

Analyst Types of Malpractice In Health Law

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Abstract

The purpose of this study is to find out analyst types of malpractice in health law. This research uses a type of normative research that aims to find laws and regulations that are relevant to the problem that is the focus of research. Malpractice refers to medical practices that do not comply with the applicable laws and ethical codes. It can also refer to negligence, errors, or a doctor's inability to solve a patient's problem in such a way that the patient is dissatisfied with the outcome. Patients suffer as a result of healthcare workers' neglect of necessary procedures when they lack knowledge of health-related topics. This occurs when medical practices are performed on patients who become victims, but medicine is based on procedures or how doctors perform actions. Whether malpractice occurs or not is not judged by its adverse consequences. The definition of malpractice under current law is unclear. However, the concept of malpractice can be found in Article 11 paragraph 1 letter b, Law No. 6 of 1963 concerning healthcare personnel, which has been repealed and replaced by Law No. 23 of 1992 which regulates healthcare.

Keywords: malpractice; health law; medical practice

INTRODUCTION

Humans are basically social creatures that need interaction with other humans. We help each other when faced with limitations. This is because every individual has flaws and limitations in themselves. Therefore, humans must always relate and interact with other humans in order to support and help each other in daily life (Frees & Gao, 2020). Through social interaction with other human beings, we can obtain the emotional and physical support needed to survive. For example, when a person is sick or experiencing difficulties, others can provide the support and assistance necessary to restore their health. In addition, social interaction also allows us to learn from the experiences and knowledge of others, as well as develop social skills and empathy that are important in our social lives (Lee et al., 2020). However, it is undeniable that social interaction can also cause conflicts and disputes between people. However, when conflict occurs, we can learn to resolve problems and reach mutual agreement by taking the perspective of others and seeking mutually beneficial solutions. In conclusion, as social beings, humans cannot live alone without depending on other humans (Palaniappan & Sellke, 2022). Through social interaction, we can support each other, learn from others, and develop social skills that are essential for survival and achieving common goals. Disease is a sign of human weakness that requires the help of others to maintain its health. However, there are mistakes that may occur in medical practice known as

malpractice that cannot be separated from the doctor himself (Margolis, 2023). This shows that although doctors are expected to help overcome the disease, the potential for errors must also be watched out for in medical practice. In the context of medical practice, there is a risk of malpractice that can occur due to the fault or negligence of the doctor. Such malpractices can be detrimental to patients who are under medical treatment (Li et al., 2020). Therefore, it is important for doctors to comply with applicable laws and codes of ethics in medical practice to avoid the risk of malpractice. Even so, doctors are also humans who have weaknesses and limitations. So, if something goes wrong in medical practice, doctors also need support and help from others to solve the problem and avoid malpractice (Doolin et al., 2024). Malpractice refers to the actions of doctors committed with negligence or misconduct in violation of laws and codes of medical ethics. Mistakes are usually unintentional or malicious, but can still pose a major threat to the health, safety, and security of patients and others involved (Boyke et al., 2020). Therefore, such actions must be subject to sanctions and punishments in accordance with applicable law. According to Van Hamel and Simon, there are two conditions that must be met in order to be categorized as negligence, namely the absence of sufficient reasons and the lack of caution that should be carried out based on existing regulations (Megalla et al., 2023).

