

## DOCTOR'S LIABILITY FOR A PATIENT'S LAWSUIT IN HEALTH SERVICES AT HOSPITAL

Marsono Budi Ujjianto  
Sarsintorini Putra

### ABSTRACT

*Lawsuit against medical malpractice is increasingly common among patients submitted to doctors due to medical actions taken that have harmed patients. Negligence resulting in a patient's loss in the form of a defect or injury to the patient's body is an unlawful act, which is the basis for the patient's claim to claim compensation, both material and immaterial. In this study, the authors formulated the problem regarding the legal responsibilities of doctors for the lawsuit of patients in health services in hospitals, and the legal consequences of violating the legal responsibilities of doctors for the lawsuit of patients in health services in hospitals. This study uses a normative juridical approach, with descriptive analytical research specifications. The data used in this study are primary data and secondary data, obtained through interviews and literature studies, which are then analyzed qualitatively. The results of this study are: (1) The legal responsibility of doctors for the lawsuit of patients in health services in hospitals is a form of legal responsibility of civil law on the basis of acts against the law as stated in Article 1365 and Article 1366 of the Civil Code. Patients file material and immaterial claims against the doctor and the hospital where the doctor works, and the doctor and the hospital pay compensation in a joint manner to the injured patient; (2) The legal consequences of violating the doctor's legal responsibility for the patient's lawsuit in health services in the hospital, in legal aspects: (a) criminal : based on Article 360 of the Criminal Code, i.e. if causing serious injury, the person will be sentenced to imprisonment for up to five years or confinement for - only one year, and if it causes a person to become temporarily ill or unable to carry out his position or work temporarily, is sentenced to a maximum of nine months in prison or a sentence of up to six months or a maximum penalty of Rp.4,500; (b) civil : based on Article 1365 and Article 1366 the Civil Code must compensate the patient both materially and immaterially; (c) administration : the provision of written warnings, recommendations for revocation of registration letters or practice licenses, and/or the obligation to attend education or training in medical or dental education institutions. As a recommendation, there is a need for assertiveness from doctors for patients who do not want to follow instructions in medical actions, by refusing and made with a written statement, and conduct regular supervision in the implementation of professional standards for doctors who perform medical actions.*

*Keywords:* Legal Responsibility, Doctor, and Lawsuit

### INTRODUCTION

One form of public health services in hospitals is the provision of medical services for patients who need care and treatment performed by medical personnel. Medical care is an effort or activity to prevent, treat disease and restore health on the basis of the relationship between medical services and individuals in need.<sup>1</sup> the doctors who have integrated in the hospital is rendering medical services.

Doctors in their duty to have a noble reason, namely to maintain a person's body to stay healthy or to me-healthy body of someone who is sick or at least reduce the suffering of the sick. Work profession of a doctor or nurse and midwife behavior guided by two fundamental principles, namely the willingness to act for the good of the patients and there was no intent to harm, injure and even potential harm to patients. As part of a sense of responsibility and as a manifestation of the two principal behaviors, health personnel shall respect a patient's right clicking.

Patients' rights which must be respected by doctors and other health personnel consists of the right to be treated, the right to obtain treatment by physicians in making decisions ethically and professionally carried out independently. Other rights that must be respected from the patient is the right to be protected in terms of health services that have been entrusted by health workers, so the job of a health worker deserves legal protection until certain limits. This means that a health worker in carrying out their duties must be in accordance with the limits-which limits have been determined to not sued or sued in court.<sup>2</sup>

The medical profession and other medical personnel is a very noble profession, and honorable in the sight of the public. A physician before making medical practice or medical services through education and training has been long enough, because of this profession a lot hung in life expectancy and / or cure of patients and families who are ill.

Doctors or other health professionals as an ordinary human being full of flaws (the human nature) in performing medical full of these risks cannot shy away from the power of nature and Iradat Allah, because of the possibility of disabled patients even died after a doctor's care may be occurred, although the doctor has done its job in accordance with professional standards or the standard Operating Procedure (SOP) and / or standards of good medical services.

