

## Legal Protection Of Health Worker In The Medical Malpractice Lawsuit In Banjarmasin

Yulia Audina Sukmawan<sup>1</sup> and Akhmad Khisni<sup>2</sup>

**Abstract.** Doctor and patient relationship is based on trust, it could turn into a medical malpractice lawsuit. Medical malpractice lawsuit due to the weakness in building communication cause harm to patients and health workers. Health workers are required to further improve the professionalism, quality, transparency, which leads to more excellent service in accordance with established standards. The problems are: What is the process for resolving cases of medical malpractice in Banjarmasin city, and how the legal protection of medical personnel in the event of criminal acts of medical malpractice in Banjarmasin. The purpose describes the process of settlement of medical malpractice and legal protection of medical personnel in the city of Banjarmasin. Benefits of reference enrich malpractice settlement process and provide knowledge of the legal protection of medical personnel in the city of Banjarmasin. The method used legal approach juridical empirical research specifications descriptive analytical data sources and data types using the type of primary data, secondary data and tertiary data collection methods used by interview, literature, study of documents, data analysis methods are qualitatively presented descriptively. The problem was analyzed using the theory of legal protection and legal liability. So health workers who have been carrying out duties in accordance with professional standards and SPO are entitled to legal protection.

**Keywords:** Legal Protection; Health Workers; Medical Malpractice.

### 1. Introduction

Every person and every profession certainly did not expect himself in trouble with the law, but considered committing an unlawful act. But now, the medical profession is very possible to get complaints from patients because they committed an unlawful act that is better known as malpractice. In the event of a malpractice action may be reasonable complained to the relevant authorities, but if it does not happen malpractice actions but complained of a malpractice action, there will be stagnant in the medical profession.

Malpractice consists of two syllables Mal comes from the Greek word meaning bad. Meanwhile, according to the practice of Indonesian General Dictionary means to perform acts that are in theory or run a job or profession. So malpractice means running a poor job quality.<sup>3</sup>

To oversee the profession of health workers, the government has issued Law 36 of 2009 on Health, Law 36 of 2014 on Health Workers, Act 29 of 2004 on the practice of medicine, Act 44 year 2009 on Hospitals, Act No. 38 of 2014 on Nursing and Act No. 4 of 2019 on Midwifery. Although born abovementioned Act public, health professionals and stakeholders in implementing health care is still not fully able to understand what

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<sup>1</sup> Student Master of Law, Faculty of Law UNISSULA email [yuliaaudinasukmawan@gmail.com](mailto:yuliaaudinasukmawan@gmail.com)

<sup>2</sup> Faculty of Law UNISSULA Semarang

<sup>3</sup>Cecep Triwibow, 2014, *Etik & Hukum Kesehatan*, Nuha Medika, Yogyakarta, p. 261.

must be done and what should be avoided. It aims to avoid errors or omissions in performing professional duty performed by health workers or hospital.

Medical dispute cases among patients with medical personnel increasingly prevalent. The first public attention to protection lies in the part of the patient, because the patient is considered to occupy a position of weakness, because of its position on the needy while medical workers and acts as the energy required. As the times it turns out, who occupy a weak position not only patients, but including health workers vulnerable to various demands and complaints, such as complaints against malpractices .. For developed countries where people already think more critically the possibility of malpractice complaints definitely more action. In this study discusses the dynamics of health law area. For example about legal protection for health workers and mechanisms to resolve disputes in the event of a medical problem.

Worker legal protection for health is a right for health workers. As is often the case, how many doctors were sued by the patient. There are two way to resolve medical disputes that litigation or non-litigation. The increasing number of lawsuits against medical malpractice in Banjarmasin city, there is a presumption that it may also arise due to changes in the relationship between doctor and patient. The changing pattern of the doctor and patient relationship with regard to the advancement of science and technology in the field of medicine. This progress is marked by the discovery and use of modern tools that have the ability to determine the source of disease and the disease early and accurately.

Based on the above description may be filed Problem Formulation What is the process for resolving cases of medical malpractice in Banjarmasin? How the legal protection of medical personnel in the event of criminal acts of medical malpractice in Banjarmasin?

## **Research methods**

The method used in this thesis is the legal approach is juridical empirical, type / specification of this research is descriptive analytical data sources and types of data in this study using a type of primary data, secondary data and tertiary data collection methods used by interview ( interviews), literature, study of documents, and qualitative data analysis is then presented descriptively.

## **2. Results And Discussion**

### **2.1. Resolution Process and Accountability Law of Health in Medical Malpractice Cases in Banjarmasin**

On May 9, 2016 traffic accident occurred at KM 08 Banjarmasin between the complainant and the Bus and Rapporteur brought to the emergency room *Ulin* General Hospital, after a 6 hour observation complainant allowed to go home. Rapporteur given ranitidine and paracetamol medicine for stock recovery, without any pain medication. After the re-examination because of their pains by patients, hospitals IGD *Ulin* asked for a referral letter from the clinic. Once there was a referral from a primary care clinics declare broken, the new *Ulin* General Hospital expressed their broken leg in a patient.

