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Legal Protection of Health Consumers from Medical Malpractice Acts

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***Abstract*— The purpose of this study is to find out and examine how legal protection to health consumers from medical malpractice actions taken by health workers. This type of research used in this study is normative legal research. This normative legal research is carried out by examining library materials or secondary data. Normative legal research examines the law conceptualized as a norm or rule of law that applies. The results showed that legal protection to health consumers from medical malpractice actions was not optimal because there was still malpractice.**

Keywords— Legal Protection, Consumer Health, Malpractice

I. INTRODUCTION

Development in the health sector as one of the national development efforts is directed towards achieving awareness, willingness, and the ability to live a healthy life for every population in order to realize optimal health status [1]. Health development involves all aspects of life, both physical, mental and socioeconomic. In the development of health development so far, there has been a change in orientation, both in terms of values and thinking, especially regarding efforts to solve problems in the health sector that are influenced by political, economic, social, cultural, defense and security factors as well as science and technology. The change in orientation will affect the process of implementing health development [2].

The implementation of development in the field of health includes health efforts, and its resources must be carried out in an integrated and continuous manner in order to achieve optimal results. Health efforts which were originally emphasized on the direction of healing efforts for sufferers gradually develop towards the integration of comprehensive health efforts. Development in the field of health which involves health promotion or promotion, prevention of disease or prevention, cure of diseases or curative, and recovery of health or rehabilitation must be carried out thoroughly, integrated, continuously, and carried out by the government together with the people [2].

In the Criminal Code (KUHP) negligence resulting in woe or even the loss of another person's life is regulated in article 359 which reads: "Anyone because of his negligence causes the death of another person, is threatened with a maximum imprisonment of five years or a maximum sentence of one year." Malpractice can also have implications for a civil claim by a person (patient) against a doctor who intentionally *(dolus*) has caused harm to the victim, thus requiring the party causing the loss (*doctor*) to compensate the loss suffered to the victim, as stipulated in Article 1365 Civil Code (Civil Code) which reads: "Every act that violates the law, which brings harm to another person, obliges the person who because of his mistake to issue the loss, compensates for the loss."

As for the objective of researchers in this study is: To find out and study how the legal protection of health consumers from medical Malpractice actions carried out by health workers.

II. RESEARCH METHODS

This type of research that will be used in this research is Normative Law Research. Normative Law Research is studying the law that is conceptualized as a norm or norm that applies in society and basically based on secondary data that is adjusted to the formulation of the problem to be examined. With reference to the research problem formulated above, this study will examine secondary data, namely, data obtained from library materials [3].

III. RESULTS AND DISCUSSION

A. Legal Aspects of Consumer Protection Under Law No.8 of 1999

In essence, there are important legal instruments that form the basis of consumer protection policies in Indonesia, namely: First, the 1945 Constitution, as the source of all sources of law in Indonesia, mandates that national development aims to create a just and prosperous society [4].

Social development goals are realized through a system of democratic economic development to be able to grow and develop a world that produces goods and services that are fit for consumption by the community. Secondly, Law No. 8 of 1999 concerning Consumer Protection (UUPK). The birth of this law gives hope for the people of Indonesia, to obtain protection for losses suffered from transactions of goods and services. The UUPK guarantees legal certainty for consumers.

Following article 3 of the Consumer Protection Act, the objectives of Consumer Protection are;

1. Increase consumer awareness, ability, and independence to protect themselves,
2. Raise the dignity of consumers by avoiding harmful excesses in the use of goods and / or services,
3. Increasing the empowerment of consumers in choosing, determining and demanding their rights as consumers,
4. Creating a consumer protection system that contains elements of legal certainty and information disclosure and access to information,
5. Growing awareness of business actors about the importance of consumer protection so that honest and responsible attitudes grow in trying,
6. Improving the quality of goods and / or services that guarantee the continuity of the business of producing goods and / or services, health, comfort, security and consumer safety.

Basically the Consumer Protection Act has the Consumer Protection Principle, namely [5]:

1. Principle of Benefits; mandating that all efforts in the implementation of consumer protection must provide maximum benefits for the interests of consumers and business actors as a whole,
2. The Principle of Justice; the participation of all people can be realized to its full potential and provide opportunities for consumers and businesses to obtain their rights and carry out their obligations fairly,
3. Principle of Balance; provide a balance between the interests of consumers, businesses and the government.
4. Principle of Consumer Safety and Safety; provide guarantees for security and safety to consumers in the use, use and utilization of goods and / or services that are consumed or used;
5. Principle of Legal Certainty; both businesses and consumers obey the law and obtain justice in the implementation of consumer protection, and the state guarantees legal certainty.