For example, it is possible that a doctor gives penicillin to a patient and the patient goes into anaphylactic shock leading to death. In this case, doctors need to consider treatment alternatives such as giving antibiotics in other ways that may be safer or have milder side effects, such as giving the drug in pill form rather than through injections (Bayuo & Koduah, 2022). It is important to remember that negligence in medical practice can have a devastating impact on patient health and safety, so all physicians must follow established ethics and standards to ensure a safe and effective quality of care. In this regard, it is important for doctors to adhere to medical ethics and follow the necessary procedures to prevent malpractice (Bradfield et al., 2022). However, sometimes mistakes occur and this can cause a significant impact on the patient and his family. Because of this, laws have been created to regulate malpractice cases and sanction doctors who commit such mistakes (Mynbaev et al., 2020). Despite this, there are cases in which the patient's illness or circumstances make treatment more complicated and difficult. In such cases, the doctor may need to seek help from another doctor or other medical professional. This shows how important the cooperation and involvement of other human beings is in maintaining our health and safety. In conclusion, humans need help from other humans because they have weaknesses and limitations (Foulkes et al., 2020). Disease is one example of such weakness and the doctor is the person assigned to help us in overcoming the disease. However, doctors should always adhere to medical ethics and procedures necessary to prevent malpractice and provide the best possible care for patients. The cooperation and involvement of other human beings is also important in maintaining our health and safety (Black et al., 2021). Negligence committed by health workers can be called malpractice which can increase public awareness of the importance of investigating malpractice cases in every hospital. Such negligence can be caused by lack of knowledge or quality of health workers on the patient's illness, both from the hospital and doctors. Therefore, professional and experienced medical personnel are needed to handle patients to avoid mistakes that harm patients. In addition, the Indonesian Medical Discipline Honor Council (MKDKI) is responsible for handling complaints of disciplinary violations committed by medical personnel. Lack of communication between patients and medical personnel accounted for 80% of the number of complaints (Palaniappan & Sellke, 2022). There needs to be health regulations

and laws that regulate actions taken by health workers so that mistakes or omissions that are suspected of being malpractices do not occur. Health regulations also have an impact on progress in the field of health, including the Lex Specialis regulation that protects the obligations of health experts in human health management programs towards the objectives of the Wellbeing For All statement (Aneiros et al., 2021). In addition, Law No. 36 of 2009 regulates health workers who commit acts of negligence or malpractice. Therefore, efforts are needed to improve the quality of health services in Indonesia so that malpractice can be minimized. One of the efforts that can be done is to improve the knowledge and skills of health workers, both through formal education and additional training. In addition, there is also a need for strict supervision from hospitals and the government on medical practices carried out by health workers. On the other hand, people must also raise awareness of their rights as patients and understand what actions should be taken by health workers. This can be done by accessing information through mass media or consulting with trusted health workers. Regulations and laws are also very important in preventing malpractice. Law No. 29 of 2004 concerning Medical Practice and Law No. 36 of 2009 concerning Health are the legal basis for handling malpractice cases in Indonesia. However, the implementation of the law still needs to be improved to ensure that patients get adequate protection and that health workers continue to perform their duties professionally and responsibly. In the event of a malpractice case, the legal settlement must be carried out fairly. Harmed patients should be adequately compensated, while healthcare professionals who commit negligence or malpractice should be subject to sanctions appropriate to the degree of culpability. However, in addition to legal settlements, it is also important to evaluate the health system as a whole so that malpractice cases can be minimized and not repeated in the future.

METHODS

This research uses a type of normative research that aims to find laws and regulations that are relevant to the problem that is the focus of research. The problem approach method used in this study is a conceptual and statutory approach. In the statutory approach, researchers will pay attention to positive legal norms and provisions applicable in Indonesia. While in the conceptual approach, researchers will analyze the concepts related to the problem under study. Thus, this research will provide a deep understanding of the problems faced and also provide recommendations based on positive legal norms and provisions applicable in Indonesia.

Types of approaches

For this type of approach in this study, a statutory approach, an analysis approach to legal concepts, and a statutory approach are used. This is because the focus of research is on legal rules that are the source of research information. The statutory approach used refers to legal rules or norms related to malpractice crimes. While the legal concept analysis approach is used to understand legal concepts related to malpractice crimes.

