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Legal Protection for the Doctor Profession in Indonesia

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SYNOPSIS

Health is one measure of the success of human development, and of course without human health it will not be productive to live an economically viable life and have a good education. accordance with Pancasila and the ideals of the Indonesian nation as referred to in the 1945 Constitution, everyone has the right to quality, quality and safe health services, and that is the human right of every individual. Doctors as people who have knowledge in the field of health have the appropriate authority and permission to carry out health services and examine and treat patients. This research have purpose to measure the legal protection for the doctor profession in Indonesia, method that used for the research namely the legal research method normative sourced from literature study in the form of legislation in the field of health and medicine, as primary legal material, as well as other literature in the form of legal articles and written information from internet on health law, medical law and malpractice medicine as a source of legal material secondary. Every doctor in Indonesia must have a Registration Certificate and Practice License before he can practice medicine. Dispute resolution should first be through mediation, or reported to the authorized institution to consider violations of medical discipline. Lack of socialization causes the general public to become less familiar with MKDKI, so they use legal channels.

Keywords: Law, Doctor Profession, Malpractice.

I. INTRODUCTION

In accordance with Pancasila and the ideals of the Indonesian nation as referred to in the 1945 Constitution, everyone has the right to quality, quality and safe health services, and that is the human right of every individual. Health is one measure of the success of human development, and of course without human health it will not be productive to live an economically viable life and have a good education. Thus, all parties, both the government and the community, are responsible for paying attention to public health.

Doctors as people who have knowledge in the field of health have the appropriate authority and permission to carry out health services and examine and treat patients who come to them

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according to the provisions in the field of health service law.

The standard of formal education of a doctor must be met academically and juridically, meaning that it is based on the formal academic standards required by passing formal medical education. Technology is happening all the time. Medical personnel who do not follow the development of science and technology will be left behind.

The pattern of thought relationships has changed where the relationship between doctor and patient has developed into a partnership pattern in this pattern, the relationship between doctor and patient is balanced, the patient is no longer passive and leaves everything to the doctor, but there is an active relationship between the doctor and patient so that the relationship This is called a partnership. This is in accordance with the times, more than half a century ago, legal experts and doctors began to develop the idea of human rights in the health sector, namely the basic right to health care (the right to healthcare) and the right to self-determination (the right to health). self-determination) then in its development the basic right is accommodation in Article 25 paragraph (1) of the United Nations Universal Declaration of Human Rights.

The existence of these changes is interpreted by the growing knowledge and public awareness of the responsibility for individual health, thus this results in a paradigm shift in effect from the belief that was originally focused on the ability of doctors personally and in the end shifts to the ability to master knowledge professionally from the doctor concerned. .

Patients suffering from certain diseases are referred by doctors to specialists for proper treatment. Medical practice carried out by doctors to patients must be in accordance with the competencies obtained during medical training, and on this basis the provision of medical services by doctors is in accordance with the competencies they have during additional training or training. Therefore, the competence of a doctor is the ability of a doctor to apply his knowledge and skills to examine or treat patients.

Medical malpractice is the error/negligence of a doctor in carrying out his professional duties without due care, failure to follow professional standards, medical service standards, standard operating procedures, and patient disability, injury, or even death.

Medical malpractice can be done intentionally or due to negligence. However, as a normal human being full of flaws, a doctor cannot escape the possibility of making mistakes and mistakes because it is human nature.

Article 50 of Law No. 29 of 2004 concerning Medical Practice states that the minimum skill level that a doctor must possess in independent professional practice carried out by professional institutions is knowledge, skills, and professionalism that describe attitudes: knowledge, skills,

and environment. .

Article 50 (a) of Law Number 29 of 2004 concerning Medical Practice states that “Doctors or dentists have the right to legal protection in medical practice as long as they carry out their duties in accordance with professional standards and standard operating procedures. it is determined that 6. A doctor or dentist who provides medical services or treatment in accordance with professional standards and normal business processes cannot be prosecuted administratively, civilly or criminally.

