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Health Law Enforcement Against Malpractice Activities in Indonesia

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Abstract
Health Law is one of the most important laws that is currently growing in Indonesian society. The growth of Health Law is not merely a formality of the growth of Law in Indonesia, but also as a form of support for the demands and needs of the Law of the Indonesian Society which is growing day by day. The importance of Health Law in Indonesia, because both other laws and Health Law have been embedded in Indonesian society. We can imagine, if there is only health without any laws that regulate it, then everything regarding health will not work according to our needs. With the existence of health law instruments, it will guarantee legal certainty and comprehensive legal protection for both health providers and the public receiving health services. Until now cases of malpractice continue to occur in Indonesia. This is in the spotlight where legislation relating to Health Law is very much needed. In this research, the appropriate method used is case study and literature study. From the case study, the author will take an example of a case that will lead to the growth of Health Law in Indonesia. Meanwhile, the study of literature helps the author to write this article by reading from books and references. The conclusion of this paper is that malpractice activities carried out by medical personnel often cause harm to patients and have fatal consequences. Enforcement of Health Law on Malpractice activities must be stricter. This means that it is not ambiguous that Malpractice Enforcement must really exist in the legislation, not based on the relevant articles.

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Introduction

Health law first appeared in the world marked by the Medical Law Congress held in Gelt, Belgium in 1967. Then health law began to be introduced further and more widely, namely in 1979, which at that time coincided with the holding of the 5th Congress of the World Association for Medical Law.

From that congress also finally gave birth to the world health organization. The world health organization is called the World Health Organization (WHO). In Indonesia, the history of health law began and emerged due to one of the cases that occurred in the health sector. From this case, a new chapter in the health sector was created. Precisely in 1979, a case in the health sector occurred. The case caused reactions and attracted public attention from various medical circles and also the wider community. The case was named the case of Dr. Setianingrum.

This case was brought to court and declared Dr. Setianingrum guilty and sentenced to 3 months in prison and 10 months probation in 1982. Reflecting on the case of Dr. Setianingrum, finally an Indonesian Health Law Association (PERHUKI) was formed on July 7, 1983. The initiation of PERHUKI was initiated by the introduction of medical law and health law. Seen from that, we can learn that every medical personnel must always be careful.

In addition, it also shows the importance of patient protection and provides guidelines for medical personnel to be more careful in carrying out their profession. The mistake made by Dr. Setianingrum is the first malpractice case in Indonesia. Because of this case, Health Law emerged which can be said to be a supervisor of health practices carried out by media personnel and the community receiving media services. The thing that made the author interested in exploring the enforcement of Health Law in Malpractice activities was the case of Dr. Setianingrum above. This case is the root of the Growth of Health Law in Indonesia.

Literature Review

In this study, several books and journals are needed as reference materials. Starting from Introduction to Health Law by Dr. Takdir, SH, MH, Legal Aspects of Medical Malpractice by Dr. Mahmul Siregar, SH., M.Hum, Legal Protection Aspects for Doctors by Prof. Dr. Syaiful Bakhri, SH. MH., Journal of Criminal Liability of Doctors in Malpractice Cases in Various Laws and Regulations in Indonesia by Putri Damayanti. Health Ethics and Law Module, Machmud, Syarul. 2012. Law Enforcement and Legal Protection for Doctors Who Commit Medical Malpractice. Putra Darwati's work. The Purpose and Function of Health Law, Mertokusumo, 1986. Basically, this research cannot be separated from previous studies. So the author wrote this article based on the main references from the books and journals above. This research is a study that discusses Health Law in

Indonesia. And how Malpractice will be the growth of Health Law in Indonesia. There are similarities regarding the research of writing with the books and journals above that the author uses as references in this writing.

Research Methods

In this writing, the author uses the Literature Study research method. Literature Study is a data collection method that is directed at searching for data and information through documents, both in the form of writing and electronic documents that can support the writing process.

The research results will be more credible if supported by existing photographs or academic and artistic papers. It can be said that Literature Study affects the credibility of the research results conducted. In addition to using the Literature Study Research method, the author also uses the Case Study method. In which in this writing, the author sees the case of Dr. Setianingrum which became the forerunner of the Growth of Health Law in Indonesia. The author realizes that Health Law has actually existed in Indonesia for a long time. However, its growth occurred due to the Malpractice case of Dr. Setianingrum.

According to Bimo Walgito, the case study method is a method that aims to study and investigate an event or phenomenon concerning an individual, such as the life history of a person who is the object of research. However, here the author does not study a person's life history but rather the author sees and examines an event or case that has been carried out by a person/object that has caused problems and the growth of law in Indonesia.

