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Legal Protection of Doctors as Health Services Providers: Implementing the Balance Principle in Indonesia

Yussy Adelina Mannas[a], Efa Laela Fakhriah[b], [a]Law Faculty, Andalas University, [b]Law Faculty, Padjadjaran University, Email: [a]yussymannas@yahoo.com, [b]efalaela@yahoo.co.id

The rising number of medical dispute cases in healthcare indicates that patients are no longer passive healthcare users. Dispute cases arise due to the concept of malpractice, where medical risk is not fully understood by law enforcement. Therefore, when a post-medical emergency occurs, the patient community, through the power of media and press and other patient protection agencies, lean to malpractice and sue the doctors and hospital. Such malpractices are not rectified by law enforcement agencies, who put aside material evidence and aspects of medical risks during a trial, in pursuit of the public sense of justice. MKDKI is authorized to determine whether there is a mistake in the application of medical discipline. But it too fails to stop these malpractices. This study aimed to determine the applicable legal protection to doctors, based on the Pancasila legal system in Indonesia. It claims that as a legal party, both doctors and patients should have equal legal protection which for doctors is guaranteed by law. The research method used was normative juridical. It employed secondary data through a literature study technique, and used a conceptual approach to further analyse qualitative descriptive data. The results of research indicate the necessity of applying a balance principle, to ensure legal protection for doctors in several respects: communication patterns, agreements, medical audits, their position, and dispute resolution. The involvement of MKDKI in a medical dispute must be a necessity, not an option, for the creation of legal protection and to promote justice.

Key words: *Indonesia, MKDKI, Legal Protection, Doctor, Balance Principle.*

Introduction

The right to health in Indonesia is affirmed in Article 28H, Paragraph (1) of the 1945 Constitution. It states that every person has the right to live a safe and prosperous life, with a focus on wellbeing and a healthy living environment, and with entitlement to health services. As a condition of its implementation, Article 28H also contained the explanation of Law Number 36, of 2009 on Health (hereinafter referred to as the Health Act). Indonesia thus recognises that health is a Human Right, and one of the elements of welfare that must be realised in accordance with the ideals of the Indonesian nation, as intended in Pancasila and the 1945 Constitution (Eka, 2012).

The profession most closely related to healthcare is that of a medical doctor. The profession of a medical doctor must be practised with the highest moral code, because a doctor must always be ready to provide medical aid to people in need. Medical science has continued to grow and develop, and therefore a relative benefit for society depends on the foundation of philosophy and idealism. When this noble ethical foundation required in the medical world is absent, it can lead to the performance of humanitarian duties solely on the basis of business relations (Endang, 2009).

Hospital services essentially include two components: the noble commitment of medical doctors, and running the medical profession as a business. Doctors are also hospital professionals, and form a part of hospital business. However, this dichotomy requires that a hospital, as an organisation or business, should have a committee that establishes patient safety standards, and a quality assurance reporting system to prevent the occurrence of unexpected events. This would entail that a doctor should also at some time be partially responsible for medical services, while the hospital prioritises patient safety in the presence of standards established by the hospital committee. Not infrequently, patient losses arise not because of a doctor's error but because of inadequate facilities, or human resources such as nurses who are not qualified. The use of non-calibrated medical devices is also likely to harm patients. Thus, patient safety standards are implicit in many aspects of hospital organisation.

Doctors used to be blamed for medical malpractices, and hospitals denied any allegations as to medical risks. Unexpected events occur not because of negligence or a mistake, but due to events that can be prevented. Therefore, in the development of global health law there is the issue of patient safety. Communication is needed, not only with patients, but also with doctors and other supporting health personnel and the hospital. Essentially medical services are seen as a series of actions, ranging from pre-medical action, to medical action and post-medical action. However, when an unexpected event occurs, and if patients or their family do not have good communication with the doctor or hospital, it should result in immediate

discharge of the patient from the hospital. Due to the lack of communication, the extent of the doctor's responsibility in the occurrence of such unexpected event cannot be determined.

