

Doctor Civil Responsibility In Medical Negligence Atrelated Medical Surgery Agreement Action Medical (Informed Consent)

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Accepted: 14-06-2023 Revised: 20-06-2023 Approved: 22-06-2023 Published: 03-07-2023

DOI: 10.30596/dll.v8i2.15254

How to cite:

Farozah, H & Wardhana, A.W., (2023). "Doctor Civil Responsibility In Medical Negligence Atrelated Medical Surgery Agreement Action Medical (Informed Consent)", De Lega Lata: Jurnal Ilmu Hukum, 8 (2): p. 219-228

Abstract

The existence of informed consent is very important for the party making the health service agreement, so that it can be seen that the existence of informed consent is very important and necessary when sick. The formulation of the problems in this study are 1) What is the civil responsibility of doctors in medical negligence in medical operations related to informed consent? 2) What is the position of awareness of medical action (Informed Consent) regarding the civil responsibility of doctors in medical negligence in medical operations? The research method used is normative juridical research. The data sources used in this study consist of secondary data. Based on the results of the study, it shows that 1) Position of Medical Action Agreement (Informed Consent) to the civil obligations of doctors in medical recognition of medical operations, namely as a means of self-defense against the possibility of claims or lawsuits from patients or their families if one day unwanted consequences arise so as to provide a sense of security in carrying out medical treatment of patients..; 2) Civil Liability of Doctors in Medical Negligence in Medical Operations Related to Medical Action Agreement (Informed Consent) by compensating for material losses in the form of compensation for expenses that have been made by patients to pay all hospital costs and other treatment expenses as well . loss for not being able to work. Meanwhile, non-material losses due to feelings of illness, anxiety, depression and so on, by fulfilling the elements of default, the patient can hold the doctor responsible for what he has suffered. Patients can file a lawsuit against the doctor to the District Court where there is a dispute. Because the doctor's actions are contrary to the principles of decency, prudence and prudence are expected of him which is based on law on default regulated in article 1239 of the Civil Code and failure regulated in article 1366 of the Civil Code and unlawful acts regulated in article 1365 of the Civil Code..

Keywords: *Doctor's Civil Liability, Medical Negligence, Medical Operations, Medical Action Consent.*

INTRODUCTION

Law in Indonesia plays an important role in various aspects of social and state life. One of them is in the health sector. Regulations for health services in general were also legalized by Law no. 36 of 2009 concerning Health (which will later be known as the Health Law), namely the regulation of the health system which covers various aspects of health services as its sub-sub-sectors. Health is the main capital in the nation's growth and survival system and has an important role in the formation of a just, prosperous and prosperous society (Maskawati, 2018).

In general, health is one of the factors for general welfare that must be achieved according to the values of the Indonesian nation as contained in the 1945 Constitution of the Republic of Indonesia through sustainable national development based on Pancasila and the Constitution. Republic of 1945. Indonesia means the development and development of human resources and is one of the capital for the implementation of national development which is basically the development of all mankind. Efforts to realize this need legal support for the implementation of the health sector (Maskawati, 2018).

In providing health services, health workers cannot be separated from the fact that as human beings they will not escape mistakes. Mistakes happen in every job, of course with various consequences. Errors can be in the form of errors or omissions in carrying out the task being performed (Triwibowo, 2019). From a legal point of view, errors/negligence will always be associated with the illegality of an act committed by someone who has the capacity to be responsible, and from the point of view of the ethical principles of health workers, especially doctors. they also have to fulfill their moral obligations. As in Law Number 29 of 2004 concerning Medical Practice, medical practice is regulated to provide protection to patients; maintain and improve the quality of medical services provided by doctors and dentists; and provide legal certainty to the public, doctors and dentists. For this reason, the Medical Council was formed. The Indonesian Medical Council is domiciled in the capital city of the Republic of Indonesia.

In the past, the legal relationship between doctors and patients was a vertical relationship or relationship of trust that was paternalistic in nature, where health workers were considered the best (father knew better), the position or positions of doctors and patients were not equal, because. The doctor is considered to know all the information about the disease, while the patient is considered to know nothing about the disease and leave it entirely to the doctor. The doctor is placed as a protector (protector) and the patient is placed as a client (protected person). The relationship between doctor and patient includes an agreement to carry out several services and because of the special nature of the legal relationship, namely "agreement regarding business", the doctor in this case is obliged to make the highest effort. Considering the relationship between doctor and patient (Haryani, 2016).