Sources of legal materials

the main provisions in the criminal law and the Health Law that become the basis or reference. Primary legal materials such as legal provisions in these laws and regulations have legally binding force. In addition, to support research and analysis of the topic, other legal materials can also be used such as literature reviews of law books and expert opinions relevant to the topic. Information sources such as legal dictionaries and related legal magazines can also be used as sources of legal material. Information sources such as health reports and statistical

data related to medical malpractice cases can provide additional relevant information in this study. All sources of this information must be used as a reference in research so that the results are reliable and credible. Tertiary legal material in question is information obtained through reading, understanding, identifying, and studying legal material relevant to the research topic. The collection of legal materials is carried out through literature studies, by searching and collecting data in accordance with the research topic. The analysis is carried out descriptively, where the author outlines the problem, provides a point of view, and proposes a solution to overcome the problem.

RESULTS AND DISCUSSION

An act of malpractice refers to actions committed by professionals, such as doctors, accountants, lawyers, and others, which are considered a failure to provide services that should be performed with a reasonable level of intelligence and skill. Malpractice can cause injury or harm to service recipients, and it can have lasting and long-term impacts on affected patients. Malpractice can include various acts that violate the law or immoral norms, actions carried out with lack of skill, unnatural actions, as well as professional mistakes. In a medical context, malpractice refers to bad practices that do not conform to established standard operating procedures. Malpractice can be divided into several categories, depending on the provisions of the applicable legislation. This is important to understand because the legal sanctions given against perpetrators of malpractice can vary according to the type of action carried out and the provisions of the applicable law. Therefore, in professional practice, it is important to understand the applicable operating standards procedures and professional ethics and always strive to provide the best service and in accordance with patient needs.

1. Medical Malpractice

Medical malpractice is an act of negligence committed by medical personnel or other medical personnel that can cause patients to suffer serious injuries due to actions taken by medical parties that are contrary to medical ethics. Medical ethics is a set of principles, rules, norms, and values held by doctors to ensure that their actions always follow the highest standards and are within the confines of applicable law. Medical malpractice can include different types of errors, such as misdiagnosis, improper treatment, failure to provide adequate care, or lack of attention to patients. Medical malpractice is usually classified as a form of professional misconduct and can have serious legal and ethical consequences for the medical personnel involved. To prevent medical malpractice, medical personnel must always follow established ethical standards and standard operating procedures and protect patients' rights to receive safe and effective medical care.

2. Juridical malpractice

Juridical malpractice is a type of malpractice that is considered a violation of the applicable positive law. In the context of medical practice, juridical malpractice occurs when medical personnel or doctors violate the rule of law in carrying out their medical practice or do not fulfill their responsibilities as doctors. An example of legal malpractice in a civil context is when the doctor neglects to provide his achievements in accordance with a previously agreed agreement with the patient. While in the criminal context, criminal malpractice occurs when a doctor commits an act or omission that violates applicable regulations with intentionality or negligence, which can result in loss or even death of the patient. Whereas in state

administrative law, malpractice occurs when doctors do not comply with the regulations applicable in state administration. In general, juridical malpractice is an act that is not in accordance with professional standards and standard operating procedures in the practice of medicine. Such actions are carried out by medical personnel or doctors who are considered incapable or lack the skills needed to carry out their duties as members of the profession with an average reputation and expertise. This action can result in the patient suffering serious injuries, becoming disabled, or even dying. To determine whether an action can be considered juridical malpractice, several factors must be considered, such as professional standards and standard operating procedures, accuracy of diagnosis, treatment policies taken, use of medications, surgery or other medical procedures, and application of postoperative care or other patient care. If any error or omission in any of these factors subsequently results in the loss or even death of the patient, then such action may be considered juridical malpractice.