Results and Discussion

One of the most important elements of a country's development is a good health index of its citizens, for that every country must have a regulatory system for the implementation of the health sector so that the goal of making the community healthy is achieved. The regulatory system is stated in the form of laws and regulations which can later be used as legal guidelines in providing health services to citizens. For that reason, understanding health law is very important not only for the health profession and the community as consumers of health services but also for academics and legal practitioners.

Law is a statutory regulation made by an authorized institution, in regulating social interaction with the aim of being obeyed by the entire community. The definition of Health Law is:

1. Law of the Republic of Indonesia No. 23/1992 on Health Health Law is all legal provisions that are directly related to health maintenance/services. This concerns the rights and obligations to receive health services (both individuals and levels of society) as well as from the implementation of health services in all its aspects, organizations, facilities, medical service standards and others.
2. Articles of Association of Indonesian Health Law (PERHUKI) Health law is all legal provisions that are directly related to health maintenance or services and their implementation. This concerns the rights and obligations of both individuals and all levels of society as recipients of health services and of health service providers in all aspects, organizations, facilities, standard medical service guidelines, health science and law and other legal sources. Health law includes components of health law that intersect with each other, namely Medical/Dentistry Law, Nursing Law, Clinical Pharmacy Law, Hospital Law, Public Health Law, Environmental Health Law and so on.
3. Prof. Van der Mijn Health law can be formulated as a collection of regulations related to the provision of care and also its application to civil law, criminal law and administrative law. Medical law which studies the legal relationship in which the doctor is one of the parties, is part of health law.
4. According to Prof. Dr. Rang, Health Law is all legal rules and legal status relationships that directly develop with or determine the health situation in which humans are located.
5. Meanwhile, according to Prof. Dr. Satjipto Rahardjo, SH. Medical Law includes regulations and legal decisions regarding the management of medical practices. From the definition of health law according to the experts above, it can be concluded that health law exists as an enforcement of legal rules that regulate the consequences of the implementation of a medical action carried out by those who work as medical personnel.

"Law Enforcement and Legal Protection for Doctors Suspected of Medical Malpractice (Dr. H. Syahrul Machmud, SH, MH) (p. 23-24)": Malpractice is any wrong attitude, lack of skill in an unreasonable level. This term is generally used for the attitude of doctors, lawyers and accountants. Failure to provide professional services and perform at a reasonable level of skill and intelligence in their community by average colleagues of the profession, resulting in injury, loss or harm to the recipient of the service who tends to put their trust in them. This includes any wrong professional attitude, unreasonable lack of skill or lack of care or legal obligations, bad or illegal practices or immoral attitudes.

Scope of Health Law

Health Law is not found in a specific form of regulation, but is spread across various regulations and legislation. Some are located in the fields of criminal law, civil law, and administrative law, the application, interpretation and assessment of which to the fact is in the health or medical field. The scope of Health Law includes among others:

1. Medical Law/Medical Law
2. Nursing Law
3. Hospital Law
4. Environmental Pollution Law

5. Waste Law (regarding Industry; Household; etc.)
6. Pollution Law (Pollution Law on Noise; Smoke; Dust; Odor; Toxic Gases; etc.)
7. Laws on Equipment that uses X-Ray such as Cobalt; Nuclear, etc.
8. Occupational Health and Safety Law.
9. Various regulations that are directly related to matters that affect human health.

A Dutch Scholar Leenen provides a limitation of the scope of Health Law for all legal activities and legal regulations in the field of health care along with its scientific studies. From the limitation of the scope, it is increasingly clear what is meant by a new legal field, namely matters concerning health that apply in all countries and are sourced not only from statutory law, International, principles applicable in the international world, Jurisprudence law, and scientific and literary doctrines.

The importance of health law for society

With the existence of health law provides protection and legal guarantees to providers and recipients of public health services. Health law also guarantees comprehensive protection for both health providers and the community receiving health services. The functions of Health Law include:

1. Maintaining order in society. Although it only regulates the order of life in a small sub-sector, its existence can make a big contribution to the order of society as a whole.
2. Resolving disputes that arise in society (especially in the health sector). Conflicts between individual interests and community interests. 3. Social engineering. If society prevents doctors from providing assistance to criminals who are injured by gunshot wounds, then this action is actually wrong and needs to be corrected.

The purpose of Health Law is to increase awareness, willingness, and ability to live healthily for everyone in order to realize an optimal level of public health. According to Bredemeier, it is to regulate the resolution of conflicts, for example, negligence in the provision of services originating from the negligence of health workers in carrying out their duties.

