

Professional Responsibility of Doctors in a Legal Perspective on Fulfilling Patients' Health Rights during the COVID-19 Pandemic in Indonesia

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ABSTRACT

The COVID-19 pandemic began to enter Indonesia in early 2020, in this case the responsibilities and obligations of doctors are one of the concerns during the pandemic. The responsibility of medicine from a legal perspective is very diverse and implemented in various countries. In Indonesia, to realize the responsibilities, obligations and rights of the medical profession, it can be done through the fulfillment of a code of ethics that needs to be developed in various conditions. This study used a qualitative juridical research model with a review of legal texts and other supporting literature. It is hoped that this research can provide an overview of how the medical profession responds to the phenomenon of the COVID-19 pandemic in Indonesia and the future prospects for professional development and a medical code of ethics.

Keywords: doctors; responsibility; rights; obligations; code of ethics

INTRODUCTION

The COVID-19 pandemic has become a catastrophic disease outbreak that is currently hitting the world. Health workers who carry out tasks to serve COVID-19 patients have a risk of being exposed to this virus while working. Medical emergencies, medical practice, and care often pose clinical risks, human error, and indications of malpractice, which can lead to lawsuits. This increasingly worrying development is not only experienced by civil society but the fulfillment of the rights and obligations of the health profession must of course also be fulfilled. In the context of COVID-19, the health profession has an important role in handling patients so that it raises different perspectives and their development in the responsibilities, rights, and obligations of doctors during the pandemic and before the pandemic. This difference is very important to see and fulfill its use based on applicable health and medical right.

Uncertainty of the outcome of medical treatment and care can be one of the potential legal risk factors (negligence, discrimination, death due to medical errors). In the current development, the number of COVID-19 patients that continues to increase in Indonesia has made the optimization of health professions increasingly emphasized. The profession that has always been highlighted to help reduce COVID-19 cases is the profession of doctors. In its development in Indonesia, the medical profession has a code of ethics, responsibilities, obligations, and rights that are regulated by law. Legal studies

regarding the rights and obligations of the medical profession in handling COVID-19 in accordance with the context of health emergencies are one of the topics we need to study for professional development and equitable treatment between doctors and patients. This is done to avoid legal risks that arise in the future and to ensure the legal protection of the medical and health professions in providing services for patients with epidemics or disasters in the future. Therefore, it is important to analyze the need for a doctor's professional position in the responsibilities, obligations, and rights of handling the COVID-19 case that occurred in Indonesia.

The government formed a COVID-19 Task Force (*Satuan Tugas Covid-19/Satgas Covid-19*) in Indonesia based on the Presidential Decree of the Republic of Indonesia Number 7 of 2020 concerning the Task Force for the Acceleration of Handling COVID-19. Furthermore, the government responded by forming a PSBB (*Pembatasan Sosial Berskala Besar/Large-Scale Social Restriction*) policy which restricts the movement of the population to stop the spread of COVID-19 based on Government Regulation of the Republic of Indonesia Number 21 of 2020 concerning PSBB. In further developments, restrictions continue to be made to the establishment of a relaxed state in which policies are made adaptation to new habits. As of April 2021, cases of COVID-19 infection have reached positive 1,589,359 people, recovered 1,438,254 people, and died 43,073¹.

Health services that are implemented in people's lives will certainly not be separated from the role of doctors. In the minds of the people, the delivery of health services which has an important role is doctors. The doctor is considered a person who has a respectable profession because he is expanding his duties as a public health service. According to Article 1 point 2 of Law Number 29 the Year 2004, focusing to medical practice, it defines that "doctors and dentists are doctors, specialists, dentists, and dentists who have received a medical or dentistry education, both at home and abroad, which are recognized. by the Government of the Republic of Indonesia in accordance with statutory regulations."²² The Black's Law Dictionary states "physician, a practitioner of medicine's personality authorized or licensed to treat diseases, one lawful engine in the practice of medicine."²³ Doctors are the parties who have the authority, handling diagnosis and license to practice to carry out medical actions and decisions, in particular carrying out examination and treatment of a number of symptoms of disease, diagnosis, and surgical operations and are limited to being carried out according to the law in health services.

The medical profession in implementing the code of ethics and professionalism is carried out through the implementation of two main principles of behavior, namely the seriousness to give the best for the patient's recovery and there is no intention of harming the patient such as hurting, injuring, and so on. In terms of being a sense of responsibility and a manifestation of carrying out the two main principles of the profession, a doctor must respect the patient's freedom rights such as the right to be treated, treated, and handled. If the doctor does not allow the patient to do so, it is also considered negligence.⁴

Study aims to describe the position of the medical profession based on positive law in Indonesia and its relevance to legal carrying capacity in the settlement of the COVID-19 pandemic. By understanding the construction of the legal thought made in the case in Indonesia, it can be used as a basis for a number of doctors and other supporting medical personnel to find out their position and authority in their position as a means of completing health facilities to be able to synergize based on the applicable law to support the settlement of the COVID-19 pandemic.

