

Legal Protection of Patients Victims of Medical Malpractice in Indonesia Reviewed Based On Civil Law & Health Laws

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Abstract. *This research examines the legal protection of patients who are victims of medical malpractice in Indonesia, focusing on civil and health law aspects. In the context of medical practice, medical malpractice is interpreted as negligence or errors that may harm patients. While legal regulations provide protection for patients, their implementation poses challenges, particularly in cases of medical malpractice. Using a normative legal research method, this study analyzes the legal provisions found in Law Number 29 of 2004 concerning the practice of medicine, Law Number 36 of 2009 concerning Health, and Law Number 36 of 2014 concerning health professionals. Additionally, the study considers judicial decisions related to medical malpractice cases in Indonesia. The research findings indicate that patients who are victims of medical malpractice have the right to claim civil damages against the responsible doctor or healthcare institution. Such claims may be based on tort and breach of contract, encompassing the neglect of medical service standards and failure to fulfill therapeutic contract obligations. Civil liability also involves hospitals, which bear responsibility for medical actions performed by healthcare professionals under their jurisdiction. The concept of respondeat superior liability is applied, whereby hospitals can be held accountable for mistakes made by their employees. In conclusion, patients have legal protection against medical malpractice based on existing regulations. However, challenges persist in the implementation and proof of tortious and contractual breaches. Therefore, this research contributes to understanding the legal aspects related to patient protection in the context of medical malpractice in Indonesia.*

Keywords: Health Law; Legal Protection; Malpractice; Patients; Victims.

1. INTRODUCTION

Medical practices performed by healthcare professionals have a direct impact on the lives and health of patients. While most medical practices are carried out to a high standard, there are situations where errors or omissions can result in serious harm to patients. Medical malpractice cases are an issue that requires serious attention, as it not only concerns the individual rights of patients, but also concerns the integrity and trust of the public in the health care system. Medical malpractice that occurs is a matter of urgency because in its application, protection and law enforcement have not been running optimally in every malpractice case that occurs, either in the governing regulations that should be protective or in the decisions given in court decisions related to medical malpractice cases that occur. Based on data from MKDKI in 2019 over the past few years there have been 252 reports of alleged malpractice cases. Malpractice itself is defined by KBBI as the practice of medicine that is wrong, inappropriate, violates the law or code of ethics.¹ Jusuf Haniifah also defines medical malpractice in his book entitled Medical Ethics and Health Law as a doctor's negligence to use the level of skill and knowledge commonly used to treat patients according to the size of the same environment. In law, medical malpractice is defined in Article 11 paragraph (1) letter b of Law No. 6 Year 1963 on Health ("Health Personnel Law") which contains:

"Without prejudice to the provisions of the Criminal Code and other regulations, administrative measures may be taken against health workers in the following cases:

1. Neglect of duty.
2. Doing something that should not be done by a health worker, either considering his/her oath of office or considering his/her oath as a health worker.
3. Neglecting something that should be done by a health worker,
4. Violating a provision according to or based on this Law."

Nabila Azzahra and T.Hafliyah (2019) in their article entitled Legal Protection of Patients Due to Medical Malpractice Reviewed from Legislation explain that legal protection of patients due to medical malpractice, where existing legal provisions can only be used as a guide in providing legal protection to patients, is still not optimal in reality. This is due to the patient's limited general knowledge in proving the actions taken by doctors and nurses. In addition, patients face difficulties when they have to prove that they are victims of malpractice,

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especially if the consequences are not clearly visible.² This opinion is in line with this study, but this study will focus more on the review of civil law and health law where the perpetrator of medical malpractice is not only a doctor but can also be committed by health workers and hospitals. This study also uses case analysis related to malpractice that occurred in Indonesia regarding the benchmark for compensation given to victims of medical malpractice.