Finally Rapporteur file a complaint through the complaint form the hospital, but has not received a response. Patients (rapporteur) requested the results of the initial examination stating the diagnosis of patients on May 9, 2016, but was not given by the *Ulin* General Hospital. Patients (rapporteur) concluded their misdiagnosis of *Ulin* General Hospital in the ER unit.

Because it is not declared a broken leg by *Ulin* General Hospital, the patient returns the bus vehicle registration impactor detained patient on May 9, 2016, whereas if otherwise broken, then the complainant can still hold the impactor bus vehicle registration to be fully responsible to the treatment of the complainant. For the incident the complainant to submit a report to the *Ombudsman* and ask the young doctor on duty in hospitals *Ulin* Banjarmasin fore investigated and must be accompanied by senior doctors, in order to avoid misdiagnosis. Rapporteur called for compensation to be reported Rp. 60,000,000, - (sixty million rupiahs) to Banjarmasin *Ulin* General Hospital.<sup>4</sup>

Prosice completion of medical malpractice cases in the city of Banjarmasin studied from the theory of legal liability on a case that occurred in the city of Banjarmasin process of resolving cases of alleged medical malpractice litigation that use non mediation based on PERMA NO.1 2016, Located at office *Ombudsman* of South Kalimantan Province assisted by Mediator team *Ombudsman* mediation between the complainant (Br.Junaidi) with reported (RSUD *Ulin* Banjarmasin) that basically in the prosice mediation pelapor asked the *Ulin* General Hospital willing to conduct an evaluation on handling patients in the ER, *Ulin* General Hospital willing to serve and help cure patients (Br. Junaidi) well, the second examination of the complainant handled by resident doctors (senior) to a clearer diagnosis Giving paracetamol type drugs was based on procedures and conditional rapporteur, The payment of compensation and approved by the reported recovery, and has been submitted to the complainant by the reported (in cash) of Rp. 60,000,000, - (sixty million) in the presence of the mediator team *Ombudsman* South Kalimantan Province in the office of the *Ombudsman* South Kalimantan Province, in the mediation process obtained a peace agreement between the two sides in which the core of a peace agreement (*deed vandading*) with a team Mediator *Ombudsman* South Kalimantan Province, then the two sides agreed to declare peace Thus the report with Registration Number: 0177 / LM / VI / 2016 / BJM otherwise been completed and closed. Natural mediation the parties shall go through the process in good faith.

In general, mediation can be divided into two parts, the first mediation in court institutions (in court) as stipulated in the technical implementation PERMA 1 2016 on Mediation Procedure of the Court. The second part of the mediation outside the court (out of court), it is moved from the provisions of Article 29 of Act 36 of 2009 and Section 6 of Act 30 of 1999.<sup>5</sup>

The process of mediation in medical malpractice dispute resolution set in PERMA 1 2016, there are two phases, phase pra-mediation and mediation stage.<sup>6</sup> The approach

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<sup>4</sup> Prevention Division *Ombudsman* South Kalimantan Province, July 8th, 2019

<sup>5</sup> Machli Riyadi, 2018, *Teori IKNEMOOK dalam Mediasi Malapraktik Medik*, Prenadamedia, Jakarta, p. 153

<sup>6</sup> *Ibid*, p. 156

used in resolving cases of medical malpractice in Banjarmasin is a sociological approach to religious humanism, ie, by digging roots disputing culture associated with a touch of religious values.

Up to now there is no legislation governing medical malpractice dispute resolution. Assumption of malpractice by doctors are in increasing both reported to MKDKI or directly solved through AMINDO organization DPW South Kalimantan. Malpractice argued by the public in general is mild negligence and breach of professional ethics that the main factor is the lack of explanation (communication) from the doctor to the patient and found no element of intent (*mensrea-dolus*).<sup>7</sup>

Proses medical malpractice settlement in Banjarmasin using the principle of Win-win Solution namely completion method in which each party will get the benefit of a balanced way according to the will agreed. The main purpose of a win-win solution is to avoid losses on one side.<sup>8</sup> Benefits of medical malpractice mediation through mediation, the parties are usually able to reach agreement among themselves, so that the benefits of mediation is perceived. Even in the mediation failed, although there has been no settlement is reached, the mediation process which previously took place has been able to clarify the issue and narrow down the dispute.<sup>9</sup>

Mediation provides several advantages, namely,<sup>10</sup> Mediation to resolve disputes quickly and relatively cheap compared to court or arbitration to institution; Medias focus on real interests and needs emotional or psychological, that mediation is not only focused on their legal rights; Mediation gives the parties the opportunity to participate directly and informally resolve disputes; Mediation provides an opportunity to control the process and the results; Mediation can change the result, in litigation and arbitration difficult to predict, with certainty through a consensus; Mediation gives results that stand the test and will be able to create a better mutual understanding between the parties to the dispute, because they themselves decide; Mediation is capable of eliminating conflicts on the coercive decision that terminated the judge.