LITERATURE REVIEW

DOCTORS AS A PROFESSIONAL GROUP

The word Profession, in general, is defined as "a vocation of occupation requiring advanced education and training involving intellectual skills, like medicine, law, theology, engineering, teaching, etc." A profession is a community group that has shared morals, ideals, and values, it is known as a moral community.⁵

A profession, in general, has characteristics or identities that differentiate it from the general population. Profession characteristics are as follows:⁶

1. Has a specialized and organized disciplinary group;
2. Professional activities or the function of performing the profession require an intellectual thought process and represent an assessment process;
3. Requires professional education to carry out the profession;
4. Serving community needs and not group interests;
5. Continuously developing knowledge that is fostered and can be tested for its validity and can be used in practice to provide services to the community;
6. Have a group identity and beliefs that are recognized by the community;
7. Have and implement a code of ethics within the profession;
8. Attract people with high intelligence and good personality, to choose this profession as a job and/or a lifelong dedication, not just as a stepping stone to finding another job.

By understanding a number of professional characteristics above, a profession can be called a profession if a permanent job in a certain field. Based on special skills is carried out responsibly, the profession has the purpose of carrying out community services and earning income from that profession⁷.

PROFESSIONAL STANDARDS AND CODE OF ETHICS FOR MEDICINE

Medical profession standard is a doctor's intention which is based on medical professional ethics. The responsibility of the profession is to determine attitudes and behaviors that can be done well⁸. The government supports independence in the implementation of the medical profession in health services. One form of support is to establish medical service standards and hospital service standards. Medical service standards are the main basis for improving the quality of medical services in Indonesia⁹. This medical service standard is a law for managing best services and operating in the health sector. The standard function of medical services is to manage medical services and prevent errors in medical staff from taking care of medical actions. Another function of maintain medical services quality as evidence. Several types of medical service standards related to the medical profession are professional standards, infrastructure standards, procedures standards, and expected results.

Medical services in Indonesia are not fixed but always change according to the needs of the specialization group, the geographic location of the economy, and science and technology development services in specialist group of the medical profession are always changing. According to the development of diseases discussed through professional meetings and scientific meetings. A doctor must be registered as a professional group and must attend professional meetings and scientific meetings. In geographically isolated areas there are limitations in medical services. The isolation of this area can also affect economic development so that local people are limited in obtaining medical services. A doctor can also perform additional examinations or treatments that are not needed to increase the cost of services. The science and technology development has also led to differences in medical service tools and methods. Some doctors have used digital tools and modern methods¹⁰. For example, the use of different digital and manual tension meters in each medical service center. Profession doctors in Indonesia have a code of ethics known as the Code of Ethics for Medicine and Dentistry Indonesia as a general guideline for behaving professionally in carrying out their profession¹¹. The Code of Medical Ethics was stipulated by the Decree of the Minister of Health of the Republic of Indonesia Number 434 / Men.Kes / SK / X / 1983 dated 28 October 1983 concerning

the enactment of the Medical Code of Ethics for Indonesian Doctors. The Indonesian people have established *Pancasila* as the *idill* foundation and the 1945 Constitution as the structural foundation. The two foundations are the philosophy of life in the nation and state, so that in all aspects of life that govern humanist relationships, including the relationship between patient and doctor.

LEGAL RELATIONSHIP BETWEEN DOCTORS AND PATIENTS

1. Agreement Relationship (Therapeutic Transactions)

Transactions are relationships formed through communication, whereas therapeutic is characterized as something that contains therapeutic elements or values. By law, therapeutic transactions are defined as a doctor-patient relationship based on medical care professionals with relevant experience or skills in relevant medical course and field study. Services were provided with based on the provision of care or assistance based on the patient's trust in medical services. Medical care consists of a number of actions performed by doctors on patients, both diagnostic and therapeutic, subject to the consent.¹²

An agreement is a momentum that certain parties promise to other parties who promise each other to implement a thing or decision. For the validity of an agreement, it must meet the requirements stipulated in Article 1320 of the Civil Code with the following element points:

- a. There is an agreement from those who bind themselves to each other;
- b. There is the ability to make an engagement;
- c. Regarding a certain matter; and
- d. Regarding something that is allowed.

The first and second elements are referred to as subjective terms because they refer directly to the person or object of the contract. If any of these subjective conditions are not met, the judge can terminate the above contract at the request of either party and to cancel the agreement if necessary¹³.

The agreement according to the contract law regulated in the Civil Code consists of two agreements types, namely¹⁴:

- a. *Innspanningsverbintenis*, namely an effort agreement, which means that both parties promise to make maximum efforts to realize what was promised;

- b. *Resultaatverbintennis*, which is an agreement that the party who promised to give a result, namely a tangible result in accordance with what was promised.

The agreement between the medical service provider (doctor) and the recipient of medical service is included the agreement for the form of *Innspanningsverbintennis* or effort agreement. In this agreement, a doctor is only obliged to perform medical services according to professional standards of medicine¹⁵.

The government determines the importance of informed consent in health care services through the Regulation of the Minister of Health of the Republic of Indonesia Number 290 / Menkes / Per / III / 2008 concerning Approval of Medical Action. Article 1 point 1 states the need for consent given by the patient or immediate family after receiving a complete explanation of the medical or dental action to be performed on the patient.