Syahadah Siregar and Abdul Halim Bin Ahman (2017) in their article entitled Legal Protection for Patients Victims of Doctor Malpractice concluded that the problem of medical malpractice lies in the absence of specific laws and legal studies on malpractice that can be used as guidelines in determining and overcoming the existence of medical malpractice in Indonesia. For this reason, it is necessary to review the legal protection policies that can be associated with negligence or Medical Malpractice, especially in providing legal protection to victims of Malpractice (patients).³ However, this study examines in depth through the perspective of criminal law while this study examines more deeply through the perspective of civil law.

Adi Suhendi, Muhyi Mohas, and Fatkhul Muin (2022) in their article entitled Criminal Law Protection for Victims of Medical Malpractice concluded that the fulfillment of the rights of victims of medical malpractice in terms of Law No. 36 of 2009 concerning Health, that malpractice is basically the actions of health professionals that are contrary to the SOP, code of ethics, and applicable laws and regulations, either intentionally or as a result of negligence that can result in harm or death to others.⁴ The researcher's opinion is in line with this study, but this study examines in depth through the perspective of criminal law, while this study examines more deeply through the perspective of civil law.

From a civil perspective in Indonesia, medical errors or malpractice can be categorized as Unlawful Acts (PMH) and default, making it possible to file a claim for compensation against the responsible doctor.⁵ The concept of *Inspanning verbintenis*, which emphasizes that doctors are committed to always giving their best efforts to patients, is often ignored, even though the doctor has done his best because the doctor's legal relationship with the patient is in a legal

² Nabila Azzahra dan T.Hafliyah, 2019, *Perlindungan Hukum Terhadap Pasien Akibat Malpraktik Medis Ditinjau Dari Peraturan Perundang-Undangan*, Aceh, Vol.3

³ Syahadah Siregar dan Abdul Halim Bin Ahman, 2017, *Perlindungan Hukum Bagi Pasien Korban Tindak Malpraktek Dokter*, Vol IX, Nomor 2

⁴ Adi Suhendi, Muhyi Mohas, dan Fatkhul Muin, 2022, *Perlindungan Hukum Pidana Terhadap Korban Malpraktek Medik*, Serang, vol.6

⁵ Adami Chazawi, 2016, *Malapraktik Kedokteran*, Sinar Grafika, Jakarta

engagement, which means that it binds one legal subject to another legal subject.⁶ Therefore, there is a relationship of rights and obligations between doctors and patients where in this malpractice act the patient's rights are violated and the doctor's obligations are ignored. This research aims to reviews the legal protection of patients who are victims of medical malpractice in Indonesia with a focus on aspects of civil and health law.

2. RESEARCH METHODS

This study aims to determine the effectiveness of positive law in Indonesia related to medical malpractice cases that occur in Indonesia and to explain the form of civil compensation for patients who are victims of malpractice. This study uses normative legal research methods because this research is conducted by examining library materials or secondary data only. The problem approach used in this research is statute approach and case approach.⁷ This research uses a statute approach and case approach because this research uses statutory sources of law which are then studied through malpractice cases that occur in Indonesia. Primary data sources in this research are legislation, namely the Civil Code, Law No. 29 of 2004 concerning medical practice, Law No. 36 of 2009 concerning Health, Law No. 36 of 2014 concerning health workers, and using judges' decisions on medical malpractice cases that occurred in Indonesia.⁸ Primary data sources in this research are books and law journals that discuss legal protection of medical malpractice incidents. Tertiary data sources in this research are legal dictionaries, KBI and medical science books. The data collection method in this research involves the acquisition of secondary data consisting of primary and secondary legal materials relevant to the focus of research on medical malpractice. This approach to collecting legal materials adopts a library research model. The data analysis method applied in this research is qualitative analysis, in which data obtained from legal materials are parsed by referring to concepts, theories, laws and regulations, doctrines, legal principles, expert views, or the researcher's own point of view.

