



Legal protection for doctors as health workers for medical malpractice

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Abstract

In the context of Indonesia, medical malpractice is a serious concern because of the large number of cases that have been reported and become news material in the mass media. An example of a case that reflects the complexity of this problem occurs in the MAKASSAR District Court decision Number 1441/Pid.Sus/2019/PN Mks. In this case, the medical treatment failed completely, causing Agita to become permanently blind in her left eye. Agita reported this incident to the police. In its decision, the Makassar District Court stated that Dr. Elisabeth has not been legally and convincingly proven that the person is guilty of committing the crime as stated in the first and second indictments. The results of this research indicate that there are several legal bases that support legal protection for doctors suspected of committing medical violations. Health Law Number 17 of 2023 has many articles that regulate legal protection for doctors. Some dispute resolution processes are fair legal processes, appeal and cassation mechanisms, protection of doctors' rights, and compliance with operating standards. Solutions to the Problem of Legal Protection for Doctors Who Perform Medical Procedures in the Context of Medical Malpractice include: Alternative Dispute Resolution, Legal Protection for Whistleblowers, Protection for Doctors and Health Workers, and Training and Increasing Awareness.

Keywords: Malpractice, health workers, doctors

Introduction

The increasingly rapid development of the world of medicine and health has provided great benefits for society, but on the other hand, it also raises the risk of medical procedures that do not meet standards or what is known as medical malpractice^[12]. This act of medical malpractice can have very serious impacts, not only for the patient who is the victim, but also for the doctor who carries out the act, as well as the hospital where the doctor works^[14].

In the Indonesian context, medical malpractice is a serious concern because there are many cases that are reported and become news material in the mass media^[13]. Malpractice cases generally show that medical malpractice can cause major losses, both material and immaterial, for patients and their families. Apart from that, doctors and hospitals can also suffer losses, both financially and reputationally^[15]. Therefore, to deal with medical malpractice problems effectively, doctors and hospitals must have adequate legal protection.

This happened in the case in the MAKASSAR District Court Decision Number 1441/Pid.Sus/2019/PN Mks. The case is that Agita Diola Fitria, the victim, went to Belle Beauty Care, a beauty clinic owned by the defendant, Dr. Elisabeth Susana, on the recommendation of her family. Agita asked for her nose to be made higher, and Dr. Elisabeth agreed by suggesting injecting filler fluid into the cheeks and nose. However, this medical procedure failed completely and resulted in Agita's left eye becoming permanently blind. Agita reported this incident to the police and after investigation and inquiry, Dr. Elisabeth was named a suspect because she was suspected of being negligent and practicing filler injections without permission.

During the evidentiary hearing at the Makassar District Court, Dr. Elisabeth received defense from many people, including medical groups. The Makassar District Court finally decided that Dr. Elisabeth did not have legal power

and convinced the defendant to commit the crimes mentioned in the first and second indictments. He was acquitted of these charges, and his abilities, position, honor and dignity were restored.

The next case also occurred at the Manado District Court, Manado District Court Decision Number 90/PID.B/2011/PN.MDO was a case involving Dr. Hendy Siagian, Hendry Simanjuntak, and Ayu Sasiary Prawani. In Manado, where Dr. Ayu and her colleagues treated referral patients from the Community Health Center, this incident occurred in April 2010. Dr. Ayu underwent a caesarean section due to urgent circumstances. However, this action was not successful in saving the patient and the patient's family reported Dr. Ayu and her colleagues went to the police for carrying out illegal actions. The Manado District Court sentenced Dr. Ayu and colleagues. However, Dr. Ayu was released because she was not proven to have committed malpractice^[16].

The case shows that doctors have the right to a fair legal process. Although initially acquitted by the Manado District Court, the appeal filed by the Public Prosecutor received approval from the Supreme Court. This shows that the defendant has the right to file an appeal and cassation to obtain justice.

In line with Article 279 paragraph (c) of Law Number 17 of 2023 concerning Health which mandates that health workers and medical personnel protect patients who receive services from accusations of criminal acts and ethically place the interests of patients and society above the interests of individuals or individuals. group. activity. This means that health workers, including doctors, are entitled to compensation and legal protection. Furthermore, according to Article 303 paragraph (1), health workers and medical personnel who provide medical services are obliged to pay attention to patient safety. Similar rules governing the responsibilities of doctors in carrying out medical

procedures are contained in Law Number 17 of 2023 concerning Health, Article 172 Paragraph 4 which states that medical personnel or health workers who have a practice permit carry out Telemedicine Services provided by Health Service Facilities as stated in Paragraph 1.

