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Professionalism and Medical Liability of Physician: Patient Protection and Civil Remedies

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ABSTRACT

*This study aims to analyze physician professionalism and medical liability within the framework of civil law, particularly concerning patient protection and available legal remedies. Employing a normative legal research method and a statutory approach, this study examines relevant legal norms, primarily those contained in Law Number 8 of 1999, the Civil Code, and Law Number 17 of 2023. The data were analyzed prescriptively, not only to explain the prevailing law (*das Sein*) but also to formulate how the law should be applied or developed (*das Sollen*) in order to provide optimal legal protection for patients. The results indicate that physician professionalism, encompassing technical competence, moral integrity, and adherence to professional standards and medical ethics, is the basis for realizing quality and equitable healthcare services. Medical liability, which includes civil and criminal legal liability and ethical and moral responsibility, constitutes an important framework for establishing a balanced contractual relationship between physicians and patients. In medical malpractice, civil law instruments, specifically lawsuits based on breach of contract, tort, and negligence, provide avenues for patients to claim compensation for losses suffered and out-of-court dispute resolution mechanisms that need to be further encouraged.*

Keywords: Civil Law; Medical Liability; Medical Malpractice; Patient Protection; Physician Professionalism.

INTRODUCTION

In the healthcare system, physicians play a central role as medical professionals dedicated to enhancing the health status of the community. A physician's professionalism is reflected in moral integrity and profound dedication and the mastery of clinical knowledge and skills acquired through extensive and continuous education and training. To optimally fulfill their role, physicians have the legal authority to undertake various healthcare measures, encompassing promotive, preventive, curative, and rehabilitative actions (Nofianto, 2024). This authority is the basis for delivering safe, effective, patient-safety-oriented medical practice (Prasetya et al., 2023).

Healthcare services, as a fundamental pillar of the public welfare system, rely upon the dynamic interaction between service providers and recipients, namely physicians and patients. This contractual relationship, a therapeutic transaction, engenders reciprocal rights and obligations bound by legal parameters (Sacharissa, 2020). On the one hand, patients have the right to receive high-quality and humane healthcare services. On the other hand, physicians, as the vanguard of medical service, must uphold professionalism and provide services by prevailing professional standards and standard operating procedures (Lestari, 2024). The Indonesian Medical Code of Ethics serves as a moral compass and practical guide for physicians in exercising their profession while affording protection in performing their professional duties.

Although the physician-patient relationship is predicated on good faith and the principle of trust, the reality reveals that healthcare service delivery does not always proceed smoothly. The complexity of medical procedures and factors beyond human control, such as the unique clinical condition of the patient, may contribute to outcomes

that fall short of expectations. In such situations, the potential for medical disputes to arise escalates, particularly when patients feel aggrieved and suspect negligence or errors in the healthcare services received. Furthermore, the widespread media coverage of alleged medical malpractice cases further reinforces the public perception of risks and vulnerabilities inherent in healthcare services (Dhoni, 2024; Mahendro, 2024; Wisely & Putri, 2024; Yuwono & Belarminus, 2024).

One manifestation of patient dissatisfaction with healthcare services is the annual increase in alleged medical malpractice complaints filed with the Indonesian Medical Disciplinary Honor Council (MKDKI) (Ardi et al., 2023). This phenomenon warrants careful examination, as it indicates friction in the physician-patient relationship, potentially eroding public trust in the medical profession. On the other hand, existing regulations, such as Law Number 17 of 2023, explicitly provide a legal framework for patients to demand medical liability from physicians, other healthcare professionals, or even healthcare institutions, in this case, hospitals, for losses incurred due to negligence or errors in healthcare services.

Within civil law, this medical liability can be enforced through a lawsuit for damages. The legal bases that can be invoked include breach of contract, referring to the physician's failure to fulfill their contractual obligations as stipulated in Article 1239 of the Civil Code, and tort, which refers to the physician's unlawful act causing harm to the patient, as affirmed in Article 1365 of the Civil Code. Consequently, in the exercise of their profession, a physician is not only required to be clinically competent but also must comprehend the legal implications of each medical action undertaken.