<sup>1</sup> Marcel Seran and Anna Maria Revelation Setyowati 2010, Ethical and Legal Dilemmas In Medical Care, the First Matter, Mandar Maju, duo, P. 7.

<sup>2</sup> 2Maskawati, Andriani Misdar, and Muji Iswanti, 2018, Health Law, and Judicial Responsibility Ethical Dimensions of Health Care, First Edition, Litera and Republican Institute, Yogyakarta, p. 24.

Advances in science and technology in the health sector has grown rapidly and is supported by the infrastructure in the health sector are increasingly sophisticated also affect professional services in the field of health over time is growing as well. Various ways health care is developed, so the consequences are getting bigger, and the possibility to make the greater mistake.

Legal relationship between a doctor or dentist with the patient actually is a relationship of health services (medical service) or another term medical action between health providers (health care provider) with health receivers (receivers of health services).<sup>3</sup>

In carrying out the profession of medicine / health, there is one thing that is rarely recognized by doctors, namely that when he received the patient's health problems, both in the field of preventive, promotive, curative, and rehabilitative, in fact there has been a transaction or agreement between two parties (doctors and patients) in the health sector, and this is the law of the events provided for in the Civil Law Act (Civil Code).<sup>4</sup>

If a patient requires an invasive procedure for diagnostic and therapeutic, then the doctor is obliged to give explanations regarding any matters relating to such action, including the risks attached to it (inherent risks). Patient or his immediate family have the right to ask questions and ask for clarification to ter-call doctor. If they had understood the explanation doctor and approve such action, the subject was asked to sign an informed consent sheet (approval of medical action / pertindik).<sup>5</sup>

Approval (informed consent) is very important given the medical action cannot be enforced because no one knows for sure the end result of medical services. The importance of informed consent is also associated with the Article 351 of the Code of Penal (Penal Code) about the persecution, which could be imputed to the doctor or hospital related medical action performed on the patient.<sup>6</sup>

Approval of medical action (informed consent) dual function, ie, for the physician can make sense in running a medical action on the patient, and can be used as a defense against possible claims or demands from patients or their families arise when unwanted things. For patients, the approval of medical action is a tribute to the doctors of their rights and can use-right as a reason for a lawsuit against a doctor of intent given health care agreement.<sup>7</sup>

Negligence for health workers in tasks or profession is actually not illegal or a crime, that negligence is not to bring harm or injury to another person and that person can receive. However, if the negligence of a health worker to cause others to suffer loss or injury, disability, or death means also against the law, and also violates ethics. Negligence causing health worker's kerugi, cedira or disabled, and so on for others classified as gross negligence or "culpa lata", or serious, and called a criminal act,<sup>8</sup> or in medicine referred to as medical malpractice.

Malpractice can be categorized as an unlawful act of criminal and / or civil. Belonging to a criminal act, track the complaint through the police, the prosecution, trial, and execution (implementation of decisions). Malpractice is a classification of criminal action complaint, so if those who feel aggrieved complaint to the police, the legal process can only be implemented, and vice versa if there is no complaint of the injured party, the competent authorities (police) do not conduct legal proceedings.<sup>9</sup>

Malpractice belonging to a civil action, a lawsuit is done through the courts. Those who feel aggrieved filed a lawsuit with the mentioned problem (posita), as well as the type and amount of claim (petition).<sup>10</sup>

Physicians and patients who talks about the approval of the medical act legally deemed to have been held bonds per-appointments. Since that time, also if it is found in medical services akibatkan loss clicking on the patient, the doctor or hospital that can be done in the service of civil redress.

In the agreement or transaction therapeutic, between doctor and patient position is equal, with such a position is the law puts both have legal liability. According Ewoud Hondius that liability in civil on medical cases are always constructed in two forms, namely liability on a contract basis or liability on the ground of misconduct / unlawful In the case of an unlawful act, the basic idea is a violation of the physical integrity of the patients' rights are protected by law, whereas the liability on a contract basis, the basic idea is no violation of a consensual relationship between doctor and patient.<sup>11</sup>

In civil law, liability on the basis of tort, the element of loss compensation calculation is the basis of the position of the

<sup>3</sup> Syahrul Machmud 2008, Law Enforcement and Legal Protection For Allegedly Performing Physician Medical Malpractice, Molds One, Mandar Maju, Bandung, p. 26.

