

# Juridic View of A Specialist Doctor Who Doesn't Have Competency of Complications Management Causing Morbidity and Mortality

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**Abstract:** *When doctors diagnose patients wrongly, they can increase the risk of complications. Misdiagnosis can cause treatment delay. Not to mention infections caused by sterilization procedures those are performed not according to the route or miscommunication because they do not receive crucial information between health agencies. Legal Liability Death and morbidity caused by specialist doctors who do not have the competence in managing complications is when a doctor who in his medical assignment deviates from the standards of the medical profession and is proven that the doctor deviates from the standards of the medical profession, fulfills the element of culpa lata / neglect / lack of heart- hearts and actions that result in fatal / serious consequences, the doctor may be subject to sanctions in violation of Article 395 of the Criminal Code that is due to lack of care or Article 360 of the Criminal Code resulting in other people seriously injured / died.*

**Keywords:** Specialist doctors; Morbidity; Mortality; Medical malpractice law

## 1. Introduction

The legal relationship between doctors and patients from a civil standpoint is a legal engagement. A legal engagement is a bond between two or more legal subjects to do or not do something or give something (1313 Jo 1234 BW). Something called achievement. A legal engagement rooted from 2 (two) reasons, one by an agreement (1313 BW) and the other by law (1352 BW).<sup>1</sup>

A doctor in carrying out his medical practice must always act upon the values of the Indonesian Medical Ethics Code (IMEC) sincerely, understand what the contents of IMEC are and live the contents of the IMEC, because by doing so the risk of medical malpractice can be avoided and it is desirable to provide maximum healing results.<sup>2</sup>

Medical malpractice is a wrong action by a doctor when carrying out a practice, which harm to the health and life of the patient, and uses medical expertise for personal gain.<sup>3</sup> Or it can also be interpreted by the doctor's job performance is not good. A doctor is considered good if:<sup>4</sup>

- a) Doctors put the interests of patients higher than the interests of doctors in obtaining payments
- b) Patients can feel whether the doctor works for the patient's sake or for money
- c) The doctor works according to his competence except in emergency relief or life-saving. An internist may not operate. However, during emergencies, for example

helping in labor on an airplane, the action can be justified.

- d) Doctors work by implementing medical service standards that have been determined by the Indonesian Medical Council
- e) Doctors work by implementing standard operating procedures that have been determined by the profession if they work independently or that have been determined by their institutions, such as health centers, hospitals, and so on.

If a specialist diagnoses the patient wrongly, it can increase the risk of complications. Not only have that, misdiagnosis can also delayed treatment that should be done immediately. Not to mention infections caused by sterilization procedures that is not in accordance with the route or miscommunication because they do not receive proper information between health agencies. The problem raised in this paper is how the legal liability of death and morbidity caused by specialist doctors who do not have the competence in the management of complications and whether death and victimization caused by doctors can be categorised as a malpractice.

## 2. Literature Review

### Medical Specialist

Operationally, the definition of "Doctor" is a health worker (doctor) who becomes the patient's first point of contact with his doctor to solve all health problems encountered regardless of the type of disease, organology, age group, and gender, as early and as far as possible, as a whole , plenary, sustainable, and in coordination and collaboration with other health professionals, using the principles of effective and efficient service and upholding professional, legal, ethical and moral responsibilities. The services he

<sup>1</sup> Andi, Hamzah. LAW Dictionaryn (Jakarta: Ghalia Indonesia, 1986), hlm.244

<sup>2</sup> Danny Wiradharmairadharna, Medicine and Health Law, (Jakarta: EGC Medicine, 1999), p.7.

<sup>3</sup> Soedjatmiko, Medical Problems in Juridic Malpractice, (Malang: Citra Aditya Bakti, 2001), p.32

<sup>4</sup> Anny Isfandyarie, Malpractice and Medical Risks in Criminal Law Review, (Jakarta: Prestasi Pustaka, 2005), p.34

provides are limited to basic medical competencies that he acquired during medical education.<sup>5</sup>

Laws of the republic Indonesia No. 29 of 2004 concerning Medical Practice provides a limitation that what is meant by doctors and dentists are doctors, specialist doctors, dentists, and dental specialists graduating from medical or dentistry education both at home and abroad that are recognized by the Government of the Republic of Indonesia in accordance with regulations legislation.

Specialist Doctors are doctors who specialize in a particular field of medicine. The specialist medical education program is a stage of education and training that graduates of doctors undergo in order to gain additional abilities and skills so they can manage health problems that are more complex and specific than ever before.

A doctor who is a specialist doctor can be called a Resident. Specialist medical education in Indonesia is called the Specialist Medical Education Program or PPDS, which is an education program to train a general practitioner to become a specialist doctor.