Legal communication between doctors and individuals who are sick for treatment requires certainty of medical action, but in fact, it often happens that treatment, even without the doctor's approval, if it does not harm the patient, is consciously neglected. However, if an error or negligence has been committed by a doctor as a result of the mistake causing harm or suffering to the patient, the matter will be resolved by the patient or his family in a legal manner. In this case, doctors who provide health services at both the diagnosis and treatment stages must be careful, honest, and meet professional standards¹⁶.

Relationship between doctor and patient can occur because of several basic approaches, namely¹⁷:

- a. Relationship Needs;
Patients need medical treatment, doctors need patients to be the subject of their profession. For example, a patient needs the results of a blood pressure check and treatment of his disease from a doctor.
- b. Trust Relationships;
Patients entrust all actions to doctors because they believe in their integrity and abilities. In ancient times it was known to understand doctor's paternalism, in the sense that doctors positioned themselves as the most knowledgeable of patients who were completely ignorant. This relationship is also part of the teaching

- c. Professional Relationships;
Cooperation and interaction are at the core of the medical professional (doctor) relationship with the recipient health service (patient). The relationship between service producers and buyers or recipients of health services is determined by a certain wage.
- d. Legal relationship.

The doctor-patient legal relationship makes the patient's right the doctor's duty, on the other hand, the doctor's right becomes the patient's obligation. This relationship is based on the patient's trust in his doctor so that the patient is ready to confirm medical action after receiving an explanation from the doctor. According to contract law, the above relationship status can be categorized as the pre-contact status of doctor and patient¹⁸.

Doctors must prioritize determining basic rights by patients, it aims to strengthen legal relationships in health services. Patients not only receive medical services performed by doctors but also have a legal relationship for all types of maintenance and service complaints. Because in principle, therapeutic transactions between doctors and patients rest on one of the basic human rights, namely the right to determine their own decisions¹⁹. Ethical institutions that have the function of monitoring whether there are errors and omissions in the application of medical service standards are the Medical Ethics Council (*Majelis Kehormatan Etik Kedokteran/MKEK*) and the Medical Ethics Advisory and Development Committee (*Panitia Pertimbangan dan Pembinaan Etik Kedokteran/P3EK*) from the Ministry of Health.

2. Relations Due to Law (*Zaakwerneming*)

The relation of doctor and patient is a therapeutic transaction relation and is different from the usual agreement regulated in the Civil Code. For example, the relationship between doctors and patients is that the patient is very close to the doctor's help, such as in traffic accidents, other disasters, when the patient is already in a critical condition. The emergency condition of the patient makes the doctor have to make immediate rescue efforts, if it is not possible to fulfill the approval of medical action, then the doctor is directly bound according to the law.

Article 1 point 2 of Law Number 44 of 2009 concerning hospitals in this condition is given the following meaning

“Emergency is a clinical condition of a patient that requires immediate medical action in order to save lives and prevent further disability.”

This situation does not allow a doctor to communicate with the patient to find out the patient's wishes and obtain consent. In such a situation, the doctor takes action based on voluntary representation or according to Article 1354 of the Civil Code is called *zaakwerneming*²⁰, which is a form of the legal relationship that arises not because of prior “Approval of Medical Action”, because of the compelling circumstances. Therefore, in a therapeutic transaction between a doctor and a patient, it appears that the patient's rights, on the one hand, are the responsibility of the doctor, and vice versa, the doctor's rights are the responsibility of the patient²¹.

Article 1354 of the Civil Code explains about *zaakwerneming*:

“If a person voluntarily, without receiving orders for it, represents other people's affairs, with or without that person's knowledge, then he is secretly committing himself to continue and settle the matter, so that the person representing his interests can carry out his own business. that. He bears all the obligations that must be carried out, if he is empowered by a power of attorney which is expressly stated.”

The doctor-patient relationship that occurs in circumstances that compel the consent of the parties is regulated in Article 1601 of the Civil Code. The doctor is willing to do the best in all its ability to fulfill the contents of the agreement, namely providing medical assistance, medical care, and curing a disease that is owned by the patient. Meanwhile, patients have an obligation to fulfill the rules set by the doctor, including providing compensation for services²².

Medical service standards are regulated in Permenkes Number 1438 / Menkes / Per / IX / 2010 concerning Medical Service Standards. This regulation is intended to formulate guidelines that are national in nature followed by all doctors or dentists in the implementation of medical practice. Medical Service Standards include two guidelines, namely PNPk (*Pedoman Nasional Pelayanan Kedokteran/ National guidelines for Medical Services*) and SPO (*Standar Prosedur Operasional/ Operational Service Standards*). In Article 3 paragraph (2) Permenkes Standard Medical Services it is said that PNPk is a national standard for medical services and is made by professional organizations and approved by the Minister.

