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Civil Lawsuit against the Hospital that Neglects to Protect the Patient and the Health Worker

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Abstract: ***The legal relationship between doctors and patients in the implementation of medical practice is an engagement born from a therapeutic agreement. This transaction creates rights and obligations for both parties. In a therapeutic agreement, both the doctor and the patient have rights and obligations that must be carried out. The rights and obligations of doctors and patients are regulated in Articles 50 to 53 of Law Number 29 of 2004 concerning Medical Practice. Thus, if the doctor does not comply with the provisions contained in the therapeutic agreement, the patient can file a lawsuit on the basis of default. The house can take responsibility for the medical actions of doctors that meet the elements of negligence and are responsible for hospital management such as damage and unpreparedness of medical equipment when doctors use it in medical services. The law and supported by several theories give the patient the right to sue the hospital on a civil basis on the basis of default or illegal actions in the form of material compensation to the injured patient.***

Keywords: therapeutic agreement; Civil Lawsuit; Patient legal protection

1. Introduction

Health is one of the basic human needs besides food and clothing, without a healthy life, human life becomes meaningless, because in a state of illness it is impossible for humans to carry out their daily activities properly. Apart from that people who are sick (patients) cannot cure their own illnesses, have no other choice but to ask for help from health workers who can cure their illnesses and these health workers will do what is known as health efforts by providing health services.

Health is one of the elements of public welfare, so that the problem of health services is a very basic national interest. The more advanced a nation is, the greater the need for good health services. Article 7 of Law Number 36 Year 2009 concerning Healthclearly states that the government has the duty to organize health efforts that are evenly distributed and affordable to the public. The government is responsible for improving the public health status.

Guarantee regarding health services is even indirectly the meaning of Article 27 paragraph (2) of the 1945 Constitution (UUD 1945), which is that "everyone has the right to a job and a living that is decent for humanity" including a decent living in getting health services if needed. As a national interest, especially regarding the attainment of general welfare, of course the function of law plays a very important role both in protecting national interests and in realizing public welfare[1].With the legal function as a social integration, the interests of patients can be guaranteed and without violating the interests of other parties related to the provision of health services.[2]

The form of implementing regulations for health services is Law Number 36 of 2009 concerning Health, hereinafter referred to as the Health Law. The Health Law does not mention health services in the sense that health services are formulated as Health Efforts. As regulated in Law Number 36 Year 2009 concerning Health in Article 1 Paragraph (11).General provisions which read:

"Health Effort refers to any activity and / or a series of activities carried out integrally and continuouslyto maintain and promote the community health degree in the form of disease prevention, health promotion, disease medication, and health recovery by the government and / or the people"

Poor health services will result in detrimental people who need medical services. Especially if the hospital does not provide proper service according to the procedures stipulated in the Criminal Code, which can cause the patient to suffer losses resulting in morbidity or death, then this is a criminal act and can be convicted according to the applicable law in Indonesia.

Basically, mistakes or negligence made by the hospital that resulted in patient losses, should need government attention to deal with this problem more seriously so that there will be no more severe losses for the community. The number of hospital cases that result in losses to patients is an example of poor hospital service to patients.

[1]Indar, "FungsiHukumDalamPenyelenggaraanPelayananKesehatan"(Legal Functions in Providing Health Services) , Jurnal AKK, Vol. 2, No.1 Januari 2013, hlm. 55.

[2] Ibid.

2. Discussion

Civil law is a law that regulates relationships between individuals and individual interests. So that the interests are regulated are individual aspects. The civil aspect in health law rests on one of the principles in health law, namely the human right to determine one's own destiny. Initially, health problems were individual / personal problems, but this individual character began to fade, because health problems were not personal problems, the community participated in them, such as infectious diseases.