3. RESULT AND DISCUSSION

3.1 Forms of Medical Malpractices

⁶ Abdulkadir Muhamad, 1982, Hukum Perikatan, hal.5

⁷ Abdulkadir Muhammad, 2004, Hukum dan Penelitian Hukum, Bandung, Citra Aditya Bakti, hal.81

⁸ Peter Mahmud Marzuki. Penelitian Hukum, Jakarta, Kencana, 2009, hal 141

Medical malpractice can be divided into three forms, that are:

1. Civil malpractice

Civil malpractice occurs when there are factors that result in non-fulfillment of the terms of the agreement or default in the therapeutic process by doctors or other health workers, or actions that are contrary to the law that result in harm to the patient. The elements that are not fulfilled in the agreement so that medical default occurs are not doing what according to the agreement must be carried out/executed, being late in carrying out a mandatory agreement, doing what according to the agreement must be done but not perfect in its implementation and results, and doing what according to the agreement should not be done. However, in civil medical malpractice can be categorized as default if the agreement in the form of medical actions or services is violated not the result of medical services performed by the doctor. For example, a medical action can be said to be malpractice if it violates the agreed procedure, not because there is no cure from the medical action performed.

The conditions for unlawful acts or actions are:⁹

- a. There must be an act.
- b. The act violates the law (written or unwritten)
- c. There is a loss caused.
- d. There is a causal relationship between the unlawful act and the loss suffered.
- e. There is an element of fault.

Meanwhile, to be able to claim compensation for doctor negligence, the patient must be able to prove the existence of the following elements:

- a. The existence of a doctor's obligation to the patient
- b. The doctor has violated medical service standards.
- c. The plaintiff (patient) has suffered a loss for which compensation can be sought.
- d. Factually the loss was caused by actions that are not in accordance with standards.

2. Criminal malpractice

Criminal malpractice occurs when a patient dies or is disabled due to the fault of a doctor or health worker or due to a lack of care in carrying out their responsibilities. The types of criminal malpractice are:

- a. Intentional criminal malpractice such as divulging medical secrets.

⁹ Hermien H. Koeswaji, 1998, Hukum dan Masalah Medik, h.53.

- b. Criminal malpractice due to carelessness, for example performing actions that are not in accordance with professional standards and performing actions without Medical Action Approval (PTM)
 - c. Criminal malpractice due to negligence (negligence), for example, disability or death of the patient due to leftover surgical instruments in the patient's cavity.¹⁰
3. Administrative malpractice
Administrative malpractice occurs when a doctor or health worker violates administrative law, for example practicing without a License to Practice (SIP) and without a Registration Certificate (STR).

3.2 Patient and Doctor Relationship

The pattern of the relationship between the patient and the doctor is vertical paternalistic, namely the pattern of the relationship between the father (in this case the doctor) and the child (in this case the patient), where the doctor as the father knows best, the patient is below the doctor (vertical). The legal relationship between doctors and patients can be called a therapeutic contract, namely a therapeutic or healing contract that is subject to civil law on engagement where the implementation of the doctor's obligations is the patient's right and vice versa the patient's obligation is the doctor's right. The obligations and rights of doctors are divided into two, namely obligations and rights based on agreements and obligations and rights based on laws and regulations.

3.3 Discussion

1) Legal Protection for Patients Victims of Medical Malpractice Based on Health Law

Juridically, the legal protection given to patients who are victims of medical malpractice has indeed been regulated in the Law, namely in Law No. 29 of 2004 concerning medical practice, then also regulated in Law No. 36 of 2009 concerning health and in Law No. 36 of 2014 concerning health workers.

¹⁰ Anny Isfandiari, 2004, Tanggung Jawab Hukum dan Sanksi Bagi Dokter, h. 35.

Based on Law No. 29/2004 on Medical Practices, patients have the right to receive safe medical services, services that are in accordance with standards, accurate information, and others. If there is a violation of service standards, patients can report to the competent authority. Patients who are victims of medical malpractice can file a civil claim against the doctor or the relevant health institution. These claims may include compensation for physical, mental, or financial losses incurred because of the malpractice. In some serious cases, such as when a patient dies because of medical malpractice, the patient or their family may also file criminal charges against the doctor or the responsible party. In addition, there are alternative ways to resolve medical disputes, such as mediation or arbitration, which can help patients and medical practitioners resolve issues without having to go through a lengthy judicial process.