(A) Methodology

This research method, namely the legal research method normative sourced from literature study in the form of legislation in the field of health and medicine, as primary legal material, as well as other literature in the form of legal articles and written information from internet on health law, medical law and malpractice medicine as a source of legal material secondary. Tertiary legal materials such as law dictionary is used for explain the meanings relevant to the topic of discussion in this research.

(B) Discussion

Medical action outside the authority of professional competence

The authority of medical personnel is the right and authority to administer medical actions to patients to prevent disease, improve health, treat disease, and restore health. The medical profession is a profession that demands mastery of a wide range of clinical knowledge and skills, including standards of good practice and behavior. Therefore, it is very important to study or train doctors before carrying out a profession which is later expected to practice professional behavior.

There is a difference between a general practitioner and a specialist. In the normative state of the medical profession, doctors perform according to what they have acquired during their training and competence. There are two forms with distinct but inseparable unity. First, the authority is based on the expertise of the doctor. This power is often referred to as the power of expertise or physical power over individual doctors who are bound by doctors. The second is legal or formal authority.

Doctors are required to exercise formal authority under Article 29, Paragraph 1 and Article 36 of the 2004 Medical Practice Law. Article 29 (1) stipulates that all doctors and doctors who practice as doctors in Indonesia are dentists and require a doctor's license and a dentist's license. There are several requirements that must be met to get a registration certificate, the conditions

that must be met are having a doctor's diploma, a specialist dentist, a doctor's oath, namely having a physical certificate. It's about being sane, having a certificate of competence, and finally claiming to uphold and uphold ethical standards. A Certificate of Registration (STR) is issued by the Medical Association and is valid for 5 years and must be re-registered every 5 years.

Article 36 of Law Number 29 of 2004 concerning Medical Practice stipulates that all doctors and dentists who practice medicine in Indonesia must have a practice license. This practice license is issued by an accredited district/city health office, meaning that a doctor who wants to obtain a license must meet requirements such as a medical license, a dentist's license, a place of practice, and a recommendation from an institutional professional.

If a doctor must have two powers in carrying out medical practice in medical actions which are required by law to have a Registration Certificate (STR) and a Practice License (SIP). If you don't have STR and SIP, you will get fines for your actions as regulated in Law Number 29 of 2004 concerning Medical Practice in Article 75 and Article 76. Article 75 states that "every doctor or dentist who intentionally performs medical practice without having a Registration Certificate as referred to in Article 29 paragraph (1) shall be punished with imprisonment for a maximum of 3 years or a fine of a maximum of Rp. 100,000,000.00 (the provision for imprisonment has been revoked by the Constitutional Court). Furthermore, it is based on Article 76 which states that "every doctor or dentist who intentionally performs medical practice without having a practice license as referred to in Article 36 shall be sentenced to a maximum imprisonment of three years or a maximum fine of Rp. 100,000,000.00 the provision for imprisonment has been revoked by the Constitutional Court.

The laws and regulations determining medical professional standards can be seen from Article 51 Letter (a) of Law Number 29 of 2004 Juncto Article 58 paragraph (1) Letter (a) of Law Number 36 of 2009, which clearly states that "every doctor or a dentist in carrying out medical practice has an obligation to provide medical services in accordance with professional standards, standard operating procedures and the patient's medical needs.

Law Number 36 of 2004 concerning Health Article 24 paragraphs (1) and (2) states that "Health workers as referred to in Article 23 must meet the provisions of the code of ethics, professional standards, rights of users of health services, service standards, and standard operating procedures. " and paragraph (2) "the provisions regarding the code of ethics and professional standards as referred to in paragraph (1) are regulated by professional organizations.