Problems that are still individual in nature are the therapeutic agreement, namely the agreement between the doctor and the patient or the health service facility and the patient as well as the legal consequences that arise if the therapeutic agreement is not implemented properly. The civil aspect in health law is limited in nature, unlike the legal aspects of state administration. The remaining civil aspects include:

a) Legal relationship between doctor and patient.
b) Legal relationship between health care facilities and patients
c) The legal relationship between health care facilities and health workers at the health care provider if the health care provider is owned by the private sector
d) Legal relationship between nurse and patient
e) Legal relations of doctors, hospitals and patients in the event of *zaakwarneming*

Health is something that everyone wants by using a variety of ways to stay healthy, starting from the adoption of a healthy lifestyle (as a preventive measure), to seeing a doctor when suffering from a disease (as a curative measure). When someone's health is disturbed, they will do various ways to get back healthy as soon as possible. Treatment to a doctor is an option when a person (patient) suffers from a disease in the hope that the disease he is experiencing can be cured by the doctor.[3]

After a doctor has a license to practice and then runs a practice, a legal relationship emerges in the context of carrying out medical practice in which each party (patient and doctor) has autonomy (freedom, rights and obligations) in establishing two-way communication and interaction. The law provides protection to both parties through a legal instrument called informed consent.

Informed consent is an obligation that must be fulfilled by a doctor. Informed consent consists of two words, namely "informed", which means explanation or information, and the word "consent" which means consent or giving permission. Thus, informed consent is the consent given by a patient or his family on the basis of an explanation of the medical action to be performed on the patient. The object in this legal relationship is health services to patients[4]

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Unlike the legal relationship in general, the legal relationship between the patient and the doctor (including the dentist) is the maximum effort to cure the patient carefully and things (met zorg en inspanning), so that the legal relationship is called a commitment.[5]

Based on Article 50 of Law Number 29 Year 2004 concerning Medical Practice, the rights of doctors in carrying out their professional duties are:

a) Obtain legal protection as long as they carry out their duties in accordance with professional standards and standard operating procedures;
b) Conduct medical practice in accordance with professional standards and standard operating procedures;
c) Obtain honest and complete information from patients or their families;
d) Receive fees for services.

Based on Article 57 of Law Number 36 of 2014 concerning Health Workers, in carrying out the practice, health workers have the right to:

a) Obtain legal protection as long as they carry out their duties in accordance with professional standards, professional service standards and standard operating procedures;
b) Obtain complete and correct information from health service recipients or their families;
c) Receive fees for services;
d) Obtain protection for occupational safety and health, treatment in accordance with human dignity, morals, morals, and religious values;
e) Get the opportunity to develop a profession;
f) Reject the wishes of recipients of health services or other parties that are contrary to professional standards, code of ethics, service standards, standard operating procedures, or provisions of laws and regulations;
g) Obtain other rights in accordance with the provisions of laws and regulations

Based on Article 58 of Law Number 36 of 2014 concerning Health Workers, in carrying out the practice, health workers are obliged to:

[3]AgrianeTrennySumilat, "Kedudukan Rekam Medis Dalam Pembuktian Perkara Malpraktik Di BidangKedokteran" (Position of Medical Records in Evidence of Malpractice Cases in the Field of Medicine), Lex Crimen, Vol. III, No. 4, Agustus-November 2014, hlm. 55-56.

[4]Hargian Dini Iswandari, "Aspek Hukum Penyelenggaraan Praktik Kedokteran: SuatuTinjauan Berdasarkan Undang-Undang No. 9/2004 Tentang Praktik Kedokteran" (Legal Aspects of the Implementation of Medical Practice: An Overview Based on Law No. 9/2004 Concerning Medical Practice), Jurnal Manajemen Pelayanan Kesehatan, Vol. 9, No. 02, Juni 2006, hlm. 54.

[5]Ibid.,p. 55.

a) Provide health services in accordance with professional standards, professional service standards, standard operating procedures, and professional ethics as well as the health needs of health service recipients;
b) Obtain approval from the recipient of health services or their family for the action to be given;
c) Maintain health confidentiality of health service recipients;
d) Make and keep records and or documents about the examination, care, and actions taken;
e) Refer recipients of health services to other health workers who have the appropriate competence and authority.

The relationship between doctors and patients in the implementation of medical practice is known as a legal relationship. A legal relationship is an engagement and an agreement is born from an agreement, so the legal relationship between doctor and patient arises from the existence of a "therapeutic" agreement. A "therapeutic" agreement (transaction) is an agreement between a doctor and a patient, in the form of a legal relationship that creates rights and obligations for both parties. The object of this agreement is in the form of efforts or therapy for patient healing.[6]

In a therapeutic agreement, both the doctor and the patient have rights and obligations that must be carried out. The rights and obligations of doctors and patients are regulated in Articles 50 to 53 of Law Number 29 of 2004 concerning Medical Practice. Thus, if the doctor does not fulfil the provisions contained in the therapeutic agreement, the patient can file a lawsuit on the basis of the law of default.