Such incapacity or negligence must be committed by a health worker who has the authority to perform medical action, such as a doctor, nurse, pharmacist, or other medical personnel. In addition, there are several other factors that must be considered in determining whether an action can be considered malpractice, such as:

- a. Professional standards: Every profession has standards and ethics that must be followed by its members. Actions that do not conform to the standards of the profession may be considered malpractice. For example, a doctor who administers drugs that do not match the recommended dosage or performs surgery without the patient's consent.
- b. Legal obligations: Health workers have an obligation to comply with applicable legal requirements in medical practice. Such unlawful acts may also be considered malpractice. For example, a doctor who prescribes drugs without observance of the rules and requirements established by law.
- c. Standard of care: Every patient has the right to a decent and adequate standard of care. Actions that do not meet such standards of care may be considered malpractice. For example, a nurse who does not maintain good patient hygiene and causes infection or other complications.
- d. Skills and knowledge: Health workers are expected to have adequate skills and knowledge in performing medical procedures. Actions committed without adequate skills and knowledge can be considered malpractice. For example, a pharmacist who gives the wrong medication because he does not understand the dosage and side effects.
- e. Harm or injury: The action taken by the health worker must produce a positive result and not cause harm or injury to the patient. If the act causes harm or injury to the patient, then it can be considered malpractice.
- f. Evidence: In the case of malpractice, there must be sufficient and convincing evidence that the actions of the medical personnel concerned are completely incompatible with the standards of the profession and have caused harm to the patient.
- g. Harm to the patient: The harm to the patient must be identifiable and attributable to the actions of the medical personnel concerned. These losses can be severe injuries, permanent disability, or even death of the patient.
- h. Intensity of actions: The intensity of the actions performed must be in accordance with the patient's condition and not exceed the limits established by professional standards.

Excessive actions or incompatible with the patient's condition can be considered malpractice.

- i. Communication: Good communication between medical personnel and patients or their families is very important in medical practice. If errors or discrepancies occur in this communication, this can negatively affect the patient's health and is considered malpractice.
- j. Practice environment: The practice environment, including medical equipment and health facilities, must meet safety and health standards set by authorized government bodies. In case of failure in this regard, this can also be regarded as malpractice.

Examples of malpractices that can occur in medical practice include errors in diagnosis, errors in drug administration, errors in surgical procedures, and errors in patient care. For example, a doctor who misdiagnoses a patient's illness and provides improper treatment can be considered malpractice. Likewise, doctors perform unnecessary surgeries or make mistakes during surgery, such as causing unnecessary organ or tissue damage. In juridical malpractice, the court will assess whether the actions committed by health workers have violated the law and caused harm to patients. The conditions that must be met to prosecute malpractice. Malpractice occurs when health workers perform or do not perform actions related to health management, diagnosis, and treatment in the field of medicine on patients. If the act is done in an unlawful manner, such as not adhering to professional principles or decency, or if the act is intentional or unintentional, it may result in offense, pain, injury, disability, bodily damage, death, or other loss to the patient.

In a legal context, compensation for losses incurred by malpractice may consist of material or nonmaterial damages, payable by the party committing the malpractice. The concept of compensation in law includes two concepts, namely compensation due to default and compensation due to unlawful acts. In case of malpractice, the party who committed the act in violation of professional or legal principles, must pay compensation to the patient who suffered losses as a result of the act. In the framework of law, namely realizing justice, legal regulation is a fundamental foundation in providing legal certainty guarantees and realizing justice. Any violation of the law will be subject to sanctions in accordance with applicable laws and regulations. Malpractice acts committed by medical personnel that can harm patients or cause serious injuries to the patient's body are violations of applicable laws and regulations and medical codes of ethics. Negative responses from the public towards health care providers and hospitals can result from malpractice. Malpractice can also cause individuals, groups, and institutions to feel a great responsibility to deal with the problem together. Criminal sanctions in accordance with the code of medical ethics and health law number 23 of 1992 can be imposed on medical personnel who commit malpractice acts. These sanctions include criminal sanctions, civil sanctions, administrative sanctions, and moral sanctions, which can be detention, damages, reprimands, fines, or license freezes for negligence or moral violations. The witness in question is

