

Legal protection of internal doctors medical services in the city of Makassar

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ABSTRACT

In discussing this thesis, the author uses a normative legal research approach. The data sources for this research come from primary legal materials, secondary legal materials, and tertiary legal materials. This research is classified as qualitative, using data in the form of direct interviews/questions and answers (dialogue) and documentation studies. The results of this study indicate that legal protection for doctors really needs to be done with various factors that cause it either caused by the behavior of the patient himself or the natural nature of a doctor in general, even though for the city of Makassar itself it turns out that there have been no cases that have reached court related to the actual alleged malpractice which has its own criteria to be considered as an act of malpractice. The main step taken to protect doctors from being dragged to court is by trying to resolve a problem through mediation, which is also a mandate from the health law. The implications of the results of this study are that in the future doctors should be able to understand more about legal responsibility because it will be very helpful in anticipating possible patient demands for medical efforts made by doctors.

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1. INTRODUCTION

The term crime comes from a term known in Dutch criminal law, namely strafbaar feit, in which the elements of a crime can be distinguished from at least two points of view, namely (1) from a theoretical point of view; and (2) from a statutory perspective. Meanwhile, the point of law is how the reality of the crime is formulated into a specific crime in the articles of the applicable laws and regulations. Criminal threats (for those who violate the prohibition) Only human actions may be prohibited, by the rule of law.

Based on the compound word criminal act, the main meaning is in the act, but it is not separated from the person. An act of punishment is held. From the third element, the sentence is carried out in an act of punishment, there is an understanding that it is as if every prohibited act is always followed by punishment (punishment). In contrast to Moeljatno, because a sentence is punishable, it means that the act is not always and is not thus subject to punishment. Elements of the formulation of criminal acts in the Law In the formulations of book II and book III of the Criminal Code, there are elements that are always mentioned in each formulation, namely regarding behavior/actions even though there are exceptions such as Article 351 (persecution).

From the formulation of certain crimes in the Criminal Code, it can be seen that there are 11 elements of criminal acts included in the subjective law against the law, for example against the law in fraud (Article 378), extortion (Article 368), threats (Article 369) which are stated for the purpose of unlawfully benefiting oneself or others as well as the unlawful element in the act of possessing in embezzlement (Article 372) which is subjective, meaning that there is awareness that owning other people's objects that are in their power is a reproach to society.

Regarding when the unlawful element is objective or subjective, it depends on the wording of the criminal offense formulation in question. The legal relationship between a doctor and a patient is actually a health service relationship (medical service) or another term for medical action between Health Providers (health service providers). with Health Receiver (recipient of health services).

Active – Passive Relationship At this stage the patient does not make any contribution to the health services he will receive. At this stage of the relationship, the patient's communication interactions do not involve choices of health service actions, because he is unable to provide them. This inability can only because his condition does not allow him to give his opinion, for example the patient is unconscious. **Guided Collaborative Relationship** This stage of the relationship occurs when the patient is sick but conscious and has the ability to ask for help from a doctor and is willing to cooperate with the doctor. At this stage of the relationship, there is already visible participation from the patient in the health service process. Thus the position of the doctor as someone trusted by the patient is still significant.

Mutual Participation Relationship At this stage of the relationship the patient realizes that he is an equal person with the doctor, and thus when he is in contact with the doctor, the relationship is built on the basis of a mutually agreed upon agreement. The agreement is made after the doctor and patient have gone through intensive stages of communication until a decision is made. Thus the development of the pattern of relationship between doctor and patient or what is commonly known as a therapeutic transaction develops from the patient being only seen as an object. Because the doctor is considered to know everything the best for the patient or father knows best, this therapeutic transaction relationship is patterned as a vertical relationship. Then the longer the relationship between the doctor and the patient shifts in a more balanced relationship, because doctors and patients have their own rights and obligations that must be fulfilled.

The following are the rights and obligations of a doctor: According to Leenen, as quoted by Danny Wiradharma⁴, it is the duty of doctors or dentists to carry out health services. Obligations arising from the nature of medical care where doctors must act in accordance with medical professional standards or carry out their medical practice legally. The obligation to respect patient rights stems from human rights in the health sector. Doctors' obligations to patients in carrying out health services are more concrete in Article 51 of Law Number 29 of 2004 concerning medical practice, which has normatively determined a series of obligations. doctors in carrying out health services that must be carried out to patients; Refer the patient to another doctor who has better expertise or ability, if unable to carry out an examination or treatment. The doctor in the agreement does not promise to produce a certain result or result, because what he is doing is an effort or effort as far as possible in accordance with the knowledge he has.

