

A Doctor's Responsibility Towards a Patient for Suspect Medical Malpractice Reviewed from a Perspective Civil Law

Haryono Linoh¹, Tamaulina Br Sembiring², Siti Nurhayati³

Article Info

Page : 18-24

ISSN : 3026-5290

Vol 2 No 1 2024

Corresponding Author

Haryono Linoh, Panca Budi Development University, Medan, Sumatera Utara, Indonesia

Email: drharyono@yahoo.co.id

Abstract

A doctor's responsibility towards a patient in the context of suspected medical malpractice is an important topic in civil law, considering the importance of maintaining professional standards in medical practice. By paying attention to professional ethics that do not allow promises of absolute healing, this research aims to examine doctors' legal responsibilities and handling of suspected malpractice, with a focus on resolutions that prioritize deliberation and increased communication between doctors and patients. This research uses a qualitative approach to explore civil law perspectives through contract theory, document analysis, and interviews with legal experts and health practitioners. Data were collected to understand how medical services contracts define the rights and obligations of physicians and patients, and how approaches to resolving suspected malpractice are implemented in practice. The research results show that improving communication, continuing education, developing protocols for handling malpractice, and strengthening the legal framework are key aspects in reducing the incidence of medical malpractice. This research also found that deliberation and internal resolution approaches are effective methods in resolving allegations of malpractice, in line with Law Number 17 of 2023 concerning Health. This research recommends implementing effective communication strategies between doctors and patients, providing continuous education and training for health workers, developing clear internal protocols for handling malpractice, and strengthening civil law to support medical malpractice conflict resolution. It is hoped that these steps will create a safer medical environment, strengthen the health system, and benefit both patients and health practitioners.

Keyword: Medical Malpractice, Civil Law, Doctor's Responsibility

1. INTRODUCTION

Medical Malpractice is defined as professional negligence by a doctor or health worker that causes harm to the patient, whether physical, emotional or financial. Malpractice can occur for a variety of reasons, including misdiagnosis, negligence in providing care, not obtaining informed consent from the patient before a medical procedure, and failure to inform the patient about the risks of the procedure. (World Health Organization. 2020). Indonesia, as a legal country, has clear rules regarding medical practice which are contained in various statutory regulations. UU no. 17 of 2023 states explicitly the rights and obligations of medical personnel and patients. Article 273 states the right of medical personnel to obtain legal protection as long as they work in accordance with existing standards, (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" and Articles 276 to 277 regulate the rights and obligations of patients. (Law Number 17 of 2023)

Article 276 Patients have the right:

- a. get information about his/her health;
- b. get an adequate explanation regarding the Services

The health he received;

- a. obtain Health Services in accordance with medical needs, professional standards and quality services;
- b. refuse or agree to medical treatment, except for medical action necessary to prevent infectious diseases and control outbreaks or epidemics;
- c. gain access to information contained in medical records;
- d. ask for the opinion of Medical Personnel or other Health Personnel; and
- e. obtain other rights in accordance with the provisions of statutory regulations.

Article 277 Patients have obligations:

- a. provide complete and honest information about their health problems;
- b. 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.

Malpractice cases in Indonesia vary, from simple mistakes to fatal mistakes that result in death or permanent disability. Various examples of cases reported by the media or which have ended up in court have sparked public discussion regarding the need for fair review and enforcement of the law for both parties. Malpractice cases that receive attention often give rise to debate not only around medical responsibility but also the legal implications of the action. (The Jakarta Post. 2022) . In practice, medical malpractice claims often involve interpretation of the "recognized standard of care" that medical personnel should have provided. Therefore, an in-depth understanding of professional standards and operational procedures that are in accordance with professional ethics is crucial. On the other hand, patients have the right to expect a certain level of care and competence from their treating physicians. So, when there is a gap between expectations and reality, the issue of doctors' responsibilities becomes the main focus. (Adriani, DK, & Sudarto, HM 2020). Then, in Indonesia, increasing public awareness of patient rights also demands an increase in medical service standards. This situation adds urgency for doctors to fully understand the limits of their obligations and for patients to know the limits of their rights in receiving health services. In many cases, there is a debate between what is interpreted as a "medical risk" that cannot be avoided and what constitutes "negligence" that should be held accountable. (Syarifudin, A. 2019). Seeing this complexity, there is a need to examine and understand the dynamics of civil law that apply to medical malpractice cases in Indonesia. This research focuses on exploring the civil legal responsibilities of doctors towards patients who suffer from medical malpractice. Thus, the background of this research is designed to answer these questions by examining existing cases and the related legal framework, with the hope of finding a solution that balances the rights and obligations between doctors and patients. (Murdoko, AR, & Widjanarti, A. 2018).