Legal Protection of Doctors in Medical Services

The medical profession is not a field of science where everything can be measured. According to Hippocrates, the medical profession is a combination or combination of science and art (science and art). Doctors have different techniques. After listening to the patient's complaints, the doctor introduces himself and observes the patient carefully.

After all, doctors are normal people who are full of mistakes. Doctors are not free from mistakes and the possibility of making mistakes because it is human nature. The legal bases that provide legal protection for doctors in carrying out the medical profession, things that doctors must do to avoid lawsuits,

1. Legal Basis that Provide Legal Protection for Doctors in Running the Medical Profession

Legal provisions that protect doctors in the event of suspicion of malpractice are contained in Article 50 of the Medical Practice Law, Article 24 Paragraph (1), in conjunction with Article 27 Paragraph (1) and Article 29 of the Health Law, and Article 24 Paragraph (1) of the Government Regulation concerning Health Workers

2. What to do before Treating Patients

a. Informed Consent

In carrying out his profession, 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 (information), and the word "consent" which means approval or giving permission. Thus, Informed Consent implies an agreement given by the patient or his family after receiving information about the medical action to be taken against him and all the risks.

b. Medical record

In addition to Informed Consent, doctors are also obliged to make "Medical Records" in every health service activity for their patients. The regulation of medical records is contained in Article 46 paragraph (1) of the Medical Practice Act. Medical record is a file containing records and documents about patient identity, examination, treatment, actions and services provided to patients. Medical records are made with various benefits, namely for patient treatment, improving the quality of services, education and research, financing, health statistics and proving legal, disciplinary and ethical issues.

3. Eliminate the risk of being considered malpractice

a. Risk Submission, according to Danny Wiradharma:

1. Inherent inherent risk

Every medical action carried out by a doctor must contain risks, therefore doctors must carry

out their profession in accordance with applicable standards. Risks that can arise for example hair loss due to chemotherapy.

2. Hypersensitivity reaction

The body's excessive immune response to the entry of foreign objects (drugs) often cannot be predicted in advance.

3. Complications that occur suddenly and can not be predicted beforehand. For example complications in pregnancy, vaginal bleeding, rupture of amniotic fluid

b. Medical Accident

Medical accidents are often considered the same as medical malpractice, because these circumstances cause harm to patients. The two conditions should be distinguished, because in the medical world doctors seek to heal rather than harm the patient. Example: Medical equipment left in the body, treatment in the wrong body part.

c. Contribution Negligence

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.

d. Respectable Minority Rules & Error Of (in) Judgment

Doctors mistakenly choose alternative medical treatment for their patients, the choice of medical treatment from doctors who have been based on professional standards turns out to be the wrong choice. Medical science is an art and science in addition to technology that is matured in experience. So the approach to a disease may differ from one doctor to another. However, it must be based on reliable science.

e. Volenti Non Fit Iniura or Assumption Of Risk

An assumption that has been known beforehand about the existence of a high medical risk to the patient if a medical action is carried out on him. If a complete explanation regarding the effects and risks has been made to the patient or family, they agree (informed consent), and if there is a risk that has been previously suspected, the doctor cannot be held responsible for his medical actions.

f. Res Ipsa Loquitur

Transfer of the burden of proof from the plaintiff (patient or family) to the defendant (medical staff). For certain negligence that is obvious, clear so that it can be known by a layman or according to general knowledge between lay people or the medical profession or both, that the

disability, injury, injury or fact is clearly evident from the result of medical negligence and this kind of thing does not require evidence from the plaintiff, but it is the defendant who must prove that his actions are not categorized as negligent or wrong.

Indonesian Medical Discipline Honorary Council (MKDKI)

The Supreme Court, through Circular Letter (SEMA) 1982, decided that the handling of cases by doctors or other medical personnel suspected of negligence or errors in the administration of medical procedures or services should not be handled directly through the judiciary, but the Honorary Council first requested an opinion. Medical Ethics (MKEK). MKEK has now been replaced by the Indonesian Medical Discipline Honorary Council (MKDKI), an independent body under the Indonesian Medical Council (KKI).