Ismail and Erwin's 2020 research examined the legal culpability of hospital staff members for making mistakes. This study focuses on the fundamental legal obligations of health care providers—such as doctors, hospitals, and other health care workers—who engage in illegal activities. This study also explains the legal basis for patient lawsuits to demand accountability, namely based on Article 58 of Law Number 17 of 2023 concerning Health. Meanwhile, what differentiates research conducted by researchers from other research is the increasingly narrow focus on doctors as professional medical personnel. This study is similar in that it draws attention to examples of medical negligence.

Medical malpractice refers to medical actions carried out by medical personnel, such as doctors, that are considered to violate professional standards and cause harm or injury to patients. The legal basis for medical malpractice in Indonesia is regulated in Law Number 17 of 2023. In the legal context, to determine whether a medical action can be categorized as malpractice, it is necessary to refer to the provisions regulated in Law Number 17 of 2023 concerning Health, as well as implementing regulations. This includes violations of professional standards, inappropriate medical procedures, or other actions that could cause harm to patients.

Results and discussion

1. Legal Protection for Doctors as Health Workers for Medical Malpractice

Medical actions that can be categorized as malpractice usually involve violations of medical professional standards, inappropriate medical procedures, or other actions that can cause harm to the patient. Some examples of medical actions that can be categorized as malpractice include:

1. Misdiagnosis that results in inappropriate treatment.
2. Failure to provide care in accordance with applicable medical standards.
3. Carrying out medical procedures that do not comply with professional standards.
4. Failure to provide patients with sufficient information about risks and treatment alternatives.
5. Failure to properly monitor the patient's condition during treatment.

1.1. Concept of Legal Protection

Apart from making doctors and other health service providers more careful in providing services, regulations regarding malpractice also protect patients' rights as legal subjects in a democratic country.

According to Article 53 paragraph (1), health workers such as doctors and nurses have the right to receive legal protection in carrying out their profession. "Every person has the right to receive compensation due to errors or negligence committed by health workers," reads Article 55 of Law Number 23 of 1992." Article 56 explains the statement, stating that:

"The aim of providing the right to compensation is to protect all individuals from all losses that may arise due to error or carelessness, both physical and non-physical."

Legal protection is essential in situations like this because carelessness or mistakes can result in death or serious disability. To achieve this goal, the government creates laws that protect patients and health workers. However, procedural errors or other negligence have caused patients to die or be disabled for life.

From a functional relationship perspective, malpractice problems occur when the functional relationship between the patient and the doctor or medical personnel is disrupted and the patient becomes a victim due to the negligence of the doctor or medical personnel in ensuring the patient's safety and well-being^[17]. However, keep in mind that the law is not intended for this type of negligence. Where Article 53 First Paragraph of Law no. 23 of 1992 states: "Health workers have the right to obtain legal protection in carrying out their duties in accordance with their profession."

Medicine and other medical professions need legal protection so they can feel comfortable and safe in doing their work. Because, if there are no fair and balanced regulations to carry out this truly valuable task, doctors will be afraid to carry out actions that are very important for human life.

The medical and medical profession has a very high risk and responsibility in dealing with human life. Every medical action performed can have a significant impact on the patient, both positive and negative. Therefore, doctors and medical personnel need to feel safe and protected when carrying out their duties

Complexity of Medical Practice: Medical practice is increasingly complex with developments in science, technology and the handling of diverse cases. This causes doctors and medical personnel to face increasingly higher risks of negligence or errors in practice.

Without adequate legal protection, doctors tend to practice "defensive medicine", namely excessive action to avoid lawsuits, instead of focusing on the patient's best interests. This will certainly hamper the quality of medical services.

1.2. Basics of Legal Protection for Doctors in Medical Procedures

Prof. Dr. Eka Julianta Wahjoepramono, SpBS revealed that the legal basis for protection for doctors in medical procedures is used as an excuse by medical professionals to commit malpractice, in particular:^[18]

a. Law Number 17 of 2023 concerning Health;

Article 273

Medical personnel and health workers involved in practice have the right:

- Obtain legal protection while working in accordance with industry norms for professionalism, service and standard operating procedures; additionally, consider the patient's medical needs;
- Obtain accurate and comprehensive patient or family information;
- Obtain salaries, allowances and performance allowances in accordance with legal requirements;
- Get security, safety and health protection at work. Compliant with legal requirements, job and health guarantees;
- Obtain protection from treatment that violates human dignity, morality, decency and socio-cultural values;
- Obtain rewards according to the guidelines outlined in legally mandated rules; G. Get the opportunity to

advance professionally by improving knowledge, abilities and career in the field of competence;

- obtain additional rights in accordance with the provisions of the articles of association; H. Ignoring the wishes of patients or those who violate norms or codes of professional ethics, services, or standard operational procedures
- b. Article 24 Paragraph 1 Government Regulation Number 32 of 1996 concerning Health Workers.