The importance of research on doctors' responsibilities towards patients in medical malpractice cases cannot be overstated, considering the increasingly complex dynamics of interactions between doctors and patients and its broad implications for aspects of civil law. Along with increasing public awareness of their rights as patients, as well as the development of increasingly advanced and specific medical practices, there is a trend of increasing malpractice cases being reported and brought to the green table. Medical malpractice not only involves the moral and ethical aspects of the profession but also legal entanglements and financial consequences that can destroy a doctor's career and undermine trust in the health system. In Indonesia, where the legal system continues to evolve to match global practice, a review of existing legal regulations is essential. Therefore, by understanding the civil law context surrounding the practice of medicine, medical professionals can operate within safe boundaries and patients can protect their rights effectively. Examples of malpractice cases that have become hotly discussed in both the public and professional spheres can be taken from incidents where a surgical error occurred which resulted in the patient losing organ function or an error in administering a fatal drug dose. In some cases, the lack of effective communication between doctors and patients about the risks of the procedure to be carried out has resulted in patients making decisions without sufficient information, which could have been avoided if the doctor had provided a clearer and more complete explanation. Seeing that this problem is a very fundamental and structural issue in civil law, it requires an in-depth investigation to not only evaluate current legal standards but also provide recommendations for improvement. In doing so, this study seeks to provide a comprehensive analysis of how physicians can practice medicine with a greater sense of security without constantly feeling threatened by potential malpractice suits, while demonstrating how patients can be given a sense of confidence that the medical system is functioning fairly and responsibly. This research is important because it can be a valuable

contribution to the legal literature in Indonesia, informing policy makers, legal practitioners, medical institutions, and the general public about how civil law can be utilized to improve the quality of medical services and reduce the incidence of malpractice. So far, legal debates and decisions surrounding medical malpractice have often been dominated by subjective views and unsystematic casuistry, making this research a step towards establishing a more objective and structured legal framework. In responding to and understanding the full dynamics and consequences of medical malpractice, this research will provide a stronger foundation for future improvements and for fair and equitable protection of the rights of patients and medical personnel. With the results of research, the responsibility of doctors towards patients for suspected medical malpractice is viewed from a civil law perspective. (Ahmad Akbar Hasibuan, Redyanto Sidi. 2023).

2. RESEARCH METHODOLOGY

This descriptive qualitative research focuses on the phenomenon of medical malpractice from the perspective of doctors and patients, as well as the related legal implications. By using secondary data such as laws, health regulations, medical codes of ethics, and court decisions, this research aims to analyze doctors' responsibilities and medical service standards. This research aims to gain an in-depth understanding of the regulations and civil laws that govern doctors' responsibilities, the influence of ethical codes on medical practice, and how court decisions set precedents in malpractice cases. By organizing secondary data, identifying key themes, and using data triangulation for validity, this study provides insight into the responsibilities of physicians in medical malpractice, which is beneficial to the public, legal practitioners, and medical personnel in understanding medical malpractice issues in the context of civil law.