<sup>4</sup> M. Jusuf Hanafi and Amri Amir, 2017, Medical Ethics and Health Law, 5th Edition, Medical Book EGC, Jakarta, p. 60.

<sup>5</sup> Hartono HS., Gatot Suharto, and Indra Wijaya (Ed.), 2008, Understanding Medicolegal Ethics, Guidelines for Doctors Profession, IDI Central Java Region, Body Publisher Diponegoro University, Semarang, p. 97

<sup>6</sup> Sri Siswati, 2015, Ethics and Health Law, in Perspective Health Act, First Edition, Second Printing, King Grafindo Persada, Jakarta, p. 98.

<sup>7</sup> Hasrul Buamona, 2016, edition of Legal Medicine, Medical Record And Informed Consent As Evidence In the Law of Evidence, First Edition, Parama Publishing, Yogyakarta, p. 40.

<sup>8</sup> Soekidjo Notoatmodjo 2010, Ethics and Medical Law, First Edition, Rineka Copyright, Jakarta, P. 168.

<sup>9</sup> Mudakir Iskandarsyah, 2011, the Criminal and Civil Claims Malpractice, First Edition, Jewel Literacy, Jakarta, p. 57.

<sup>10</sup> Ibid.

<sup>11</sup> Eko Pujiyono, 2017, Justice in Medical Care (Application of Patient Autonomy: Theory & Practice Law In Court), Citra Aditya Bakti, duo, P. 148.

coretires that must exist before the tort alleged to someone.<sup>12</sup>

Intentionally or because of negligence causing his injuries or disabilities a patient's limb, entitles the victim / patient to provide reimbursement of the cost of healing, demanding compensation for losses caused by the injuries or disabilities.

Today, often resulting lawsuits from patients who feel disadvantaged, to claim damages due to errors or omissions by a doctor or health worker to do the job. Various cases have been brought to trial and the focus of attention among the medical profession and the legal profession. The cases that have been raised and brought to trial, as the case involving Dr. Hotma Partogi Pasaribu and it was decided by the Medan District Court with Decision No. 417 / Pdt.G / 2012 / PN Mdn.

In such cases, the patient (Ny, MS) bleed clot then conducted an ultrasound examination, the result is myoma uteri, and by dr. HPP surgery performed. HPP doctors have explained to the patient that curettage is not solving problems, but it is a step that must be passed before the surgery, but the patient refused and asked for immediate surgery. The husband has also given approval for the surgery. However, after dilaku-kan medical action by Dr. HPP, patients do not receive medical action performed by doctors resulting in lifelong disability in the patient, and the patient filed a lawsuit in the District Court of Medan.

In such cases, doctors do not provide medical services deemed appropriate professional standards and standard operating procedures, namely direct patient surgery performed without a biopsy, so that the air due to a lifelong disability. Over the case, the Medan District Court passed a decision to dr. HPP to pay immaterial damages to the patient by Rp200.000.000,00 (two hundred million rupiah).

There are still many other cases in several hospitals in the country, which led doctors to deal with the court since sued by patients or their families who feel disadvantaged in health care. Circumstances such as these show a phenomenon that the medical world crisis began medical ethics, medical skills and even crisis cannot be resolved with medical ethics solely, but must be resolved in a way that is more broadly, that should be resolved through legal channels.<sup>13</sup>

The case of claim for damages filed by the patient to the doctor above are included in the field of civil law, which is based on a relationship between doctor and patient in a therapeutic transaction. Legally, the agreement between doctors and patients has created rights and obligations, and should be implemented as agreed. If one party does not fulfill its obligations or to act beyond what is magnified promised, the injured party may file a claim for compensation.