The implementation of specialist medical education programs in Indonesia is currently carried out in educational hospitals and network hospitals under the coordination of the medical faculty. The application of 'university based' education and training is considered the most appropriate way to maintain the quality of education and training of residents or Participants Of Specialist Medical Education (PSME) programs.

### Morbidity and Mortality

Morbidity is a condition where a person is said to be ill if a perceived health complaint causes disruption of daily activities that is not being able to carry out work activities, take care of the household, and normal activities as usual<sup>6</sup>Mortality in the narrow sense is intended as an illness or pain event, whereas in the broad sense mortality has a much more complex understanding, not only limited to statistics or measures of these events, but also the factors that influence it (determinant factors), such as social factors, economic factors, and also culture.

Death or mortality is one of the three components of the demographic process that affects population structure; the other two components are birth (fertility) and population mobility.<sup>7</sup> Death can be interpreted as the event of the loss of all signs of life permanently, which can occur any time after a live birth.<sup>53</sup> According to the United Nations and WHO, death is the loss of all signs of life permanently which can occur any time after a live birth. Still birth and miscarriage are not included in the definition of death.

Morbidity (illness / illness) is a condition of deviation from the normal state, which is usually limited to physical and

mental health. In certain cases this morbidity occurs continuously (cumulative morbidity) which can ultimately cause death in sufferers.

### Research Methods

This type of research is normative legal research which examines the law as norms, rules that are in the We Act, and various statutory regulations. The problem approach used in this study is the normative juridical approach. The form of research conducted here is qualitative research. The research applies to humanistic or interpretative knowledge which technically emphasizes text, and this research is a series of scientific activities in the context of problem solving.<sup>8</sup>

### 3. Results and Discussion

The medical profession has a specialty that distinguishes it from other professions. The specialty of the medical profession lies in its autonomous nature and its size regarding the average ability of doctors as carrying the profession, accuracy, perseverance, caution, and a high sense of devotion. A doctor's action is carried out in accordance with professional standards of the doctor whose indications are carried out carefully and in accordance with medical measures, as a doctor who has an average ability compared to doctors from the same medical doctor with means of effort that meets a reasonable proportion (proportional) compared to the concrete goals of the medical action.<sup>9</sup>

In the Indonesian Medical Ethics Code (IMEC) which regulates General Obligations, Article 2 states: "A doctor must always try to carry out his profession in accordance with the highest professional standards." While Article 7a states that, "a doctor must, in every medical practice, providing competent medical services in full technical and moral freedom, accompanied by compassion and respect for human dignity."<sup>10</sup>

The implementation of the medical profession must develop with the development of increasingly broad technological knowledge which concerns aspects of human life. The doctor profession is not a business profession but a profession that must be carried out with high morality because it must always be ready to provide help to those who need it. Therefore doctors in carrying out their duties must always be bound by the Code of Ethics and Doctor Oath.

In general, every action or deed that has been done must be accounted for by everyone. As stated by Berkhouwer and Vorstman, there are at least 2 conditions that result in liability in law, namely: (1) "... the consequences can be

<sup>5</sup> <https://somelus.wordpress.com/2008/11/26/p/understanding-doctor-and-doctor-duty>

<sup>6</sup> Sirusa BPS. Morbiditas, from <https://sirusa.bps.go.id/>

<sup>7</sup> Bagoes Mantra, General Demographic. (Yogyakarta: PustakaPelajar, 2010)

<sup>8</sup> Abudin Nata, Methodology of Islamic Studies (Jakarta, Raja GrafindoPersada, 2003), hlm. 126.

<sup>9</sup> Moh. Hatta, Helath law and Medical Disputes, (Yogyakarta: Liberty, 2013), hlm.84

<sup>10</sup> Ari Yunanto, Medical Malpractice Criminal Law, (Yogyakarta: Andi, 2010), hlm.12

calculated in advance. (2) Negligence in doing something (or not do it)".<sup>11</sup>

As a legal subject, doctors in carrying out actions or actions in the association of society are distinguished between daily actions relating to the implementation of the profession and actions that are not related to the profession. Likewise, the legal responsibilities of doctors are distinguished between: legal responsibilities related to the implementation of their profession and legal responsibilities that are not related to the implementation of their profession. The doctor's attachment to the legal provisions in carrying out his profession is the legal responsibility of the doctor which includes:<sup>12</sup>

- a) The field of administrative law, contained in Law No. 9 of 1960 concerning Health Principle, Law No. 36 of 2014 concerning Health Workers, and so on.
- b) Criminal Law Sector, namely the Criminal Law Act (Law No. 1 1946), including Articles 48-51, 224, 267, 268, 322, 344-361, 531 of the Criminal Code.
- c) In the area of Civil Law, specifically regarding the provisions in BW III Book on Engagement Law.