RESEARCH METHODOLOGY

FRAMEWORK

The approach method used is the normative legal approach, namely research that emphasizes of law regulations, conducts a positive legal inventory related to the effectiveness of statutory regulations in the field of law²³. The normative obligations method (as known as normative juridical method) applies a research approach that is carried out by examining library materials²⁴. The source of literature regarding the hospital is the main source that is used as a reference in this study. This research, it focuses on the foundation that the medical profession must meet professional classifications that can support the realization of a sense of professional responsibility, fulfillment of obligations, and rights in carrying out the professional performance of a doctor.

RESEARCH MODEL

The research specification used is descriptive-analytical, which describes and analyzes problems based on the relevant laws and regulations²⁵. The data analysis method used in the writing of this dissertation is the qualitative normative analysis method. Normative means that the data is analyzed based on the regulations that are relevant as positive law, while qualitative is data analysis without using formulas and numbers²⁶.

DISCUSSION

RESPONSIBILITIES OF THE MEDICAL PROFESSION

The profession is a vocation requiring advanced education and training in a job that requires advanced education (expertise) and training (skills), for example, in general, there are three professions, namely law, medical, and government.²⁷ To become doctors need high expertise that can be obtained from the formal education level.

Civil legal liability arises because of the existence of a legal relationship between a doctor and a patient, this relationship is called a therapeutic agreement or transaction. If there is a dispute, the disputing is between individuals or individuals, then the patient or family can file a lawsuit against the doctor who has defaulted or acted against the law to the Court. In contrast to the case of criminal law liability, where law enforcement is carried out by

authorized law enforcement officials. Investigations and investigations are carried out by the Police or Civil Servant Investigators (PPNS), prosecutions are carried out by the Public Prosecutor and tried by a Judge or Panel of Judges, and to accompany a doctor he may be accompanied by one or more Advocates. For a doctor or dentist who practices privately, after the agreement or engagement between the doctor or dentist is carried out correctly and legally, then the rights and obligations of each party appear to fulfill the agreement²⁸. Meanwhile, if a doctor or dentist practices in a hospital, the responsibilities will be different when compared to a doctor or dentist who practices privately²⁹.

The doctor's action agreement based on the agreement with the patient is regulated in Article 39 of Law Number 29 Year 2004 concerning Medical Practice that:

"Medical practice is carried out based on an agreement between a doctor or dentist and a patient in an effort to maintain health, prevent disease, improve health, treat disease and restore health."

For a doctor or dentist who practices privately, what is the basis for his / her responsibility can be determined by referring to the act against the law as regulated in Article 1365 of the Civil Code as well as default or broken promise³⁰.

Responsibility is a necessary consequence of human free will and immutability based on free will.³¹ Responsibility is an attitude of willingness to assume the risk of consequences arising from illegal acts that cause harm to other people or parties in accordance with the field of law. In criminal law, a person who is responsible will get a sanction or punishment, while in the field of civil law, a responsible person must be willing to compensate for the losses arising from his actions that violate the law or accountability³².

1. The Principle of Responsibility Based on the Elements of Fault

Liability based on the element of error (fault liability, liability based on fault Principle) is stipulated in the Civil Code. Articles 1365, 1366 and 1367 stipulate that a person will be held accountable legally if there is an element of wrongdoing directly or indirectly. Article 1365 of the Civil Code, which is known as an article on acts against the law, requires that an act against the law must fulfill four main elements, namely³³:

- a. There is an act;
- b. There is an element of error;
- c. There are losses suffered; and
- d. There is a causal relationship between errors and losses.

That is against the law in element, it's commonly known as error. The notion in "law" does not only conflict with law but also contradicts appropriateness and morality in society. In common sense, this principle of responsibility is acceptable because it is fair for the person who made a mistake to compensate for the loss for the victim. It is unfair if an innocent person compensates for the losses suffered by other people whose losses did not arise because of his treatment. Sharing the burden of proof, following the provisions of Article 163 *Herziene Indonesische Reglement* (HIR) or Article 283 *Rechtsreglement Buitengewesten* (Rbg) and Article 1865 of the Civil Code stipulates that whoever admits having a right, must prove the existence of that right or event (*actorie incubit probation*)³⁴.

2. Liability Principle Presumption

The principle of this stipulates that the defendant is always held responsible until he can prove his innocence (presumption of liability principle). In this principle, the burden of proof lies with the plaintiff. This principle is contrary to the presumption of innocence. This principle, when applied to the consumer's case, will seem relevant. In this principle, it is the business actor who is being sued, the obligation to prove mistakes. The defendant must present supporting evidence to prove his innocence. The consumer is not so meaningful as to want to file a lawsuit. The position of the consumer as a plaintiff is always open to being sued by the actor of business, if the consumer fails to show the fault of the defendant or the business actor³⁵.

3. The Principle of Absolute Responsibility (No-Fault Liability, Absolute / Strict liability principles)

Strict liability is the principle of responsibility which determines that error is not a factor that determines the existence of its responsibility, but there are exceptions that allow the defendant to be released from responsibility. On the other hand, absolute liability is the principle of responsibility without error and there are no exceptions³⁶.