Doctors' Liability in Malpractice Cases in Various Legislations in Indonesia

The way a doctor works in treating a patient is between “possibility” and “uncertainty” because the human body is complex and cannot be fully understood. The variations in each patient have not been taken into account: age, level of illness, nature of illness, complications, and other things that can affect the results that can be given by the doctor (J. Guwardi, 2009: 3). Because of the “possibility” and “uncertainty” of treatment, doctors who are less careful and incompetent in their field can be dangerous for patients. In order to protect the public from poor quality medical practices, medical law is needed. Until now, medical law in Indonesia has not been formulated independently so that the limitations regarding malpractice have not been formulated, so that the content, understanding and limitations of medical malpractice are not uniform, depending on which side people look at it. In reality, Law Number 29 of 2004 concerning Medical Practice does not contain provisions regarding medical malpractice because Article 66 paragraph (1) states that "any person who knows or whose interests are harmed by the actions of a doctor or dentist in carrying out medical practice can complain in writing to the Chair of the Medical Disciplinary Honorary Council."
Indonesia” only contains the meaning of medical practice errors.

There are several theories and responsibilities of doctors (Anglo Saxon jurisprudence) (Syahrul Machmud, 2007: 60)

1. Informed consent

Informed consent means, consent is agreement, while informed is having been informed, so informed consent means agreement based on information. Another term that is often used is consent for medical action. Before performing a medical action, a doctor is obliged to provide an explanation to the patient and/or his/her family about the diagnosis and procedures for medical action, the purpose of the medical action taken, alternative actions and their risks, risks and complications that may occur and the prognosis for the action taken. The regulation on informed consent is contained in Article 39 and Article 45 of Law Number 29 of 2004 concerning Medical Practice which states that medical practice is carried out based on an agreement between the doctor and the patient in an effort to maintain health, prevent disease, improve health, treat disease and restore health. All medical actions to be performed by the doctor must obtain the patient's consent. This consent can be given in written or oral form (expression consent) and for medical actions that contain high risks must be given with written consent, signed by the person entitled to give consent. However, in emergency situations or for actions that are commonly performed or are already publicly known, this consent is not required (implied consent). The consent of the patient and his/her family is an implementation of the patient's basic rights to health services (the right to health care) and the right to self-determination (the right of self). Determination) that must be recognized and respected. After the patient agrees to the medical action based on clear and explicit information from the doctor, and the medical action is in accordance with the standards of medical service, the doctor cannot be blamed if there is a failure in the effort.

2. Contribution Negligence

The doctor cannot be blamed if the doctor fails or is unsuccessful in treating the patient, if the patient is uncooperative because he does not explain honestly about the history of the disease he has suffered and the medicines he has consumed during his illness, or does not obey the instructions and instructions of the doctor or refuses the agreed treatment method. This is considered a patient error known as contribution negligence or the patient is also at fault. Honesty and obeying the doctor's advice and instructions are considered the patient's obligations to the doctor and to himself.

3. Respectable minority rotes and errors of (in) judgment

Respectable minority rule, which means a doctor is not considered negligent if he chooses one of the many recognized treatment methods. If a mistake occurs when a doctor chooses an alternative medical action, this is usually called medical judgment or medical error, which is the choice of medical action by a doctor that has been based on

professional standards and it turns out that the choice is wrong. The doctor cannot be held accountable for this unless the doctor does not follow the medical standards that are generally carried out by his colleagues in the same circumstances.

4. Volenti non fit iniura or assumption of risk Volenti non fit iniura or assumption of risk

It is a previously known assumption about the high medical risk to the patient if a medical procedure is performed on him. If a complete explanation has been given and it turns out that the patient and/or his family agree (informed consent), if a previously suspected risk occurs, then the doctor cannot be held responsible for the medical procedure he performed. This doctrine is also applied to cases of forced discharge (going home of one's own free will even though the doctor has not permitted it), then this frees the doctor and the hospital from legal claims.

5. Responsive superior or vicarious liability (hospital liability/corporate liability)

In the Indonesian legal system that follows the European continental, it is regulated in Article 1367 BW, the purpose of the provisions of this article is that the employer has the right to control the actions of his subordinates both on the results achieved and on the methods used. Likewise, with the development of health law and the sophistication of medical technology, RS cannot escape responsibility for the work carried out by its employees, including what is done by medical staff.

