

The Role of Indonesian Honorary Council of Medical Discipline in Upholding Indonesian Medical Code of Ethics

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Abstract-The purpose of this study is to analyze the role of Indonesian Honorary Council of Medical Discipline in upholding the Indonesian medical code of ethics which in carrying out its duties often triggers disputes between doctors and patients or medical disputes. It is normative legal research using the conceptual and statutory approaches. The data are secondary data collected from the literature study. The results of the study show that first, doctors as ordinary people can make mistakes, both professional mistakes and ethical violations. Therefore, the role of the Indonesian Honorary Council of Medical Discipline is needed in enforcing disciplinary law. Second, the relationship between doctor and patients, if constructed, can be classified into two things, namely therapeutic transactions and the law. The therapeutic relationship between patients and doctors is known as a therapeutic relationship or therapeutic transaction. It means there is a bond between the patients and the doctors in terms of treatment or treatment of the disease.

Keywords- *Doctors, Patients, and Code of Ethics.*

I. INTRODUCTION

The right to obtain health is affirmed in Article 28H Paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) which states that every person has the right to live in physical and spiritual prosperity, have a place to live, and obtain a good and healthy living environment, and is entitled to obtain health services. As a condition of its implementation, that is stated in the explanation of the Health Act, Indonesia recognizes that health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian people as referred to in the Pancasila and the 1945 Constitution.[1]

Health services are an object of treatment and care approval. The effort to improve the life quality in the health sector is an extensive and comprehensive business. These efforts include improving public health, both physical and non-physical. Health services involve many parties, such as hospitals, health workers, and patients. The direct relationship that occurs is between the doctors and the patients. The medical profession is a noble profession, which is related to the benefits of human welfare. Therefore, it is often said that the profession in the medical field always carries out moral and intellectual commands. Being a doctor means being willing to serve a sick human being to heal as well as serving a healthy

human so as not to get sick, by preventing diseases and improving the patients' health. Thus, the spirit to serve must always be in the doctors. This attitude is essential in forming the most basic ethical attitudes. [2]

A doctor is a profession that must be performed with high morality because a doctor must always be ready to provide help to people who need it. Medical science continues to develop and proceed so that the usefulness of medical science for the community depends on its foundation of philosophy and idealism. Without the noble ethical foundation of the medical area, it can lead to humanitarian tasks that it carries solely based on business relationships. [3]

In the principle or relationship between the patients and the doctors (other health workers) of the hospital, there is a therapeutic relationship or therapeutic transaction. There is a bond between the patients and the doctors in terms of treatment or treatment of the disease and between the patients and the hospital in terms of health services by providing facilities and standardized health infrastructure. Doctors and hospitals must fulfill their responsibility to provide health services according to service standards, professional standards, and standard operating procedures to patients, both requested and unsolicited. It is because, in principle of the therapeutic transaction, the health provider and the health receiver are both legal subjects that have equal rights and obligations following the principle of equality before the law and stated in Article 1320 of the Civil Code regarding the legal requirements of an agreement. [4]

In recent years, there are several cases about lawsuits from patients who claim compensation for being aggrieved. They sue due to mistakes or negligence made by doctors or health workers in performing their work. It is a concern of the health and the legal profession. Cases that have attracted public attention happened to three obstetricians, (dr. Dewa Ayu Sasiary Prawani, dr. Hendry Simanjuntak, and dr. Hendy Siagian) which were given a free verdict by the District Court Decision in 2011. However, at the Supreme Court level, these three doctors were found guilty of malpractice to Julia Fransiska Makatey. [5]

The existence of rights and obligations as a result of the legal relationship between the doctors and the patients has the potential for disputes between them or also called medical disputes. To avoid or reduce the number of medical disputes that occur, it is necessary to understand the legal relationship between the doctors and the patients. This legal relationship will lead to legal actions and consequences. In the legal consequence, two things that cannot be separated are about who is responsible and to what extent the responsibility can be given. A study is needed on how doctors give responsibility for losses suffered by patients in medical service.

II. RESEARCH METHOD

The present study is normative legal research. The data used are secondary data that includes primary and secondary legal material in the form of laws and regulations including Law Number 36 of 2009 about Health, Law Number 29 of 2004 about Medical Practices, Law Number 4 of 2019 about Midwifery and decisions court related to the present study. The secondary data are obtained through a literature study. The approach method used is the conceptual and statutory approaches. Data analysis is carried out by systematizing the data and subsequently used to translate the concept of the role of Indonesian Honorary Council of Medical Discipline in upholding the Indonesian medical code of ethics, which in carrying out its duties often triggers disputes between doctors and patients or medical disputes. [6]

III. FINDINGS AND DISCUSSION

1. *Legal Relationship Between Doctors and Patients*

Article 1354 Civil Code formulates *zaakwaarneming* is if a person voluntarily (without obtaining an order for it), represents the affairs of others with or without the knowledge of this person, then he secretly binds himself to continue and resolve the matter until the person represented by his interests can do the business yourself. He bears all the obligations that must be borne if he is empowered by a power of attorney stated expressly.