3. RESULT AND DISCUSSION

Informed Consent

Informed consent (Consent to Medical Procedures) is a fundamental principle in medical ethics and health law, representing the consent given by the patient after fully understanding the medical procedure to be undertaken, including its potential risks and benefits. This concept stems from the recognition of patients' rights to make informed decisions regarding their medical care, rooted in the values of individual autonomy and freedom. The origins of the term "informed consent" can broadly be traced back to the mid -20th century, when issues of medical ethics began to receive more serious attention, especially after revelations of non-consensual medical experimentation during World War II. The development of this concept was also influenced by important court cases that emphasized the importance of patient consent, such as the case of *Salgo v. Leland Stanford Jr. University Board of Trustees* in 1957, which explicitly introduced the term "*informed consent*". (Rahmadsyah, Rudi, and Redyanto Sidi. 2023). The definition of *informed consent* includes the process by which a doctor or other health care provider provides information to a patient about the diagnosis, nature and purpose of the proposed procedure, available alternatives, and the potential risks and benefits of each option. This information should be presented in language that is easy for patients to understand, allowing them to evaluate their options before giving their consent. Informed consent is not just a signature on a consent form; it is an ongoing communication process between patients and healthcare providers. The benefits of the practice of informed consent are significant, both for patients and healthcare professionals. For patients, the primary benefit is empowerment through adequate information to make educated decisions about their care. It affirms patient autonomy and respects their right to determine what happens to their bodies, contributing to patient trust and involvement in the health care process. From a healthcare provider's perspective, informed consent serves to reduce the risk of misunderstandings and unrealistic expectations, which can lead to patient dissatisfaction and malpractice-related lawsuits. By providing clear and complete information, doctors can help build a relationship of trust with patients, which is important for successful treatment outcomes. (Redyanto Sidi. 2020). Apart from that, informed consent also has broader ethical and legal benefits. From an ethical perspective, it supports the principles of justice, respect for human dignity, and honesty. In a legal context, informed consent serves as a protection for both parties. For patients, this provides assurance that their rights are recognized and respected; for healthcare providers, it acts as evidence that they have fulfilled their obligation to inform patients, potentially reducing the risk of litigation. In this research, a legal analysis of informed consent is needed to dissect how regulations and medical ethical codes guide doctors in conveying information to patients. This includes how physicians fulfill their legal and ethical obligations to ensure that patients receive all the relevant information necessary to make educated decisions about their care. Failure in the informed consent process may be

considered a form of medical malpractice if patients are not given the opportunity to fully understand the risks, benefits, and alternatives of a medical procedure, ultimately influencing their decisions. Implementing effective informed consent requires more than just administrative procedures; this requires effective communication, empathy, and a deep understanding of the patient's needs and desires. Health professionals must be skilled at explaining complex medical information in an accessible and understanding manner, as well as being sensitive to patient concerns and questions. In practice, this may also involve the use of educational materials, such as brochures or videos, to help ensure that patients truly understand the information given to them. Informed consent is an important pillar of ethical and legal medical practice, striking a balance between medical expertise and patient rights. By ensuring that patients are actively involved in decisions about their care, informed consent strengthens the doctor-patient relationship, supports informed and responsible decision making, and advances the ultimate goal of medicine: to treat with respect, concern, and justice.

The Legal Relationship of Doctors and Patients in Medical Procedures Seen from a Civil Law Perspective