The responsibility of a doctor can be sued for in this case a doctor in the medical profession must be run professionally with the standards of the profession, competence and permission to work in accordance with the standards and professionalism.<sup>14</sup>

Similarly, the hospital, also responsible for the waiter's health provided in the event of claims or demands for damages. Hospitals are places to work in accordance with the health workers and the duties of their respective professions. Hospital, according to Article 1 paragraph 1 of Law No. 44 Year 2009 on Hospital is: "Hospital is a health care institution that organizes personal health services in plenary that provides inpatient, outpatient, and emergency", while health workers, according to Article 1, item 6 of Law No. 44 of 2009:

The hospital will involve all health professionals who interact with each other in performing the task of his profession. According Bahder Johan Nasution that the profession of a doctor or dentist is a functional group that works on the basis professionalisasinya, but administratively they are employees of the hospital.<sup>15</sup>Health personnel in performing its duties paid by governments or owners of the hospital for their professional expertise. Thus on labor relations, legal action is the responsibility of the medical staff the hospital.

Against any negative results received by the patient, the patient always claimed to have occurred malpractice made by a doctor who will ultimately involve the hospital as the doctors worked, but if examined again that from the beginning of the relationship of physicians, patients, and hospitals expressed in the transaction therapeutic built not aimed at the result, but the process or the doctor's efforts to the maximum. Thus, if a doctor commits malpractice, it must be seen from the process, whether a doctor has done its job in accordance with the authority, competence and standard operating procedures, if any one of those things that are not fulfilled, then we can say a doctor has malpractice but with proof of course,

## ISSUES

From the description above background, the authors formulate the problem as follows:

1. How is the legal responsibility of the doctor against patient lawsuits in the health services in the hospital?
2. How the legal consequences infringement liability doctor against patient lawsuits in the health services in the hospital?

<sup>12</sup> Ibid., P. 149.

<sup>13</sup> Bahder Johan Nasution, 2013, Health Law, Accountability Doctor, Molds Second, Rineka Copyright, Jakarta, P. 4.

<sup>14</sup> Desriza Ratman, 2013, Informed Consent and Legal Aspects of Medical Records Therapeutic Transactions, Cerakan First, Keni Media, Bandung, p. 16.

<sup>15</sup> Bahder Johan Nasution, 2005, the Health Law, Accountability Doctor, Rineka Copyright, Jakarta, P. 46.

## RESEARCH METHODS

This research using normative juridical approach, with specification of descriptive analytical research. The data used in this research is secondary data, obtained through the study of literature, which is then analyzed qualitatively.

## DISCUSSION

### 1. Legal liability doctor against patient lawsuits in the health services in hospitals;

By law, doctors and patients relationship is a relationship that was formed through an agreement or contract which is known as therapeutic transaction. The agreement begins with questioning (anamnesis) between doctors and patients, then conducted a physical examination by a doctor to a patient, a doctor will diagnose a patient's illness. This first diagnosis can be a working diagnosis or diagnoses temporary or definitive diagnosis. Once the diagnosis is made, then the doctor decide what kind of therapy or medical action that will be done to the patient.<sup>16</sup>

Legal relationships where the doctor does not promise anything (cure or death) to a patient named *inspannings verbintenis*, which is very different from the usual legal relationships with the agreement in general, that *risikoverbintenis* or *resultants verbintenis* promising a definite result.<sup>17</sup>

In the regulated legal relations regarding the rights and obligations of reciprocity, in the sense of obligation to the patient's physician, community, peers and ourselves as outlined in the KODEKI, patients' rights, community, peers and themselves.

Law relationship that was born of doctor-patient relationship in the health care effort has given rise to the legal aspects, both in the field of civil law, administrative law, and criminal law.<sup>18</sup>

The doctor's responsibility not only of the medical aspect, but there are responsibilities on legal aspects. That is because by law, any agreement will bring forth rights and obligations, which if one party violates the agreement the contents of those who feel harmed can sue or seek redress against those deemed harmful.