The difference between the resultant *sverbintenis* and *inspanningsverbintenis* is that in the event of an error the doctor is obliged to carry out his own duties (in the sense that it is carried out personally and not by other people) according to what has been agreed, unless the patient agrees that it is necessary to have someone represent him (because the doctor in the pronouncement the oath is also obliged to maintain his own health) and the doctor is obliged to provide information to his patient regarding everything related to his illness or suffering. This doctor's obligation in terms of treatment agreements To be able to maintain public health, various facilities are needed, one of these facilities is a doctor, it can be said that doctors are "leaders" in health services, even so the presence of other health workers still has specialties that cannot be replaced.

This aims to provide a sense of security for the parties because the relationship that is formed between the patient and the doctor or other health worker, or the relationship between the patient and the hospital, the patient's position is always in a weaker position. Such an unequal position of the patient and health workers makes it easy for the patient to receive unfair treatment. So it is precisely in this law on medical practice that the patient's position needs to be escorted so that he does not experience any loss or in other words the patient needs to receive justice or protection.

On the other hand, it is the same with health workers, the position of health workers with the existence of the Medical Practice Law, in this case is obtaining legal certainty, so that patients cannot

arbitrarily accuse doctors or other health workers if an unwanted event occurs. As a comparison, in countries that adhere to the Anglo-Saxon legal system they recognize and use a legal principle called the Good Samaritan Law where this principle supports one's moral awareness and responsibility in making efforts to save anyone who is in need without having to be burdened with legal responsibility for the action and the results or consequences it causes, the Good Samaritan Law states about the article, which states that a person cannot be held responsible for his actions based on good faith, on the other hand, if they see a situation that endangers other people and they choose not to react, they can be subject to legal responsibility for their indifference.

Indifference to others (*hablumlanas*) will slowly numb the sense of empathy for the human heart itself, for that we are always required to do good and help each other than what is required in the Qur'an Surah Al-Maidah verses. In general it can be said that medical law is administrative law, because this is a branch of State Administrative Law, as referred to in State Administrative Law, the existence of medical law is intended to create regularity in the behavior of doctors in dealing with other communities (patients, nurses, hospitals, and so on), then there will be justice, peace, and harmony for all involved in the health service. In connection with this medical profession, lately it has been widely reported in the national mass media, both through electronic media and print media.

Likewise, public reports to the Indonesian Doctors Association (IDI) from 1998 to 2004 contained 306 cases of alleged malpractice. As an example of the case that happened to three doctors in Manado, as is well known, based on decision Number 365 K/Pid/2012 on September 18 2012, the Supreme Court granted the cassation request from the public prosecutor to the Manado District Attorney and canceled the Manado District Court decision Number 90/PID. Hendy Siagian (defendant III) has been legally and convincingly proven guilty of committing the crime "an act which through negligence caused the death of another person".

Malpractice in practice is sometimes obscured from what is called medical risk, so that it is not uncommon for a doctor who has worked very professionally, namely in accordance with medical professional standards, medical service standards, and Standard Operating Procedures (SOP) to be charged with malpractice charges. In carrying out his profession it is very possible to get a similar situation experienced by Dr. Ayu, this can be caused by the end result of a treatment process carried out by doctors, if the patient is treated until he dies or is disabled, he may receive a response from the patient's family that this is a malpractice.

Apart from negligence, negligence and it could be intentional on the part of a doctor, the doctor must also get the same treatment as a patient or patient's family in defending their rights, because it could be that in a process the medical service is not the doctor who is the cause of the patient's deterioration or death, but this it can also be due to other factors, for example the patient's family does not heed the doctor's advice, nurse's mistake or perhaps hospital facilities. Of course, this will be very detrimental for the doctor himself, even though the public does not really understand what malpractice means, so that any medical action or medical service performed by a doctor does not meet the expectations of the patient or the patient's family, including worsening of the patient's condition or other things. The worst case is that the patient dies, it is considered a malpractice carried out by a doctor, so that in this case the medical service performed by the doctor is considered by the patient or the patient's family as unprofessional and even considered as a complete doctor's fault. Of course this can also be or maybe it's happening to our doctors in Makassar.

