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**DOCTORS AND HOSPITALS: A LEGAL PERSPECTIVE ON
ACCOUNTABILITY**

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Abstract

Medical malpractice recently becomes a hot issue in the society, news which cover these rumors made us think about the condition of the health services in our country. Such malpractice is linked to the rules governing hospital services and doctors on their patients. A clear and definite legal rule is required to resolve the malpractice cases. Accordingly, the purpose of this study was to determine the accountability of hospitals and doctors from the perspectives of civil law, criminal law and administrative law. The research method used is normative law and doctrinal research by collecting primary, secondary and tertiary legal literature. The results showed that civil law due to the legal relationship of mutual binding between the hospital with a doctor or medical personnel, are criminal law referring to constitution No. 8 of 1999, and the administrative law due to the violation of medical ethics are decided by the Honorary Council of Medical Ethics.

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Keywords: Doctors and Hospitals, Legal Perspective, Accountability.



1. Introduction

The hospital is a place where a lot of the life expectancy and health of patients or their families to be cured, the doctor's office, medical personnel and create a legal relationship between hospital and patient. These legal relations are based on two kinds of human rights guaranteed in documents and international conventions. Both kinds of these rights are the right to self-determination and the right to information. To ensure the creation of a good legal relationship between hospitals as providers of health services with the community or patients as users of health services, the government through Act No. 23 of 1992 on Health has determined the standard of medical services that must be performed by hospitals through medical personnel in Provide services to the people in need. This is in accordance with the opinion of Lindor et al., (2014) which states that medical malpractice laws require service providers to practice caring with heart and not neglect obligations. Here the rights of a patient must be met by the hospital as stipulated in the medical rules.

Malpractice study discusses the empirical evidence liability risk of malpractice impact in doctor diagnostic imaging (Li & Brantley, 2015), most often focuses on tabulation and comparison of claims by type of service providers (Brock, Nicholson, & Hooker, 2016; Miller, 2013; Miller, 2012; Miller, 2011), identifying the causes of frequent allegations resulting from diagnosis (Miller, 2013; Miller, 2012; Miller, 2011); Doctors have higher claims rates than assistants and nurses (Brock Nicholson, & Hooker, 2016; Leigh & Flynn, 2013); doctor disciplinary action in practice (Brock Nicholson, & Hooker, 2016; Leigh & Flynn, 2013; Balestra, 2013).

Malpractice cases that many get reviews from among doctors and the law in Indonesia is dr. Setianingrum case in Pati Central Java, where dr. Setianingrum Pati submitted to the District Court for alleged medical malpractice is due to negligence causing other people (patients) died. This case occurred in 1979 that there were at least two different expert opinions. On one side states Dr. Setianingrum it complies with the procedures and practice doctor standards are well adapted to their term of office and the area of work in community health centres away from the health centre. On the other hand states Dr. Setianingrum has neglected to be careful not to patients who are allergic to drugs. So that the court decision in the first instance and appeal judges said Setianingrum action has violated the practice doctor standards either follow the majority opinion of the expert witness, but on appeal Setianingrum found not guilty and was released following the contrary opinion.

As a legal term, medical malpractice is not synonymous with professional error. Medical errors, their causes, and their impact have been a major issue in scientific discourse (Shurtz, 2013). According to Tehrani et.al (2013) said that to study errors (including surgical epidemiology), malpractice claims have been used (Gawande et al., 2003) and diagnostic errors caused by supporting factors (Gandhi et al., 2006). The lack of skill or neglect, causing damage to the patient (Toth, 2015). Damage caused by misdiagnosis can be defined as a preventable danger caused by delay or failure (Newman-Toker & Pronovost, 2009).

Medical malpractice can be said to have occurred when there is an implied contract between the doctor and the patient. In line with the opinion of Stamm et al., (2016) that medical malpractice is a civil error caused by contract.

In many cases, people are often confused to file charges against hospitals that have malpractice actions. In the actions taken by the hospital through its medical personnel is considered a malpractice

measure, often hear from the hospital that the action has been given in compliance with the standards set forth in the Health Act regarding the services to be provided to a patient. Meanwhile, patients still assume that the hospital has malpractice. This, of course, raises a problem that requires verification of its true value. Patients have a heavy burden here because the patient must be able to prove that the hospital's actions can be classified as malpractice measures. More specifically, according Cestac & Assailly (2016) activities that affect compliance, reduce the risk of errors, malpractice or claims of negligence, and even fraud or abuse depend on a documentation of key factor records.