From the sound of article 19 paragraph (3), it can be interpreted that consumers who consume goods or experience losses on the 8th day after the transaction, cannot submit compensation to business actors. However, in the case of the doctor's relationship with the patient, usually the loss experienced by the patient occurs immediately after the doctor took the wrong action, so that the loss rarely occurs beyond the time limit specified in Law No.8 of 1999. However, if the patient turns out to experience a loss after the arrest within 7 days, it is not possible for the doctor / dentist to be prosecuted based on the Articles in the Civil Code, both regarding defaults and against unlawful acts, for example in the matter of not closing the stitches that usually occur after the grace period. Giving compensation to patients or consumers, still providing opportunities for patients to be able to sue doctors / dentists as business actors with criminal charges, stated in article 19 paragraph (4) which reads: Giving compensation as referred to in paragraph (1) and Paragraph (2) does not eliminate the possibility of criminal prosecution based on further evidence regarding the existence of an element of error [6].

The doctor or dentist can be free from claim for compensation, if it can prove that the loss suffered by the patient occurred not due to the fault of the doctor or dentist concerned, as stated in article 19 paragraph (5), as follows: Provisions as referred to in paragraph (1) and paragraph (2) do not apply if the business actor can prove that the error is the fault of the consumer.

B. Health Legal Aspects Based on Law No.23 of 1992

Within the scope of development in the health sector, the existence of a health law is one of the goals of the health system that reflects the efforts of the Indonesian people to achieve better health status. Health is a state of well-being of the body, soul, and social that enables everyone to live productively socially and economically, while what is meant by health efforts is any activity to maintain and enhance health carried out by the government and or the community [4].

Health worker is every person who devotes himself in the field of health and has knowledge and or skills through education in the field of health which for certain types requires authority to carry out health efforts. Health workers consist of; medical personnel, nursing staff, pharmaceutical personnel, public health workers, nutrition workers, physical ignorance staff, medical technical personnel. Violations or crimes in this Law may be subject to criminal acts contained in article;

Article 15

1) In an emergency in an effort to save the life of a pregnant woman and / or her fetus, certain medical measures can be taken.
2) Certain medical actions as referred to in paragraph (1) can only be carried out:
   a. based on medical indications requiring such action;
   b. by health workers who have the expertise and authority for it and are carried out in accordance with professional responsibilities and based on the consideration of a team of experts;
   c. with the consent of the pregnant mother concerned or her husband or family;
   d. in certain health facilities.

Article 80 paragraph 1; Crimes against article 15 paragraph (1) and (2), sentenced to prison for 15 years and a maximum fine of Rp. 500 million

Article 33

1) In healing diseases and restoring health, organ and / or tissue transplants can be performed, blood transfusions, drug implants and or medical devices, as well as plastic and reconstructive surgery

2) Organ and / or tissue transplantation and blood transfusion as referred to in paragraph (1) are carried out only for humanitarian purposes and are prohibited for commercial purposes.

C. Civil Law aspects based on BW /KUHPerdata

There are 4 Principles in implementing Responsibility in KUHPerdata / BW [5]:

1. Perform Default (Article 1239 KUHPerdata)
2. Committing acts against the law (Article 1365)
3. Negligence resulting in losses (Article 1366 of the KUHPerdata)
4. Neglecting work as the person in charge (Article 1367 paragraph (3) of the KUHPerdata).

Implementation of Civil Law due to Default (Article 1239 of the KUHPerdata). Sounds from article 1239 of the KUHPerdata.: "Each engagement to do something, or not to do something, if the debtor does not fulfill his obligations, get the settlement in the obligation to provide compensation, loss and interest"

In legal language, default is a condition where a person does not fulfill his obligations based on an agreement or contract. According to KUHPerdata, a person can be considered a default if:

1. Not doing what is promised will be done.
2. Too late to do what was promised will be done.
3. Doing what was promised, but not in accordance with what was promised
4. Do something that according to the agreement cannot be done.

Implementation of Civil Law due to Defaults (Article 1239 Civil Code). Sounds from article 1239 of the Civil Code: "Each engagement to do something, or not to do something, if the debtor does not fulfill his obligations, get the settlement in the obligation to provide compensation, loss and interest"

In legal language, default is a condition where a person does not fulfill his obligations based on an agreement or contract. According to civil law, a person can be considered a default if:

1. Not doing what is promised will be done.
2. Too late to do what was promised will be done.
3. Doing what was promised, but not in accordance with what was promised
4. Do something that according to the agreement cannot be done.