In proving the error / omission of doctors in carrying out the profession it is not enough just to prove juridically, but also medical verification is obtained from the decision of the assembly and not from listening to expert witnesses in this case it is still possible for personal opinions derived from practical experience supported by factors luck.

Negligence causing death or serious injury that may be found in the practice of health care can be qualified as a crime. In order to sentence in an event must first be proven:<sup>13</sup>

- a) There is a causal relationship between behavior or neglect and death or serious injury to the patient.
- b) Concerned in his behavior or negligence.

Doing or neglecting something needs to be tested based on the description of the behavior listed in the provisions of criminal law is the application of a reaction that is criminal law. Behavior that does not meet the offense formula cannot be punished or any actions that are dangerous or despicable of the act. There is no other way for the judge but to pronounce the "acquittal".

The basis for the nullification of the written sentence, which is all mentioned in the Criminal Code, applies to doctors who have performed professionally, namely Article 48 of Forced Power / Overmatch; Article 49 self-defense / *uit zelfredediging*; Article 50 implements the provisions of the Law / *veering van een wettelyk voorshrift*; Article 51 carries out legal office orders.

Medical errors cause many cases of death (mortality) and morbidity. Medical error is one of the highest causes of death (mortality). Some types of medical errors that can

lead to death include surgery operation errors, medication errors, and improper doses as well as treatments by doctors who do not have the competency in managing complications.

The mortality rate is an indicator of the results of the performance of a health service process, in hospitals there are deaths under 48 hours and there are deaths above 48 hours, deaths that occur under 48 hours are indicated if it occurs is simply due to a factor in the level of emergency or at patient, meaning that the patient's condition determines his death more.

For example, due to errors / negligence resulting in patients dying, disability or other unpleasant consequences, the doctor can be held accountable for these consequences as contained in the Criminal Law Act (KUHP) Chapter XXI about causing people to die or injury due to their fault.

These provisions can be seen in the articles below:  
Article 359 of the Criminal Code:

"Whoever caused his mistake caused the death of a person sentenced to prison for five years or confinement for one year".

Article 360 of the Criminal Code:

- (1) "Anyone who has caused a serious injury to a person is punishable by a sentence of imprisonment of five years or a sentence of imprisonment of one year".
- (2) "Anyone who by mistake causes an injury in such a way that the person becomes ill temporarily or does not carry out his position or work temporarily, is sentenced to a nine-month prison term or a maximum sentence of six months, or a fine of up to IDR. 4500, - "

Article 361 of the Criminal Code:

"If the offense described in this chapter is carried out in an occupation or occupation, the sentence may be increased by one third and the offender may be dismissed from his job, at which time the crime was committed and the judge can order that his decision be announced".

Civil liability by a doctor who has made a mistake and caused a loss to his patient is regulated in Article 1365 of the Civil Code stated as follows: "Every act that violates the law, which brings harm to others, requires the person who due to wrongful issuance of the loss, compensates for the loss".

In health services, negligence arising from the actions of a doctor is "negligence due to". Therefore, the criminal is the cause of the arising of consequences, for example, the actions of a doctor who causes disability or death of people under his care, so that the act can be harmed to him.<sup>14</sup>

At the same time, a new doctor can be said negligent, if he has committed a major negligence or culpa lata or grove schuls as the Rechtbank Amsterdam decision on April 13, 1962 NJ1962: 286. In line with that Picard (1984: 154),

<sup>11</sup> SoerjonoSoekanto, Legal Aspect and Medical Ethics In Indonesia, (Jakarta: GrafitiPers, 1983), hlm.67

<sup>12</sup> Veronica Komalawati, Loc.cit, hlm.102

<sup>13</sup> F. Tengker, Medical Law Articles, (Bandung: Nova,2007), hlm.67

<sup>14</sup> SyahrulMachmud, Law Enforcement and Legal Protection for Doctors Allegedly Conducting Medical Malpractice, I, Bandung: Karya Putra Darwati, 2012. P.58

states that for a person doctors in carrying out their duties of treatment, can only be said negligent to do negligence if it meets four requirements, namely:<sup>15</sup>

- 1) The defendant must owe the plaintiff a duty of care, (doctors must provide health services in accordance with their obligations)
- 2) The defendant must breach the standards of care established by law, (doctors have violated established health service standards)
- 3) The plaintiff must suffer an injury or loss; the defendant's conduct must have the actual and legal cause of plaintiff's injury. (patients must suffer losses due to the actions of medical personnel)

If a person commits an action and the act has a consequence that is prohibited and threatened by law by laws and regulations even though the act was not done intentionally, that person should be able to do other things so that it does not cause a prohibited effect or even does not commit the act. Thus in determining whether someone is not careful is if the person can do something else so that the consequences prohibited by statutory regulation and threatened with punishment do not arise.