According to Adami Chazawi, *zaakwaarneming* is not the cause of malpractice. It is a form of legal engagement that was born because of the Act, as well as *onrechtmatige daad*. Unlike the *onrechtmatige daad* that leads to civil malpractice of doctors, *zaakwaarneming* is not the cause of the medical malpractice. In carrying out the legal obligations caused by *zaakwaarneming*, it can lead to medical malpractice if there are deviations in carrying out the legal obligations of the doctors and cause harm to the patients. In this case, the action is carried out in an emergency because the patients are not aware of. For instance, it is due to a severe accident. Therefore, in such circumstances, patients need immediate action and cannot be delayed. Delay in handling will bring fatal consequences. For example, when it endangers the lives of the patients, then the obligation to obtain informed consent can be removed. [7]

The legal relationship between the doctors and the patients that occurs because the law gives the doctors an obligation to provide health services to patients. It means that the occurrence of this legal relationship is not needed, even the participation of patients, such as in emergencies. Thus, the legal relationship between the doctors and the patients derived from the law is not possible to produce *resultaat verbintennis* (engagement of results) because the patients do not have the initiative and even participation. Hence, the resulting agreement is *verbintennis inspanning* (engagement effort).

2. *Rights and Obligations of Doctors and Patients*

Article 52 of the Medical Practice Law states that a patient's right is to obtain a complete explanation of medical procedures, including diagnosis and procedures for medical treatment, the purpose of the medical action taken, an alternative of other actions and the risks, risks and complications that may occur, and prognosis for action taken. The patients are also entitled to ask the opinion of other doctors or dentists, get services according to medical needs, refuse medical measures, and obtain the contents of the medical record. The patients' obligations are regulated in Article 53 of the Medical Practice Law which states that patients must provide complete and honest information about their health problems; obey the doctors or dentists' advice and instructions; comply with the applicable provisions in health care facilities and provide service fees for services received. Therapeutic transactions carried out by patients and doctors require both parties to fulfill their respective rights and obligations. [8]

Article 50 of the Medical Practice Law explains that in carrying out medical practice, doctors or dentists have the right to 1). Obtain legal protection as long as they follow the professional standards and standard operating procedures in carrying out their duties, 2). Provide medical services according to professional standards and operational procedure standards, 3). Obtain complete and honest information from patients or their families, and 4). Receive service fees. By law, the doctor and patient relationship is known as a therapeutic transaction. It starts with a question and answer (*anamnesa*) between the doctors and patients, followed by a physical examination by the doctors to the patients, and lastly, the doctors determine the diagnosis of the patients' disease. This first diagnosis can be a working diagnosis or a provisional or definitive diagnosis. After the diagnosis is established, the doctors decide the type of therapy or medical treatment to be performed on the patients. [9]

In the field of medicine, the doctors and the public realize that it is impossible for the doctors to guarantee that treatment efforts will always be successful according to the wishes of the patients or their families. The doctors can only perform the maximum efforts carefully and

thoroughly based on their knowledge and experience in dealing with diseases.

Several doctor obligations are regulated in several articles in the Medical Practice Law. If all of them is compiled, it contains the doctors' obligation to attend sustainable medical education and training organized by professional organizations and other institutions accredited by professional organizations in the context of absorbing scientific development and medical technology, have a Registration Certificate (STR) and a Practice License (SIP), provide medical services following the professional standards and standard operating procedures and patient medical needs, refer patients to other doctors or dentists with better expertise or ability well if they cannot carry out an examination or treatment, keep everything about the patients confidential, even after the patients have died, perform emergency relief on the basis of humanity, unless they are sure there are others on duty and able to do it, and carry out quality control and cost control. [10]

Beyond the obligations to the patients, the doctors also have general obligations, namely obligations to peers and to oneself that have been set out in Kodeki. These obligations are the responsibility of the medical profession. The obligations of doctors or dentists for patients in carrying out health services as written above are regulated more concretely in Article 51 of the Medical Practice Law.