The relationship between doctor and patient is one of the most fundamental aspects of medical practice. In the context of civil law, this relationship is often viewed through the prism of a service contract which regulates the rights and obligations of each party. The Civil Code (KUH Perdata) provides a broad legal framework for understanding and navigating these legal relationships. A contract between a doctor and a patient is formed based on an agreement to provide and receive medical services. According to Article 1338 of the Civil Code, "*All agreements made legally are valid as law for those who make them* ." (Civil Code, Article 1338) This creates a legal basis for doctors to provide care, and for patients to receive care and comply with related payment obligations. In medical service contracts, there is an element of "achievement" that must be carried out by doctors, namely providing medical services in accordance with professional standards. Article 1339 of the Civil Code states, "*Agreements must be carried out in good faith*." This requires doctors to act professionally, ethically, and with concern for the patient's welfare. The physician's obligations in this relationship include, but are not limited to, providing competent care, maintaining patient confidentiality, and obtaining informed consent before performing medical procedures. Article 1365 of the Civil Code states that "*Every unlawful act which causes loss to another person requires the person whose fault caused the loss to compensate for the loss* ." This underscores the responsibility of physicians to avoid malpractice that could harm patients. (Anwar, Y., Riza Zarzani, T. ., & Chermanto, C. 2023). In line with physicians' obligations, patients have the right to receive appropriate medical care, to be fully informed about their health condition and treatment options, and to the privacy and confidentiality of medical information. Article 1381 of the Civil Code regulates "*claims for unlawful acts* ," which can be applied in cases of violation of patient rights. The legal relationship between doctors and patients in the context of medical procedures is a complex relationship regulated by civil law principles. The Indonesian Civil Code provides a strong legal basis for regulating medical service contracts, establishing the rights and obligations of doctors and patients, and providing a dispute resolution mechanism. It is important for physicians and patients to understand their rights and obligations within this framework to ensure that the practice of medicine is conducted ethically, professionally, and in accordance with applicable legal standards.

Doctor's Responsibility towards Patients in the Event of Malpractice Seen from a Civil Law Perspective

As a profession, doctors have an obligation to provide medical services to patients. Remembering that there is an obligation towards doctors means that the doctor accepts responsibility if an error occurs. The professional responsibilities of doctors can be divided into ethical responsibilities and legal responsibilities. Legal responsibility can also be divided into administrative responsibility, criminal responsibility and civil responsibility. (Anny Isfandyarie, 2006). The responsibility of doctors in the event of medical malpractice in civil law can be seen from 2 (two) theories which state the source of the malpractice act, namely the breach of contract theory, in this theory the source of the malpractice act is the breach of contract (default) and the negligence theory, this theory states that The source of malpractice is negligence or error. This responsibility aims to obtain compensation for patient losses in the event of errors or medical malpractice. (Kembaren, Novalina, & Sembiring, Tamaulina. 2024). The responsibility of doctors for default is regulated in the provisions of Article 1239 of the Civil Code which states that: "*Every obligation to do something, or not to do something, if the debt does not fulfill its obligations, is resolved in the obligation to provide compensation for costs, losses and interest* ." Meanwhile, liability for breach of contract arises because the doctor does not

carry out his obligations originating from the agreement, namely the therapeutic agreement. (Veronica Komalawati, 2002). Default occurs because the doctor's actions in providing treatment to the patient are not in accordance with what is contained in the therapeutic agreement, such as not carrying out what was promised, being late in carrying out the promised action, making a mistake in carrying out what has been agreed and doing something that is prohibited in the agreement. In the event of a default in health services, according to Bahder Johan Nasution must fulfill the following 3 (three) elements. (Bahder Johan Nasution, 2005)

