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The Legal Policy of Doctors' Responsibilities in Hospitals in the Indonesian Legal System

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ABSTRACT

Health services are a primary need for the community. The medical profession in this case occupies the main position in providing health services for the community. Therefore, it is necessary to have good responsibility and competence for a doctor in providing services to the community. This study uses a qualitative method with a literature approach and a legal approach. The results of the study state that a doctor in carrying out his duties and profession is guaranteed and protected by laws and regulations, in addition to having competence and scientific quality in the medical field.

Keywords: Doctor; Patient; Health services.

1. INTRODUCTION

Hospitals are part of health resources that are very important in helping the implementation of health efforts. The implementation of health services in hospitals is characterized by very complex characteristics and organizational structures. Various types of health workers and their scientific instruments interact with each other. Medical science and technology that is developing rapidly requires health workers to follow it in order to provide quality services, making hospital problems more complex.

Health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation (Komaruddin & Tjumpamah, 2000). Therefore, every activity and effort to improve the health status of the community to the highest level is carried out based on the principles of non-discrimination, participation, protection, and sustainability which are very important for the formation of Indonesian human resources.

Doctors and patients are two related legal subjects in Medical Law. The two form both a medical and a legal relationship. The medical relationship and the legal relationship between doctor and patient is a relationship whose object is health care in general and health services in particular.

A doctor in carrying out his duties must actively communicate well with his patients, and make brilliant medical decisions and have carried out standard diagnostic and therapeutic measures, all of which are recorded in a good medical record. A good medical record is a medical record that contains all the required information, whether obtained from the patient, the doctor's thoughts, examinations and actions of the doctor, communication between medical/health personnel, informed consent, and others, as well as other information. These medical records that can be evidence at a later date are arranged in chronological order. Medical records can be used as a means of proving the existence of medical negligence, but can also be used to prove that the entire process of handling and medical actions carried out by doctors and other health workers is in accordance with professional standards and standard operating procedures or means that the medical negligence did not occur.

Therefore, it is necessary to analyze in depth related to the responsibility of doctors in handling patients in hospitals as regulated in the laws and regulations in Indonesia. In this case the author focuses the discussion on two questions, namely; What are the rights and responsibilities of doctors in hospitals? What are the responsibilities of doctors to patients in the legislation?

2. METHODS

This research is a qualitative research in the type of normative juridical method, with the object of study of legal doctrines related to the value of justice in a country more specifically (Yunus; Anggraeni; Rezki, 2019), includes the value of justice in ideology as well as its guarantee in the legislation (Rawls, 2019). This study uses library research techniques. This study uses data sourced from literature searches, text books, newspapers, legal magazines, laws and regulations, jurisprudence, and so on that have relevance to the theme of the discussion.

3. RESULTS AND DISCUSSION

1. Rights and Responsibilities in Health Practice: The rights and obligations of a person and are attached to the duties and authorities that exist in a person. Duties and authority are not only defined in relation to the work environment in an institution, but can also be interpreted as existing and inherent in a person as a creature created by God (Mukri; Aji; Yunus, (2017)). In terms of the profession that applies to doctors, rights are guidelines for the fulfillment of achievements or services that have been carried out in accordance with the duties and authorities given by an institution for work based on their profession. Doctors in carrying out their duties and authorities obtain the same legal protection as other citizens, provide services and obtain complete and honest information from patients.

In dealing with such a situation, the patient is expected to be able to find his identity with whom he will deal with so that there is no doubt for the patient to tell all the symptoms of the disease he is suffering from to a trusted person. In this case, the doctor will help cure the patient's illness. Regarding medical malpractice, doctors cannot demand fulfillment of achievements, as long as the doctor is proven to have taken actions that are contrary to professional standards in providing medical services, ethically, and of course the law. However, if on the other hand the doctor is not proven to have committed medical malpractice against the patient for whom he is responsible, then the doctor can make a claim to claim rights as regulated in the applicable legislation.