In its development, it requires health workers who are used to performing procedural services, as well as requiring special services from specialist doctors such as surgeons. One aspect of procedural care that is often carried out and is felt to be important in providing information to patients and their families is surgery (Komalawati, 2012). In the legal and medical professions there are regulations that provide protection to sick citizens who receive health services from information provided by hospitals through doctors (Haryani, 2016).

Before a doctor performs a surgical procedure, the doctor must provide information about the type of disease he is suffering from and the medical action that will be taken to save the patient's life as well as the risks that may arise from the medical action. for patients and their families (Hanafiah, 2017). It is a type of legal relationship that is changing and becoming more democratic, that is, horizontal contractual relationship or mutual participation, equal legal relationship between patient and doctor, all of which are presented between the two parties, these agreements are usually known as informed. Approval or consent to medical action, demands for wisdom and professionalism from doctors will increasingly arise. Health services provided by doctors to patients must be supported by adequate facilities and infrastructure or in other words a support center where the center can assist doctors in providing health services to patients.

Various efforts to cure health must obtain consent from the patient based on information from the doctor at the hospital, or what is known as informed consent. Because informed consent is an agreement to perform medical action, then the existence of informed consent is very important for the parties in the health service contract, so it appears that the existence of informed consent is very important and needed in hospitals.

As one of the executors of medical services and as person in charge of medical action approval (informed consent), doctors must realize that informed consent can truly guarantee the implementation of a legal relationship between patient and doctor, based on mutual fulfillment. the rights and obligations of each party are proportional so that they can be calculated. In Regulation of the Minister of Health of the Republic of Indonesia No. 290/MENKES/PER/III/2008 concerning Approval of Medical Actions Article 1 states that informed consent is an agreement given by a patient or close relative after receiving complete information about the medical or dental action to be performed on the patient. Then, in Article 2 of the regulation, it is stated that all medical actions to be performed on patients must obtain approval. Informed consent is given after the patient has received strong information about the need for medical intervention involved and the risks it may pose (Komalawati, 2015).

The process of implementing informed consent begins with the provision of information by the doctor concerned to the patient/family, the doctor signs a document that includes the date and time, as well as approval or refusal by the patient/family. If the patient/family agrees by signing and writing the date and time, then the witness will follow. The process of providing information is carried out in a comfortable, quiet place, and witnessed by the patient's family and the nurse who treats it. Statement of hospital agreement between the patient or the patient's guardian and the treating doctor. procedures, in the contract in accordance with the agreed terms set forth in a written agreement, in which there are clauses which are the terms of this agreement. This agreement letter complies with the law of the agreement.

Based on the background of the problems mentioned above, the writer is very interested in conducting a research in the form of a thesis by taking the title: "Physician Civil Responsibility in Medical Negligence in Related Medical Operation Actions Agreement Action medical (Informed Consent)"

1. As for what the author will examine is How is the position approval for medical action (Informed Consent) related Doctor's civil liability in medical negligence medical operations?
2. What is the civil responsibility of doctors in medical negligence medical operations related to action approval medical (informed consent)?

RESEARCH METHOD

Research in writing thesis it uses The research used in this thesis research was normative juridical research. Data collection was carried out using library research, namely library research.

DISCUSS AND ANALYSIS

Position *Medical Treatment Consent (Informed Consent)* Related Doctor's Civil Liability In Medical Negligence At *Medical Operations*

Legal relations arise when a patient calls a doctor because he feels that something is threatening his health. His psychological state gives a warning that he feels sick, and in this case it is the doctor who is considered to be able to help him and provide assistance. Therefore, the position of the doctor is considered higher by the patient and his role is more important than that of the patient. The pattern of vertical relationship that gives rise to the paternalistic status of doctors towards these patients has both positive and negative impacts.