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

By fulfilling the elements of breach of contract, the patient can hold the doctor responsible for the losses they suffer. The patient can file a lawsuit against the doctor to the District Court where there is a dispute, but the patient provides evidence that there has been a loss due to the breach of contract, as in the civil law system in Indonesia, proof of the arguments for the lawsuit is borne by the plaintiff/patient. As for compensation for losses due to default in Article 1249 of the Civil Code, it is only determined in the form of money. However, in its development, according to experts and jurisprudence, losses can be divided into material and immaterial losses. Material losses are losses that can be measured in money, while immaterial losses are losses suffered that are not worth money. Responsibility for unlawful acts (*onrechtmatigedaad*) is regulated in the provisions of Article 1365 of the Civil Code, the emergence of a doctor's responsibility which causes harm because the doctor in carrying out an action on a patient is an unlawful act, namely contrary to the principles of decency, thoroughness and caution that are expected of him. (Hendrik, 2010). Lastly, the author borrows contract theory by Hugo Grotius, that every individual is a rational actor who enters into a contract or agreement to advance their personal interests. In a medical context, patients seek care to improve their health, while doctors offer their professional services as part of their practice. This contract is bound by the principle of good faith, where both parties are expected to fulfill their obligations according to the agreement. As the author has explained in the paragraph above, one of the figures in contract theory was Hugo Grotius, who in the 17th century argued that a contract is an agreement between two or more parties which creates legal obligations that must be fulfilled. Later, this idea was further developed by figures such as John Locke and Jean-Jacques Rousseau, who emphasized social agreements as the basis of society and law. In the context of medical malpractice, contract theory helps explain the legal responsibilities that doctors have towards patients. When physicians fail to meet the expected standards of care, which have been implicitly or explicitly agreed upon in a medical services contract, this may be considered a breach of contract. Article 1338 of the Civil Code states that all valid agreements are valid as law for those who make them, which provides a legal basis for demanding compliance with the agreement. In civil law, allegations of medical malpractice are considered serious because they involve a violation of the service contract between the doctor and the patient. When malpractice occurs, patients have the right to demand compensation based on Article 1365 of the Civil Code, which states that every action that is against the law and causes harm to another person, requires the perpetrator at fault to compensate for the loss. However, in the end, the author, who also works as a health worker, is of the opinion that no medical worker wants malpractice to occur on a patient, no health worker does not want the patient being treated to recover. Therefore, the public needs to understand and understand that medical services provided by medical personnel are healing efforts, in their ethics medical personnel are prohibited from promising healing. What exists is effort, maximum treatment in accordance with Ethics and Medical Service Standards.

4. CONCLUSION

In the context of a doctor's responsibility towards a patient for suspected medical malpractice seen from a civil law perspective, contract theory offers valuable insight into the relationship between doctor and patient. This relationship, regulated through a medical services agreement, requires the physician's fulfillment of an obligation to provide medical care consistent with the standards of the profession. Medical professional ethics emphasizes that health workers must not promise absolute healing to patients, but can only offer maximum effort and treatment. This reality recognizes that, even with the best intentions, there is no guarantee that any medical intervention will be successful without the risk of complications or malpractice. In the event that there are indications of malpractice, it is important to remember that the recommended initial approach is internal resolution and deliberation to reach consensus, in line with the mandate of Law Number

17 of 2023 concerning Health. This approach not only reflects a commitment to fair and constructive resolutions but also emphasizes the importance of maintaining a relationship of trust between physicians and patients.