Based on the foregoing, this research comprehensively examines physician professionalism and medical liability from a civil law perspective. Specifically, this study will delve into three main aspects. *First*, it will analyze physician professionalism within the framework of medical liability. *Second*, it will analyze aspects of legal protection for patients who suffer losses due to alleged malpractice. *Third*, it will examine the grounds for civil claims that can be brought in cases of alleged malpractice. The results of this study are expected to provide a theoretical contribution to the development of health law, particularly concerning the civil liability of physicians. Furthermore, on a practical level, this research is intended to guide stakeholders, including physicians, patients, healthcare institutions, and legal authorities, in understanding the rights and obligations of each party and resolving medical disputes fairly and judiciously.

METHOD

This study employs a normative legal research method with a statutory approach to examine physician professionalism and medical liability within the framework of civil law, particularly concerning patient protection and civil legal remedies. This

approach is selected because the research analyzes positive legal norms enshrined in statutory regulations (Qamar & Rezah, 2020), namely Law Number 8 of 1999, the Civil Code, and Law Number 17 of 2023. The primary data sources used in this research consist of primary legal materials in the form of these statutory regulations and secondary legal materials encompassing legal doctrines, findings from prior research published in scientific journals, textbooks, and other legal literature relevant to the issues under investigation. All legal materials were collected through library research and analyzed using prescriptive data analysis techniques. This analytical technique is applied to delineate and explain the prevailing legal norms (*das Sein*) and formulate and provide recommendations regarding how the law should be applied or developed (*das Sollen*) to afford optimal legal protection for patients who are victims of alleged medical malpractice (Sampara & Husen, 2016). Thus, this methodological approach is expected to yield an in-depth, comprehensive legal study and contribute to developing health law in Indonesia, particularly in resolving alleged medical malpractice cases through civil legal remedies.

RESULTS AND DISCUSSION

A. Physician Professionalism within the Framework of Medical Liability

Physicians play a central role in the healthcare system as medical professionals dedicated to enhancing public health. A physician's professionalism is reflected not only in moral integrity and profound dedication but also in the mastery of clinical knowledge and skills acquired through extensive and continuous education and training. To optimally fulfill their role, physicians have the legal authority to undertake various healthcare measures, encompassing promotive, preventive, curative, and rehabilitative actions. This authority, as regulated in Law Number 17 of 2023, forms the fundamental basis for delivering safe, effective, and patient-safety-oriented medical practice.

As an embodiment of professionalism, physicians must possess a Medical Registration Certificate (STR) as written evidence legitimizing their competence and authority to practice medicine (Gunawan & Helvis, 2023). This STR is obtained through a national competency examination administered by an authorized institution and constitutes an absolute prerequisite for physicians to obtain a practice license. The obligation to possess an STR aligns with the principle of preventive legal protection, which ensures that only genuinely competent individuals are permitted to engage in medical practice. Furthermore, Law Number 17 of 2023 also prohibits healthcare facilities from employing physicians who do not possess a valid practice license as an endeavor to maintain the quality and safety of healthcare services.

In the exercise of their profession, physicians are bound by established professional standards, service standards, and standard operating procedures (Dhanardhono et al., 2023). Medical professional organizations formulate professional standards as guidelines regulating physician competence and conduct in performing their duties. Service standards constitute benchmarks for delivering quality and patient-satisfaction-oriented healthcare services. Meanwhile, standard operating procedures serve as technical guides governing the procedures for carrying out specific medical actions. Moreover, physicians must adhere to professional ethics stipulated in the Indonesian Medical Code of Ethics, which embodies noble values and moral principles that every physician must uphold to exercise their profession.

Furthermore, physician professionalism also encompasses the moral responsibility to continuously enhance their competence and knowledge in line with medical science and technology advancements (Mustika et al., 2024). Physicians must remain abreast of the latest developments in the medical field, whether through continuing education, seminars, or scientific publications. In addition, physicians are also expected to dedicate themselves to their respective fields of expertise and to prioritize the interests of patients and the public above personal interests. Thus, physician professionalism is a holistic concept encompassing clinical competence, adherence to regulations and professional standards, and profound moral integrity.