2. METHOD

Through descriptive research, researchers try to describe events and events that are the center of attention without giving special treatment to these events. Types and Locations of Research The data used in this thesis are qualitative data obtained using the following types of research:

In this case, the author conducted interviews with the Indonesian Doctors Association (IDI), the Provincial Health Office. Library research, the author reviewed books related to health law, internet sites, on Law 8 of 1999 concerning Consumer Protection as well as other things that have a relationship with the discussion of this thesis.

Research Location To obtain the data and information needed in the preparation of this thesis, the research location was conducted at the Office of the Indonesian Doctors Association (IDI), Office of the Health Office of Prov.

The first step is to carry out normative juridical research based on secondary legal materials, namely an inventory of regulations relating to the use of instruments. Laws on health, laws on medical practice and consumer protection laws, as well as several local regional regulations. - written materials related to this issue.

Sources of data In compiling this thesis, the data obtained in the study can be grouped into three types, namely: Primary legal materials are primary data sources obtained from various laws and regulations such as: Law no; Secondary legal material is data obtained from the literature, documents and other laws and regulations that are relevant to the writing material.

Methods of data collection The author conducted direct research with the Indonesian Doctors Association (IDI) and the Health Office: Direct interviews, namely carrying out a question and answer process (dialogue) with the Indonesian Doctors Association (IDI) and with the health office; Documentation Study Namely the author collects data by reviewing books, writings, and laws and regulations in the fields of Health Law, Medical Practice, and Consumer Protection as well as existing report data (annual reports) library materials in this study includes books, scientific articles, and Internet sites. Research Instruments In this section the researcher explains about the data collection tools that are adapted to the type of research, namely: laws and regulations, observations, interviews, and documentation.

Data Processing and Analysis Techniques In this writing, the data obtained is then collected both primary and secondary, and analyzed in depth. In examining the data and material presented, the following methods are needed: Deductive which is generally guided by laws and regulations; Descriptive which is generally used in describing, quoting or clarifying the sound of laws and regulations and general descriptions.

3. RESULTS AND DISCUSSION

In From the results of the interviews and observations conducted by the researchers on February 27 2018, the Soundcloud Malang Community was pioneered by its founder, who initially had another literature-based community, namely the Poetry Night Community. To describe the results of this study, the researcher will divide into several sub-chapters which tell and explain, the Malang Poetry Night Community as the former community of the Malang Soundcloud Community, as well as the organizational environment of the Malang Soundcloud Community and also the community's efforts, in strengthening and maintaining its community. To interpret the data that the researcher got, the researcher will describe the data, according to Harold J.'s Organizational System concept.

3.1 Legal Protection for Doctors in Medical Services in Makassar City

If a doctor has carried out medical services or medical practice in accordance with professional standards and standard operating procedures, then the doctor cannot be prosecuted by law, whether administrative law, civil law or criminal law. medical services in accordance with professional standards, medical service standards and standard operating procedures considering that this has been regulated in the Participation Law in Article 51 letters (a,b,c,d,e), namely that every doctor provides medical services in accordance with professional standards and standard operating procedures as well as patient medical needs, referring patients to other doctors or dentists who have better expertise if they are unable to carry out an examination or treatment, must be able to keep everything he knows about a patient confidential even after the patient dies, and provide assistance on a humanitarian basis unless he is sure that someone else is on duty and is able to do so, and adds knowledge and keeps abreast of developments in medical science.

So that if the doctor's actions are in accordance with the existing service standards and operational standards, then the doctor should have received legal protection from objections from the patient or the patient's family. has provided an explanation to the patient and/or family regarding the diagnosis and procedures for medical action, the purpose of the medical action being performed, other alternative actions and the risks and complications that may occur.

After the patient agrees to a medical action based on clear and clear information, and the medical action is in accordance with medical service standards, the doctor cannot be blamed if there is a failure in this effort. and or his family regarding the diagnosis and procedures for medical action to be given to the patient, so that the patient can consider whether he still wants to continue the procedure or refuse it, this has also been stated in the provisions contained in

Article 52 of the Medical Practice Law states that the patient has the right to obtain a complete explanation of the medical action referred to in Article 45 paragraph (1), that is, every doctor's action

that will be performed by a doctor on a patient must receive approval. the doctor and the obligation of the patient to receive and provide complete and honest information from both the patient and the patient's family regarding their health and to the patient who must comply with all the doctor's advice and instructions and comply with all applicable provisions in health care facilities, in accordance with the provisions of the article 50 letter c and article 53 letter a, b and c of the Medical Practice Act.