In the concept of civil law, compensation can be filed because of default or an illegal act. Thus, the form of accountability in civil law can be grouped into*first*, contractual responsibility and *second*, responsibility for illegal acts.The difference between contractual responsibility and liability for illegal acts is whether there is an agreement in the legal relationship or not. If there is an agreement between the legal relationship, then the responsibility is the contractual responsibility. Meanwhile, if there is no agreement, but there is one party that harms the other party, the party who is injured can hold the party who caused harm to responsibility on the basis of the act of violating the law.[7]

The legal relationship of the therapeutic contract is interpreted differently by the law, although in principle the legal relationship of the therapeutic agreement is the same, namely the relationship between the patient and the medical personnel. Law Number 36 of 2009 concerning Health states that the parties to a therapeutic contract are patients with health workers, while Law Number 29 of 2004 concerning Medical Practice states that the parties to a therapeutic contract are patients and doctors / dentists. The definition of the therapeutic agreement above is interpreted differently, therefore Salim H.S has perfected the meaning of the Therapeutic Agreement, namely:[8]

"A contract made between a patient and a health worker and / or a doctor or dentist, in which the health worker and / or doctor or dentist tries to make maximum efforts to cure the patient in accordance with the agreement made between the two and the patient is obliged to pay the cost of healing."

According to civil law, a person can be considered to have defaulted if: Not doing what he is determined to do, doing what is promised but too late and carrying out what was promised, but not as promised and doing something according to the agreement he is not allowed to do. In connection with this matter, the default meant in the civil responsibility of a doctor is that he does not fulfill the conditions stated in an agreement he has entered into with his patient.

Claims to pay compensation based on consent or agreement that occur can only be made if there is a doctor's agreement with the patient. The agreement can be classified as an agreement to do or do something.The agreement occurs when the patient calls the doctor or goes to the doctor, and the doctor fulfils the patient's request to treat it. In this case the patient will pay an honorarium. Meanwhile, doctors actually have to make achievements in curing patients from their illnesses. But the healing is not certain that it can always be done so that a doctor only binds himself to provide as much assistance as possible, according to the knowledge and skills that he has mastered. That means he promised to do his best to cure the patient.

In a lawsuit based on default, it must be proven that the doctor really has entered into an agreement, then he has defaulted on the agreement (which of course in this case always must be based on professional errors). So here the patient must have evidence of harm due to non-fulfillment of the doctor's obligations in accordance with the applicable medical profession standards in a therapeutic contract. But in practice it is not easy to carry out, because the patient also does not have enough information from the doctor about what actions the doctor is obliged to do in a therapeutic contract.

Almost all of the civil law aspects concerning a patient's lawsuit against the doctor who handled it were the matter of claiming compensation. Article 1365 BW states that every act violating the law, which brings harm to another person, obliges the person who due to his wrongdoing the loss to compensate the loss. Actions against the law (*onrechtmatigedaad*) in its development are expanded into four criteria, namely first, violating the rights of others; or second, contrary to the legal obligations of the perpetrator; or third, violating moral rules; or fourth, contrary to propriety, thoroughness and caution that a person should have in his interactions with fellow citizens or the property of other people.

[6]Bahder Johan Nasution, HukumKesehatan: Pertanggungjawaban Dokter (Health Law: Doctor's Accountability), Jakarta: Rineka Cipta, 2009, hlm. 11.
[7] Rosa Agustina (et.al), HukumPerikatan (Law of Obligations), Denpasar: Pustaka Larasan, 2012, hlm. 4.
[8] Salim, H.S., *HukumKontrak: Teori &Teknik Penyusunan Kontrak*, (Contract Law: Contract Formulation Theory &Techniques) Jakarta: Sinar Grafika, 2004, hlm. 46.