As with the provisions of Article 50 of Law Number 29 of the Year of Medical Practice, it is stated that "doctors or dentists in carrying out medical practice have rights" among others are:

1. Obtain legal protection as long as carrying out duties in accordance with professional standards and standard operating procedures;
2. Provide medical services according to professional standards and standard operating procedures;
3. Obtain complete and honest information from patients or their families;
4. Receiving rewards.

Doctors' rights, as affirmed in the provisions of Article 50 of Law Number 29 of 2004, may not be enforced if doctors fail to comply with professional standards while carrying out their professional duties, particularly the right to obtain legal protection, as described in the types of doctor's rights related to therapeutic agreements as follows (Komalasari, 2019):

- a. The right to patient information regarding complaints suffered.
- b. The right to remuneration or honorarium.
- c. The right to end the relationship with the patient, if the patient does not comply with the advice he is given.
- d. The right to good faith from the patient in the implementation of therapeutic transactions.
- e. Right to privacy.

In simple terms it can be said that the right is the authority to do and not to do. However, in relation to medical services, doctors' actions must be reasonable and measured in accordance with professional standards to avoid abuse of rights for doctors, rights are always paired with obligations so that obligations are often said to be a burden or task that must be carried out. In essence, rights and obligations are a demand from the authority attached to a person, which demands on the one hand the fulfillment of achievement, and on the other hand the demands of achievement. With regard to rights, H.J.J. Leenen stated that (Macmud, 2008):

Humans have two kinds of human rights, namely human rights and individual rights. The boundary between the two is somewhat blurred, so a different rationale is needed. This is because individual human rights have a social aspect. This means that the two categories of human rights in fact reveal the

individual and social dimensions of the existence or existence of something. The human right to health care is one of the social human rights."

Regarding the issue of human rights, PurnadiPurbacaraka argues that human rights are a set of principles that arise from values(Macmud, 2008).

These human rights can basically be distinguished between positive human rights and negative human rights. PurnadiPurbacara further stated, "Positive human rights contain basic authority that must be fully guaranteed, while negative human rights are a set of human rights that must be protected against all kinds of disturbances that come from outside the person concerned(Macmud, 2008)."

The provisions in Law Number 36 of 2009 do not limitatively regulate the rights of doctors related to their duties and authorities in carrying out their profession, but these rights have been reflected implicitly in the provisions which in Articles 4 to 8, have described the rights of a doctor as the basis for making demands if these rights are violated by other parties, for the other party's achievements are not fulfilled. From this right then arises an authority from the party who feels aggrieved to demand fulfillment of achievements through various available legal means.

Law regulates the relationship between people, both individuals and individuals, individuals with society and society with other communities. Thus from this relationship arises power and authority called subjective. Subjective law is an active aspect of legal relations, therefore rights often do not include only one authority but sometimes constitute a collection of rights and or authorities. Subjective rights are rights granted by objective rights, where objective rights are the rules that govern a social relationship.

Historically, the regulation of rights has received attention since the 19th century in Germany with the introduction of two theories about rights as quoted by R. Soeroso as follows(Soeroso, 2005):

- a. The theory that considers rights as protected interests (belangenTheorie) by Rudolf Von Jhering. According to this theoretical view, rights are something that is important to the person concerned, which is protected by law. The theory in its statement can confuse rights with interests, and it must be recognized that rights in principle protect interests.
- b. The theory that considers rights as wills equipped with power (wilsmacht theory) by Bernhard Windscheid. This theory holds that the right is a will that is equipped with the power that the legal order gives to the person concerned. Based on that will, the person concerned can have something.

Van Apeldoorn gives the following formulation of rights:

Right is a force (macht) governed by law, and this power is based on morality (morals) and not only physical strength. Furthermore, Apeldoorn stated that what is called a right is a law that is related to a certain human or legal subject. Thus, power becomes power until finally a right arises when it starts to move(Soeroso, 2005).

Utrecht states that rights are not powers. Rights are a way to gain power, but rights themselves are not power(Soeroso, 2005). Another view of rights related to permits was also put forward by Lemaire where he argued that rights are something with permission. Permission is concerned to do something, but this permission is not based on law but is parallel or equal to the law. Law in the form of orders/prohibitions or permits. Rights are laws in the form of permits(Soeroso, 2005).