Article 29 of the Health Law states that in the event that a health worker is suspected of negligence in carrying out his profession, the negligence must be resolved first through mediation. MKDKI is not a mediation institution, in the context of dispute resolution mediation, however, MKDKI is a state institution authorized to determine whether or not a doctor or dentist has made a mistake in the application of medical or dental disciplines and stipulates sanctions for a doctor or dentist who is found guilty.

MKDKI case handling process :

1. The handling of the alleged violation case is carried out after the complaint has been made. The requirements for the complaint are contained in Article 3 of Perkonsil Number 2 of 2011. After the complaint is registered in MKDKI/MKDKI-P, the complainant can provide supporting data for the complaint in the form of evidence owned and a statement about the truth of the complaint.
2. After that clarification will be carried out by a special officer from MKDKI/MKDKI-P. Then enter the handling of cases in the form of "Preliminary Examination". This initial examination stage is discussed in Articles 13-18 of the Council's Regulation No. 2 of 2011. At this stage of examination, the MKDKI checks whether the complaint is accepted, not accepted or rejected.
3. If the complaint is received, the Chairperson of the MKDKI forms an MPD, namely the Disciplinary Examination Board.
4. Investigations are carried out to collect information and evidence related to the reported incident. After the investigation, a disciplinary examination will be held
5. What is carried out in the disciplinary examination of a doctor or dentist, several decisions:
 - a. Is declared not to have violated the discipline of a doctor or dentist

b. The provision of disciplinary sanctions, in the form of:

1. Written warning

2. Obligation to attend education or training;

- Formal re-education at an accredited medical or dental education institution

- Non-formal re-education carried out under the supervision of a certain doctor or dentist at an accredited medical or dental education institution, health service facility and network, or other designated health service facility, for a minimum of 2 (two) months and a maximum of 1 (one) month.) year

3. Revocation of STR or SIP which is:

a) While a maximum of 1 (one) year

b) Permanent or forever

c) Restriction of certain medical care actions in an area of medical science or dentistry in the implementation of medical practice.

If it is proven that he has committed a disciplinary violation, after the decision of the doctor or dentist who is complained about, he can file an objection to the decision of the MKDKI to the Chairperson of the MKDKI within 30 days of the reading or receipt of the decision by submitting new evidence that supports his objection.

In terms of ensuring the neutrality of the MKDKI, Article 59 paragraph (1) of the Medical Practice Law, it is stated that the MKDKI consists of 3 (three) doctors and 3 (three) dentists from their respective organizations, a doctor and a dentist representing Hospital association and 3 (three) law graduates²⁰. So there is no need to worry that the doctor will defend his colleagues.

II. CONCLUSION

- The authority to administer medical practice in Law Number 29 of 2004 concerning Medical Practice, every doctor must first have a Registration Certificate (STR) and Practice License (SIP). When these two things have been fulfilled, every doctor has the right to practice medicine in accordance with the authority of his professional competence.
- The resolution of malpractice cases is often brought to court, but the question remains whether the court is able to prove the truth in the medical field. Even if doctors or medical personnel are expert witnesses, can the judge understand the opinion of the medical world. The medical dispute resolution should first be through mediation, or

reported to the authorized institution to consider violations of medical discipline, namely the Indonesian Medical Discipline Honorary Council (MKDKI). Lack of socialization causes the general public to be less familiar with MKDKI, so they use legal channels.

- The Supreme Court, through Circular Letter (SEMA) 1982, decided that the handling of cases by doctors or other medical personnel suspected of negligence or errors in the administration of medical procedures or services should not be handled directly through the judiciary, but the Assembly requested an opinion first. Indonesian Medical Discipline Honorary (MKDKI)
- MKDKI has the authority to examine and make decisions on complaints related to violations of medical discipline and sanctions.

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