Rights and obligations of doctors in the therapeutic transactions also be a measure of the actions taken against the patient's physician. In the event of default or tort doctor could be considered malpractice. Malpractice itself is a term that is addressed to the doctor when the doctor cannot take responsibility for the consequences of scientific harm to patients.<sup>19</sup>

If the patient is suffering losses due to errors doctors in their profession, the patient can sue for compensation, either by default (a state in which a person does not fulfill its obligations based on the agreement / contract) or because of an unlawful act (contrary to the professional obligations of his), or violate the rights of patients arising from his professional obligations, or contrary to morality, or contrary to decency in society.<sup>20</sup>

If the lawsuit is based on the default (do not meet achievement or meet achievement is not good), then the patient must have evidence of loss due to non-fulfillment of obligations physician, in accordance with the applicable standard of medical profession in a therapeutic contract. In practice it is not easy to carry it, because the patient did not have enough information from the doctor about what measures is the duty doctor in a therapeutic contract.

Civil liability of a doctor, in contrast to criminal law which aims to organize the order and security in society, civil law adheres to the principle that "whoever harms others, should give compensation". According to the civil law, the doctor and patient relationship can occur for two (2) things:<sup>21</sup>

#### a. Under the agreement (*ius contractus*);

Here formed a voluntary therapeutic contract between doctor and patient based on the free will. Demands can be done if the alleged event of default, which is a denial of what was agreed. Basic demand is not done, too late to do or the wrong doing of what has been agreed that. For the validity of an agreement, pursuant to Article 1320 of the Civil Code mentions several requirements, namely:

- 1) There is agreement each party who made the agreement;
- 2) The ability of the parties to make an agreement;
- 3) The existence of a particular object;
- 4) Because kosher.

<sup>16</sup> Anny Isfandyarie 2005, Medical Malpractice & Risk, Studies In Criminal Law, First Edition, Achievement Reader Publisher, Jakarta, p. 85.

<sup>17</sup> Ibid., P. 85 and 86.

<sup>18</sup> Hermien Hadiati Koeswadji, 1998, the Legal Medicine, Study on Relationship of Law in Mana Doctor As One Party, Citra Aditya Bakti, Jakarta, p. 85.

<sup>19</sup> Desriza Ratman, op.cit., P. 62.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid., P. 83-85.

This form is common, where a patient voluntarily to the hospital or somewhere practitioners. In this sort of thing said to have taken a voluntary therapeutic relationship between doctor and patient on free will. The surgery the signboards of doctors and hospitals is common knowledge that indeed volunteered to provide medical services. The emergence of the charges against the doctor or hospital is because in the opinion of the patients existence of a default in the provision of medical services. In general, and that also applies to hospitals and doctors, tort can be considered in three (3) things:

- 1) Do not do what has been agreed;
- 2) Too late to do what has been agreed;
- 3) One does what has been agreed.

**b. Under the law (ius delicto).**

Here the adage applies in civil law "who cause harm must replace these losses". This is based on the provisions of Article 1365 of the Civil Code, which states that: "An unlawful acts involving harm to others, require a person who due to his fault causing harm, to replace these losses".

In connection with the legal responsibility of the physician in the field of civil law, then there are two (2) forms the principal responsibility, namely:<sup>22</sup>

- a. Liability for damages caused by wan-achievement;
- b. Liability for damages caused by an unlawful act.

Basically, the civil liability aims to mem-gain compensation for damage suffered, in addition to prevent things that are not desirable. Therefore, the basis for the demanding responsibility of physicians that are considered detrimental to the patient is about tort or breach of contract which entitles the aggrieved to receive compensation from other parties who have obligations to the party suffering such losses.<sup>23</sup>

There is Three (3) the principle of civil liability set out in the Civil Code, namely:<sup>24</sup>

- a. Any actions that cause harm on another person means a person who did it had to pay compensation as damages liability (Article 1365 Civil Code);
- b. Someone must be responsible not only for damages done intentionally, but also because of negligence or lack of care (Article 1366 of the Civil Code);
- c. Someone has to give an account not only for damages from his own actions, but also for any loss arising from the actions of others who were under his supervision (Article 1367 of the Civil Code).