Strict liability must have a relationship between the defendant and the fault, whereas in absolute liability the defendant may not be directly related to the fault but the defendant can be held accountable, for example in the case of a natural disaster. Usually the principle of absolute responsibility can be applied in consumer disputes because.³⁷

- a. Consumers have not proved in a favorable position the mistakes in the complicated process of production and distribution;
- b. Manufacturers are expected to be better able to anticipate litigation at any time for their errors, for example by adding an insurance or cost component.; and
- c. This principle may make manufacturers more cautious.

HOSPITAL'S RESPONSIBILITY FOR THE MISTAKE OF DOCTOR WORKING

Legal norms are different from ethics. The regulates on obligations of doctors refer to several regulates which has implemented, namely the obligations of doctors to sufferers, obligations of doctors to colleagues, and obligations of doctors to themselves. Meanwhile, the legal norms contained in the Medical Practice Act regulate not just an obligation. Also regulate rights, because with the fulfillment of obligations, there will be rights that need to be fulfilled as well.

In carrying out medical practice, a doctor has rights as stipulated in Article 50 of the Medical Practice Law which stipulates that a doctor or dentist in carrying out medical practice has the right:

1. Receive legal protection as long as tasks are performed in accordance with professional standards **u** standard operating procedures;
2. Provision of medical services according to professional standard operating procedures;
3. Obtain complete and honest information from patients or their families; and
4. Receive fees for services.

The profession of a doctor or dentist is functional professions who work on the basis of professionalism, but administratively they are hospital employees or medical personnel. The government or private hospital voters will provide allowances and fixed income for the duration of their respective professional positions. On the basis of an employment relationship, every action and behavior of medical personnel is the responsibility of the hospital. As part of hospital medical personnel,

they still have their own professional autonomy. The hospital leadership or any party cannot give orders that are not in accordance with the profession to the doctor, because it is only his profession that can order a doctor to take an action or act deemed unprofessional.

Article 46 of the Hospital Law explains the legal responsibilities of hospitals, that:

“The hospital is legally responsible for all losses incurred by negligence committed by health workers at the hospital.”

Article 1367 of the Civil Code can be used as the reference to the responsibility of the hospital for the actions of the medical personnel under it, because the clause of the article states that the liability for karmic mistakes in a lawsuit against the law includes the actions of those under its supervision. This is known as the respondent superior theory or doctrine, where between a doctor or dentist and a hospital, there is a work relationship in accordance with the task assigned to him.

Before the doctrine of respondent superior was accepted in the relationship between doctors and hospitals, so when the hospital was still a private hospital (or came from a charity institution), a doctrine called a charitable community was known. This doctrine states that private hospitals cannot be sued for compensation if a patient suffers an injury. In this case, there will always be problems when the family wants to file a lawsuit, because it is necessary to know which parts are included in the therapeutic agreement with the doctor and which parts are included in the contract with the hospital. It is necessary to know at what stage the error has occurred, for example whether the error occurred at the drug distribution stage or during the general service stage. Likewise, whether the action taken is included in the competence of the perpetrator or is it carried out under supervision or without supervision³⁸.

Limitations of patients and their families, due to lack of understanding of diagnosis and therapy provided by health services, it will be very difficult for the patient or his family to file a lawsuit. So in order to protect the interests of these patients, legal experts suggest that there is reverse proof, it is the doctor who must prove that the diagnosis and therapy that he has done are not wrong. Another way is the application of the *Res ipsa loquitur doctrine*³⁹, this doctrine is based on the thing speaks for, namely, the facts have spoken for themselves so that they do not need to be proven again.

RESPONSIBILITIES OF HOSPITALS AND DOCTORS FOR NEGLIGENCE

Malpractice is professional misconduct on the part of a professional person such as physician, dentist, veterinary, malpractice may be the result of ignorance, neglect, or lack of skill or fidelity in the performance of professional duties, intentionally wrong doing or illegal or unethical practice.⁴⁰

Malpractice is essentially an error in carrying out the profession that arises from the obligations that doctors have to do⁴¹. Furthermore, Hermien Hediati Koeswadji explained that malpractice is literally defined as bad practice or bad practice related to the application of medical science and technology in carrying out the medical profession which contains special characteristics⁴².

Professional action does not meet the professional standards set, there will be various malpractice actions in violated legal provisions, although sometimes the term inappropriate directly refers to two or more types of inappropriate (malpractice). Broadly speaking, malpractice is divided into two major groups, namely medical practice malls which usually also include ethical malpractice and juridical malpractice. Meanwhile, juridical malpractice is divided into three, namely civil malpractice, criminal malpractice and administrative malpractice.

Blum formulated medical malpractice is a form of professional negligence in which miserable injury occurs to a plaintiff patient as the direct result of an act or mission by a defendant practitioner⁴³. Meanwhile, the formula that applies in the medical world is: Professional misconduct or lack of ordinary skills in the performance of professional acts, a practitioner is liable for damages or injuries caused by malpractice.