The application of criminal law to medical malpractice must be proven *culpa lata*, which means serious error caused by extreme carelessness, where the only suspects are the perpetrator and the perpetrator's assistant. Under the applicable health law, medical malpractice may be subject to criminal and civil lawsuits. Civil lawsuits against medical malpractice must fulfill the elements of tort and default stipulated in Article 1365 of the Civil Code and Article 1371 of the Civil Code and must prove the existence of *culpa levis* or plain error by proving the causal relationship between the doctor's actions and the harm caused by the perpetrator of medical malpractice and the hospital responsible.

2) Civil Liability of Hospitals and Doctors for Patients Victims of Malpractice

Doctors who perform medical actions must follow the guidelines of the established Code of Medical Ethics. They need to carry out their work professionally and comply with applicable legal rules to ensure that the medical actions performed remain in accordance with medical ethics and legal norms.¹¹ Ethical responsibilities as part of the medical profession include doctors' behavior towards patients, fellow colleagues, coworkers, and towards themselves. Medical ethics comes from the Greek term "ethos," which refers to the norms, values, or patterns of behavior followed by a particular professional group.¹² Based on Law Number 29 Year 2004 Article

¹¹ Fernandez, M. R. (2023). *Analisis Yuridis Terhadap Tanggungjawab Dokter Atas Tindakan Malpraktik* (Doctoral dissertation, Universitas Islam Malang).

¹² Gaol, H. L., & Napitupulu, F. (2023). Perlindungan Bagi Pasien Yang Sakit Atas Dugaan Malpraktek Oleh Dokter. *DIKTUM*, 2(3), 8-14.

66 paragraph (1) states that errors in providing health services by a doctor can be the basis for filing a lawsuit to the Chairman of the Indonesian Medical Discipline Honor Council (MKDKI). The right to file a lawsuit is given to parties or patients who feel aggrieved. This law also emphasizes the importance of medical practices that provide freedom to victims to express their complaints to the Chairman of MKDKI. It is intended that the perpetrators of malpractice can be sanctioned in accordance with applicable policies.¹³ Doctors or health workers who do not provide services in accordance with applicable procedures may face sanctions and may be sued for damages by the injured party. Medical criteria for assessing a doctor, with an average level of expertise of the same group, should pay attention to methods that are appropriate to the purpose of treatment. In this context, a doctor may be considered guilty of medical negligence if he or she exhibits ignorance, a low level of care, and gross negligence that results in injury or death to the patient.¹⁴

The hospital is a public service provider entity that is responsible for every public health service it provides. This responsibility involves the provision of health services that have high quality standards and are affordable, with the principles of safety, comprehensive, without discrimination, participatory, and provide protection for the community as recipients of health services. This also applies to health service providers as an effort to achieve an optimal level of health.

Health as a public service is recognized as a human right in the field of health that must be respected and elevated by every health service provider, be it government agencies, the private sector, groups, or individuals. Recognition of this human right is recognized as stated in Article 28 paragraph (1) of the 1945 Constitution which states that every individual has the right to health. Similarly, this is explained in Article 4 of Law No. 3/2009 on Health, which affirms that everyone has the right to health. As a public service delivery center, the hospital as an organization to deliver quality medical services for the public.

From a normative juridical perspective, hospitals are responsible for the medical actions performed, this refers to the application of the provisions of Article 1367 of the Civil Code, Article 46 of the Hospital Law, as well as

¹³ Zulhasmar Syamsu, Venny Sulistyawati. *Pertanggungjawaban Perdata Seorang Dokter Dalam Kasus Malpraktek Medis*. Lex Jurnalica Volume 8 Nomor 3, Agustus 2011.