The basis of medical responsibility is an unlawful act (*onrechtmatige daad*), a doctor has acted against the law because his actions are contrary to the principles of decency, integrity and prudence expected in dealings with fellow citizens (obligation according to law). In this case Article 58 of Law Number 36 of 2009 concerning Health, 1365 of the Civil Code (Article 1401 BW) is used, which regulates the conditions for unlawful acts. To be able to file a case based on an unlawful act, 4 (four) conditions must be fulfilled as referred to in Article 1365 of the Civil Code, namely:

1. The patient must experience a loss;
2. There was an error or negligence (besides the individual, the hospital can also be held responsible for the errors or omissions of its employees);
3. There is a causal relationship between losses and mistakes;
4. This act violates the law.

In accountability for unlawful acts, the element of guilt stands alone (*schuld wet zelfstanding vereist*). On the other hand, it seems that the problem of wrongdoing in unlawful acts, in certain incidents, becomes less important because there is a tendency for elements of error to be "imagined" (*deschuld fictie*), "presupposed" (*de schuld vermoeden*), "objective" (*de schuld objectivering*).

Informed consent or approval for medical action is an agreement given by a patient or family on the basis of an explanation regarding the medical action to be performed on the

patient. This definition is regulated in the Regulation of the Minister of Health of the Republic of Indonesia Number 585/Menkes/Per/IX/1989 Concerning Medical Consent. Any medical or dental action to be performed by a doctor or dentist on a patient must obtain approval, this is regulated in Article 45 of Law Number 29 of 2004 concerning Medical Practice. The approval is issued after the patient has received a complete explanation from the doctor regarding; 1) diagnosis and procedures for medical action, 2) the purpose of the medical action performed, 3) alternative actions and risks, 4) risks and complications that may occur and 5) prognosis of the action taken.

Basically, informed consent is the opinion that the decision to administer drugs to patients must be made on the basis of cooperation between doctors and patients. Based on this information, it can be concluded that consent to information in a medical agreement is a fulfillment of the principle of peace which animates contract law where based on Article 1320 of the Civil Code it is stated that an agreement will occur when both parties reach an agreement. Adam Chazawi said that informed consent has two functions. For doctors, informed consent provides a sense of security in carrying out medical procedures for patients, as well as can be used as a way to protect themselves from possible lawsuits or lawsuits from patients or their families if one day the results are not desired. . happen. Consent from the patient in this case has a very broad meaning because once the patient signs his signature on the medical consent form, it is considered that the patient has been informed and the patient has surrendered his fate to the doctor, and the doctor can do the following. what the doctor thinks is right. However, from the patient's point of view, informed consent is a manifestation of the patient's rights where the patient has the right to obtain information about the disease he is suffering from, what treatment steps to take, problems that may arise from these steps, etc. alternative treatment and prognosis. what the doctor thinks is right. However, from the patient's point of view, informed consent is a manifestation of the patient's rights where the patient has the right to obtain information about the disease he is suffering from, what treatment steps to take, problems that may arise from these steps, etc. alternative treatment and prognosis. what the doctor thinks is right. However, from the patient's point of view, informed consent is a manifestation of the patient's rights where the patient has the right to obtain information about the disease he is suffering from, what treatment steps to take, problems that may arise from these steps, etc. alternative treatment and prognosis.

Informed consent is also considered present, this can be demonstrated by patient movements that are believed by the doctor. By nodding, the doctor can get a sign of approval. It can be said that the patient allows the doctor to examine parts of his body, while the patient allows/accepts and does not refuse, the doctor sees this as approval to be examined in order to find a cure for his disease. Likewise in the case of consent to medical action carried out by the patient, if the patient has agreed or does not ask for further information from the doctor, then he is considered to have known the doctor's information.

Doctor's Civil Liability in Medical Negligence Related Medical Operation Actions Agreement Action Medical (Informed Consent)

Doctors as the main part in providing health services to the community have great opportunities because they are directly related to the implementation of health services and the quality of services provided. The main basis for doctors to be able to perform medical

procedures on other people is the knowledge, technology and skills they have, which are obtained through education and training. The doctor with his scientific equipment has unique qualities. This uniqueness can be seen from the legality granted by law, namely permission to perform medical procedures on the human body in an effort to maintain and improve health conditions.