Lemaire's view is relevant to the relationship between doctors and patients related to medical service actions, because without permission or consent from the patient, the doctor cannot carry out an action in the form of treatment or care for a patient who is suffering from an illness. The absence of permission as required in the view above to perform a medical action is part of medical malpractice. Contrary to Lemaire's opinion, Utrecht precisely stated that this permission was granted to the person concerned by the order, not because rights are subordinate to the legal order(Soeroso, 2005).

Law Number 29 of 2004 concerning Medical Practice in the description of Article 51 states that doctors and dentists in carrying out medical practice are obliged to(Isfandyarie, 2006):

1. Provide medical services in accordance with professional standards and standard operating procedures, as well as the medical needs of patients;
2. Refer the patient to another doctor or dentist who has better skills or abilities, if unable to perform an examination or treatment;
3. Keep everything that is known about the patient, even after the patient's death;

4. Carry out emergency assistance on a humanitarian basis, unless it is certain that someone else is on duty and capable of doing it;
5. Increase knowledge and follow the development of medical science or dentistry.

Furthermore, from the description of the article above, an outline can be drawn that the duty of a doctor is none other than providing assistance to patients in need, in this case requiring medical treatment services. In principle, both personally and institutionally, both on behalf of individuals and professions, everyone is obliged to provide assistance to anyone, including a patient, especially for health care providers. In accordance with his oath, doctors have an obligation and a high moral burden to provide help to people in need, in this case patients.

In relation to the above, Hippocrates has reminded that medical science is a combination of knowledge and art (science and art), which must be formulated in such a way as to produce a diagnosis that is close to the truth (Notoatmodjo, 2011). Obligations in health services by medical personnel, including doctors as a form of implementation of health services which characterize various aspects, as stated by van der Mijl quoted by Komalasari that the main characteristics of health services are as follows (Komalasari, 2019):

- a. Everyone who asks for professional help, is generally in a position of dependence, meaning that he must receive a certain kind of help with a view to achieving a specific goal. For example, to improve one's health, someone will ask for help from a doctor, it is different if someone has the desire to make a lawsuit, then he must see a lawyer. If the purpose of the person is to make a will, then he must ask for help from a notary to state his will.
- b. Everyone who asks for help from a person who has a confidential profession in general cannot judge that professional skill. The relationship between the person asking for help and the person providing help is confidential. In the sense that the first party is willing to provide information that will not be disclosed to others, and the profession must be able to maintain such confidentiality.
- c. Everyone who runs a profession that is confidential, almost always holds an independent position (free), even if he practices privately. So in such cases, there is professional autonomy and only a few possibilities for the employer to take corrective action.
- d. The nature of this work also has the consequence that the results cannot always be guaranteed, but there is only an obligation to do one's best. That obligation is not easy to test. According to the opinion of Hendrosono Soewono who has concluded the van der Mijl view that (Komalasari, 2019):
 - 1) There is a dependency factor between the two parties, the patient as the recipient of the service and the doctor as the service provider who is professionally expected to be able to treat himself;
 - 2) On the basis of the patient's belief that the doctor has knowledge that can cure his illness, the patient confidently surrenders and surrenders himself to be treated for the sake of healing his illness;
 - 3) The main condition for getting good results in treating is the patient's trust in the doctor who treats him.

In terms of professional ethics regarding the obligations of doctors to patients, it has been formulated in the Code of Medical Ethics (KODEKI) based on the Decree of the Executive Board of the Indonesian Doctors Association (IDI) Number 111/PB/A.4/02/2013, as stated in the following articles: summarized among other things is that Article 14: "A doctor is obliged to be sincere and use all his knowledge and skills for the benefit of the patient, which when he is unable to carry out an examination or treatment with the patient's consent, he is obliged to refer the patient to a doctor who has the expertise for that."

Decree of the Executive Board of the Indonesian Doctors Association (IDI) Number 111/PB/A.4/02/2013 in Article 15 that "Every doctor is obliged to provide opportunities for his patients so that they can always interact with their families and advisors, including in worship and or solving personal problems." In Article 16 states that "Every doctor is obliged to keep everything he knows about a patient, even after the patient dies." So, in Article 17 that "Every doctor is obliged to provide emergency assistance as a form of humanitarian duty, unless he believes that someone else is willing and able to provide it."