2. Problem Statement

Malpractice issues related to the hospital as a service provider, physician and patient that can cause generate conflict between patient and doctor (Harolds, 2015). In this paper, we will focus on accountability for hospitals and doctors in cases of malpractice. It is linked to the rules governing hospital services and doctors on patients. A clear and definite legal rule is required to resolve the malpractice case. It is hoped that patients can get the maximum protection to get good medical care and for medical personnel will also be able to carry out tasks in accordance with the profession as well without having to have a general fear of medical treatment provided to patients.

3. Research Questions

1. How accountability hospitals and doctors from civil law perspective?
2. How accountability hospitals and doctors from criminal law perspective?
3. How accountability hospitals and doctors from administrative law perspective?

4. Purpose of the Study

1. To examine accountability hospitals and doctors from civil law perspective.
2. To examine accountability hospitals and doctors from criminal law perspective.
3. To examine accountability hospitals and doctors from administrative law perspective.

5. Research Methods

The research method used is normative research method (Jahn & Keil, 2015). Data collected by using library research, the research by using library materials punish primary, secondary and tertiary. Researchers also did field research by visiting Bogor District Court to obtain the required data in form copy of malpractice cases that already have permanent legal force.

Data processing is qualitatively, meaning to describe with words so that the description of sentences that could be understood and accounted. The approach method used as support is statute approach, conceptual approach and analysis approach.

6. Findings

6.1.Accountability of Hospital and Doctor Based on Civil Law

Hospital is a place of legal relationship between doctor and patient. Although research on medical malpractice in civil law (Grembi & Garoupa, 2013), one of which is the research Burau et al., (2009) who examined health service cases provided by the government using empirical assessments of medical malpractice cases in civil law jurisdictions.

In a bond, there are the rights and obligations of each party. Doctor-patient legal relations also form the legal responsibility of each. For doctors, the medical treatment should be aimed to patient's health benefit is a legal obligation that is fundamental agreement of doctor-patient (contract therapeutic) that in Law No. 29 of 2004 regarding Medical Practice in Article 39 is referred to as the agreement between the doctor or dentist with patient (Chazawi, 2007). Generally, patients come to the doctor to be given medical treatment services while doctors receive to serve patients.

Measure treatment should be based on medical profession standard, standard procedures and general principles of medical professionals. In Act No. 29 of 2004, the measure referred to by the term professional standards and standard operating procedures "(Article 50 jo 51). While in article 44 paragraph (1) referred to as the "standard of medical services or dentist", whose contents are distinguished by the type and level of health care facilities (paragraph 2). The standard of medical or dental services is further stipulated in the Ministerial Regulation (paragraph 3).

From a civil law perspective, medical malpractice occurs when the wrong treatment by doctors / medical personnel in providing services to the patient creates a civil loss. This coincides with the consequences of being a particular criminal element. Elements of physical loss or the lives of patients due to wrong treatment by doctors is an essential element of medical malpractice from the point of civil law including criminal law. With the incidence of civil loss can be used as the basis of the formation of civil liability for doctors / medical personnel and even hospitals. Elements that have been violated are regulated in Article 1365 of the Civil Code, which consists:

- a. Patients should experience a loss;
- b. There was an error or omission (in addition to individuals, hospitals can also be responsible for errors or omissions employees);
- c. There is a causal relationship between the loss and errors;
- d. The act was unlawful.

Thus, any claim or lawsuit may be filed by the patient to the doctor / medical / hospital if there is a loss caused due to negligence by doctors / paramedics or hospital patient care. Based on the vicarious liability theory, which should be responsible in malpractice case is the supreme leader as a responsible

6.2.Accountability of Hospital and Doctor Based on Criminal Law

The fault element (*schuld*) could be minimized if the doctor / medical personnel to apply the precautionary principle in their profession as determined either by size medical profession standard as well as based on the standard operating procedures.

At any medical intervention such as negative risk surgery may occur. Therefore, prior to surgery, doctor is required to explain in advance to the patient or his family the intent and purpose of the medical action and the risks that may arise from the medical / surgical procedure and who is responsible if the risk is true.

Doctor required to provide information clearly to the patient / family in a language that is easily understood so that the patient / family can take a decision without pressure from any party to approve or reject the doctor's medical action to be performed on him / her. If the patient / family agreed to do medical treatment after the explanations, the patient / family signed letters medical action (informed consent) that had been prepared by the hospital.