Sri Siswati and Safitri Hariyani argued that a doctor or health worker should be responsible civilly if he does the following:<sup>25</sup>

- a. In default (Article 1239 of the Civil Code);
- b. Acted against the law (Article 1365 of the Civil Code);
- c. Negligence resulting in loss (Article 1366 of the Civil Code);
- d. Shirk work as a responsible [Article 1367 paragraph (3) of the Civil Code].

A civil suit filed by more patients the bottom-right in tort, as in the case of dr. HPP sued by MS patients who had been made by the Medan District Court with Decision No. 417 / Pdt.G / 2012 / PN Mdn.

On the case, the Medan District Court passed its decisions with the injunction as follows:

**PASSING:**

In the exception

- Rejecting exception Defendant I, Defendant II and Co-Defendants. THE PRINCIPAL CASE
  1. Granting Plaintiff's part;
  2. Declare Defendant I and Defendant II has committed an unlawful act;
  3. Declared valid and have the force of Decision of the Honorary Council of Indonesian Medical Disciplinary No. 24 / P / MKDKI / VIII / 2009 dated March 31, 2011;
  4. Declared valid and have the force of Resolution of the Board Audit Discipline (MPD), which was read on October 28, 2011;
  5. Punish Defendant I and Defendant II jointly and severally to pay damages to the Plaintiff Rp200,000,000 immaterial, - (two hundred million);

<sup>22</sup> Anny Isfandyarie 2006, Liability and Sanctions For Doctors, Book I, First Edition, Achievement Reader Publisher, Jakarta, p. 5 and 6

<sup>23</sup> Ibid., P. 6.

<sup>24</sup> Ibid., P. 7.

<sup>25</sup> Sri Siswati, op.cit., P. 214-217.

6. Also to punish the Defendant to comply with the contents of this decision;
7. Punish Defendant I and Defendant II jointly and severally to pay court costs amounting to Rp928.500, - (nine hundred and twenty eight thousand five hundred rupiah);
8. Plaintiff refused to rest.

Dr. HPP commits an unlawful act, which has met the elements in Article 1365 and Article 1366 of the Civil Code. Article 1365 of the Civil Code states that: "Every illegal acts that bring harm to others, require a person who because of his fault publish these losses, indemnify", then Article 1366 of the Civil Code states that: "Everyone is responsible not only for the harm caused his deeds, but also for the harm caused to negligence or carelessness, his heart".

Deeds Dr. HPP has met the requisite elements or tort as follows:

- a. The act was an act against the law;
- b. Their fault;
- c. Their losses;
- d. The causal relationships between actions and loss.

Before filing a lawsuit to court, MS (Plaintiff) through family to sue Dr. HPP to the Indonesian Medical Disciplinary Honorary Council (MKDKI) with registration number: 24 / P / MKDKI / VIII / 2009. Based on the examination conducted by MKDKI to the complaint plaintiff, MKDKI take a decision which was read on March 31, 2011, namely:

- a. Against Teradu, doctors HPP, a specialist in obstetrics gynecology found violations of professional discipline kedokteran, namely at point 6 of the Decree of the Council kedokteran Indonesia Number: 17 / IMC / Kep / VIII / 2006 on Guidelines for Enforcement of Discipline of the Medical Profession, which reads: In the management of the patient, do they should not do or do not do what should be done in accordance with their professional responsibilities, without justification or legitimate forgiving, so that can endanger the patient, in this case did not take appropriate action against me-merlukan state intervention;
- b. Sanctions against Teradu, physician obstetrician gynecologist HPP by point 1 above, as follows:
  - 1) recommendations revocation letter registration marks for 2 months;
  - 2) This decision in effect since the publication of pe-Implementing determination by the Medical Council Indonesia,
- c. That breach Teradu in item 1 above should not be construed as "culpa" (negligent), as well as "opzet" (intentionally), also not an offense in the sense of "opzet bij mogelijkheid" (conviction of the possibility) and against the law, both in criminal law (wederechtelijk) or civil law (onrechtmatige daad) within the meaning of kedokteran legal malpractice. "Breach" is limited to the norms of administrative discipline, so it's not necessarily be interpreted as a "violation" or "tort" which requires comprehensive requirements of "pro-fesional competency of experts" and "geographic competency of experts";
- d. Ordered that all evidence remained in the investigation file;
- e. Provide a copy of this decision only to Teradu and Council kedokteran Indonesia,

In such cases, Dr. HPP acted against the law because of their negligence, thereby causing losses to the patient. Here there are inadvertent physicians in providing medical action to the patient to the detriment of patients. Doctors are less assertive and tend to follow the wishes of the patient, so that the act is not based on the standards of the medical profession. There was also no routine surveillance.