If a patient who feels aggrieved wants to file a lawsuit based on an unlawful act against a health worker or health facility, then he must prove that an illegal act has occurred with the criteria mentioned above. In addition, the patient must also prove that there is a causal relationship between the act of breaking the law and the losses he has suffered.A lawsuit based on an unlawful act can be directed at the perpetrator of the act himself, if he commits a mistake, negligence, is careless enough to cause harm to another person. A lawsuit can also be directed against people who are responsible for the actions of the people who are dependent or the items under their control.

Therefore, the basis for a lawsuit is not appropriate if it is only based on Article 1365 BW, but also based on Article 1366 BW. This is because according to theory or doctrine, the act of medical malpractice (especially for doctors) consists of three things, namely: *First*, Intensional Professional Misconduct, which is found guilty / bad at practicing if the doctor in practice violates standards and is done intentionally. Doctors practice disregarding the standards in the existing regulations and there is no element of neglegance.*Secondly*, negligence, or accidental, when a doctor who due to his negligence which results morbidity or death of the patient. A doctor neglects to do something that should be done according to medical science. This category of malpractice can be prosecuted, or punishable, if proven before a court hearing. Third, Lack of Skill, where a doctor performs medical actions but is out of his or her competence.[9]

In addition, according to the concept of civil law, this error can be distinguished between the meaning of error in the broad sense and the understanding of error in the narrow sense. The definition of error in a broader sense includes deliberate and negligent. Meanwhile, the definition of error in the narrow sense only includes negligence. The definition of deliberate action is that the perpetrator knows and wants to do it. Meanwhile, the definition of negligence is an act in which the perpetrator knows the possibility of an adverse effect on others[10]

Negligence is a form of fault that is not intentional, but it is also not something that happens by accident. If there is negligence, there is no evil intention from the perpetrator. Negligence in carrying out medical actions causes patient dissatisfaction with doctors in carrying out treatment efforts in accordance with the medical profession. This negligence causes harm to the patient. Thus, a doctor, apart from being able to be prosecuted in a civil manner on the basis of default and breaking the law, can also be prosecuted on the basis of negligence, thus causing losses. This claim on the basis of negligence is regulated in Article 1366 BW, which states that: "Everyone is responsible not only for damages caused by his actions, but also for losses caused by negligence or carelessness".

The Health Law regulates matters relating to negligence problems of health workers in Article 29 and Article 58. Article 29 provides that in the event that a health worker is suspected of negligence in carrying out his profession, the negligence must first be resolved through mediation. Article 58 regulates the right of every person to claim compensation for a person, health worker, and / or health provider who causes loss due to deliberate or negligence in the health service they receive. Based on these provisions, it appears that the prosecution for compensation, either as a result of mistakes or negligence in health services, and the prosecution is aimed at a person, health worker or at the health provider (hospital).

In the context of an act of breaking the law, the hospital can be said to be the party "participating in the guilt". According to J.H. Nieuwenhuis, that participating (participating in) is guilty of violating the law by two or more people. Regarding the accountability that arises, it is necessary to ask the extent to which each joint actor must compensate for the losses suffered by the aggrieved party (patient), as well as how the perpetrators together share the burden of losses between them.

Regarding the first question, each perpetrator is responsible for the loss for all losses, with the understanding that if one of them has paid, then the other is free from the obligation to pay. Meanwhile, regarding the second question, the obligations of each actor are determined by the severity of the respective mistakes. Meanwhile, based on Law Number 44 of 2009 concerning Hospitals, claims for compensation are only directed at the hospital, which is specifically caused by negligence of health workers at the hospital.

Thus it can be interpreted that the accidental losses caused by the health workers in the hospital, then claims for compensation cannot be made aimed at the hospital. The hospital will not be responsible if the loss is due to an error, in an intentional sense, the health worker at the hospital.[11]The patient will file a lawsuit against the hospital, if the patient knows and feels that he has been harmed by the actions of health workers at the hospital. It is not easy for the patient to claim that the loss is a result of the actions of health workers. It could be that the disaster that befell the patient happened beyond the expectation of the health worker. Health workers have made efforts as appropriate and possible, but calamity / loss still befall the patient, so this does not include negligence of health workers. Therefore, the patient must know the medical record of himself, so that it can be known the forms of actions performed by health workers.