Malpractice is a violation or negligence in the implementation of the medical profession which violates the provisions of the applicable positive law. Civil malpractice occurs when a doctor does not fulfill his obligations (broken his promise), that is, does not deliver the achievement as agreed. Doctor's actions that can be categorized as civil malpractice include⁴⁴:

1. Not doing what the agreement is obliged to do;
2. Doing what was agreed to be done but not perfect;
3. Doing what was agreed upon but too late;
4. Doing what the consensus says shouldn't be done.

DOCTOR'S OBLIGATIONS ACCORDING TO THE LAW

1. Doctor's Obligations Under the Health Law

Doctors as health workers are obliged to provide health efforts as regulated in Article 50 paragraph (1) of the Health Law which confirms that health workers have the task of administering health services in accordance with their field of expertise, including the medical profession. When providing health services, the medical profession is obliged to respect professional standards, to respect the rights of patients. as regulated in Article 53 paragraph (2) of the Health Law, namely: Health personnel in carrying out their duties are obliged to comply with professional standards and respect the rights of patients.

Doctors in providing health efforts must follow professional standards that govern all health effort procedures. In providing services, a doctor must respect the patient's rights such as providing information on the right health condition, providing appropriate care, giving freedom to make decisions on his own for some risky surgical treatments. If a doctor does not fulfill his obligation and creates a loss to the patient in the service, the doctor is obliged to compensate for the loss. This is stipulated in Article 55 paragraph (1) of the Health Law which regulates that: Everyone has the right to compensation for mistakes or negligence committed by health workers.

2. Doctor's Obligations According to the Medical Practice Law

The obligations of a doctor according to the Medical Practice Law are regulated in several articles as follows, Article 36 stipulates that: "Every doctor and dentist who practices medicine in Indonesia is required to have a practice license."

A practicing doctor must have a license to practice. Doctors who have a license and hold a practice are obliged to attach a name board as identification. This is regulated in Article 41 paragraph (1), namely a doctor or dentist who has a license to practice and operates a practice as referred to in Article 36 is obliged to put up a medical practice nameplate.

Several medical service standards are that before carrying out certain treatment, a doctor is obliged to obtain consent from the patient, the doctor is obliged to keep the patient's secret, the doctor is obliged

to write all the results of the examination and the patient management in the medical record and the doctor is also obliged to control the quality of care and costs according to the health effort services provided to. The patient. The purpose of cost control is to determine the cost according to the care provided without manipulating maintenance costs for other purposes. As regulated in several articles as follows Article 45 paragraph (1) Medical Practice Law Every medical or dental action to be carried out by a doctor or dentist against a patient must obtain approval and paragraph (5) every medical or dental action that contains risks. Height must be given with a written consent signed by the person entitled to give approval. In Article 46 paragraph (1) of the Medical Practice Law stipulates that every doctor or dentist in carrying out medical practice is obliged to make medical records and paragraph (3) stipulates that each medical record must be affixed with the name, time and signature of the officer providing the service or action.

The overall obligations of a doctor are summarized in Article 51 of the Medical Practice Law which stipulates that in carrying out medical practice, a doctor or dentist has the following obligations:

- a. Providing medical services in accordance with professional standards;
- b. Operational procedures and patient medical needs;
- c. refer patients to other physicians or dentists with better skills or abilities if they are unable to perform examination or treatment;
- d. Keep secret everything he knows about the patient, even after the patient dies;
- e. Provide an ambulance and perform emergency on a human basis if he is unsure if someone on duty is able to do so; and
- f. Increase of knowledge with the development of medical science or dentistry.

DOCTOR'S OBLIGATIONS ACCORDING TO DOCTRINE

A doctor is obliged to:⁴⁵

1. Dedicating his life to humans;
2. Show gratitude to the teacher for being indebted to him;
3. Carry out their duties carefully and nobly;
4. Prioritizing the maintenance of patient health;
5. Respect for the secrets entrusted to him;
6. Upholding with all its strength the noble and honorable traditions in the field of medicine;

7. Regarding colleagues as brothers;
8. Does not differentiate between religion, race, nationality and party;
9. Maintain absolute respect for the life from pregnancy;
10. Under any threat does not use his abilities to break the law of humanity.

Basically, based on the medical code of ethics, the obligations of doctors can be formulated as follows:⁴⁶

1. The doctor is obliged to treat the patient in an adequate manner. The doctor in the agreement does not promise to produce one result or result, because the health service provided by a doctor is an effort or effort as far as possible in accordance with his / her knowledge. This means that a doctor in providing health efforts must try carefully and sincerely (*met zorg eh inspanning*);
2. A doctor is obliged to carry out his own duties (in the sense that personally and not carried out by others) in accordance with what has been agreed.

DOCTOR'S RIGHTS

1. Doctor's rights under the Health Act

Doctors, as health care workers, have the right to receive legal protection, during health care efforts as regulated in Article 53 paragraph (1) of the Health Law which emphasizes that: Health workers have the right to legal protection in carrying out their duties according to their profession.

2. Doctor's Rights According to the Medical Practice Law

In carrying out medical practice, a doctor has rights as regulated in Article 50 of the Medical Practice Law which stipulates that a doctor in carrying out medical services and practice has the right:

- a. Receive legal protection as long as carrying out tasks in accordance with professional standards and standard operating procedures;
- b. The provision of medical services in accordance with professional standards operational standard procedures;
- c. Receive complete and honest information from patients or their families; and
- d. Receive fees for any medical services.