Within the medical liability framework, physician professionalism is the primary foundation for realizing quality and accountable healthcare services. This medical liability encompasses legal liability, both civil and criminal, as well as ethical and moral responsibility. Civil legal liability pertains to the physician's obligation to compensate patients harmed due to negligence or errors in healthcare services (Nurarafah, 2022). Criminal legal liability pertains to criminal sanctions imposed on physicians if their actions fulfill the elements of a criminal offense (Satria, 2024). Meanwhile, ethical and moral responsibility pertains to the physician's obligation to comply with the professional code of ethics and the noble values of medicine (Subekti et al., 2024). Collectively, these aspects form a comprehensive web of medical liability, which will contribute to enhancing healthcare service quality and public trust in the medical profession in Indonesia.

B. Legal Protection for Patients in the Context of Medical Malpractice

In the Indonesian health law system, legal protection for patients constitutes a fundamental pillar to guarantee the fulfillment of patients' fundamental rights to safe, quality, and affordable healthcare services (Prastyanti et al., 2023). Specifically, in medical malpractice, defined as an act or omission by a medical

professional that deviates from professional standards and harms the patient, effective legal instruments are required to protect the patient's rights and remedy the losses suffered. These legal instruments are not only aimed at providing justice for patients who are victims of malpractice but also at creating a deterrent effect to prevent similar incidents from recurring in the future, which will improve the quality and safety of healthcare services as a whole.

Law Number 8 of 1999 serves as one of the primary legal bases for protecting patients who are victims of medical malpractice. Although Law Number 8 of 1999 does not explicitly regulate medical malpractice, legal doctrine recognizes patients as consumers of healthcare services and physicians as business actors. The logical consequence of this legal construction is the opening of opportunities for patients to claim compensation based on Article 19 section (1) of Law Number 8 of 1999, which imposes an obligation on business actors to provide compensation for losses suffered by consumers resulting from traded goods and/or services. Furthermore, Article 19 section (2) of Law Number 8 of 1999 regulates the forms of compensation that can be granted, including refunds, replacement of equivalent goods or services, medical treatment, or compensation by applicable regulations.

In addition to Law Number 8 of 1999, the Civil Code also provides important legal instruments in protecting patients who are malpractice victims. Within the contractual relationship between physicians and patients, a therapeutic transaction, patients can file a civil lawsuit for breach of contract as stipulated in Article 1239 of the Civil Code. In this case, breach of contract refers to the non-fulfillment of contractual obligations by the physician, such as performing medical procedures that do not comply with standard operating procedures or without valid and adequate informed consent. If a breach of contract is proven, the patient has the right to claim compensation for material and immaterial losses.

Furthermore, Article 1365 of the Civil Code also regulates tort, which can be the basis for a civil lawsuit in medical malpractice cases. Tort in this context encompasses actions or omissions by a physician that violate the law, propriety, morality, or the due care that should be exercised in social interactions and harm the patient. More specifically, Article 1366 of the Civil Code regulates liability for losses caused by negligence or lack of due care, which is highly relevant in medical malpractice cases. To prove the existence of a tort or negligence, the patient must demonstrate that the physician has failed to meet the standard of care required in their profession and that this failure has a causal relationship with the losses suffered by the patient (Susila, 2021).

Law Number 17 of 2023 strengthens and expands the scope of patient legal protection. Article 4 section (1) of Law Number 17 of 2023 explicitly states that

every person has the right to protection from health risks, which embodies the human right to health. As a consequence of this right, Article 293 section (3) of Law Number 17 of 2023 requires physicians to obtain informed consent from the patient or their family after providing complete and honest information regarding the diagnosis, the medical procedures to be performed, the risks and potential complications, alternative actions, and the prognosis. This informed consent becomes one of the important instruments in preventive legal protection, aimed at preventing medical malpractice resulting from medical procedures that do not align with the will and understanding of the patient (Khalid, 2023).