Article 24

“obtain additional rights in accordance with the provisions of the articles of association; H. Ignoring the wishes of patients or those who violate norms or codes of professional ethics, services, or standard operational procedures ^[19]. Standard Operating Procedure (SOP). SOP, or standard operating procedure. As long as a doctor complies with Standard Operating Procedures (SOP) and fulfills his commitments, he can use legal protection as a basis for carrying out his profession.

2. Forms of Resolving Medical Disputes as an Effort to Achieve Justice for Doctors in Indonesia

Based on the cases previously discussed in the introduction, there are several types of medical dispute resolution that can be used to encourage justice for doctors in Indonesia. The following are several types of medical dispute resolution that can be used to promote justice for doctors in Indonesia:

2.1. Settlement of medical disputes through a fair legal process

In both cases described above, the doctors involved had the opportunity to undergo a fair legal process. They have the right to defend themselves and receive an objective trial. This is important to ensure that doctors are not punished carelessly or based solely on public opinion. A fair legal process allows doctors to prove their innocence and protect their rights.

2.2. Settlement of medical disputes through appeals and cassation

One form of resolving medical disputes is through the appeal and cassation process ^[20]. In the second case involving dr. Ayu Sasiary Prawani, the appeal was filed by the Public Prosecutor and the Supreme Court granted it. Although initially tried and acquitted, cassation allows parties who are dissatisfied with the court's decision to appeal and request a review.

2.3. Settlement of medical disputes through the protection of doctors' rights

The second case shows support and protests from doctors throughout Indonesia. The doctors took to the streets and went on strike as a form of protest against the punishment received by Dr. Ayu Sasiary Prawani and colleagues. In this case, the protection of doctors' rights is in the spotlight, including their rights to undergo a fair legal process and obtain an appropriate assessment. This protest action also shows the importance of solidarity and support in maintaining justice for doctors.

2.4. Resolving medical disputes through compliance with standards and SOPs

In medical malpractice cases, it is important to ensure that doctors carry out medical practices in accordance with

established standards and SOPs. In the first case decision, the Makassar District Court concluded that the medical treatment carried out by Dr. It cannot be confirmed that Elisabeth Susana's actions violate the law.

The aim of resolving medical disputes as an effort to achieve justice for doctors in Indonesia is to provide a fair and balanced dispute resolution mechanism for both parties, both patients and doctors. This is important to ensure that the rights and interests of each party are protected. Apart from that, medical dispute resolution also aims to reduce the legal and psychological burden that doctors face when involved in disputes. A fair dispute resolution process can minimize doctors' fear and anxiety in providing services.

Medical dispute resolution also aims to encourage more transparent and accountable medical practice, by encouraging both parties to resolve problems constructively and based on applicable professional standards. Another goal is to build public trust in the medical profession, by proving that problems in medical practice can be resolved fairly and professionally. Ultimately, medical dispute resolution aims to create a more conducive medical practice climate, where doctors can focus on healing efforts and improving the quality of health services, without worrying too much about the possibility of legal disputes. Overall, the main goal is to realize justice and protect doctors' rights, while ensuring that patients' rights are fulfilled, thereby creating professional and quality medical practice.

Overall, the process of resolving medical disputes in an effort to achieve justice for doctors in Indonesia involves a fair legal process, appeal and cassation mechanisms, protection of doctors' rights, and compliance with standards and SOPs in medical practice. It is important to prioritize justice for all parties involved, both doctors and patients, and ensure that assessments of medical procedures are based on sufficient facts and evidence.

3. Solution to the Problem of Legal Protection for Doctors Who Perform Medical Procedures in the Context of Medical Malpractice

Providing legal guarantees and certainty for doctors in carrying out their duties and responsibilities is an important goal of legal protection for doctors in the context of medical malpractice. This is important to encourage doctors to work professionally and not hesitate to take necessary medical action. This legal protection also aims to prevent the emergence of fear and reluctance from doctors in providing the medical services that patients need. Legal protection can reduce the psychological burden on doctors when facing possible malpractice claims.