The Rights and Obligations of Patients in Law Number 36 Year 2009 concerning Health regulates the rights for everyone, including patients, the provisions of which include Article 4 to Article 8 as follows:

1. Article 4 states that everyone has the right to health.
2. In Article 5 Paragraph (1) that everyone has the same rights in obtaining access to resources in the health sector. Paragraph (2) Everyone has the right to obtain safe, quality, and affordable health

services. Paragraph (3): Everyone has the right to independently and responsibly determine the health services needed for themselves.

3. Article 6 Everyone gets a healthy environment for the achievement of health status.
4. In Article 7, everyone has the right to receive information and education about health in a balanced and responsible manner.
5. Article 8 Everyone has the right to obtain information about his/her health data including actions and treatments that have been or will be received from health workers.

The above patient rights are reaffirmed in Law Number 29 of 2004 concerning Medical Practice and the elaboration of patient rights contained in Article 52, among others:

- a. The right to live, over one's own body, and the right to die a natural death.
- b. The right to obtain an explanation of humane medicine in accordance with the standards of the medical profession.
- c. The right to get an explanation about the diagnosis and therapy from the doctor who treats him to refuse the diagnostic procedure and from the doctor who treats him.
- d. The right to refuse planned diagnostic and therapeutic procedures may even withdraw from the therapeutic contract.
- e. The right to obtain an explanation about the medical research that will be followed and to refuse or accept his participation in the medical research.
- f. The right to be referred to a specialist if necessary, and returned to the referring doctor after completion of consultation or treatment for treatment or follow-up.
- g. The right to confidentiality or private medical records.
- h. The right to obtain an explanation of hospital regulations.
- i. The right to have contact with family, counselors or clergy, and others as needed during hospitalization.
- j. The right to obtain an explanation regarding the details of hospitalization costs, drugs, laboratory examinations, X-ray examinations, ultrasonography, (USG), CT-Scans, Magnetic Imaging (MRI), including room fees, operating rooms, delivery rooms and doctor's fees.

In relation to this right, doctors in carrying out their profession, in which each profession is obliged to keep the information obtained from their clients confidential. This client information that must be kept confidential is a job secret that must be guarded and upheld by professionals. As a medical secret, doctors are obliged to keep information about the patient's illness confidential, both information submitted directly or that has been recorded in the medical record which contains everything related to the disease(Ilyas,2014).

This provision is reaffirmed by Law Number 29 of 2004 concerning Medical Practice in the provisions of Article 48 which states that:

- Paragraph (1) Every doctor or dentist in carrying out medical practice is obliged to keep medical secrets.
- Paragraph (2) Medical secrets can be read only for the benefit of the patient's health, to fulfill the request of law enforcement officials in the context of law enforcement, the patient's own request, or based on the provisions of the legislation.
- Paragraph (3) Further provisions regarding medical secrets shall be regulated by a Ministerial Regulation.

The patient's rights are protected in accordance with the provisions of Article 322 of the Criminal Code which states that:

Paragraph (1) Whoever deliberately discloses a secret which he must keep because of his current or former position or occupation, is threatened with a maximum imprisonment of nine months or a maximum fine of nine thousand rupiahs.

Paragraph (2) If a crime is committed against a person, the act can be prosecuted only on the complaint of that person.

Patient rights related to medical services are also regulated in the provisions of international law in Article 25 of the Universal Declaration of Human Rights, namely(Prasetyawati, 2011):

1. Everyone has the right to a standard of living that is adequate for the health and well-being of himself and his family, including food, clothing, shelter, and health services and other social services that are absolutely necessary. These rights include the right to benefits in the event of unemployment, illness, disability, loss of a marriage partner due to death, old age or loss of livelihood, caused by circumstances beyond the will of the person concerned.
2. Mother and child outside the will of the person concerned. All children, legal and illegitimate, enjoy the same social protection.