Some case illustrations that cause doctors to be exposed to claims of default from patients, include: A patient comes to the obstetrician to be sterilized, because he does not want to get pregnant again. Obstetricians are willing to sterilize these patients. It turns out that a few months after surgery, another pregnancy occurs. So in this case, the obstetrician can be prosecuted because he is deemed not to do what he believes will be done. The reason for the demand is, the patient is willing to undergo a sterilization operation, because he does not want to get pregnant again, but after surgery, the patient can still get pregnant again.

The lawsuit relating to this default is usually in the form of a lawsuit for compensation against a doctor who is deemed to have committed an act which is detrimental to the patient as described in the case example above. In this default, the patient must have evidence of loss as a result of not fulfilling the doctor's obligations to him as the doctor promised [4].

D. Implementation of Civil Law Doctors Because Acts Against the Law.

Claims against illegal acts can be filed based on article 1365 of the Civil Code. Unlike the claim for compensation based on an agreement that was born because of an agreement (default), then an act against the law does not have to be preceded by an agreement. The elements that can be used as a basis for filing lawsuits are as follows:

a. There is an act against the law
b. There is a loss
c. There is a causal relationship between unlawful acts and losses
d. There is a mistake

Based on the 1919 Jurisprudence, what is meant by actions against the law are actions or omissions that meet the following criteria;

a. Violating the rights of others
b. Contradicts one's own legal obligations
c. Violates the ethical view that is generally held (good customs) or good morality
d. Contrary to the cautious attitude that should be heeded in the community of people towards themselves or other people's objects.

To be able to sue doctors with acts against the law, patients must be able to show the existence of a doctor's error because of negligence in carrying out his professional obligations causing harm to the patient. Losses that occur must be explained as a result of the doctor's negligent actions, or in other words there is a clear causal relationship and there is no justification.

A doctor can be declared a mistake and must pay compensation, if the losses incurred there is a close relationship with the mistakes made by the doctor. In determining the mistakes of doctors, we must refer to professional standards. So that in the implementation of medical practice, acts against the law can be identified with the actions of doctors who are concerned or not in accordance with professional standards that apply to the profession of the profession in the medical field.1.3.

Article 1365 of the Civil Code regulates acts done intentionally by someone that can result in harm to others, as an illegal act. For someone who is unintentional, but due to negligence or carelessness causing harm to others in illegal acts, compensation can be submitted based on article 1366 of the Civil Code.

For Article 1366 of the Civil Code, case illustrations can be given as follows: A surgeon made a wrong operation. Diseased area on the left, which is operated on the right. Injuries that arise in areas that do not suffer pain is a patient loss that must be paid by a surgeon because of negligence (accidental). Such actions can be classified as unlawful acts.

Negligence as an example of the case above, can be considered as an illegal act (Tort) or known as negligence in tort. To be used as a basis for a lawsuit, these negligence must meet the following conditions:

1. A behavior that results in a loss is not in accordance with normal caution.
2. The Plaintiff must prove that the Defendant was negligent in carrying out his obligations to the Plaintiff.

3. Defendant's behavior is the real cause (Proximate Cause) of the loss felt / suffered by the plaintiff.

Implementation of Civil Law Doctors as Responsible. In Article 1367 paragraph (3) of the Civil Code, a person must provide responsibility not only for losses incurred from one's own actions, but also for losses incurred from the actions of others under his supervision. There are two forms of medical practice that are generally carried out by doctors, namely:

1. Private medical practice, where doctors conduct examinations until treatment of patients at the place of practice is carried out.
2. Medical practices in health service facilities, including those implemented in hospitals.

For medical practice carried out in hospitals, doctors usually do not work alone as in the practice of individual medicine (a consultation place for patients), especially in the handling of inpatients. In connection with the handling of these inpatients, doctors need help from other health workers who work under his orders, namely midwives, nurses, assistant doctors and special education participants (PPDS), and so on. The mistake of a nurse because of carrying out the doctor's orders, is the responsibility of the doctor who gave the order. This kind of responsibility adheres to the employer-employee doctrine, where the doctor is the employer who is responsible for the actions of employees under his supervision

E. Criminal Law Aspect Based on WvS / Criminal Code.

The health service provided by a doctor to patients is an act of the medical profession. Medical action is an action that is full of risks. The risk can occur due to something that cannot be predicted in advance or the risk that occurs due to the wrong doctor's actions. It is said to be wrong if the doctor does not do his job in accordance with the standards of the medical profession and medical procedures. If a doctor commits a wrong action, the doctor can be categorized as carrying out a malpractice, so that it can involve aspects of criminal law

Doctors are a noble profession and have certain requirements because in the implementation of this profession is full of risks. The requirements include technical requirements related to ability (related to 'basic science' and technical skills) as well as juridical requirements, related to competence. The doctor's profession carries a high risk because the shape, nature and purpose of the actions taken by a doctor can potentially cause harm to someone. According to Bernard Barber, in a profession contained essence, which requires high knowledge that can only be studied systematically with primary orientation more aimed at the interests of society [7].