1. Criminal sanctions are a form of sanctions imposed by legal institutions, such as courts, on someone who has committed actions that violate applicable laws or regulations. In the context of the above statement, criminal sanctions can be imposed on medical personnel who commit malpractice acts that violate the code of medical ethics and health law number 23 of 1992. The criminal sanctions in question include legal action in the form of detention or reduction of freedom, as well as payment of fines. In addition, civil sanctions may be

imposed in the form of damages or payment of compensation by medical personnel to victims of malpractice. Administrative sanctions can also be given by relevant government agencies, such as the Food and Drug Supervisory Agency (BPOM), in the form of reprimands or freezing of practice licenses.

2. In addition, moral sanctions can also be imposed by related medical professional organizations, such as the Indonesian Medical Association (IDI), in the form of reprimands or membership suspensions. Criminal, civil, administrative, and moral sanctions aim to provide a deterrent effect to perpetrators of malpractice, prevent similar acts from occurring in the future, and provide justice for victims
3. Civil sanctions are sanctions given through the civil court process, which aims to compensate losses suffered by victims due to malpractice. Civil sanctions can be in the form of payment of material and/or non-material damages. Material compensation is usually related to financial losses suffered by victims, such as medical expenses, loss of income, and so on. While non-material compensation is related to losses that are difficult to measure financially, such as physical or psychological suffering experienced by victims.
4. Administrative sanctions, on the other hand, are sanctions imposed by authorities such as the Medical Council or local health authorities. Administrative sanctions can take the form of reprimands, restrictions on practice licenses, or revocation of practice licenses. The purpose of administrative sanctions is to stop medical practices that do not conform to established ethics and standards. In addition, administrative sanctions can also serve as a preventive measure so that medical practices that violate ethics and standards do not occur again in the future.

"Regulatory authorizations are generally imposed on delegated offences by private managerial offences imposed by assemblies or authoritative mechanical authorities of the state, the sanction of condemnation is an oral and written warning. The nature of the fault must be notified to the sanctioning party before it can be imposed. If for the time being sanctions have a time limit and sanctions are considered complete if the recipient of the sanctions has exceeded the specified time limit and returns to the original state that is the state before receiving sanctions, administrative sanctions are the last witnesses where sanctions are in the form of fines, the amount of fines can be determined by applicable laws because each regulation has a different legal basis and criteria. In addition, there are sanctions in the form of freezing to revocation of certificates. The sanction is the severity of the punishment for medical personnel who violate the code of ethics varies depending on the nature of the violation. However, if there is a violation, the sanctions given must be educational so that unwanted violations do not occur and do not occur again in the future. In addition, these sanctions should serve as a lesson for practicing physicians and other members of medical staff in charge of practicing medicine."

sanctions imposed on ethical violations in the practice of medicine. These sanctions include written and verbal reprimands, salary increases or reductions, and temporary or permanent revocation of a doctor's license to practice. If the offense is criminal in nature, then the doctor concerned will be tried and punished in accordance with labor regulations and medical law, such as fines or imprisonment. However, medical risks are not sanctioned in the medical practice law and KODEKI because they are considered work accidents that cannot be debated, guessed, or suspected, and cannot be avoided. In addition to written sanctions, there

are also unwritten sanctions in the form of moral sanctions arising from the actions of medical staff members who commit malpractice acts. Although this moral sanction is not written, it can still have an impact on the reputation and career of the doctor concerned. As for the witnesses, the paragraph explained that violations by medical personnel are not always written, public perception of the quality of medical personnel can be influenced by it. Medical personnel have a very important role in providing health services to the community, and for that they have a legal basis to provide legal guarantees in carrying out their duties. As a profession that carries out medical procedures and provides health services, they must comply with the laws and regulations that have been regulated in Indonesia's positive law to protect their legal rights and provide quality health services.