In such case, then what becomes the benchmark is the mind and ability of the person to determine whether everyone who falls into the same category with him and under the same conditions and with the same means will do something else. If someone else in the same category will do the same with him, it can be said that there is negligence or neglect. However, on the other hand if the other person will do something different from what is done by him, it can be said that he has done less careful, neglectful and negligent.<sup>16</sup>

Negligence or negligence essentially contains three elements, namely the perpetrator doing (or not doing, het doen of het nietdoeni), other than what he should have done (or not doing) so that by doing so (or not doing) has committed acts against the law. The second element, the perpetrators have been negligent, careless, or lack of thought. The third element, the actions of the offender can be criticized and therefore, the offender must be responsible for the consequences that occur because of the act.<sup>17</sup>

### Malpractice Caused Mortality and Morbidity

Negligence in the medical world is a wrong action by a doctor in carrying out his work or obligations so as to cause a loss to others both death (mortality) and make the patient more severe illness (morbidity). In Indonesia, there are many cases of death in medical services. Doctor negligence as above, in Indonesia is recognized as medical malpractice. Almost all scholars and literature in Indonesia use the term medical malpractice to refer to doctors who have made mistakes in carrying out their practice.

Criminal Malpractice occurs when a patient dies or has a disability due to a doctor or other health worker being careless, criminal malpractice, namely:

- a) Criminal malpractice due to intentional (intentional), for example in cases of abortion without medical indications, euthanasia, divulging medical secrets, not doing help in emergency cases even though it is known that no one else can help, and provide a doctor's statement that is not true.
- b) Criminal malpractice due to carelessness (recklessness), for example, taking actions that are not in accordance with professional standards and taking action without the approval of medical action.
- c) Criminal malpractice due to negligence (negligence), for example there is a disability or death in patients due to the actions of doctors who are not careful or negligent with the lagging of the surgical instruments in the patient's body cavity.

To prove professional mistakes in the medical field, of course, requires the standards of the medical profession that are only determined by the professional group itself. And what must be maintained by professional groups is professional honor. The honor of doctors in carrying out the profession should be interpreted as a doctor in carrying out his profession in accordance with applicable medical profession standards in accordance with the goals of medical science.

While the doctor must be responsible for the losses incurred, because of his mistakes in carrying out the profession. The strength of evidence from evidence assessed according to article 188 paragraphs (3) of the Criminal Procedure Code is conducted by the law in a wise and prudent manner in certain circumstances, after careful and thorough examination based on his conscience as well as information obtained from the process of handling health enforcement efforts.

The nature of the evidentiary power of witness testimony is the same as evidence of evidence, expert statements and letters which have free evidence. According to article 189 paragraph (14) of the Criminal Procedure Code that the strength of evidence from the testimony of the accused alone is not sufficient to prove that the defendant is guilty of carrying out the act of the accused must be accompanied by other evidence.

Here is the power of evidence for the actions that are charged to convince the judge, as stated in modern criminal law that the reproach of an action lies in the relationship between the inner state of the perpetrator with the actions he did, but in the evaluation of that relationship.

Judgment is in the hands of the judge, because the core of the error lies in the assessment and psychological condition that becomes a measure, based on facts that existed before the incident, at the time of the incident and after the incident, the judge assessed the inner state of the offender. The evidence that can indicate whether there is a match between the other evidences, so that the judge is sure of the deeds committed by the defendant.

<sup>15</sup> Ibid

<sup>16</sup>CecepTriwibowo, Ethics and Medical Law, Cet. I, (Yogyakarta: NuhaMedika, 2014), hlm.288

<sup>17</sup> Ibid

#### 4. Conclusion

Legal Liability for Death and Morbidity Caused by Specialist Doctors Who Have No Complications in Management of Complications, that is, if a doctor who in his medical duties deviates from the standards of the medical profession and is proven that the doctor deviates from the standards of the medical profession, meets the element of culpa lata / neglect / lack of heart- hearts and actions that result in fatal / serious consequences, the doctor may be subject to sanctions in violation of Article 395 of the Criminal Code that is due to lack of carefulness or Article 360 of the Criminal Code resulting in other people seriously injured / died. Criminal liability arises if first of all it can be proven that there has been a professional error, for example an error in diagnosis or an error in the way of treatment or treatment or error of treatment by an incompetent doctor. A doctor is considered to have the ability or competence to apply his knowledge, but the person concerned is still unable to practice without meeting an administrative requirement. Such conditions are as required in the provisions regarding medical practice permits. Death and Morbidity Caused By Doctors As Malpractice occurs when a patient dies or has a disability due to doctors who are not competent in the management of complications or other health care workers are not careful

Doctors in carrying out medical practices must follow standard operating procedures (SOP) so that the possible risk of death or morbidity can be minimized in such a way as possible. Doctors who have done work according to SOP will get legal protection

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