3. Doctor's Rights According to Doctrine

A doctor has rights as a professional developer can be formulated as follows⁴⁷:

- a. The right to receive complete information from patients, which will be used for diagnostic and therapeutic purposes;
- b. The right to pay for services or honoraria for services provided to patients;
- c. The right to good faith from the patient or his / her family in carrying out therapeutic transactions;
- d. The right to defend oneself against demands or claims of patients for the health services it provides;
- e. The right to obtain approval for medical action from the patient or his family.

CONCLUSION

The efforts made by the hospital to support patient rights by implementing service standards based on patient safety, this is carried out starting from the hospital patient's journey to post-healing. It is expected to maintain the professionalism of the hospital to implement medical regulation so that staff in the hospital is maintained professionalism through credential mechanisms, maintaining the quality of the medical profession, and maintaining the ethics and discipline of the medical profession so as to guarantee the quality of health services and protect patient safety.

Civil liability is regulated in Article 1367 of the Civil Code that hospitals as legal entities that provide complete medical services are responsible for medical malpractice committed by medical personnel and medics. Civil responsibility in the form of material compensation, as stipulated in Article 1243 of the Civil Code. The civil responsibility of a doctor is also determined by the pattern of relationships, among others: a doctor as an employee, a doctor as a partner (by attending physician), and a doctor as an independent contractor.

As for suggestions presented by the author, namely the government as supervisors for hospital management, must be officials who implement laws well and support government efforts in overcoming the problem of the COVID-19 pandemic in collaboration with health institutions. so that the implementation of accreditation policies, service facilities, poor community services, emergency patients, and so on, can be carried out by the hospital properly. The form of a hospital legal entity

is useful for protecting the medical profession. It is hoped that the hospital will insure the profession of doctors. Losses arising from human limitations to take an action can be covered properly, trial costs and compensation for patients can be covered by the insurance company.

NOTES

- ¹ Government Regulation of The Republic Indonesia Number 21 year 2020 about Large-Scale Social Restrictions to Accelerate Corona Response Virus Disease 2019 (Covid-19) (*Peraturan Pemerintah Republik Indonesia Nomor 21 Tahun 2020 Tentang Pembatasan Sosial Berskala Besar dalam Rangka Percepatan Penanganan Corona Virus Disease 2019 (Covid-19)*)
- ² Bahder Johan Nasution, *Hukum Kesehatan Pertanggungjawaban Dokter*; Jakarta: Rineka Cipta, (2005). P41
- ³ Black, H.C., *Black's Law Dictionary*, West Publishing Co. St. Paul, Minnesota, (1990) p. 1033.
- ⁴ Bahder Johan Nasution, *Hukum Kesehatan Pertanggungjawaban Dokter*; Jakarta: Rineka Cipta, (2005). P41
- ⁵ Neufeldt, Victoria. *Webster's New World Dictionary*. New York: Webster's New World Dictionary (1993)
- ⁶ Bahder Johan Nasution, *Hukum Kesehatan Pertanggungjawaban Dokter*; Jakarta: Rineka Cipta, (2005). p39.
- ⁷ Suparman Usman, *Etika dan Tanggung Jawab Profesi Hukum di Indonesia*, Gaya Media Pratama, Jakarta, (2008), p119.
- ⁸ Suparman Usman, *Etika dan Tanggung Jawab Profesi Hukum di Indonesia*, Gaya Media Pratama, Jakarta, (2008), p 42
- ⁹ Suparman Usman, *Etika dan Tanggung Jawab Profesi Hukum di Indonesia*, Gaya Media Pratama, Jakarta, (2008), p 43
- ¹⁰ Bahder Johan Nasution, *Hukum Kesehatan Pertanggungjawaban Dokter*; Jakarta: Rineka Cipta, (2005). p 43.
- ¹¹ Pasal 1 Peraturan Pemerintah Nomor 26 Tahun 1960 Tanggal 2 Juni 1960 Tentang Lafal Sumpah Dokter.
- ¹² Veronica Komalawati, *Peranan Informed Consent dalam Transaksi Terapeutik (Persetujuan dalam Hubungan Dokter dan Pasien)*, PT. Citra Aditya Bakti, Bandung, p 1.
- ¹³ R. Subekti, *Hukum Perjanjian, Cetakan 9*, Intermasa, Jakarta, (2002), p 17.
- ¹⁴ R. Subekti, *Hukum Perjanjian, Cetakan 9*, Intermasa, Jakarta, (2002), p 70
- ¹⁵ Bahder Johan Nasution, *Hukum Kesehatan Pertanggungjawaban Dokter*; Jakarta: Rineka Cipta, (2005), p12-13.
- ¹⁶ R. Subekti, *Hukum Perjanjian, Cetakan 9*, Intermasa, Jakarta, (2002), p 30
- ¹⁷ Samsi Jacobalis, *Pengantar Tentang Perkembangan Ilmu Kedokteran Etika Medis dan Bioetika*, Sagung Seto, Jakarta, (2005), p 48.
- ¹⁸ Bahder Johan Nasution, *Hukum Kesehatan Pertanggungjawaban Dokter*; Jakarta: Rineka Cipta, (2005). p 28.
- ¹⁹ Hermin Hadiati Koeswadji, *Hukum Kedokteran*, Citra Aditya Bakti, Bandung, (1998), p 24