Syahrizal Abbas said mediation compared to litigation has advantages:<sup>11</sup> Is a flexible, voluntary, faster, cheaper, accordingly, needs a neutral, confidential, based on a good relationship; Improving communication between the parties to the dispute; Helps release anger against the other party; Knowing things or hidden issues associated with previously unrecognized dispute; Neither side was winning or losing.

## **2.2. Medical Legal Protection Against Crime Happens In The Medical Malpractice In Banjarmasin**

Legal protection of medical personnel in the event of criminal acts of medical malpractice in Banjarmasin city in terms of the theory of legal protection of health workers in the field of medical care / health have legal protection, it has been stipulated in Act 36 of 2014 on health workers in it has regulated the rights and

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<sup>7</sup> Interview Dith the Head of Health Care of Banjarmasin, June 23, 2019

<sup>8</sup> Machli Riyadi, 2015, *Hukum Kesehatan Kontemporer*, Cetakan Pertama, Akademi, Jakarta, p. 225

<sup>9</sup> Gatot Sumartono, 2006, *Arbitrase dan Mediasi di Indonesia*, Gramedia Pustaka Utama, Jakarta, p. 139

<sup>10</sup> Machli Riyadi, 2017, *Hukum Kesehatan Kontemporer*, cetakan kedua, Akademia, Jakarta, p. 229

<sup>11</sup> Machli Riyadi, 2016, *Penyelesaian Malapraktik Medik Melalui Mediasi*, Grammatical Publishing, Surabaya, p. 170

obligations of health workers. If there is action from unsatisfactory medical services the patient may report to the leadership of hospitals to report patient disappointment, or you can create a letter addressed to the Department of Health, or the *Ombudsman* IDI RI representative of South Kalimantan.

In the context of the reported usually is a Person who should be responsible in case of acts of malpractice in the medical services are implementing in this case is a doctor, midwife, or perpetrators of malpractice. Then the second is Leader Institution in this case is the chairman of the hospital where the perpetrator malpractice work. And third is the boss. The sanctions that can be imposed for health workers who make mistakes or omissions may include advice and suggestions, warnings loud, the proposed revocation of his license to practice, the proposed transfer to another place, or can be prosecuted under the law for actually proven to have committed malpractice , Usually forms of dispute resolution in cases of malpractice are: Through the Non-litigation settlement pathway malpractice cases can be resolved by consensus or by mediating pathways between the two sides that can be done by the *Ombudsman* and the hospital or doctor.

Legal protections of health workers which:

- Medical Consent Act (PTM) or Informed Consent includes information and approval. Approval is given after the person concerned informed or informed.<sup>12</sup> So informed consent is consent based on information about the disease, and the consequences can be calculated according to medicine in terms of treatment, and then the patient accept (permit) for treatment. Permission is called "informed consent". If doctors perform maintenance actions without the consent of the patient then it included an unlawful act in accordance with Article 1365 Civil Code. So that should be explained at the time of informed consent, is a diagnosis of the disease; Differential diagnosis; Type of inspection: purpose, procedure; This type of treatment / action and complications; Alternative treatment / action & Complications; Risk Treatment / actions; *Pronosis* Disease; Prices / costs.<sup>13</sup>
- Legal Protection Against Medical Record or Record. Medical Records is a file that contains records and documents on his identity, examination, treatment, action, and other services that have been given to patients<sup>14</sup>, The role of the recording of medical risk is very important and very attached to the service activity, so there is a saying that the medical risk is the third person at the time of receiving the patient's doctor<sup>15</sup>,
- The role of the Medical Committee and Medical Audit. The arrangement of the Medical Committee of Article 4 paragraph (1,7,8) of the decree of the minister of health RI 983 / Menkes / SK / XI / 1992 on Guidelines for the Organization General Hospital. Medical committee is a group of medical personnel whose membership is

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<sup>12</sup> Wila Chandrawila Supriadi, 2001, *Hukum Kedokteran*, Mandar Maju, Bandung, p. 62

<sup>13</sup> Desriza Ratman, 2012, *Mediasi Non Litiigasi Terhadap Sengketa Medik Dengan Konsep Win-Win Solution*, Elex Medi komputindo, Jakarta, p.29

<sup>14</sup> Anny Isfandiarie, 2006, *Tanggungjawab Hukum dan Sanksi Bagi Dokter*, Prestasi Pustaka, Jakarta, p.164

<sup>15</sup> M. Yusuf Hanafiah dan Amri Amir, 2009, *Etika Kedokteran dan Hukum Kesehatan*, Perstasi, Jakarta, p.55

selected from members of the medical staff functional. The key task of helping the director of the hospital to set standards of medical services and standard operating procedures and to monitor its implementation, implementing coaching ethics of the medical profession, the authorities of the medical profession functional staff members and develop service programs, education, and training and development. Medical audit conducted of the medical committee that is structurally under the director of the hospital aims to provide legal protection for both patients and health professionals.