To respect the rights of patients, doctors should fulfil their legal and professional ethics and be true to their profession. Doctors should provide services to patients in accordance with service standards, safety standards and patient safety. They should strive, to the maximum extent possible, to comply with the above standards and adopt all kinds of preventative measures to stop any malpractice. Likewise, patients are entitled to receive any information related to their health, treatment pattern and received health services. Doctors who practice in accordance with the above standards are entitled to legal protection, in the event of any medical risks during the discharge of their duties. This is affirmed in Article 50 of Medical Practice Law, Article 27 of Health Law and Article 75 of Law Number 36 Year 2014 on Health Personnel.

During the last few years, lawsuits have been issued from a few patients who have felt disadvantaged, and therefore claimed damages as a result of mistakes by doctors or health workers in carrying out their work. These cases have been tried in court and received a spotlight from health and legal professions (Agus and Gwendolyn, 2010). A few cases were even tried at the District Court but the doctors were acquitted. However, that was not so in the Supreme Court which actually found doctors guilty of malpractice and sentenced them suitably.

Cases of malpractice and negligence (errors in the medical profession) are often aired in the media excessively. This increases doubt and suspicion in the minds of the general public. They assume that the noble profession of medical doctors has degraded morally; hence doctors are generally untrustworthy. As a result, doctors are often considered irresponsible in carrying out their professional duties, and criticised as if earning money was their only aim. It is also assumed that medical errors occur because doctors are not careful in carrying out their professional requirements (Samsi, 2005). Frankly, however, no doctors would intend to harm their patients deliberately because it is a profession that upholds moral values and ethics in carrying out its duties, it is even regarded as a noble profession (*officium nobile*) as helper and saviour for mankind affected by disease (Eka, 2012). But many factors affect the medical profession. Among others are the increasing number of patients, distances between two places where they may practice, and above all, the bodily fatigue that they feel being human themselves. Owing to these factors, doctors sometimes make mistakes (Ari dan Machli, 2016).

When a case of malpractice goes to court, it is not easy for either the prosecutor or patient to prove either the mistakes committed by a doctor, or that their consequences harmed the patient. The evidence of a doctor's error involves two disciplines, law and medicine. The law

positively affirms that doctors obtain legal protection throughout their duties, in accordance with professional standards and standard operating procedures. To prove a mistake in the medical profession, the prosecutor or patient must prove which part of the professional standard or standard operating procedure was violated, resulting in the specific injury or harm to the patient. This is very difficult for someone who does not have the ability to master medical science.

However, whenever any hazard happens, the evidence is guarded only by the Criminal Justice Act (hereinafter referred to as the Criminal Code). It sometimes excludes the possibility of medical risk in the healing effort, caused by the lack of understanding of law enforcement officials against medical risk factors. In addition to the medical risks, a negative effect on the patient may also occur due to an unexpected event not attributable to the doctor's fault, such as inadequate facilities or unskilled and unqualified human resources including nurses and other technicians. Due to such incidents, there now exists a provision of legal protection in various state laws relating to the conduct of medical practices. Thus, a law enforcement process will be required in the event of any mishap, with the principle of balance offering a legal protection for the doctor. Such a principle and its application accord with the living values of the Indonesian nation, the Pancasila.

Hence, a study was required to examine the extent of legal protection available to doctors. This paper examines medical services in health care not as an isolated activity, but as a part of a complete series of services. There is also the use of artificial intelligence and technological products for diagnostic and therapeutic purposes. Mishaps can occur at any level and due to any factor. Doctors must be able to enjoy their autonomous rights and privileges. Any act of negligence resulting in medical risks and hazard is an unexpected event which may not be due to the doctor's mistake. But when such an event occurs, the doctor must have the right to obtain legal protection. This paper’s statement of problem is that it is , to examine the extent to which appropriate legal protection is available for medical doctors, based on the application of the principle of balance in the health services of Indonesia.

Methods

The method used in this research was normative legal research. It focused extensively on secondary data, on the use of legal materials primary, secondary and tertiary, and on legal principles and legal norms in force. Field research was also conducted to obtain primary data to support the secondary data. The interview technique was used as the data collection method, with a qualitative method of data analysis and data processing.