REFERENCEE

- Adiningrum, TS (2022). Legal Protection for Patients and Doctors: A Civil Law Perspective. *Journal of Legal Dynamics*, 22(3), 335-350.
- Adriani, DK, & Sudarto, HM (2020). Malpractice in the medical profession: Analysis and legal consequences. *Journal of Law & Development*.
- Ahmad Akbar Hasibuan, Redyanto Sidi. "Legal Protection for Nurses in Carrying Out Nursing Service Duties in Hospitals." *Journal Ners*, vol. 7, no. 1, April 10, 2023, pp. 378-383. - [PDF] from universitypahlawan.ac.id
- Amen, L. (2021). Dynamics of Medical Care Standards and Physician Responsibilities. *Respati Medical Journal*, 16(4), 410-419.
- Anny Isfandyarie, (2006), *Legal Responsibilities and Sanctions for Doctors*, Book 1, Achievement Pustaka, Jakarta.
- Anwar, Y., Riza Zarzani, T. ., & Chermanto, C. (2023). Responsibility Judgment Of Medical Physicians On The Quality Of Radiology Operational Licenses At Bhayangkara Hospital Banda Aceh. *SIBATIK JOURNAL: Scientific Journal Social, Economic, Cultural, Technological, and Educational Sectors* , 2 (8), 2263– 2282. <https://doi.org/10.54443/sibatik.v2i8.1196>
- Bahder Johan Nasution, (2005), *Doctor's Liability Health Law*, PT Rineka Cipta, Jakarta.
- Beni Satria and Redyanto Sidi. (2022). *Hospital Criminal Liability for Negligence committed by Medical Personnel*. First Printing. CV. Dewa Publishing. ISBN: 978-623-8016-83-9.
- Firdaus, R. (2023). The Role of Medical Documentation in Malpractice Claims. *Journal of Public Health*, 11(1), 55-62.
- Harsono. (2022). Malpractice in Medical Practice: Juridical Analysis of Professional Standards and Regulations. *Journal of Unitary Law*, 7(2), 124-133.
- Hendrik, (2010), *Health Ethics and Law*, EGC Medical Book Publishers, Jakarta
- Indrayana, D. (2020). "Health Law: Challenges and Updates." Yogyakarta: Genta Publishing.
- Kembaren, Novalina, & Sembiring, Tamaulina. (2024). Health Law Enforcement Against Malpractice Activities in Indonesia. *GOVERNANCE: Scientific Journal of Local Politics and Development Studies* , 10(3). Panca Budi Development University. EISSN: 2406-8985, ISSN: 2406-8721.
- Civil Code (Civil Code), Article 1338.
- Kurniawan, R., et al. (2022). Informed Consent in Medical Practice: Ethics, Law, and Practice. *Journal of Medical Law and Ethics*, 10(3), 201-210.
- Murdoko, AR, & Widjanarti, A. (2018). The accountability of medical professionals: Indonesia's legal perspective. *Journal of Public Health Sciences*.
- Prasetyo, T. (2019). Legal Aspects of Medical Malpractice in Indonesia. *Journal of Medicine and Law*, 1(1), 21-35.
- Rahmadsyah, Rudi, and Redyanto Sidi. "The Position of Informed Consent in Medical Services for Patients in Hospitals Who Have the Status of a Suspect." *Nursing Journal*, vol. 7, no. 1, March 25, 2023, pp. 240-244. - [PDF] from universitypahlawan.ac.id
- Ratna, K.N. (2020). "Malpractice in Medical Practice in Indonesia: A Case Analysis." *Journal of Law and Health*, 3(1), 15-29.
- Redyanto Sidi. "The Position of Informed Consent in Home Patient Services Pain." *Iuris Studia: Journal of Legal Studies*, vol. 1, no. 2, 2020, pp. 214-219. [PDF] from bundamedia grup.co.id
- Rusli, A. (2018). *Medical Malpractice: A Comparative Study of Court Decisions*. Jakarta: Rajawali Press.
- Sulistiyowati. (2020). Reviewing the Malpractice Prevention System in Hospitals. *Journal of Hospital Management*, 5(2), 143-152.
- Supriadi, M. (2021). "Medical Ethics and Law." Jakarta: Prenada Media.
- Sutedi, A. (2019). "Civil Law in Medical Practice." Bandung: Refika Aditama.
- Sutedi, S. (2021). Legal Aspects in Medical Practice. *Journal of Health Law*, 5(2), 2021.
- Syarifudin, A. (2019). Legal consequences of medical malpractice in Indonesia. *Journal of Legal Dynamics*.

- The Jakarta Post. (2022). "Rising Trend in Medical Malpractice Claims in Indonesia: An Overview".
- Law of the Republic of Indonesia Number 17 of 2023 concerning the Rights and Obligations of Medical Personnel and Health Personnel.
- UU no. 29 of 2004 concerning Medical Practice.
- UU no. 44 of 2009 concerning Hospitals.
- Veronica Komalawati, (2002), The Role of Informed Consent in Therapeutic Transactions, PT Citra Aditya Bakti, Bandung.
- Wijaya, C. (2021). Malpractice and its Settlement Mechanism: A Review of Civil Law. *Journal of Legal Studies*, 29(3), 276-290.
- World Health Organization. (2020). Patient Safety.