Issue legal responsibility of health workers in general and doctors in particular a lot to do with the hospital. A hospital, in addition to the social aspect to help cure patients, hospitals must also consider its survival. Not a bit of medical malpractice suits against the rear wall in the hospital, so if there are claims of alleged medical malpractice (alleged medical malpractice), the hospital will also be involved.<sup>26</sup>

Lawsuit or civil claim can be filed in addition to the doctor or dentist, can also be submitted to legal entities or a health care center or hospital where the doctor or the dentist's work. Similarly, if a doctor or dentist to work in a team, then all the doctors can also be sued or prosecuted jointly and severally depending on how much responsibility each. Included also take responsibility for the actions of medical personnel who are under his command.<sup>27</sup>As is the case of Dr. HPP and patients, the hospital where Dr. HPP works also are defendants, namely Saint Elizabeth Hospital Medan.

Viewed from a legal perspective, it is the responsibility of the hospital, both owned by the government or private, the same responsibilities (legal liability) to the community. Equally can be sued and sought redress if and until proven negligence, either from a doctor, nurse, midwife or negligence in the field of hospital management.

Basically, the right to sue a patient at the hospital, based on Article 32 letter q Act No. 44 of 2009, which states that: "Patients have the right to sue and / or demanding home aakit when the hospital suspected of providing services that do not conform to standards, either to civil or criminal".

<sup>26</sup> J. Guwandi 2006, Alleged Medical Malpractice & Draft RPP: "Therapeutic Agreement Between Doctors and Patients", First Edition, Faculty of Medicine, University of Indonesia, Jakarta, P. 82.

<sup>27</sup> Syahrul Machmud, op.cit., P. 181.

The right to sue as a guide for patients when they are going to prosecute / sue the hospital. In the letter q Article 32 of Law Number 44 Year 2009 is set implicitly that a patient when receiving health services are entitled to assess the health services provided both by hospital and doctor, and if the service is not assessed in accordance with the standards of service. This assessment makes the patient is entitled to sue in civil and criminal, when the hospital suspected of having committed service not up to standard. This relates to the obligations of hospitals that were set out in Article 29 of Law No. 44 of 2009, due to health care in accordance with the standards is an obligation of the hospital, as which is expressed in Article 5 letter that in order to perform tasks as referred to in Article 4, the hospital has the function of organizing health treatment and recovery services in accordance with standard hospital services.<sup>28</sup> As for criminal sanctions for hospitals, set within the provisions of Law No. 44 of 2009:

a. Article 62

Any person who deliberately organizing hospital did not have a permit referred to in Article 25 paragraph (1) shall be punished with imprisonment of 2 (two) years and a maximum fine Rp5.000.000.000,00- (five billion rupiah).

b. Article 63

(1) In the case of criminal offenses referred to in Article 62 carried out by the corporation, in addition to imprisonment and fines against the officer, the criminal can be levied against the corporation in the form of penalty by weighting three (3) times the penalty referred to in Article 62;

(2) In addition to criminal penalties referred to in paragraph (1), Korpo constellation additional penalty may be imposed in the form of:

- a. Revocation of business license; and / or
- b. Revocation of legal status.