6. Res ipso loquitur Doctrine of res ISPA loquitur

Res ipso loquitur The doctrine of res ISPA loquitur is directly related to the burden of proof (onus, burden of proof), namely the transfer of the burden of proof from the plaintiff (patient and/or his/her family) to the defendant (medical personnel). For certain negligence that is already obvious, clear so that it can be known by a layperson or according to common knowledge between laypeople or the medical profession or both, that the defect, wound, injury or fact is clearly evident and the result of negligence of the medical personnel, and this kind of thing does not require proof from the plaintiff but the defendant must prove that his/her actions are not included in the category of negligence or error.

Causes of Malpractice

Criminal medical malpractice by medical personnel is caused by an incorrect or incorrect medical action, namely carrying out non-procedural actions instead of implementing a Standard Operating Procedure (SOP) that has been determined by the Hospital where the medical personnel works.

According to drg. Fabri Oktariansyah, an alumni of the Faculty of Medicine and Health Sciences, Muhammadiyah University of Yogyakarta, majoring in the Dentistry Education Study Program. Based on the results of the interview on August 3, 2016, according to him, the factors of medical malpractice by medical personnel are due to an error in carrying out a non-procedural medical action and can also be caused by errors in carrying out physical, mental and social services that are not in line with the Operational Service Standards (SOP) and Medical Service Standards (SPM) that have been determined. According to Dr. Alma Hepa Allan who works at the Special Hospital for Mothers and Children in Bantul (RSKIA) as well as the Secretary of the Bantul branch of IDI. Based on the results of the interview on August 22, 2016. According to him, the factors of criminal medical malpractice by medical personnel are due to the comparison of the number of health workers that is not evenly distributed, that there will be a break in concentration in medical actions for patients who are very many, for example in the Health Center, health service facilities and infrastructure that are not good, can also be caused by factors of material and

The last one could be caused by a factor of conscience by medical personnel towards their patients.

Based on the two opinions above, I can conclude that malpractice occurs due to errors in physical services from medical personnel to the community receiving medical services and can also occur due to personal problems between medical personnel and patients.

Handling of Malpractice Based on Statutory Regulations

In the current Indonesian legislation, there is no definition of malpractice. However, the meaning or understanding of malpractice is found in Article 11 paragraph (1) letter b of Law No. 6 of 1963 concerning Manpower.

Health ("Labor Law") which has been declared abolished by Law No. 23 of 1992 concerning Health. Therefore, according to the law, according to Dr. H. Syahrul Machmud, SH, MH, the provisions of Article 11 paragraph (1) letter b of the Health Workforce Law can be used as a reference for the meaning of malpractice which identifies malpractice with neglecting obligations, meaning not doing something that should be done.

Article 11 paragraph (1) letter b of the Health Workers Law: (1) Without reducing the provisions in the Criminal Code and other statutory regulations, administrative actions may be taken against health workers in the following cases:

a. Neglect of obligations;
b. Doing something that a health worker should not do, both considering his oath of office and considering his oath as a health worker;
c. Ignoring something that should be done by a health worker;
d. Violate any provision according to or based on this law.

So, looking at the meaning of the term malpractice itself, malpractice does not refer only to a particular profession, so in this case we will explain by referring to the provisions of several existing professions, for example:

1. Doctors and dentists as regulated in Law No. 29 of 2004 concerning Medical Practice ("Medical Practice Law")
2. Advocates as regulated in Law No. 18 of 2003 concerning Advocates ("Advocates Law");
3. Notary as regulated in Law no. 30 of 2004 concerning Position
4. Notary ("Notary Public Law");
5. Public accountants as regulated in Law No. 5 of 2011 concerning Public Accountants ("Public Accountants Law").

In addition, in the Criminal Code, there are relevant articles related to criminal liability related to Malpractice, namely Articles 359, 360, and 361 of the Criminal Code. Negligence causing death is regulated in Article 359 of the Criminal Code which reads: "anyone who, due to his mistake (negligence), causes another person to die, is threatened with a maximum

imprisonment of five years or a maximum imprisonment of one year."
Article 359 of the Criminal Code can accommodate all acts committed that result in death, where death is not intended or desired (I MadeWidnyana, 2010: 62).
In this case, there must be three more elements which are details of the sentence "causing another person to die", namely:

1. There must be a certain form of action;
2. There are consequences in the form of death;
3. There is a causal verband between the form of action and the result of death.

These three elements are no different from the elements of the act of taking the life of murder as regulated in Article 338 of the Criminal Code. The difference with murder lies only in the element of guilt, namely Article 359 is a mistake in the form of carelessness (Adami Chazawi. 2001: 125).
Negligence resulting in injury is regulated in Article 360 of the Criminal Code which reads:

1. Anyone who, due to his mistake (negligence) causes another person to suffer serious injury, is threatened with a maximum prison sentence of five years or a maximum imprisonment of one year.
2. Anyone who, due to his mistake (negligence), causes another person to be injured in such a way that illness or an obstacle arises in carrying out his official work or profession for a certain period of time, is threatened with a maximum prison sentence of nine months or a maximum imprisonment of six months or a maximum fine of four thousand five hundred rupiah.

