

# Juridical Analysis of Anesthesian Responsibility for Alleged Negligence Towards Patients in Pre-Operation

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## Abstract

Errors and negligence committed by health workers in carrying out their profession are not in accordance with professional standards and standard operational procedures or a term better known as Malpractice, as a result of these errors or negligence patients suffer serious injuries, disabilities, and even death. This research is included in library research, so it takes and processes data from library sources such as books and journals related to this research. The approach used in this research is normative legal research (normative juridical) or doctrinal research. The data collection method for this research is the documentation method, namely data collected from sources, such as Ministry of Health Regulation No. 18 of 2016 and others. The analysis used in this research is a content analysis technique, which is a technique used to analyze the content of written information with the aim of drawing conclusions from the information being analyzed. This research shows that the Anesthesiologist's responsibility for alleged negligence can be punished if he is proven to have committed such negligence. However, of course it must go through existing mechanisms such as a hearing at the Ethics Council or hospital management and in the author's opinion, crime is the last option in resolving a problem, there is the option of mediation and so on there.

**Keywords:** Juridical analysis, liability, anesthesiologist, negligence

## 1. INTRODUCTION

The relationship between doctors and patients has developed since the time of Hippocrates and continues to evolve to this day. Changes in technology, scientific knowledge, and social structures have transformed health care methods and medical practice. This condition presents challenges to the moral principles and responsibilities that apply to medical personnel and society, especially when dealing with patients who are sick or at risk due to medical procedures. According to Suprapti Samil, human interactions, including the relationship between doctors and patients, are regulated based on politeness and moral values known as mores and ethica. Suprapti Samil stated in KODEKI 1980 that the term ethics comes from a combination of the concepts 'more of a community' and 'ethos of the people'. Health services can be provided individually or collectively within an organization, aimed at maintaining and improving health, preventing disease, and restoring the health condition of individuals, families, groups or society in general, often by ensuring survival. The implementation of health services involves various parties including health facilities, medical personnel and patients. Health workers, in particular, play an important role in achieving health development goals. The focus of this research is on the role of the Anesthetist. According to Alodokter.com, an anesthesiologist is a specialist who is responsible for providing anesthesia or anesthesia to patients who will undergo surgery or other medical procedures. The anesthetist is part of the surgical team, collaborating with the surgeon and nurses, providing sedative and analgesic drugs to make the patient sleep and not feel pain during the operation. The primary responsibilities of an anesthesiologist include these various aspects.

1. Providing perioperative services, namely medical procedures required for surgery, which include preparation before surgery, intraoperative services (during the operation), and post-operative services

2. Determining treatment to prevent and relieve pain in patients, both in surgical procedures and in patients with certain medical conditions, such as cancer patients, patients who are about to give birth, and patients who will undergo endoscopic procedures
3. Provide emergency treatment, including resuscitation measures for critical patients and patients in intensive care

The anesthetist has duties both before the operation, during the operation, and after the operation. Here's the explanation:

1. Before surgery

The anesthetist's responsibilities begin before the surgical procedure is carried out. At this stage, the anesthesiologist is tasked with making an evaluation before anesthesia, namely ensuring that the patient's condition is suitable for undergoing surgery. Apart from that, the anesthesiologist will also create an anesthesia plan that suits the patient's condition. This includes the type of anesthesia that will be used and the method of breathing support that will be administered. Several things that the anesthetist considers before administering anesthesia include:

- a) The patient's condition and medical history

The anesthesiologist will check whether the patient has had surgery and what type of operation it was, as well as whether the patient has any health problems, for example diabetes or heart disease. The patient is also asked to tell the doctor whether he or his family members have allergies to anesthetics or other medicines.

- b) Type of operation

The anesthetist will consider the type of operation to be performed before administering anesthesia, for example the patient may need general anesthesia to ensure comfort and safety during major surgery.

- c) Medical examination results

The results of medical examinations that are taken into consideration by anesthesiologists include physical and supporting examinations, such as blood tests or electrocardiogram (EKG).