3. *The Role of the Indonesian Honorary Council of Medical Discipline in Providing Health Services*

Doctors, as ordinary people can make mistakes, both professional mistakes, and ethical violations. There is a need for disciplinary law and specialized agencies that are authorized to secure the disciplinary law. Medical ethical norms apply as a guide for good/bad behavior in carrying out the medical profession. There are two regulations which form the basis of medical practice in Indonesia which are based on ethical norms as follows Government Regulation Number 26 of 1960 containing doctors' oath and Decree of the Minister of Health of the Republic of Indonesia Number 434/Menkes/SK/X/1983 of October 28, 1983 about the Indonesian Medical Code of Ethics (KODEKI). [11]

a. *Indonesian Honorary Council of Medical Ethics (MKEK)*

MKEK is a special board of the IDI (Indonesian Doctors Association) professional organization formed under Article 16 AD/ART IDI. MKEK has the power and authority to conduct guidance, supervision, and evaluation in the implementation of medical ethics and obligation, among others, to fight for medical ethics so that it can be upheld in Indonesia. Concerning IDI management, MKEK has the task of giving suggestions and recommendations. The members of the assembly are

ordinary members of IDI and are appointed by the IDI Board. Therefore, according to Fred Amein, the MKEK is an autonomous court (internal court from and for the medical profession).

b. *Indonesian Medical Council (KKI)*

After a long time trying to establish a body that take a role as a guiding institution for Medical Practice in Indonesia, based on Article 4 to Article 26 of the Medical Practice Law, the Indonesian Medical Council (KKI) is formed to be registrar of the doctors and dentists who has been registered at the Indonesian Medical Council who may apply for permission to the Indonesian Government to practice medicine. Doctors and dentists who intentionally practice medicine without having a Registration Certificate (STR) are illegal. In addition, KKI is tasked with fostering the scientific discipline of doctors and dentists who carry out medical practices. Therefore, KKI has an independent board, namely the Indonesian Honorary Council and Medical Discipline (MKDKI). [12]

c. *Indonesian Honorary Council and Medical Discipline (MKDKI)*

Article 66 of the Medical Practice Law states that complaints to MKDKI can be made by people who are disadvantaged. However, the reports can also be done by anyone who knows that a disciplinary violation has occurred in the implementation of Medical Practice. It should be noted that complaints of this disciplinary issues do not eliminate the opportunity for someone to report the doctors or dentists to the authorities for alleged violations of ethics, suspected criminal acts, and civil lawsuits. It is confirmed in Article 66 of the Medical Practice Act. Therefore, at the same time and in one case, the doctors or dentists can face civil, criminal, disciplinary, and ethical violations.

Based on the complaints of alleged disciplinary violations, the MKDKI will investigate, examine, and make decisions on the doctors or dentists. Article 69 of the Medical Practice Law states that MKDKI decisions can be in the form of Not Guilty or Granting Disciplinary Sanctions. MKDKI Decision in the form of Granting Disciplinary Sanctions to the problematic doctors or dentists can be in the form of a decision as follows disciplinary Sanctions in the form of STR or SIP Revocation Recommendations, disciplinary Sanctions in the form of obligation to follow education and training in medical and dental education institutions and combined disciplinary sanctions number 1) and 2).

MKDKI's Disciplinary Sanctions will be recorded by KKI and will be considered in the issuance of STR of the doctors or dentists. Sanction of revocation of STR or SIP will have an impact not only for the concerned person but also the regulation of staffing in the medical institution where the doctor works. [13]

The existence of MKDKI essentially has an essential role if there are medical disputes that occur between doctors and patients. MKDKI will be able to shed light on an event, whether it is true that disciplinary violations were committed by doctors or not. The handling of complaints made by MKDKI from 2006 to February 2015 totaled 310 complaints. 36 complaints were stopped because complainants dropped them, while one complainant died, and another was not cooperative. The complaints were rejected or delegated to Professional Organizations after the initial inspection stage with reasons including: complaints do not meet the requirements for example, complainants and/or defendant cannot be identified, information or data in complaints is incomplete, medical actions occur before the Medical Practice Act is established in October 6, 2004, there were no alleged violations of professional discipline, there were alleged violations of the ethics of the medical profession, doctors or dentists who complained of not being registered at KKI, compensation. [14]

127 complaints involving 194 doctors/dentists who have received MKDKI Decisions are first, 106 complaints did not violate the medical discipline; second, 94 complaints violated the discipline of the medical profession. Of the disciplinary sanctions, 44 defendants were given written warnings, 50 defendants recommended to have their STR/SIP temporarily revoked; and 6 defendants are required to take part in the reeducation program. Third, a total of 91 complaints were still being handled until February 2015 and five people (two doctors and three dentists) and one complainant filed a lawsuit to Administrative Court. [15] [16]

IV. CONCLUSION

The conclusions in this study were: (i) A relationship between doctors and patients occurred in a medical practice is known as a therapeutic relationship, which is a legal relationship because it is carried out by legal subjects and has legal consequences. The legal relationship between the doctors and the patients, if constructed, can be classified into the doctor-patient relationship based on therapeutic transactions, which are based on Article 1320 of the Civil Code and the doctor-patient relationship based on the law of the Article 1354 of the Civil Code. (ii) The responsibility of doctors in health services arises because of the legal relationship between doctors and patients. In a legal relationship, there are rights and obligations of each party that emerge responsibilities in its implementation. The doctors' responsibilities can be distinguished from responsibilities based on law, criminal law, civil law and administrative law.

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