In the profession also has a mechanism for controlling the behavior of the holders of these professions and has a reward system. The law gives authority independently to the doctor to carry out and be responsible for carrying out medical science according to part or all of its scope and to make real use of that authority. A doctor is declared to have made a professional mistake when carrying out actions that deviate from the things mentioned above or better known as malpractice. Several factors cause unintentional mistakes in the implementation of the medical profession, namely lack of knowledge, lack of experience and lack of understanding from the doctor concerned. These three factors can cause errors in making decisions to determine the diagnosis and actions that must be taken.

Malpractice is a professional error that is not only a mistake made by the medical profession, but even so it seems to have belonged to the medical profession, because when malpractice is discussed the association is malpractice of the medical profession. Malpractice can occur due to intentional factors or not intentionally. The difference lies in the motives of the actions taken. If it is done consciously and its purpose is directed to the effect or not care about the consequences that can result from the action and the doctor knows that the action is against the law, then this action is called malpractice. In a narrow sense, it is also called criminal malpractice. An action is considered criminal malpractice if it meets the following criteria:

1) The act is a despicable act resulting in a loss to the health of the body that is injuries or loss of patient's life so that it becomes an element of crime (actus reus).
2) Performed with the wrong mental attitude (mens rea) in this case there is intentional / dolus or culpa.
3) Is intentional (intentional), careless (recklessness) or negligence (negligence).

If the action is not based on the motive to cause bad consequences, then the action is an act of negligence. The consequences of negligence actually occur outside the will of the person doing it.

Implementation of Disciplinary / Ethical Law Due to Malpractice

There are two institutions in charge of overseeing the issue of medical ethics, viz

1. Indonesian Medical Disciplinary Honorary Board and
2. Committee for consideration and guidance of medical ethics

Both of these institutions are specialized bodies of IDI professional organizations that have the power and authority to conduct guidance, supervision, and assessment in the inauguration of medicine. If a doctor is proven to have committed a violation of professional ethics he may be subjected to administrative sanctions, including:

Article 69 of the Law on Medical Practice

1) The decision of the Indonesian Medical Disciplinary Board honors the doctor, dentist and the Indonesian Medical Council.
2) Decisions as referred to in paragraph (1) can be in the form of being found not guilty or giving disciplinary sanctions.
3) Disciplinary sanctions referred to in paragraph (2) may be in the form of:
   a. giving written warning;
   b. revocation of registration certificate or license for practice; and / or
   c. the obligation to attend education or training in medical or dental education institutions.

Ethical Sanctions aimed at Educative, According to the explanation of article 53 paragraph (2) of Law No.23 of 1992, professional standards are guidelines that must be used as guidelines in carrying out the profession properly.

Tempo Interactive Mataram Wednesday, April 23, 2008 Reports That Since 2006, the Indonesian Medical Disciplinary

Honorary Council (MKDKI) has cracked down on 13 doctors for making mistakes in practicing. The doctors who were prosecuted came from various cities such as Jakarta, Medan, Sorong, and Central Java. "The action taken by MKDKI was a written warning and the license to practice was revoked due to malpractice,"

Based on the description above, the researcher sees that there is a good and clear legal protection for the recipients of health services, and very severe sanctions for service providers. Therefore it is expected that service providers are always careful in carrying out the profession to Health Consumers, so they are not subject to legal sanctions as stated above.

IV. CONCLUSION

Based on the descriptions and analysis of data in the previous chapters, the results of this study can be concluded as follows:

1. The emergence of Malpractice begins when the relationship between the patient and the doctor, in this relationship that provides the basis for the existence of rights and obligations between the two parties that make a therapeutic agreement / agreement that is an agreement between the doctor and the patient who gives authority to the doctor to perform activities providing services health to patients based on expertise and skills possessed by the doctor.
2. Malpractice can occur due to intentional factors or not intentionally. The difference lies in the motives of the actions taken. If it is done consciously and its purpose is directed to the effect or not care about the consequences that can result from the action and the doctor knows that the action is against the law, then this action is called malpractice.
3. That Legal Protection for Health Consumers exists, this is contained in Law No. 23 of 1992 concerning Health, Law No.8 / 1999 concerning Consumer Protection, Law No.29 of 2004 concerning Medical Practices, Civil Code (BW) and Criminal Code (WvS).

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