2. During Operation

Before the operation begins, the anesthetist will administer anesthesia to the patient, and ensure the anesthesia is working well. When the operation is taking place, the role of the anesthesiologist is still needed to accompany the patient during the operation. During the procedure, the anesthesiologist will monitor the patient's condition and vital signs, such as heart rate and rhythm, breathing, and blood pressure. Apart from that, the anesthesiologist will also monitor whether the patient feels pain or not.

3. After operation

After the operation is complete, the anesthetist's duties do not stop there. The anesthesiologist is still responsible for monitoring the patient's consciousness and condition during the recovery phase. This includes checking the patient's post-operative condition and possible complications. An anesthesiologist is also needed to treat pain that occurs after surgery until the patient feels comfortable. Technically, the role of an anesthesiologist begins when administering anesthesia or carrying out intubation for emergency conditions. Intubation is a technique used to maintain the airway and provide oxygen, by inserting a special tube into the windpipe through the mouth.

So what if there is negligence, negligence or the anesthetist is careless in carrying out his duties? Or is it suspected that the anesthesiologist was negligent in carrying out his duties, resulting in the patient experiencing a bad condition or even losing his life? What are the anesthesiologists' responsibilities as officers appointed by the hospital to treat these patients? This is what then motivated the author to discuss this material about anesthetists, which the author then entitled: Juridical Analysis of the Liability of Anesthetists for Alleged Negligence of Patients During Pre-Operation. With the focus of the problem I am discussing, what are the duties and functions of an anesthetist in health services in hospitals? and what is the responsibility of the anesthetist for alleged negligence towards the patient during pre-operation?

## 2. METHODOLOGY

Normative juridical research, namely research that reveals a problem, situation or event by providing a comprehensive, broad and in-depth assessment from the perspective of legal science, namely by examining legal principles, legal rules and legal systematics. In collecting data, document study was used, namely by studying secondary materials, in the form of legislation, other regulations, court decisions regarding health cases as well as books, papers and journals related to what was studied. The data obtained was then analyzed qualitatively, namely a method of data analysis that is not based on numbers or statistics, so that the data obtained in library

research is then presented in logical sentences to obtain a description of the Responsibility of Anesthesiologists for Alleged Negligence Against Patients. In Pre-Operation.

### 3. RESULTS AND DISCUSSION

*Duties and functions of anesthesiologists in hospital health services?*

*Understanding Anesthesia*

Say anesthesia introduced by Oliver Wendell Holmes Which describe circumstances No aware Which nature temporary, because administering medication with the aim of relieving surgical pain. Analgesia of course giving drug for remove painful without deprive the patient of consciousness. Anesthesiology is a medical science which is on initially profession remove painful and maintenance sand before, during and after surgery. Definition anesthesiology develop keep going in accordance with development medical science. Anesthesia general is remove awareness with administering certain drugs, do not feel pain even though they are given stimulation painful, and nature reversible. Ability for maintain function ventilation is lost, depression function neuromuscular, and also cardiovascular disorders. Patients need help to maintain road breath and giving ventilation pressure artificial. Often time we ask questions with terms sedation and anesthesia. Anesthesia is the extent of the Central Nervous System (CNS) or yang often called *the Central Nervous system* (CNS) is depressed by agents general, depends on potency agent anesthesia and concentration the gift. Arthur Ernest Guedel explains the detailed classification state of anesthesia based on the use of the inhalation anesthetic agent *diethyl ether*. Sign sign classification guedel classic this between other often showing eyelash reflexes, breathing, eye movement, size pupil, and muscle movement. Although action drug anesthesia general General Anesthesia (GA) on cortex and areas *thalamus* brain which cause disappearance consciousness is well known, the exact mechanisms used drug this for produce circumstances anesthesia still not yet understood well. Successful general anesthesia is defined as *hypnosis triads reversible*, analgesia, and abolition activity reflex. In technique balanced anesthesia that uses multiple drugs, the classic stage of anesthesia hidden. Inadequate general anesthesia can cause intraoperative awareness with or without recall, while overdosing result recovery delayed and possible happen complications post operation. When anesthetic state produced by one drug with specificity work which relatively low, depth anesthesia actually equalized with circumstances depression CNS.