Medical records are files that contain notes and documents about the patient's identity, examination, treatment, actions and other services that have been provided to patients. The existence of medical records is needed in health service facilities, both in terms of implementation of health service practices and from legal aspects.[12]Civil legal liability for doctors due to unlawful acts (*onrechtmatige daad*) is regulated in Articles 1365, 1366, and 1367 BW, namely that

[9]Setya Wahyudi, "Tanggung Jawab Rumah Sakit Terhadap Kerugian Akibat KelalaianT enagaKesehatanDan Implikasinya" (Hospital Responsibilities for Losses Due to Negligence of Health Workforce and its implications), Dinamika Hukum, Vol.11, No.3, September 2011, hlm.509.

[10] R.Setiawan,Pokok-PokokHukumPerikatan (Principles of Engagement Law),Bandung:Binacipta,2008,hlm.54.

[11]SetyaWahyudi,Op.cit.,p.513.

[12]AgrianeTrennySumilat,Op.cit.,p.59.

doctors must be responsible for their mistakes that harm patients and to compensate for losses, in addition the doctor must be responsible for the losses. Which is caused by negligence and carelessness in carrying out their professional duties and the doctor must be responsible for the mistakes committed by his subordinates who, on his orders, did the act.

Syahrul Machmud gave a legal opinion regarding malpractice cases related to civil responsibility, as for his opinion as follows:

"Civil responsibility in cases of suspected malpractice committed by doctors, malpractice in the field of civil law, which violates the law as referred to in Article 1365 BW and Article 1239 BW related to default. Lawsuits or civil suits for malpractice against a patient can be filed in addition to a doctor, it can also be filed with a legal entity or health service center or hospital where the doctor works. Likewise, if the doctors work together, all of the doctors can also be sued or sued jointly depending on how big their respective responsibilities are. This includes taking responsibility for the actions of medical personnel who are under his command.[13]

For the enforcement of medical professional ethics it is carried out by the Medical Ethics Council ("MKEK") as stated in Article 1 point 3 of the Guidelines for the Organization and Work Procedure of the Indonesian Medical Ethics Honorary Council, "the Honorary Council of Medical Ethics (MKEK) is one of the autonomous bodies of the Indonesian Doctors' Association. (IDI) which is specially formed at the Central, Regional and Branch levels to carry out professional hospitality duties, fostering professional ethics and / or other institutional and ad hoc tasks at their respective levels. "

Thus, MKEK is an ethics enforcement agency for the medical profession (kodeki), in addition to MKDKI (Honorary Council of Indonesian Medical Disciplines), which is an institution that has the authority to determine whether there are mistakes made by doctors and dentists in the application of medical and dental disciplines, and sanctions as stipulated in Article 1 point 14 of the Medical Practice Law.

However, in the case of negligence by a doctor / health worker that results in malpractice, the victim is not required to report it to MKEK / MKDKI first. In Article 29 of the Health Law it is precisely stated that in the event that a health worker is suspected of negligence in carrying out his profession, the negligence must first be resolved through mediation.Although, victims of malpractice can immediately file a civil suit. So, there are several efforts that can be taken in the event of negligence by health workers such as:

a) Report to MKEK / MKDKI;
b) Perform mediation;
c) performcivil lawsuit

3. Conclusion

Hospitals that have employed medical and nursing staff as employees at the hospital in their services even though they are in accordance with the Standard Operating Procedure (SOP) and/or good medical service standards are often negligent in carrying out their duties. Many negligence, such as not fulfilling the conditions agreed upon under Article 1320 of the Civil Code by patients and doctors, have resulted in default or the doctor in medical services has performed according to standard medical procedures but the effect is undesirable but occurs due to a system error from the hospital, causing the patient is at a disadvantage. Negligence committed by medical personnel who have met the elements of default so that medical personnel in this case are categorized as negligent, doctors who work as subordinates and hospitals as employers can take responsibility.

Hospitals, both government and private, can take responsibility for the medical actions of doctors who have met the elements of negligence and are responsible for hospital management such as damage and unpreparedness of medical equipment when doctors use them in medical services.The law and supported by several theories give the patient the right to sue the hospital on a civil basis on the basis of default or illegal acts in the form of material compensation to the injured patient. The prosecution of this case is possible insofar as the medical personnel negligently results in physical disability and even death of the patient. However, whether the charges can be accepted or not depends on the evidence carried out by each party and the evaluation of the results of the evidence by the judge.

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