The right of procreation or the right not to be hindered or lost to obtain children, in certain cases, in certain communities is not a fundamental right, because this right is not essentially the right to have children, so that this right cannot be forced on other parties. Thus, this right is the right of individual freedom concerning vertical work power in the form of protection of the authorities, as well as horizontal work power, namely the protection of third parties, in this case doctors as service providers in health services, especially those related to the implementation of medical actions.

2. Responsibilities of the Doctor's Profession: In essence, any position will always have authority and power attached, therefore every power in carrying out duties in a position also has responsibilities. Doctors as developers of professional duties in various aspects related to medical services, always and often are faced with demands for fulfilling responsibilities, both legally and related to the medical code of ethics. The above is in line with the considerations of Law Number 29 Year 2004 letter c which states that(Sutarno, 2014):

The implementation of medical practice which is the core of various activities in the implementation of health efforts must be carried out by dentists who have high ethics and morals, expertise and authority whose quality must be continuously improved through continuous education and training, certification, registration, licensing, and guidance, supervision, and monitoring so that the implementation of medical practice is in accordance with the development of science and technology.

A doctor in his position as a service seller, in the sense of being a business actor, will deal with patients as consumers who need the services of the doctor, such conditions are reciprocally mutualistic symbiosis, as the meaning contained in Article 1 paragraph (1) of Law No. 8 of 1999 concerning Consumer Protection that service consumers are as regulated in Article 1 paragraph (2), namely final consumers, HeriyaniSafitri asserts that(Safitri, 2005):

“As consumers in health services, they can be categorized as final consumers, because patients are not part of the production. The consumeristic nature of health services can be seen from the shift in the paradigm of health care, from what was originally a social one to a commercial one where patients incur high costs for their health efforts.”

Komalasari concluded that the nature of the profession is a call to life to devote oneself to humanity based on education which must be carried out with serious intentions and full responsibility. Responsibility is always related to the implementation of the obligations of the duties and authorities given or charged to someone(Komalasari, 2019).There are several characteristics of the profession as stated by Anny Isfandyarie as follows(Komalasari, 2019):

- a. Professional Doctor is a highly positioned job of experts who are skilled in applying knowledge systematically.
- b. Doctors who have exclusive competence in certain knowledge and skills.
- c. Doctors based on intensive education and specific disciplines
- d. Have the responsibility to develop knowledge and skills, and maintain honor.
- e. Have their own ethics as a guide for assessing their work.
- f. Tend to ignore control from society or individuals.
- g. Its implementation is influenced by the community, certain interest groups, and professional organizations, especially in terms of recognition of their independence.

Another view related to the special characteristics of the profession, put forward by Parson quoted by Komalasari that the special characteristics of a profession are as follows(Komalasari, 2019):

- a. Disinterestedness, meaning that it does not refer to self-interest. This value must be used as a normative benchmark for professional bearers.
- b. Rationality, which means making an effort to find the best based on considerations that can be justified scientifically. The embodiment of the professional work system is carried out based on rationality which is one of the dominant characteristics of science.
- c. Functional specificity, namely professionals have authority (authority) in society with a distinctive sociological structure that is centered on superior technical competence, which is only owned by the bearer of the profession concerned. Therefore, a professional is considered a person who has authority only in his field.
- d. Universality, namely the basis of decision making is not based on "who" or personal benefits that can be obtained by decision makers, but based on "what" is the problem.

The description shows that as professional developers, doctors are people who have expertise and skills in medical science who are independently able to meet the needs of people who need services. As a person who has scientific independence, the doctor must be able to decide for himself the actions that must be taken in carrying out his profession, especially in terms of carrying out medical actions against his patients, and his actions must be objectively accountable for the professionalism of the services performed by the debtor.

3. Physician Competencies in Health Practice: Doctors in carrying out their duties must have confidence in patients that patients need professional services that must be carried out with sincerity and responsibility. Therefore, doctors must have good competence, have experience in health practice and trusted medical professional education. So then a doctor can be charged with trust and responsibility in serving patients.