*Malpractice*

Malpractice is an error or negligence that is committed by health workers in carrying out their profession inappropriately with standard his profession And standard procedure operational, consequence error or negligence the patient suffer wound heavy, disabled, even die world. Meaning malpractice in a way medical which by the etymology of "malpractice" comes from the word *malpractice* which means method wrong treatment or wrong action. Malpractice is action professional which no correct or failure profession for apply skills. So medical malpractice is the act of one person professional medical Which wrong and result loss patient. Malpractice constitute term Which very general. By literally "mall" have meaning "Wrong", whereas "practice" have meaning "implementation" or "action", so malpractice means implementation or wrong action. However, most of the terms are used to state that an action is wrong. But most terms this is used to indicate that there is a wrong action in the act framework for carrying out a profession. It contains the meaning, that it is a mistake the profession is not solely carried out by medical professionals, which means including all profession. Meaning malpractice in a way medical is negligence a doctoruse level skills and knowledge knowledge based onsize Which common person other in treat patient with size standard in environment Which The same. Negligence interpreted also withdo action medical under standard service medical. The juridical meaning of malpractice in legal norms, especially criminal law, does not provide definitive details on what is considered negligence and wrongful action in the world of medicine or malpractice. Legal norms look more at the causality or cause and effect relationships of actions, such as someone causing the death or injury of another person. Article 359 of the Criminal Procedure Code explains that whoever, because of his fault, causes the death of a person is sentenced to imprisonment for a term of five years or imprisonment for a term of one year. And the words of Article 360 of the Criminal Code are:

1. Any person who, through his fault, causes serious injury to a person shall be punished by imprisonment for a term of 15 years or imprisonment for a term of up to one year.
2. Whoever, through his fault, causes someone to be injured in such a way that the person becomes temporarily ill or unable to carry out his position or work, is punished with imprisonment for a maximum of nine months or imprisonment for a maximum of six months or a fine of up to Rp. 4.5004.

### *Substance of Ministry of Health Regulation no. 18 of 2016 concerning Licensing and Implementation of Anesthesia Management Practices*

The substance of a regulation is the basis for the validity of the material juridical foundation that contains the content of a statutory regulation. Ministry of Health Regulation no. 18 of 2016 concerning Licensing and Implementation of the Practice of Anesthesia Management, here what is used is article 10 and article 11 where article 10 and article 11 discuss the doctor's authority or applicable SOP before carrying out any treatment related to anesthesia. Article 10 contains "Anesthetists, in carrying out their professional practice, are authorized to provide anesthesia management services to:

- a. Preanesthesia
- b. Intraanesthesia
- c. Postanesthesia

#### *Article 11*

1. Preanesthesia management care services as referred to in article 10 letter a, namely carrying out preanesthesia management reviews which include
  - a) Preparation of patient administration
  - b) Check vital signs
  - c) Other examinations are required according to the patient's needs, including inspection, palpation and auscultation
  - d) Examination and research of the patient's physical status
  - e) Analyze assessment results and formulate patient problems
  - f) Evaluate pre-anesthesia service management actions, evaluating independently and collaboratively
  - g) Document the results of the anamneisi/assessment
  - h) Thoroughly prepare the anesthesia machine every time it is used and ensure that the machine and monitor are in good condition and ready to use
  - i) Controlling supplies of medicines and fluids every day to ensure that all medicines, both anesthesia and emergency medicines, are available according to hospital standards and
  - j) Ensure the availability of anesthesia infrastructure based on the schedule, time and type of operation.
2. Intraanesthesia management services as referred to in article 10 letter b, consist of:
  - a) Monitoring equipment and drugs according to anesthesia technique planning
  - b) Monitor the patient's overall condition properly and correctly
  - c) Documentation of all recorded actions is good and correct.
3. Post-anesthesia care services as referred to in article 10 letter c include:
  - a) Planning actions to arrange Easter anesthesia procedures
  - b) Management of pain according to the instructions of an anesthesiologist.
  - c) Monitoring the condition of Easter patients with Epidural catheter installation
  - d) Monitoring the condition of Easter patients administering regional Anesthesia Tika medication
  - e) Monitoring the condition of Easter patients administering general anesthesia
  - f) Evaluation of the results of the Easter patient's condition with epidural catheter installation
  - g) Evaluation of the results of Epidural catheter placement and regional Anesthesia treatment
  - h) Evaluation of the results of epidural catheter installation and general anesthesia treatment
  - i) Implementation of actions to deal with emergency conditions
  - j) Documentation of the use of medicines and medical devices used
  - k) Maintain equipment so that it can be used for the next anesthesia procedure.

