, law enforcement officials prioritize resolving disputes using restorative justice mechanisms in accordance with the provisions of statutory regulations.

Article 307 explains: Decisions from the panel as intended in Article 304 can be submitted for double review to the Minister in the event that:

- a. new evidence discovered;
- b. misapplication of disciplinary violations; or
- c. there is an alleged conflict of interest between the examiner and the examinee.

Then Article 308 explains:

- (1) Medical personnel or health workers who are suspected of committing unlawful acts in the implementation of health services which may be subject to criminal sanctions must first request a recommendation from the panel as intended in Article 304.
- (2) Medical Personnel and Health Personnel who are asked to be held responsible for actions/deeds related to the implementation of Health Services that cause civil harm to Patients, must request a recommendation from the panel as intended in Article 304.
- (3) The recommendation from the panel as intended in paragraph (1) is given after the Sipil Civil Servant Investigator or the Republic of Indonesia State Police investigator submits a written request.
- (4) Recommendations from the panel as intended in paragraph (2) are given after the Medical Personnel, Health Personnel, or person authorized by the Medical Personnel or Health Personnel submits a written request regarding the lawsuit filed by the Patient, Patient's family, or person authorized by the Patient. or the patient's family.
- (5) The recommendation as intended in paragraph (3) is in the form of a recommendation whether or not an investigation can be carried out because the implementation of professional practices carried out by Medical Personnel or Health Personnel is in accordance with or not in accordance with professional standards, service standards and standard operational procedures.
- (6) Recommendations as referred to in paragraph (4) are in the form of recommendations for the implementation of professional practices carried out by Medical Personnel or Health Personnel in accordance with or not in accordance with professional standards, service standards and standard operational procedures.
- (7) Recommendations as intended in paragraph (5) and paragraph (6) are given no later than 14 (fourteen) working days after the application is received.
- (8) In the event that the panel does not provide a recommendation within the time period as intended in paragraph (7), the panel is deemed to have provided a recommendation so that an investigation into the criminal act can be carried out.
- (9) The provisions as intended in paragraph (1), paragraph (3), paragraph (5), and paragraph (7) do not apply to examinations of Medical Personnel or Health Personnel who may be held responsible for alleged criminal acts that are not related to the implementation of Services. Health.

Patients can sue the hospital if there is an act of violation of law or breach of contract committed by a doctor who practices at the hospital in accordance with the provisions stipulated in Article 310 of the Health Law if alternative dispute resolution efforts are unsuccessful. If a medical or health crime occurs, the meaning is not dispute resolution because the meaning of dispute resolution is civil in nature. Medical crimes are always associated with malpractice. In the new Criminal Code, namely Law Number 1 of 2023, formulations such as articles 359, 360, 361 of the old Criminal Code will still be found as regulated in Article 474

paragraph 3, Article 474 paragraph 2, Article 475 paragraph 1 of the Criminal Code which new.

Regarding legal protection for patients undergoing inpatient treatment at a hospital, this means that the hospital is legally responsible for everything that occurs due to negligence committed by the hospital's health human resources, so there is a legal relationship and legal provisions written in the law. The health between the parties shows that unlawful acts or defaults committed by medical personnel within the hospital environment which result in harm to patients will be the responsibility of the hospital. In order to achieve the goals expected by the patient, in this case compensation is given, the initial step is mediation (alternative dispute resolution) on the legal basis of Article 193 of the Health Law.

CONCLUSION

Settlement of medical disputes between inpatients and doctors and hospitals is resolved first through the Professional Discipline Enforcement Council for Medical Personnel and Health Personnel, which can currently be carried out at the Indonesian Medical Discipline Honorary Council (MKDKI) until the Professional Discipline Enforcement Council for Medical Personnel and Health Personnel is formed. as intended by Article 304 of the Health Law. Furthermore, if elements of unlawful acts and breach of contract are found, you can submit a request through out-of-court dispute resolution as intended in Article 310 of the Health Law. Legal protection for patients is carried out based on the provisions of Article 276 and Article 277 of the Health Law.

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