Result and Discussion

The application of the principle of balance in the legal protection against a doctor is highly related to the rights and obligations embedded in the medical profession. Essentially, a doctor's responsibility is to be true to professional rights and obligations. Both rights and duties of a professional define a doctor's capacity as a legal subject, and provide the doctor with justice in society, while interacting with fellow human beings or people's relations with their country. These values of justice also have a foundation in the values contained in Pancasila. Regarding the application of the principle of balance, it can be achieved only if the legal protection begins at the stage of agreement between the doctor and patient. Thus, the concept of legal protection promoting this principle of balance has several aspects.

First, the pattern of communication between a doctor and a patient is highly significant. In the doctor-patient relationship, the communication pattern must be active-passive, guidance-cooperation, and mutual participation. Such mutual relationship-based participation results in a respect for the rights and obligations of both parties, i.e., doctors and patients. With this pattern of relationships, while the patient provides the information needed by the doctor to determine the best form of treatment, the doctors also respect the patient's right, by providing true, clear and complete information about his disease.

Second, the terms of therapeutic transaction or agreement between the patient and the doctor must also be given due importance. There must be the informed consent as such an agreement gives rise to the attachment between two sides (Veronica, 2002). Furthermore, informed consent is also based on ethical and moral principles, and patient autonomy. This principle contains two important features, namely; everyone has the right to decide freely to choose a case using an adequate understanding, and the decision should be made in a state that allows a choice without any interference or coercion from others. Because the individual is autonomous, it is necessary to provide enough information to enable the patient to consider all consequences of the medical treatment, and act accordingly. It is this principle that ethnologists call informed consent (Veronica, 2002).

It is necessary to increase awareness about the availability of doctor protections in the law relating to health services. This includes making them aware about their code of conduct determining how to perform duties in accordance with applicable professional standards. One of these professional standards is the implementation of informed consent and access to medical records. Conversely, legal awareness for the patient is required to meet the anticipation of a law guaranteeing their interests, without sacrificing certain professional standards with regard to the principle of proportional dynamic legal developments. Besides, the fulfillment of human rights is the main basis of the procurement of informed consent, in the framework of health services for humanity, and aims to protect patients from all medical

action and protection of health workers; protecting doctors especially against the occurrence of unexpected consequences and potential harm (Ezwandra, 2011).

Third, medical audits should also be carried out by a Medical Committee of the hospital, to avoid recurrent but unexpected events. One of the conditions related to hospital management is the conduct of medical audits. A medical audit is a professional evaluation of the quality of medical services provided to patients. It uses medical records of activities carried out by medical professionals including doctors, nurses etc. It also serves as a tool for hospital organisation, to evaluate what corrective action should be taken against the doctor or nurses, in the event of negligence or a mishap. It may be to provide warning or advice, to show how to resolve problems related to certain medical issues, or to suggest a therapy to specific patients (Hermin, 1998). In the event of an unexpected circumstance, medical auditing is also a method for evaluating the extent to which physicians are involved in harming the patient. It is expected that such audits can prevent doctors from blame for the loss or mishap.

Fourth, the ‘balance’ legal protection should also attend to the doctor's status or position. Since the law mandates legal protection for each party in any profession, the doctors' profession cannot remain excluded from such jurisprudence. The medical profession too is given immunity or protection by the law. Legal protection is however given only to doctors who perform their duties professionally. Moreover, medical offences cannot be equated with common criminal acts; hence the law enforcement officers who process medical crime should have a deeper understanding of this fact. There is adequate provision in medical jurisprudence to educate law enforcement officials about how to prove a medical error when it occurs.

For instance, a permanent physical disability or death of a patient need not have been due to a medical error. It is just an occurrence which in the medical field is known as a medical risk. Hence, it is important to differentiate between a medical risk and a medical error. Doctors who would be sanctioned under law have been proved to have made mistakes. But as a subject of law, doctors have equal standing in accordance with the principle of equality before the law. Therefore, a doctor legally proven guilty can be sued on criminal, civil or administrative grounds. However, it should not be forgotten that doctors have an obligation to be careful in carrying out their work, and to follow service standards, medical profession standards and standard operating procedures, to meet the patient's rights. The fulfillment of the rights of patients is one way of giving legal protection to them as stated in the law.