#### *Anesthesiologist's Liability for Alleged Negligence to the Patient During Pre-Operation*

It was explained at the beginning that medical errors are a doctor's professional error in carrying out medical procedures on a patient. Where the alleged medical error has violated the provisions of medical discipline, as regulated in Medical Council Regulation Number 4 of 2011 concerning Professional Discipline of Doctors and must also be proven through a medical audit as regulated in Article 49 paragraph (2) of Law Number 29 concerning Medical practice. Before discussing further regarding medical errors in the medical discipline, it is necessary to know that within the scope of medicine there are teachings that can be used as a basis for finding out about medical errors other than those contained in the provisions of Medical Council Regulation Number 4 of 2011 concerning the Professional Discipline of Doctors and Minister of Health Regulation Number 755 of 2011 concerning the Implementation of Medical Committees in Hospitals. The principle in question is known as the 4 (four) Ds, proposed by Taylor, which consist of Duty to Use Due Care,

Reliction of That Duty, Dernage, and Direct Causal relationship. According to Bambang Poernomo, mistakes in carrying out professional duties are divided into two. First, errors in carrying out the profession based on the provisions of the professional medical profession. Second, legal (juridical) errors related to professional duties based on statutory provisions. It should be noted that the source of juridical error in carrying out the medical profession is if a doctor makes a mistake, does something that should not be done, remembers the medical oath, ignores something that should be done according to professional standards, and behaves not in accordance with general standards regarding expected fairness. from fellow professional colleagues in the same circumstances and in the same place. To determine whether there is a mistake in the perpetrator, in this case the doctor, in their medical actions, it can be measured objectively and subjectively. Objectively it must be proven that in such circumstances, normal humans in general ( *de normale mens* ) can predict the possibility of consequences occurring, and this possibility will prevent good humans from acting or not acting. So what is used as a measure is a reasonable *person* . Meanwhile, subjectively it must be examined whether the perpetrator, based on his expertise, could predict the consequences of his actions.

In criminal law, an act is said to be a criminal act when the act meets the elements of error, and is an act that is against the law, and can be held criminally liable. Mistakes themselves in criminal law are further divided into negligence ( *culpa* ) and intention ( *dolus* ). It has been previously explained that negligence is a criminal act committed by any person due to carelessness and not taking into account events that will occur later, where in the negligence of the perpetrator of the crime he did not intend it and there was no intention (*mens rea*) to commit the criminal act. Meanwhile, on purpose, the perpetrator of the criminal act is aware, wants and has an intention ( *mens rea* ) in committing the criminal act. An act can be categorized as *criminal malpractice* if it meets the formulation of a criminal offense, so that when the elements of wrongdoing and unlawfulness of a criminal act are met, then the perpetrator of the criminal act can be held criminally responsible, as can the anesthesiologist. First, the action (both *positive act* or *negative act* ) must constitute a disgraceful act (*actus reus*). Second, it is carried out with a wrong mental attitude ( *mens rea* ), namely in the form of intention, carelessness or negligence ( *culpa* ). Within the scope of the rules of the medical profession, there is also a theory of intentional acts to identify doctors' mistakes, where this theory is used as a basis for patients to file claims in criminal law. Due to this medical error, it was carried out intentionally, causing the patient to suffer injury ( *assault and battery* ). In this theory, in fact it rarely occurs and can be classified as a criminal act based on the element of intent. It is important to know that doctors in carrying out the medical profession are based on the value of dedication for the sake of healing the patient's health, so it is difficult to find doctors who carry out medical procedures on patients with the intention to ( *mens rea* ) to harm the patient.