Legal Responsibility For Medical Personnel Who Commit Malpractice

Legal liability of medical personnel or doctors can be carried out both criminally and civilly depending on the violation of the law committed. Criminal liability is carried out if the doctor is proven to have committed a criminal offense, such as medical offenses included in the Criminal Code (KUHP) or health laws. Examples of medical offenses regulated in the Criminal Code are abortion, ending the patient's life at the request of the person concerned, and revealing the patient's secrets to third parties. Meanwhile, civil liability or liability is carried out when doctors commit unlawful acts or defaults. Civil liability based on default is regulated in Article 1239 of the Indonesian Civil Code, while liability caused by unlawful acts is regulated in Articles 1365, 1366, and 1367 of the Indonesian Civil Code. Article 1365 of the Indonesian Civil Code regulates liability based on general unlawful acts, while Article 1366 of the Indonesian Civil Code explains that liability can be made for intentional unlawful acts or those that occur due to negligence. In addition, doctors can also be criminally liable if proven to have committed one of the criminal acts regulated in health law, such as engaging in organ or tissue trafficking, performing plastic surgery operations for the purpose of falsifying someone's identity, performing an abortion illegally, or trading blood. In the context of civil liability, medical personnel can also be held liable if proven to have committed errors or omissions in medical practice that cause loss or damage to patients or their families. This is stipulated in Article 1365 of the Indonesian Civil Code which states that any person who intentionally or through his negligence causes harm to others, is obliged to compensate for such losses.

Examples of cases in medical practice that can result in civil liability include misdiagnosis, negligence in providing care, failure to provide sufficient information to patients or their families, and violations of medical ethical standards such as performing medical actions without patient consent or performing medical actions that are not in accordance with applicable medical standards.

In this case, the patient or his family can file a claim for compensation or a claim for civil liability through civil court channels. The party considered responsible in this case is the medical personnel or medical institution responsible for the medical practice.

Overall, as medical personnel, doctors have legal responsibilities both criminally and civilly for their medical practice. To avoid violations of the law and minimize the risk of errors in medical practice, doctors need to carry out their duties in accordance with applicable medical ethics and standards, and follow the rules of law applicable in medical practice

CONCLUSION

The conclusion from the above writing is that malpractice is an act that harms patients or other parties committed by health workers and can be subject to legal sanctions, both in administrative, civil, and criminal law. Sanctions imposed for ethical violations can be in the form of oral or written reprimands, salary increases or reductions, revocation of doctors' practice licenses, and criminal sanctions in court in accordance with labor regulations. Such sanctions can have an impact on public perception of the quality of medical personnel, although there are also unwritten sanctions. In order to provide legal guarantees, medical personnel need a legal basis or umbrella, such as laws and regulations on health law protection regulated by Indonesian positive law as well as adequate medical skills. Therefore, efforts are needed to improve the quality of education and training of medical personnel so that they can provide quality and safe health services for patients. In addition, in handling malpractice cases, it is important to pay attention to ethical and moral aspects in the practice of medicine. Unwritten moral sanctions can affect public perception of the quality of medical personnel, so there needs to be efforts to improve ethics and morality in medical practice. In order to carry out the profession, medical personnel must also comply with laws and regulations regarding the protection of health laws. There is a legal umbrella that protects medical personnel who carry out the profession in carrying out medical actions or providing health services. Therefore, medical personnel must understand and comply with the legal rules applicable in the practice of medicine. In this case, the role of health institutions is also very important to ensure the quality and safety of health services provided by medical personnel. Health institutions must have a good quality control and supervision system, as well as take corrective and corrective actions if errors or accidents occur in health services.

In conclusion, malpractice is a serious problem in the practice of medicine and can have a negative impact on patients as well as society at large. Therefore, continuous efforts are needed to improve the quality and safety of health services, both through improving the quality of education and training of medical personnel, law enforcement against violations of the medical profession, improving ethics and morality in medical practice, and developing a system of supervision and quality control in health institutions.

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