- ²⁰ The definition of *Zaakwarneming* according to Article 1354 of the Civil Code is meaning to an action that is carried out voluntarily without any power, direction, order, coercion from the represented party. Subjects who perform *zaakwarneming* actions are referred to as *gestors*.
- ²¹ Veronica Komalawati, *Peranan Informed Consent dalam Transaksi Terapeutik (Persetujuan dalam Hubungan Dokter dan Pasien)*, PT. Citra Aditya Bakti, Bandung, p 85.
- ²² Bahder Johan Nasution, *Hukum Kesehatan Pertanggungjawaban Dokter*, Jakarta: Rineka Cipta, (2005), p 30.
- ²³ Roni Hanitijo Soemitro, *Metode Penelitian dan Jurimetri*, Ghalia Indonesia, Bandung, (1998), p 32.
- ²⁴ Soerjono Soekanto, *Penelitian Hukum Normatif*, RajaGrafindo Persada, Jakarta, (2009), p 13.
- ²⁵ Winama Surachman, *Pengantar Ilmu Dasar dan Teknik*, Tarsito, Bandung, (1999), p 32.
- ²⁶ Roni Hanitijo Soemitro, *Metode Penelitian dan Jurimetri*, Ghalia Indonesia, Bandung, (1998), p 33.
- ²⁷ Henry Campbell, *Black's Law dictionary, Sixty Edition*, St. Paul, Minn, (1966), p 1226.
- ²⁸ Bahder Johan Nasution, *Hukum Kesehatan Pertanggungjawaban Dokter*, Jakarta: Rineka Cipta, (2005),
- ²⁹ Anny Isfandyarie. *Tanggung Jawab Hukum dan Sanksi bagi Dokter*. Buku I. Jakarta, Prestasi Pustaka Publisher, (2006).
- ³⁰ Syahrul Machmud, *Penegakan Hukum dan Perlindungan Hukum Bagi Dokter yang Diduga Melakukan Medikal Malpraktek*, Bandung, Mandar maju, p 109
- ³¹ Bagus, Lorens, 1996, *Kamus Filsafat*, Jakarta: PT. Gramedia Pustaka Utama
- ³² Sri Praptianingsih, *Kedudukan Hukum Perawat dalam Upaya Pelayanan Kesehatan di Rumah Sakit*, Raja Grafindo Persada, Jakarta, (2000), p 65.
- ³³ Celina Tri Siwi Kristianti, *Hukum Perlindungan Konsumen*, Sinar Grafika, Jakarta, (2008), p 92-94.
- ³⁴ Hermin Hadiati Koeswadji, *Hukum Kedokteran*, Citra Aditya Bakti, Bandung, (1998)
- ³⁵ Celina Tri Siwi Kristianti, *Hukum Perlindungan Konsumen*, Sinar Grafika, Jakarta, (2008), p 94-95.
- ³⁶ Celina Tri Siwi Kristianti, *Hukum Perlindungan Konsumen*, Sinar Grafika, Jakarta, (2008), p 94-95.
- ³⁷ Celina Tri Siwi Kristianti, *Hukum Perlindungan Konsumen*, Sinar Grafika, Jakarta, (2008), p 94-95.
- ³⁸ Syahrul Machmud, *Penegakan Hukum dan Perlindungan Hukum Bagi Dokter yang Diduga Melakukan Medikal Malpraktek*, Bandung, Mandar maju , p 107.
- ³⁹ *Res ipsa loquitur doctrine* is the method that doctors use in presenting evidence and facts in disclosing his actions that resulted in disability or death.
- ⁴⁰ Henry Campell Black, *Black's Law Dictionary*, St Paul Minn, 1990.
- ⁴¹ Veronika Komalawati , *Hukum dan Etika dalam Praktek Dokter*, Pustaka Sinar Harapan, Jakarta, (1989), p 87.
- ⁴² Hermien Hadiati Koeswadji, *Hukum Kedokteran*, Citra Aditya Bakti, Bandung, (1998), p 124
- ⁴³ Hermien Hadiati Koeswadji, *Hukum Kedokteran*, Citra Aditya Bakti, Bandung, (1998), p 122-123.
- ⁴⁴ Sofwan Dahlan, *Hukum Kesehatan*, Badan Penerbit UNDIP, Edisi 2, Semarang, (2000), p 61.
- ⁴⁵ World Medical Association (WMA), Geneva Declaration of 1984.
- ⁴⁶ Hermin Hadiati Koeswadji on Bahder Johan Nasution, *Hukum Kesehatan Pertanggungjawaban Dokter*, Rineka Cipta, (2005), Jakarta, p 35-36.
- ⁴⁷ Article 50 of the Medical Practice Act

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