- Judicial profession. Indonesian Doctors Association (IDI) or the Indonesian Dentists Association (IDGI) as the parent organization of physicians, not willing if the outcome of treatment failure are all considered medical malpractice. It is important to maintain the dignity of the medical profession as a profession personnel specialized healthcare profession should be tried in court and not the general courts.
- Role of Medical Dispute Review Committee. First, a standard component of science and technology in the field of medicine, the standard of competence in the field of science and technology should be appropriate in the form of standard operating procedures and standard operational procedures. Second, moral and ethical standards of conduct, both in the standard case of the medical profession is the standard of moral and ethical behavior, which in applying science and technology to the patient's medical and health services, physicians are given moral signposts set out in medical ethics and KODEKI. Third, the standard of human relationships is the relationship with the patient's physician, the government bears the profession and the public authorities to receive health care and health recovery.
- The role of the Indonesian Medical Disciplinary Honorary Council (MKDKI). In Article 66: (1) Any person who knows or interests harmed or actions of a doctor or dentist in conducting medical practice can complain in writing to the Chairman of the Indonesian Medical Disciplinary Honorary Council. (2) Complaints shall at least contain: a. identity of the complainants, b. name and address of the doctor's office or dentist and the time action is taken, and the reason for the complaint. (3) The complaint referred to in paragraph (1) and (2) does not eliminate the right of everyone to report any suspected criminal offenses to the authorities and / or civil damages sued in court.
- The role of the Indonesian Medical Council. Has tasks and functions mandated by Article 7 of the Medical Practice Act 29 of 2004 which registers doctors and dentists; professional education standards certify doctors and dentists; as well as to provide guidance to the organization of medical practice were conducted with relevant institutions in order to improve the quality of medical services. Authority in accordance with Article 8 which approve and reject the application for registration of doctors and dentists; issue and revoke registration letter; certify the competency standards; tested the registration requirements of doctors and dentists; authorize the application of the branch of medicine and dentistry; conduct joint training of doctors and dentists on the implementation of professional ethics established by professional organizations; and the recording of doctors and dentists being

penalized by professional organizations or devices for violation of professional ethics.

### 3. Closing

#### 3.1. Conclusion

- Based on PERMA 1 2016, the process of resolving medical malpractice cases in Banjarmasin, namely through the (non-litigation) consensus or through mediation between the two parties (Health Workers and Patients) conducted by the *Ombudsman* and the hospital or doctor. In the Health Act 36 of 2009 on health therein have been regulated rights and obligations of the patient. If there is action from unsatisfactory medical services the patient may report to the head of the hospital's patients report disappointment, or you can create a letter addressed to the Department of Health or representative *Ombudsman* of South Kalimantan. The process for resolving medical malpractice cases could non-litigation.
- Legal protection of medical personnel in the event of criminal acts of medical malpractice in Banjarmasin namely with, PTM or Informed Consent; Medical Record; The role of the Medical Committee and Medical Audit; Justice Profession Indonesian Doctors Association (IDI); Role of Medical Dispute Review Committee; MKDKI; The role of the Indonesian Medical Council.

The doctor who has been carrying out duties in accordance with professional standards, service standards and standard procedures to obtain legal protection. In operational entitled to implement the practice of medicine, physicians must meet Informed Consent and Medical Records can free physicians from any legal case of alleged malpractice.

#### 3.2. Suggestion

Doctors should establish good communication with patients and perform medical procedures in accordance with professional standards, service standards with standard operating procedures. For the government should create a special legal rules about medical malpractice clearly, so that the existence of legislation which systematically to provide protection and legal certainty to health professionals and patients.

Physicians and patients involved in the dispute should finish with familial / mediation, if necessary proof of medical malpractice can be through MKDKI as the competent institutions in resolving disciplinary offenses doctor<sup>16</sup>,

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<sup>16</sup> Michel Daniel Mangkey, *Perlindungan Hukum Terhadap Dokter Dalam Memberikan Pelayanan Medis*, Jurnal Lex et Sositotis, Vol.II/No.8 (2014), url : <http://ejournal.unsrat.ac.id>

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