Based on the authority of a doctor who already has a registration certificate in accordance with Article 35 (1) of the Medical Practice Law, the legal relationship between a doctor and a patient begins with a question and answer (anamnesis) between the doctor and the patient. , then proceed with a physical examination, and if necessary according to the doctor can carry out an examination to help, then the doctor will carry out an examination. This diagnosis can be a "working diagnosis" or preliminary diagnosis, differential diagnosis or it can also be a definite or final diagnosis. After that, doctors usually plan treatment by ordering drugs or injections or surgery or other actions and are accompanied by recommendations that must be followed so that the patient gets a faster recovery.

In order to see that a doctor's actions have legal consequences for a misdiagnosis he makes in medicine or health services, it is necessary to know what factors are used as a measure to determine whether there were errors or deficiencies made by the doctor. There are four elements of negligence, that is; 1) There is an obligation to do or not do something, 2) There is a violation or failure to fulfill these obligations, 3) There is loss or injury to the patient and 4) There is a causal relationship between the breach and failure to fulfill that obligation with injury or loss (Asyhadie, 2017).

From a legal point of view the legal consequences of a doctor due to an error or negligence committed by a doctor, civil liability for the doctor can arise if the patient sues for negligence committed by the doctor in carrying out the agreement between the doctor and the doctor. patient, where the doctor has agreed to do something or do something for the patient's recovery. The basis of the case that can be used in the accountability of doctors' mistakes from a civil law perspective depends on the legal relationship that arises because Article 1239 of the Civil Code is not regulated and acts against the law.

The legal basis in the Civil Code is contained in the following articles: 1) Article 1365 of the Civil Code which reads; "Every act that violates the law, which causes harm to other people, makes them responsible for the crime that causes loss, to compensate for that loss." 2) Article 1366 of the Civil Code which reads: "Every person is not only responsible for losses caused by his actions, but also for losses caused by his negligence or carelessness". 3) Article 1367 of the Civil Code which reads: "A person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of people who are his dependents or those caused by goods under his control".

A doctor's misdiagnosis that causes a patient to die can be held liable in civil terms. Cases to hold doctors accountable are based on two legal bases, namely based on contractual responsibility as stipulated in Article 1239 of the Civil Code and based on unlawful acts (onrechtmatigedaad) in accordance with the provisions of Article 1365 of the Civil Code.

Civil Law Obligations are based on three principles including:

- a. Any action that causes harm to other people means that the person who committed it must pay compensation, as a form of accountability for the loss that has occurred.

- b. A person is responsible not only for acts of loss that are caused intentionally, but also for the negligence or mistakes and negligence he has committed.
- c. A person must be held responsible not only for damage caused by his own actions, but also for damage caused by people under his supervision.

According to the provisions of Book III of the Civil Code concerning Contracts, medical actions performed by doctors constitute the implementation of the doctor's legal duties in carrying out his profession. Collaboration between doctor and patient is basically an agreement to do something. However, liability for errors in civil law is not only sufficient to determine violations of legal obligations committed by doctors, but also against losses resulting from violations that have occurred. For this reason, it is necessary to prove the existence of a causal relationship between the error and the loss it causes. If it cannot be proven that there is a causal relationship, it means that there was no error or negligence in the medical action.

As a result of negligence in acting must be legally responsible. Elements of legal responsibility can be in the form of civil law, criminal law and administrative law. Based on the principle of liability in civil law, every person who is guilty of negligence and causes harm to others is obliged to compensate for the loss. The negligence can be as referred to in Article 1234 HKUPerdata regarding the topic of the engagement. Related to this, JH Leahy Taylor said, if the actions of doctors and judges are considered negligent, even if the level is small, if the consequences are big, then the compensation will be big. However, if it is proven that the negligence did not cause a loss, then it is not obligatory to compensate for the loss.