In addition, the aim of this legal protection is to maintain a balance between the patient's right to receive good and safe medical services, and the doctor's right to obtain legal protection when carrying out medical procedures according to professional standards. This legal protection also aims to encourage a conducive climate for medical practice, where doctors can focus on healing and improving the health of patients, without worrying about unwarranted lawsuits. Furthermore, this legal protection aims to provide space for doctors to innovate and develop medical science, without fear of excessive legal consequences.

If we look at Law Number 17 of 2023 concerning Health, it provides a solution to the problem of legal protection for doctors who carry out medical procedures in the context of medical malpractice through several provisions, including:

3.1. Alternative Dispute Resolution

Article 310 of Law Number 17 of 2023 stipulates that disputes caused by errors in carrying out their profession must be resolved first through alternative dispute resolution outside of court. This indicates an attempt to resolve the problem.

Alternative dispute resolution is a process in which the parties involved in a dispute try to reach a resolution outside of court^[21], without having to go through a formal litigation process. Common alternative dispute resolution methods include mediation, arbitration, negotiation, and dispute resolution conferences.

3.2. Legal Protection for Whistleblowers

Health workers and other health workers who report suspected abuse of patients are guaranteed legal protection under Article 275 paragraph (3). This aims to encourage transparency and reporting of errors or suspected medical malpractice without fear of retaliation or reprisal.

Law 17 of 2023 provides legal protection for whistleblowers through several provisions, including:

a. Article 179

- "Health facilities must comply with patient safety standards.
- Patient safety standards as referred to in paragraph (1) are implemented by controlling and eliminating risks, assessing and disclosing information, and finding solutions to problems related to handling and preventing threats to patient safety.
- "Ministerial regulations regulate additional provisions for patient safety requirements as intended in paragraph (1)"

b. Article 178 paragraph (2) "Improving the quality of Health Services internally as intended in the paragraph is carried out through:

- Measurement and Reporting of Quality Indicators;
- Patient Safety Event Reporting; And
- Risk management".

With this legal protection, doctors or medical personnel who report suspected medical malpractice do not need to worry about retaliation or retaliation that they may face as a consequence of such reporting. This is important to create an environment that supports disclosure of errors and increased patient safety.

c. Protection of Doctors and Health Workers

By providing legal protection to medical personnel and healthcare professionals involved in reports or actions related to medical malpractice, this law creates an environment where physicians feel safe to report problems or errors without fear of legal or professional threats.

- Article 53 stipulates that patients have an obligation to disclose all relevant information regarding their health problems in an honest and comprehensive manner, follow the advice and orders of medical professionals, comply with the laws applicable to health care institutions, and offer a balance of services in the relationship. to the services they receive.
- Article 74 regulates that medical audits can be carried out in order to educate and supervise doctors and dentists who practice medicine.

- Article 75 According to paragraph 29 paragraph (1), a doctor who practices dentistry or secretly performs surgery without having a registration certificate is equated with a surgeon who performs surgery with a scalpel that is at least 3 (three) years old or a doctor teeth that have the longest scalpel that is as big as possible IDR 100,000,000.00.

In some medical malpractice cases, doctors who have acted in accordance with applicable medical standards but still face claims or lawsuits, can feel emotionally and professionally burdened. With legal protection, doctors can feel more confident and protected in carrying out their medical duties, and avoid unfair legal consequences

d. Training and Awareness Raising

Ongoing training and increased awareness are critical in the context of medical malpractice. Doctors need to keep up with the latest developments in medical practice, standards of care, and legal regulations relating to medical procedures. By improving their knowledge and skills, doctors can reduce the risk of medical procedures that do not comply with standards and improve the quality of care they provide to patients. Training and raising awareness are also important in understanding patient rights, effective communication, and the importance of informed consent before carrying out medical procedures.

Conclusion

The results of this research indicate that there are several legal bases that support legal protection for doctors suspected of committing medical violations. Health Law Number 17 of 2023 has many articles that regulate legal protection for doctors. According to Article 121, medical personnel and health workers who are reported to have alleged criminal acts against patients receiving treatment must receive legal protection related to health. In addition, Article 303 paragraph (1) states that medical personnel and health workers who provide necessary health services by considering patient safety have legal rights and protection. Some dispute resolution processes are fair legal processes, appeal and cassation mechanisms, protection of doctors' rights, and compliance with operating standards. Solutions to the Problem of Legal Protection for Doctors Who Perform Medical Procedures in the Context of Medical Malpractice include: Alternative Dispute Resolution, Legal Protection for Whistleblowers, Protection for Doctors and Health Workers, and Training and Increasing Awareness.

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