Furthermore, Law Number 17 of 2023 also provides an out-of-court dispute resolution mechanism that can be accessed by patients who are malpractice victims. Article 305 section (1) of Law Number 17 of 2023 grants the right to patients or their families who feel aggrieved by the actions of medical personnel or healthcare professionals to file a complaint with the MKDKI. The MKDKI will then conduct an examination and provide recommendations related to alleged violations of professional discipline. Although the MKDKI's recommendations are not legally binding in court proceedings, they can be an important consideration for judges when assessing the existence or absence of medical malpractice. In addition, Article 310 of Law Number 17 of 2023 also mandates that the resolution of disputes between patients and physicians or healthcare professionals be prioritized through mediation or other alternative dispute resolution methods before resorting to litigation. Thus, Law Number 17 of 2023 provides a comprehensive legal framework for protecting patients through preventive and repressive legal instruments and encourages peaceful and efficient dispute resolution.

C. Grounds for Civil Lawsuits in Medical Malpractice in the Indonesian Legal Perspective

In the Indonesian legal system, civil lawsuits are one of the primary instruments used by patients who are victims of medical malpractice to claim compensation for the losses they have suffered. Civil lawsuits in the context of medical malpractice are based on the principle of civil legal liability, which aims to restore the losses suffered by the victim and provide a deterrent effect to the perpetrator so as not to repeat the act in the future. The grounds for these civil lawsuits originate from various statutory regulations, primarily the Civil Code and Law Number 17 of 2023, which comprehensively regulate the rights and obligations of the parties in therapeutic transactions as well as the available dispute resolution mechanisms.

One of the most frequently used grounds for civil lawsuits in medical malpractice cases is a breach of contract, as regulated in Article 1239 of the Civil

Code. In the context of a therapeutic transaction between a physician and a patient, a breach of contract refers to the non-fulfillment of a contractual obligation by the physician, which can take the form of an active action that deviates from the content of the agreement, such as performing a surgery that does not conform to what was agreed upon, or negligence in meeting established service standards, such as failing to provide complete and honest information to the patient before performing a medical procedure. To be able to claim compensation on the grounds of a breach of contract, the patient must be able to prove the existence of a contractual relationship with the physician, the occurrence of a breach of contract by the physician, the existence of losses suffered by the patient, and the existence of a causal relationship between the breach of contract and the losses.

In addition to a breach of contract, patients who are victims of medical malpractice can also file a civil lawsuit on the grounds of tort as regulated in Article 1365 of the Civil Code. Tort has a broader scope than breach of contract because it is not limited to violations of agreements but also encompasses any act or omission that violates the law, propriety, morality, or the due care that should be exercised in social interactions. In the context of medical malpractice, a tort can occur if a physician performs a medical action that violates the prevailing professional standards, service standards, or standard operating procedures or if the physician fails to exercise the principle of due care in providing healthcare services, thereby resulting in harm to the patient, whether physical, psychological, or material.

Furthermore, Article 1366 of the Civil Code explicitly regulates liability for losses caused by negligence or lack of due care. This article is highly relevant in cases of medical malpractice resulting from negligence or carelessness on the part of the physician in the exercise of their profession. To prove negligence, the patient must demonstrate that the physician has failed to meet the standard of care required in their profession, which may refer to professional standards, service standards, standard operating procedures, and the prevailing customs in proper and correct medical practice. If such negligence is proven to have resulted in harm to the patient, the physician can be held civilly liable to compensate for such losses.

In the event that negligence is committed by a physician working in a hospital, Article 1367 of the Civil Code can serve as the basis for claiming civil liability from the hospital for the actions of its subordinates. This article affirms the principle of vicarious liability in civil law, which allows the aggrieved party to claim compensation from the employer for acts or omissions committed by their employees within the scope of their employment. Thus, a hospital as a legal entity employing physicians can be held civilly liable for losses resulting from medical

malpractice committed by its physicians, as long as it can be proven that the physician acted in their capacity as a hospital employee.