¹⁴ Agustin, E. N., Maghfiroh, S. A., Annisa, S. R., & Istanti, N. D. (2023). Analisis Kebijakan Perlindungan Hukum Korban Malpraktek Profesi Medis: A Literature Review. *Jurnal Ilmiah Kedokteran Dan Kesehatan*, 2(1), 53-64.

internationally recognized professional standards and accreditation of health services. From a doctrinal juridical perspective, the hospital's responsibility for the negligence of health workers is governed by the principle of respondeat superior, which requires the hospital to be responsible for the quality of care (duty to care). From a theoretical juridical perspective, as a corporation the hospital is subjected to vicarious liability, hospital liability, and corporate liability, so that the hospital can be held liable for errors committed by health workers who work in a sub-ordinate (employee) position.¹⁵ Hospitals are responsible for the negligence of health workers, which is included in the type of Medical Malpractice, and the consequences of the negligence of health workers are included in the type of minimal malpractice, where the health workers involved can still be held liable. Third, the implications of the provisions of Article 46 of the Hospital Law are to supervise health workers, compile medical records, and provide clear consent for medical actions for patients.¹⁶

Therefore, patients who are victims of medical malpractice can sue hospitals and doctors who perform medical actions civilly with claims of Unlawful Acts (PMH) and Default. Claims based on tort.¹⁷ Malpractice claims based on tort are based on Article 1365 which reads "every unlawful act that brings harm to another person, obliges the person whose fault caused the harm, to compensate for the loss" which is complemented by Article 1371 paragraph (1) BW, which states that "Causing injury or disability to a person's limbs intentionally or negligently, gives the victim the right to, in addition to getting reimbursement for the cost of recovery, claim compensation for losses arising from the injury or disability".¹⁸ This is complemented by Article 1370 BW which provides a legal basis for the husband, wife, or heirs to file a lawsuit or claim for compensation related to the patient's death. To be considered a tort, as with medical malpractice, certain conditions must be met. These include the existence of fault, the incurrence of harm, and the existence of a causal link between the act and the harm. An act is considered unlawful if the medical act performed by the doctor or dentist contradicts the obligations of the perpetrator, violates the subjective rights

¹⁵ Syamsul, A., & Aida, Z. (2023). Pertanggungjawaban Hukum Oleh Rumah Sakit Atas Kelalaian Yang Dilakukan Oleh Tenaga Medis. *Jurnal Pendidikan dan Konseling (JPDK)*, 5(2), 4143-4153.

¹⁶ Toumahuw, B. N., Wijaya, A. U., & Widiyanto, R. M. (2023). Tanggung Jawab Rumah Sakit Terhadap Kelalaian Malpraktik. *Jurnal Ilmu Hukum Wijaya Putra*, 1(2), 57-68.

¹⁷ Ujjianto, M. B., & Wijaya, W. (2020). Tanggung Jawab Hukum Dokter Terhadap Gugatan Pasien Dalam Pelayanan Kesehatan di Rumah Sakit. *Jurnal Juristic*, 1(01), 52-66.

¹⁸ MA. Moegni Djojodirjo, *Perbuatan Melawan Hukum*, Pradnya Paramita, Jakarta, 1982, hlm. 13

of others, violates ethical norms, or contradicts the principles of propriety, thoroughness, and caution (*patiha*) that should be possessed by a person in socializing with fellow citizens or against other people's property. This requirement is alternative, meaning that it is sufficient to fulfill only one of them to be considered a tort.

Furthermore, there is a fault requirement, which can be measured objectively or subjectively. In the context of medical malpractice, the measurement of fault relevant to the profession of medicine or dentistry is subjective. This is due to the nature of the profession and the expertise of the doctor or dentist that allows them to understand the consequences of their medical actions.