Law Number 29 of 2004 concerning Medical Practice
This law stipulates that if a doctor or medical personnel is proven to have committed malpractice, they can be subject to sanctions in the form of:

a. Administrative Sanctions

In Law Number 29 of 2004 concerning Medical Practice, the term MDTK becomes the Indonesian Medical Discipline Honorary Council (MKDKI) which receives complaints and has the authority to examine and decide whether or not there is an error made by the doctor because it violates the application of medical discipline and applies sanctions. If it turns out that there is a violation of medical ethics, then the MKDKI forwards the complaint to the professional organization (IDI), then the IDI will take action against the doctor. It's just that the sanctions given by the MKDKI are only in the form of administrative sanctions such as giving a written warning, recommendation to revoke the registration certificate or practice permit and/or the obligation to attend education or training at a medical education institution. It does not rule out the possibility of civil or criminal claims from patients or the patient's family.

b. Civil Lawsuit

Civil claims filed can be in the form of claims for breach of contract based on contractual liability and/or unlawful acts (onrechtmatigedaad). As the doctrine has been explained above, if a doctor practices privately, he is sued personally, including being responsible for the actions of medical personnel under his command. If working in a team, then his responsibility is based on how much responsibility he has in the team. Likewise, the hospital can be drawn as a defendant for all actions taken by all its employees (both medical and non-medical), even against private doctors who are given a place to practice at the hospital.

c. Criminal Charges

Claims Criminal law can be imposed under the provisions of the articles due to intent or negligence that results in the death, illness or injury of another person and the articles on abortion. For example, a doctor is faced with a dilemma of saving the life of the baby or the life of the mother, then saving the life is more important (medical abortion provokatus) this is exempted from criminal charges. However, a new prohibition is imposed on the act of criminal abortion provokatus, namely the removal of life without medical reasons

The Relationship between Medical Malpractice and Health Law

In fact, society cannot be separated from health law. This is because with the existence of health law, public safety can actually be guaranteed. One of the scopes of health law that will be discussed is medical law. Among all the scopes of Health Law, Medical Law is the one that is most often associated with Health Law. This is because in every discussion of Health Law, Medical Law is the one that always appears in the discussion. Medical Law appears in society to avoid things that can actually harm society itself. Lately, there has been a lot of medical malpractice.
Medical malpractice is a doctor's mistake because he does not use knowledge and skill levels according to professional standards which ultimately results in patients being injured and disabled or even dying. Based on Article 55 paragraph 1 of Law No. 23 of 1992 concerning health, "everyone has the right to compensation for errors or negligence committed by health workers". At this point, Health Law is used, where if the doctor is proven to have committed malpractice, the doctor will be subject to criminal sanctions. If we look at the first case of malpractice in Indonesia, namely the case of Dr. Setyaningrum, it is clear that medical malpractice is related to Indonesian Health Law, which resulted in the beginning of the emergence of Health Law in Indonesia.
However, understanding Health Law and Medical Law should not merely be seen as a punishment for medical personnel who make medical errors but should also be seen as a guideline for carrying out their profession properly.

Closing

Conclusion

The conclusions that can be drawn from the discussion above are

1. The existence of Health Law in society today is to provide and guarantee legal certainty for medical personnel and those receiving medical services. This means that with the existence of health law, medical personnel will be careful in carrying out their profession and medical recipients will also behave well.
2. There is no definite law governing Medical Malpractice, but there is a Law governing how criminal law acts if there is negligence in medical treatment by medical personnel. Therefore, the Regulation on the enforcement of Malpractice must really be a law without using relevant articles.
3. As we know, Malpractice will be the growth of Health Law in Indonesia. However, it does not mean that Malpractice can be considered as something that is done

unintentionally. Although doctors have the authority to treat patients, it does not mean that Malpractice cases can be used as an excuse that all humans must have made mistakes. However, the mistakes made could be intentional or unintentional. Therefore, it is appropriate that all medical actions carried out by doctors or other medical personnel have been regulated by law, so that they are fair both for the medical personnel themselves and for the patients who receive treatment.

Suggestion

The author, namely myself, is aware that there are still many shortcomings in writing this article. Therefore, I really expect criticism and suggestions from the lecturers and my fellow friends. I am sure that the criticism and suggestions given will help me to make better articles in the future.

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