Law Number 17 of 2023 also reinforces and clarifies the grounds for civil lawsuits in medical malpractice cases. Article 193 of Law Number 17 of 2023 explicitly states that hospitals are legally responsible for all losses caused by the negligence of healthcare professionals in the hospital. This provision not only affirms the principle of vicarious liability in the context of healthcare services but also expands the scope of hospital liability, which is not only limited to the negligence of physicians but also other healthcare professionals working in the hospital. Consequently, Law Number 17 of 2023 further strengthens the position of patients in claiming compensation for losses suffered due to medical malpractice.

Before filing a civil lawsuit in court, Law Number 17 of 2023 mandates that the parties first endeavor to resolve the dispute through non-litigation channels. Article 310 of Law Number 17 of 2023 affirms that disputes arising from alleged errors or negligence of medical personnel or healthcare professionals must first be resolved through alternative dispute resolution, such as mediation, negotiation, or conciliation. This non-litigation route is more effective and efficient in resolving medical malpractice disputes because it can produce faster, cheaper, and more satisfactory solutions for both parties. In addition, Article 308 section (2) of Law Number 17 of 2023 also requires a recommendation from the MKDKI before medical personnel or healthcare professionals can be held civilly liable in court. This MKDKI recommendation, although not binding on the judge, can serve as important evidence and consideration in assessing the presence or absence of elements of error or negligence in the medical actions performed by the physician.

Overall, the Indonesian legal system has provided a comprehensive legal basis for patients who are victims of medical malpractice to file civil lawsuits, both against the physician personally and against the hospital as an institution. Nevertheless, the evidentiary process in medical malpractice cases is often complicated and complex because it involves technical professional standards and requires specialized expertise to interpret them. Therefore, the role of medical experts, both as expert witnesses in court and as members of the MKDKI, becomes crucial in assisting judges to understand the facts of the case and make fair and balanced decisions. Effective law enforcement in medical malpractice cases will provide justice for victims and encourage improving the quality and safety of healthcare services in Indonesia.

CONCLUSIONS AND SUGGESTIONS

Based on the findings and discussion presented, it can be concluded that physician professionalism constitutes the central pillar in realizing quality and equitable healthcare services. This professionalism encompasses not only technical competence and clinical expertise but also moral integrity, adherence to regulations, professional standards, and medical ethics. Within the framework of medical liability, physician professionalism becomes the foundation for building a balanced contractual relationship with patients based on the principles of due care, transparency, and respect for patient rights. This medical liability includes legal liability, both civil and criminal, as well as ethical and moral responsibility stemming from the noble values of the medical profession. Legal instruments, such as Law Number 8 of 1999, the Civil Code, and Law Number 17 of 2023, simultaneously form a legal framework that protects patient rights. This legal framework encompasses the right to receive safe and quality healthcare services, information and informed consent, and claim compensation in the event of medical malpractice. Specifically, civil lawsuits based on breach of contract, tort, and negligence serve as important instruments for patients who are malpractice victims to claim compensation for losses suffered. In addition, out-of-court dispute resolution mechanisms, such as mediation and through the MKDKI, are also encouraged to be developed for faster, more efficient, and equitable resolution.

Based on the above conclusions, several strategic steps are recommended to improve healthcare services' quality and strengthen patient legal protection. *First*, continuous education for physicians regarding professionalism and comprehensive medical liability is needed, covering medical and technical aspects, law, and professional ethics. *Second*, the government must refine healthcare service regulations, particularly those related to professional standards, service standards, standard operating procedures, and informed consent, by involving professional organizations and other stakeholders. *Third*, optimization of out-of-court dispute resolution mechanisms, primarily through the MKDKI, must be carried out by strengthening the institution's authority, capacity, and independence. *Fourth*, more intensive outreach and education to the public regarding patient rights and the mechanisms for claiming those rights must be promoted through various information channels. *Fifth*, increasing the capacity and understanding of law enforcement officials regarding health law and medical malpractice is crucial to ensure professional, fair, and accountable case handling. Implementing these recommendations is expected to enhance physician professionalism and legal protection for patients, ultimately contributing to the realization of a better, fairer, and more dignified healthcare system in Indonesia.

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