Meanwhile, the second theory is related to the theory of negligence, where medical errors must also be based on a doctor's negligence in carrying out medical procedures. It is known that a doctor's negligence in carrying out medical procedures is difficult for law enforcement officials to prove that negligence in medical procedures is considered an error in criminal law. The difficulty for law enforcement to prove a doctor's medical error is influenced by law enforcement's lack of knowledge regarding the scope of legal rules contained in the medical profession, whether it constitutes a medical error or not. Because it has to go through a series of proofs contained in the medical discipline. Apart from that, the proof must look at the medical error, not only from the scope of criminal law, but first look at the medical error from the medical discipline aspect. The connection between the disciplines of medicine and criminal law will be seen when medical experts carry out a medical audit to prove that the alleged medical error of the anesthetist in medical procedures has violated medical discipline as regulated in Medical Council Regulation Number 4 of 201 1 concerning the Professional Discipline of Doctors. If during the medical audit the anesthesiologist violates the provisions of the medical discipline, whether embolism was a factor that caused the patient's death, even if embolism was the cause, the next question is what factors caused the embolism to occur during the medical procedure. Regarding proof of this, it must be based on real negligence on the part of the doctors, as charged in Article 359 of the Criminal Code. Law enforcement officials cannot immediately process a doctor who is suspected of negligence in carrying out their duties in providing medical services, they must first start with internal hospital stages such as a medical audit. The medical audit arrangements are as follows:

1. Paragraph (1): In running a hospital, a medical audit must be carried out
2. Paragraph (2): Audits as referred to in paragraph (1) can be in the form of performance audits and medical audits.
3. Paragraph (3): Performance audits and medical audits as referred to in paragraph (2) can be carried out internally and externally
4. Paragraph (4): External performance audits as referred to in paragraph (3) can be carried out by supervisory personnel.

5. Paragraph (5): The implementation of medical audits is guided by the provisions stipulated by the minister.

Regarding medical audits which are guided by Minister of Health Regulation Number 755 of 2011 concerning the Implementation of Medical Committees in Hospitals. These regulations regulate the position of the Medical Committee which is an integral part of the Hospital with a non-structural organizational form, but is formed by the Head/Director of the Hospital. Where the Medical Committee has the authority to carry out medical audits from the aspect of medical discipline, and has the right to carry out examinations of medical staff suspected of committing violations of medical discipline, and even provide recommendations for follow-up medical audits of suspected medical discipline errors. By having the right to provide recommendations and follow up on allegations of medical errors, law enforcers (police, public prosecutors) should use this as a way to help prove medical errors from a criminal law aspect. Therefore, the process of proving errors in medical disciplines through medical audits is very necessary, so that it can be used as a basis for law enforcers (Police and Public Prosecutors) to prove medical errors in criminal law. According to the author, to determine a doctor's medical error, criminal law must be used as a last resort to resolve ( *ultimum remedium* ) medical errors in medical procedures. This means that you must first prove the medical error from the aspect of medical science. So that the results of proving medical errors in criminal law will obtain material truth as part of the objective of criminal evidence ( *negative wettelijke* ). Medical audits are formed in addition to evaluating the medical services that doctors have provided to patients, their formation is also intended as a forum that can help doctors who are facing problems accused of committing ethical, disciplinary and legal violations which are quite complicated and complex. Apart from that, according to the author, the position of the audit Medical services are not only a place to prevent medical errors, whether negligent or intentional. However, what is broader is that it is a forum to assist law enforcers in proving doctors' medical errors in medical actions on patients, and is a consequence of the existence of a therapeutic relationship which contains the rights and obligations of doctors in efforts to heal patients.

#### 4. CONCLUSION

The results of the research show that specialist anesthetists are responsible for errors or negligence (malpractice) in their medical procedures. Events that can be prevented are based on the Code, laws and regulations in the field of Health and Medicine, Default in accordance with Articles 1239, 1243 and 1246 of the Civil Code and Unlawful Acts in accordance with Articles 1365, 1366, 1367 paragraph (1), 1370 and 1371 of the Civil Code. It is said to be in breach of contract if the doctor's actions, which are inspanings verbintenits, are not in accordance with professional standards and standard operational procedures. A doctor is said to commit an unlawful act if he is wrong or negligent in his medical treatment on a patient, even though there is no prior agreement between them. In events that cannot be prevented, the risk must be viewed as a medical accident and the doctor cannot be blamed. Furthermore, protective efforts that are intended to prevent malpractice in patients can be carried out by consistently and consistently implementing the three pillars of patient safety, namely risk management, clinical governance and quality improvement.

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