Fifth, the legal protection based on the principle of balance should also consider the pattern of dispute settlement, particularly if the dispute is about a therapeutic relationship. For instance, if a patient feels aggrieved by a doctor acting in the medical service of that doctor, the patient can complain to the doctor in accordance with that perception (the doctor is not necessarily

wrong). If it is doubted that the doctor has committed a mistake or violated unethical procedures, the doctor could be prosecuted in criminal and civil courts or referred to the Indonesian Medical Disciplinary Council (MKDKI) or Indonesian Doctors Association (IDI). The patient has a right to sue the doctor if the doctor's behaviour or acts are found detrimental to the criminal sphere specified in Article 66 Paragraph (3) of the Medical Practice Act. This Act does not terminate a MKDKI complaint but examines it within the civil or criminal realm. The party entitled to submit this report or complaint follows Article 108 of the Criminal Procedure Code. A civil complaint may be filed by the patient to court, on the basis of a loss suffered, or on the basis of a fault or a mistake (Article 1239 Civil Code) or unlawful acts (Articles 1365, 1366 and 1367 Civil Code) in the form of a liability (Innaka, 2010). Patients may also send a report against a doctor (or doctors) to MKDKI or to MKDKP (Honorary Council of Medical Disciplinary province for those already established by IMC under MKDKI) (Article 27, Paragraph (2) of the Law Practice Medicine). In addition to the patient reporting to MKDKI, the doctor can also counter-complain to MKDKI about the patient alleging malpractice against the doctor, to prove and examine the doctor's case in self-defence, in particular that the doctor did not violate any professional standard.

In such a situation, the choice of dispute resolution submitted to MKDKI is left entirely to the injured patient, to choose either mediation or litigation. It is important that the MKDKI have enough authority to determine whether a doctor made a mistake in the application of medical standards. Such problems occur because the doctor fails to get legal protection. Such refutations in the medical profession are generally solved by articles of criminal laws in the Criminal Code which ignore the possibility of medical risks. Law enforcement officers, at the level of both police and prosecutor, as well as at the patients' side, find it difficult to prove the doctor erred in the light of medical science. As a result, the proof of the doctor's guilt is only done on the basis of the resulting losses, and not considering negative consequences as the cause. In fact, this is what distinguishes a medical criminal offence from a criminal act.

Based on these descriptions, we need a renewal of law in society; particularly a review of the MKDKI provisions pertaining to the medical dispute resolution mechanism. It is important that the guilt of doctors must be proven in the light of medical discipline, and not arbitrarily as is the case now. It is also necessary in terms of providing the right to obtain legal protection by the state, to the doctor. Since a legal state is based on Pancasila, which prioritises deliberation for consensus, the first method of dispute resolution should be done through a deliberation. Deliberation should be initiated by all the parties involved in the medical dispute, namely patients and doctors, including the hospital (e.g. the Hospital Director) if the medical dispute occurred in a hospital. The dispute settlement by deliberation is expected to reach an agreement for both parties. The dispute settlement through out-of-court mediation may also be applicable if the problem requires efficiency, secrecy, or non-formalistic events and requires a more pressing settlement of justice (Soetrisno, 2010).

Conclusion

The medical profession being a noble one, legal protection to doctors should be guaranteed as they are providers of priority services for patient safety. The hospital as a health institution comes next in guaranteeing patient safety standards, and to avoid any incident. However, if an incident happens, it should not always be termed a fault of the doctor. In such cases, the application of the principle of balance should be adopted to provide legal protection to the doctor. Such a legal protection should be made available from the pre-stage of a medical action up to the medical dispute resolution, with a translation. These stages require first, communication with the patients by applying mutual participation patterns; second, agreement in therapeutic transactions namely the implementation of informed consent, because this is responsible for the approval of the attachment between the two parties. Third, there is a need to implement a medical audit by the Medical Committee of the hospital, to avoid the recurrence of unexpected events. Fourth, the position of the doctor should be seen as a legal subject. Doctors should have equal standing before the law in accordance with the principle of equality before the law, so that if a doctor is legally proven guilty, the doctor can be sued, for criminal, civil or administrative matters. Fifth, in terms of dispute resolution, either by mediation or litigation, MKDKI as a disciplinary law enforcement agency must be involved for a refutation in breach professional standards and standard operating procedures. It should not be seen as an option, but a necessity.

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