Another requirement in a tort claim is the existence of a loss arising from the medical actions of the doctor or dentist. This loss can be material, which is tangible such as the failure of medical treatment that causes the patient to suffer financial losses due to medical expenses. Meanwhile, immaterial losses are indirect, such as loss of work ability due to disability. In addition, there needs to be a causal link between the medical action and the loss suffered. This means that the loss suffered by the patient must be directly caused by the medical actions of the doctor or dentist.¹⁹

Regarding claims for compensation for doctors' mistakes in performing medical actions, this is regulated in Article 55 paragraph (1) of the Law on Health, which states that "Everyone is entitled to compensation due to errors or negligence committed by health workers".

Meanwhile, claims based on default are based on a breach of promise or non-fulfillment of the contents of the engagement or therapeutic agreement between the doctor and the dentist.²⁰ The demands that can be made in a default lawsuit by the plaintiff are:

- a. Fulfillment of performance and compensation
- b. Performance fulfillment
- c. Compensation
- d. Cancellation of reciprocal agreement
- e. Annulment with damages.

¹⁹ Maryam, S. (2021). Perlindungan Hukum Terhadap Pasien Korban Malpraktek Medis Dalam Perspektif Hukum Perdata. *SIGNIFIKAN*, 2(3), 169-177.

²⁰ Novriansyah, V., Pasamai, S., & Anzar, A. (2021). Tanggung Jawab Dokter Akibat Malpraktik Medis Dalam Prespektif Hukum Perdata. *Journal of Lex Generalis (JLG)*, 2(3), 957-971.

The amount of compensation claim allowed will be determined by how much harm has been suffered by the patient or their family, including both actual and indirect harm. The judge will be responsible for determining the amount of compensation based on considerations of justice and propriety. If a lawsuit is filed against a team of doctors, then the compensation claim can be charged jointly (joint responsibility).

4. CONCLUSION

Patients who are victims of medical malpractice receive legal protection that has been juridically regulated in the Law, including Law No. 29 of 2004 on physician practice, Law No. 36 of 2009 on health, and Law No. 36 of 2014 on health workers. According to Law No. 29 of 2004, patients have the right to receive safe and standardized medical services and can report violations of service standards to the competent authority. Patients who are victims of medical malpractice can file a civil claim against the doctor or health institution responsible, including compensation for physical, mental, or financial losses arising from the malpractice. In serious cases, such as death due to medical malpractice, patients or their families may file criminal charges. Doctors have an obligation to follow the guidelines of the Code of Medical Ethics, and errors in providing health services can be the basis for a lawsuit to the Chairman of the Indonesian Medical Discipline Honor Council (MKDKI). The law emphasizes the importance of practicing medicine in accordance with ethical procedures and principles, and doctors who do not meet these standards may face sanctions and compensation claims. Hospitals, as public service providers, are responsible for the medical acts performed, and are bound by the provisions of Article 1367 of the Civil Code and Article 46 of the Hospital Law. Patients who are victims of medical malpractice can file claims for tort and default. PMH claims are based on Article 1365 BW, which states that unlawful acts that cause loss must be compensated. This claim requires proof of fault, loss, and causation. Furthermore, the requirement of fault is measured subjectively in the context of the medical profession, and the loss can be material or immaterial. The judge is responsible for determining the number of damages by considering a sense of justice. In the context of tort claims, doctors or hospitals can be faced with claims for fulfillment of performance, compensation, or cancellation of the agreement. The amount of the compensation claim is determined by the amount of loss suffered by the patient. The entire claim can be filed against the team of doctors as jointly and severally liable. The legal protection of patients who are victims of medical malpractice involves the fulfillment of patients' rights, the enforcement of ethical and legal obligations for doctors and hospitals, and the assessment of a sense of justice in determining compensation. To strengthen legal protection, it is

recommended for patients who are victims of medical malpractice to: first, keep medical documentation evidence carefully; second, establish open communication with doctors; third, consider alternative dispute resolution options before lawsuits; fourth, understand the time limit for filing claims; and fifth, maintain mental health during the legal process.

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