Related to the responsibilities of the medical profession, Heriyani describes what things a doctor must have as self-competence in carrying out their professional duties. These self-competencies are as follows(Safitri, 2005);

First; Education, experience and other qualifications. In carrying out professional duties, a doctor must have a degree of education that is in accordance with his field of expertise. Medical services provided to patients must be based on the knowledge gained during education, both education as general practitioners and specialists, as well as their experience in helping patients. In addition, Article 28 (1) of Law Number 29 of 2004 concerning Medical Practice requires every dentist/dentist to always attend continuous medical education and training in order to absorb the development of Medical Science and Technology or Dentistry (Iptekdok).

Second; Degree of treatment risk. Doctors should try to minimize the risk of treatment by minimizing the side effects of treatment. In addition, the degree of risk of treatment must be notified to the patient and his family so that the patient can choose an alternative treatment for himself.

Third; Maintenance equipment. Doctors must understand the use of treatment equipment in order to obtain accurate results and the examinations carried out if external examinations are not able to give the expected results.

4. CONCLUSIONS

From the discussion above, it can be concluded that a doctor in carrying out medical services in a hospital must receive legal protection as regulated in legislation. In addition, a doctor must have full responsibility for patients in good faith to help patients on humanitarian grounds.

In carrying out his profession, a doctor must have self-competence and qualifications such as having education, experience, and other qualifications; must be able to minimize the risk of treatment by minimizing the side effects of the treatment carried out; must be able to understand the use of medical treatment tools as a form of effort to obtain the best and accurate results.

REFERENCES:

1. D. Veronika Komalasari, 2019. *Hukum dan Etika dalam Praktek Dokter* (Jakarta: Pustaka Sinar Harapan, 1989)
2. Muntaha, *Hukum Pidana MalaPraktek Pertanggungjawaban dan Penghapusan Pidana*, Jakarta: Sinar Grafika).
3. Heriyani Safitri, 2005. *Sengketa Medik:Alternatif Penyelesaian Perselisihan antara dokter dengan pasien*, Jakarta:Penerbit Diadit Media).
4. R. Soeroso, 2005. *Pengantar Ilmu Hukum,Cet ke-7*, Jakarta:Sinar Grafika.
5. Syahrul Macmud, 2008. *PenegakanHukumdanPerlindunganHukumbagiDokter yang didugaMelakukanMedikaMalpraktek*, (Bandung: Bandar Maju, 2008).

6. Notoatmodjo, Soekidjo. *Kesehatan Masyarakat Ilmudan Seni*, (Jakarta: PT. Rineka Cipta, 2011).
7. Anny Isfandyarie, *Tanggung Jawab dan Sanksi bagi Dokter, Buku 1*, (Jakarta: Prastasi Pustaka Publisher, 2006)
8. H. Sutarno, *Hukum Kesehatan Eutanasia Keadilandan Hukum Positif di Indonesia*, (Malang: Setara Press, 2014).
9. Hermien Hadiati Koeswadji, *Beberapa Masalah Hukum dan Medik*, (Bandung: Citra Aditya Bakti, 1992)
10. Jhon Rawls, *A Theory of Justice Teori Keadilan*, (Yogyakarta: Pustaka Pelajar, Cetakan III 2019)
11. Komaruddin dan Yooke Tjumparmah, *Kamus Istilah Karya Tulis Ilmiah*, (Jakarta: Bumi Askara, 2000)
12. Mukri, S.G.; Aji, A.M.; Yunus, N.R. (2017). Relation of Religion, Economy, and Constitution In The Structure of State Life, *STAATSRECHT: Indonesian Constitutional Law Journal*, Volume 1, No. 1.
13. Yunus, N.R.; Anggraeni, RR Dewi.; Rezki, Annissa. (2019). "The Application of Legal Policy Theory and its relationship with Rechtsidee Theory to realize Welfare State," *'Adalah*, Volume 3, No. 1.
14. Arsita Eka Prasetyawati, *Ilmu Kesehatan Masyarakat Untuk Kebidanan Holistik*, (Yogyakarta: Nuha Medika, 2011)
15. Amir Ilyas, *Pertanggung jawaban Pidana Dokter dalam Malpraktek Medik di Rumah Sakit*, Yogyakarta: Rangkang Education, 2014.