According to the Criminal Code, if in the implementation of treatment, medication or investigation it is confirmed that there was an error, then it means that the perpetrator of the crime made a mistake. Criminal law liability according to Article 360 Paragraph (1) KHUP that "Anyone who because of his negligence causes serious injury to another person, is threatened with a maximum imprisonment of five years or a maximum imprisonment of one year. year." Professional misconduct that needs to be proven in criminal liability is usually related to the matter of: Negligence; and consent of the patient concerned

Negligence in criminal law (*culpa*) at the level of *culpa levissima* (mild negligence) and *culpa lata* (gross negligence), has two elements, namely; 1) Possibility of predicting the consequences and 2) Not being careful about what is done or not done (Mariyanti, 2018). Proof of the existence of *culpa* (negligence) in criminal law consists of two elements; 1) The perpetrator is a doctor who must be able to predict the consequences of his actions and 2) Doctors' actions in conducting medical research, using patients as subjects are not careful or negligent.

In practice, so that doctors can work properly, guidelines are given, namely the Indonesian Medical Code of Ethics (KEKI), Law no. 29 of 2004 concerning Medicine and Dental Practice, Law no. 36 of 2009 concerning Health. According to Gunadi J, it can be distinguished between patient risk and doctor negligence (negligence) which doctors can hold accountable, there are three types of risk borne by patients, namely accidents, medical risk, errors. judgment (judgment error). In civil law it is stated that in the event of an alleged violation of the law, the following conditions must be met; 1) There is an action (to do or not to do), 2) This act violates the law, 3) There is a loss for the patient, 4) There is a causal relationship between losses and mistakes, 5) There is an element of error or omission

In unlawful acts based on theory, the civil liability of doctors in medical negligence in medical activities related to the authority of medical action (Informed Consent) includes Legal responsibility for personal mistakes and negligence (responsibility) in the form of a doctor's actions that violate the law in Article 1365 of the Civil Code and responsibility for personal negligence is regulated in Article 1366 of the Civil Code. Meanwhile, legal responsibility for the mistakes and/or negligence of people under their supervision (obligation) is regulated in Article 1367 of the Civil Code. Cases resulting from lawsuits against the law can be seen from the accountability model used, namely accountability for mistakes based on articles 1365, 1366 and 1367 of the Civil Code.

Thus, the Doctor's Civil Liability in Medical Negligence in Medical Operations is related to the Medical Action Contract (Informed Consent) by compensating for equipment losses by reimbursing the costs used by the patient to pay all hospital costs. expenditure. and other medical expenses and disability benefits. At the same time, compensation for unnecessary losses due to feelings of pain, anxiety, stress and so on to meet the elements of failure, the patient can make the doctor responsible for what he suffered. Patients can file a lawsuit against the doctor in the District Court if there is a dispute. Because the doctor's actions are contrary to the rules of etiquette, it is hoped that compliance and caution will become the legal basis for failure to supervise in Article 1239 of the Civil Code and negligence regulated in Article 1366 of the Civil Code and acts against the law. regulated in Article 1365 of the Civil Code.

CLOSURE

Conclusion

The position of medical action approval (informed consent) on the civil responsibility of doctors in medical negligence in medical activities, namely as a way to protect oneself from possible lawsuits or lawsuits from patients or their families if one day it is not needed. results that occur to provide a sense of security in carrying out patient treatment. Physician Civil Liability for Medical Negligence in Medical Operations is related to the Medical Procedure Contract (Informed Consent) to compensate for equipment losses by reimbursing the costs incurred by the patient to pay all hospital and other costs. medical expenses too. as compensation for failure to work. At the same time, compensation for unnecessary losses due to feelings of pain, anxiety, pressure and so on to fulfill the element of default, the patient can make the doctor responsible for what he suffered. Patients can file a lawsuit against the doctor in the District Court if there is a dispute. Because the doctor's actions were contrary to the rules of decency,

Suggestions

For the government, it is better for the government to make regulations regarding the Civil Liability of Doctors for Medical Negligence in Medical Operations in connection with providing information about the amount of compensation that should be clearly stated in Law No. 36 of 2009 concerning Health. Determination of the amount of compensation is necessary so that there is no violence from the party requested for compensation. In order for doctors to prevent medical negligence from occurring in medical activities related to medical consent (informed consent), doctors must comply with professional ethics, medical professional standards, and laws and regulations by continuously improving the quality of their services in

order to prevent mistakes. or negligence of health workers. , it is important to provide the Medical Committee with the ability to carry out its duties properly, especially the work of issuing documents, recovering patents, granting medical authority, medical review, and applying professional discipline to all doctors serving in hospitals.

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