A doctor who is considered negligent, even though a doctor is not considered negligent if he chooses one of the many recognized treatment methods, where the choice of medical action from the doctor has been based on professional standards such as in the case of diagnoses using scientific methods and available facilities to ensure more certainty and confidence in the diagnosis that was enforced, which later turned out to be the wrong choice. know that the medical field is a very complex field, As in a treatment effort, there is often disagreement or the same opinion about the appropriate therapy for a particular medical situation.

Forced discharge, a patient who decides to go home of his own free will even though the doctor has not allowed it, and if a full explanation has been made and it turns out that the patient and/or the patient's family agree if there is a risk that has been foreseen, then the doctor cannot be held responsible for his medical actions and matters This kind of thing also frees doctors and hospitals from lawsuits. decided to go homethis can be caused by several things such as the cost of hospitalization which is quite large or maybe from the patient or the patient's family who decide to go home because they believe that their death is near, even though if we talk about death, of course it is the secret of Allah and only the one who knows best about that.

3.2 Steps Taken To Protect Doctors In Carrying Out Their Duties.

He said that a doctor who carries out his duties must be in accordance with and based on the applicable Code of Medical Ethics, according to him the most important thing in protecting a doctor if a doctor is suspected of committing malpractice is in the mediation process, because most of the sources of disputes are the lack of communication, which where this has been stated in law no. 36 of 2009 concerning health, he continued to explain that the mediation stage is faster in resolving problems, more effective losses will be reduced in resolving disputes, what's more, we know the principle that always exists, namely the "Principle of Presumption of Innocence" until the person concerned is actually proven guilty of a court decision.

He also said that legal settlement of health care cases (litigation) often had a bad impact on health workers, because in addition to the future of these health workers already being bad, even though he was not necessarily guilty, in the future he might lose the trust of patients not to mention feelings embarrassment both yourself and your family can also be a prolonged moral burden. He added that in order for a doctor to implement the Code of Ethics properly, it must start from becoming a medical student to becoming a real doctor.

Carrying out structural, training and scientific courses that are accredited by the professional organization of the Indonesian Doctors Association (IDI) so that the medical code of ethics can be remembered by doctors, it is necessary to hold structured training/courses regarding the medical code of ethics. Doctors must be happy to always be careful in announcing or implementing new techniques or treatments that have not been tested for their validity and on matters that can cause public unrest. Requiring doctors to be able to keep abreast of developments in medical/health science and technology as referred to in the scope of article (1) is carried out by obliging every doctor to always maintain their health, so they can work properly. Provide proper legal protection, In the opinion of the author, mediation is an effort to resolve disputes against the parties by sitting together in order to produce a mutual agreement by presenting a neutral mediator who is able to bridge the dialogue between the parties in order to create an orderly dialogue process, in which the presence of a mediator will directing the parties to be more open and honest in conveying their problems.

The Mediator ensures the willingness of the parties to resolve the problem through mediation. The Mediator can reveal hidden interests which can be done in two ways, namely directly by announcing questions directly to the parties, or indirectly by hearing or reformulating the statements put forward by the parties. The mediator tries to encourage the parties not to stick to a positional mindset, but must be open and look for alternative solutions to solving problems together.

Analyzing dispute resolution options, where the mediator helps the parties determine the gains and losses if they accept or reject a settlement of the problem. The Mediator also reminds the parties to be realistic and not make unreasonable demands or offers. The Mediator also helps the parties to develop offers that can be used to test whether or not a formal agreement can be reached. agreement

which refers to the steps that will be taken by the parties to implement the agreement and end the dispute.

4. CONCLUSION

In this chapter conclusions will be presented regarding the discussion in the previous chapters, related to the discussion we can conclude that in some cases a doctor does need to get legal protection, such as from several factors that are used as the basis for the patient or from the patient's family to sue, including: who are considered unprofessional, patients or families who cannot accept the failure of a treatment effort, doctors who are blamed by patients who turn out to be caused by the patients themselves, doctors who are considered negligent, and requests for forced discharge from patients or the patient's family. doctors in the city of Makassar have received fairly good legal protection, even so the doctors on duty also often get complaints from patients or the patient's family, however, no one has yet reached the green shirt, because most of these problems can be resolved through mediation, this is also one of the efforts to protect doctors when there is an objection from the patient or the patient's family.

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