The problem of criminal responsibility doctors regulated in the criminal code, which covers the legal responsibilities that arise either because of deliberate action / omission, namely Article 267, 299, 304, 322, 344, 346, 347, 348, and 349 of the Criminal Code covers errors based on intent. This deliberate action is influenced by one's inner attitude, in this case the inner attitude of doctors / paramedics. Under normal circumstances, each person has the ability to drive and realize the inner attitude into intentional acts or negligence (*culpa*).

In criminal law that is used as a measure is not the most cautious person, but rough mistakes (*culpa lata, grove schuld*). So the important thing is the precision and reasonable care that can be expected from a doctor. Not smartest or the most careful doctor, but a reasonable doctor. Therefore it can be said to be their new culpa when he did not know, did not check, do or not do, in the same circumstances, would find, examine, do or not do. Another point to keep in mind that in terms of criminal law, then in terms of issues offense culpa, the emphasis lies on the consequences. Therefore, culpa's inner attitude in criminal malpractice must be a culpa lata (gross negligence, grote onachtzaamheid) which is a form of gross negligence which is fatal and serious, meaning careless maker, the inner attitude does not want to know, even willing to be true, consequences that would occur.

The acts threatened in the Criminal Code are:

- a. Persecution / mishandling contained in articles 351, 352, 353, 354, and 355;
- b. The negligence causing death caused by onbewuste culpa and bewuste culpa in article 359;
- c. The negligence that cause injuries are contained in chapters 90, 359, and 360;
- d. Abortion is regulated in Article 346, 347 and 348;
- e. Euthanasia is contained in chapter 344;

6.3.Accountability of Hospital and Doctor Based on Administrative Law

From the point of law, administrative law violation is not medical malpractice. However, medical administrative law violations arising nature against the law in the event of malpractice actions that lead to bad consequences to the patient. The losses consequences in the patient are the decisive elements. Violation of medical administration law will lead to occurrence medical malpractice cases.

Violation of the administrative law of doctors is essentially a violation of medical administrative obligations. Doctor administrative obligations can be divided into two, namely administrative obligations that relate to the authority before the doctor did and administrative obligations at the time of the doctor

doing medical services. Violation of such administrative obligations may become a medical malpractice, if after the services carried out cause harm to the patient's health or life.

With the fulfillment of Permit Practice, Doctor License and Registration Certificate in administrative doctors already have the authority to make medical services. However, the doctor must also have the ability or competence in carrying out the practice in accordance with his expertise as well as possible and carefully. Criminal acts of medical practice formulated in Law no. 29 of 2004 stems from a violation of administrative law. In addition, a malpractice breach is a Standard Operating Procedure (SOP) for doctors serve patients.

Administrative sanctions may be imposed on a doctor if, upon examination by the Honorary Council of Medical Ethics, the examined doctors is found guilty of violating the provisions required by professional standards and standard operating procedures (regarding the complaint process to applicable administrative sanctions). The examination results from Honorary Council of Medical Ethics in Law No. 29 of 2004 is called the Indonesian Medical Discipline Honor Board. If found violation of medical ethics then Indonesian Medical Discipline Honor Board will forward complaints on professional organizations and Indonesian Doctors Association who take action against the doctor. Administrative sanctions provided by Indonesian Medical Discipline Honor Board are in the form of giving written warnings, revocation recommendation of registration letter or practice license and or obligation to follow education or training in medical education institution. However, this does not rule out the civil possibility or criminal suit from the patient or his family.

One of the hospital's obligations is having to provide good medical equipment. There are several theories that can serve as the basis that hospitals can be held legally accountable i.e. agency theory (patients assume everyone who works in the hospital is hospital agent). In addition to agency theory, hospital accountability can also be assessed through the theory of Respondent Superior or Vicarious Liability (hospital liability / corporate liability).

7. Conclusion

In civil law, hospital and doctor / medical personnel should be held accountable for the hospital because a doctor / medical personnel are mutually binding legal relationship between them.

In criminal law, refers to Law No. 8 of 1999 on Consumer Protection, the hospital should be accountable for the criminal. Accountability is seen from who is most responsible in the hospital in accordance with the position and structure contained in the hospital.

Administratively, Honorary Council of Medical Ethics authorized to impose sanctions in the form of verbal or written reprimand to the doctor after a thorough examination proved to have violated medical ethics and the Honorary Council of Ethics may also recommend that the concerned doctor practice license revoked by the Minister of Health. Decision of the Honorary Council of Medical Ethics does not cover the rights of patients / families to sue doctors and hospitals to civil law and criminal law.

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