2. As a result of the violation of law legal responsibility to sue the doctor's patients in health care in hospitals.

Each legal act creates legal effect. The legal consequences are the consequences caused by the legal event.<sup>29</sup> According Syarifin that legal consequences are all consequences arising from all legal actions undertaken by law subject to the legal object or other consequences caused by certain events by the law in question has been determined or considered as legal consequences<sup>30</sup> Soeroso argues that the legal consequences can be tangible as follows:<sup>31</sup>

- a. The Birth, changes in or cessation of a state of law. For example, the age to 21 years, the legal consequences of incompetent transformed into competent legal law, or with their forgiveness, they are gone competence to take legal action;
- b. The Birth, changes in or cessation of a legal relationship between two or more subjects of law, in which the rights and obligations of the parties of the deal with the rights and obligations of the other party. For example Made an agreement of sale with Ketut. With the agreement (legal event), it gives birth to the legal relationship between Made and Ketut. With the birth of the legal relationship, born as a result of such legal rights and obligations. Once paid for, the legal relationship be completed;
- c. Both sanctions if it does act that is against the law. For example, a thief who was convicted is a legal consequence of the actions of the thief. Stealing is taking other people's stuff without rights and unlawfully.

Regarding the legal consequences of violations of the legal responsibility of the doctor against patient lawsuits in the health services in hospitals, the legal effect of tangible sanctions. Therefore doctors have melaku-kan act categorized as an act against the law, which is detrimental to the patient, so the doctor can be penalized.

As a result of legal liability law violation lawsuit against the patient's physician in the health services in hospitals, can be seen from several aspects of the law, namely:

- a As a result of the criminal law;

A doctor who causes damages to the patient due to negligence of the doctors in the treatment, either directly or indirectly can be held overall responsibility for the late criminal. Against every offender, the offender must get punishment.

Accountability in criminal law, in regard to criminalize someone next person has committed a prohibited act also known as the principle of *straf zonder geen Schuld* (no punishment without fault). Therefore, to be able dipidananya an error that can be interpreted as a liability in criminal law must meet three (3) elements, as follows:<sup>32</sup>

- 1) Petindak their ability to take responsibility, meaning that the state should petindak normal life;

<sup>28</sup> 28Zahir Rusyad, 2018, the Patient Protection Law, Legal Protection Against Concept Patient's Rights In Health By Doctor and Hospital, First Edition, Equals Press, Malang, p. 70.

<sup>29</sup> Ishaq, 2008, Fundamentals of Legal Sciences, First Edition, Sinar Graphic, Jakarta, P. 86.

<sup>30</sup> Pipin Syarifin 2009, Introduction to Law, Faithful Reader, duo, P. 71.

<sup>31</sup> R. Soeroso 2005, Introduction to Law, Seventh Printing, Graphic Rays, Jakarta, P. 296.

<sup>32</sup> Momon Sudarma, 2008, the Criminal Law In Practice Medicine, Salemba Medika, Jakarta, P. 78.

- 2) Their inner relationship between petindak and actions that can be either intentional (dolus) or negligence (culpa);
- 3) The absence of reasons removal of errors or forgiving.

All actions in the medical services performed by medical practitioners may experience an error, which ultimately lead to medical malpractice, and when such actions are performed in a distorted and adverse health consequences or death of the patient, the health worker may be subject to liability in criminal, by criminal sanctions.

In developed countries, the top three specialists, the main target claims of impropriety in practice, the surgeon (orthopedic, plastic, and nerves), anesthetist and specialist in obstetrics and diseases of the womb.<sup>33</sup>

Sanctions in criminal law is basically a form of torture or other sanctions restrictions on freedom of perpetrators of criminal acts. With the expectation after undergoing criminal sanctions will be causing any deterrent effect against perpetrators of (repressive) or there is a preventive element against another person (people).

From the point of criminal law, the legal consequences of medical acts performed by doctors and harm patients, included in the criminal courts when the form of damages referred to in the formulation of a crime and be certain criminal elements. Medical action performed by a doctor, which is not in accordance with professional standards and operational standards mengakibatkan death or bodily injury to the patient an element of crimes under Article 359 of the Criminal Code and Article 360 of the Criminal Code when negligence / culpa resulting in death or injury.

- 1) Article 359 of the Criminal Code:

Anyone who due to his fault caused the death of people sentenced to prison five years or confinement forever one year.

- 2) Article 360 of the Criminal Code:

- (1) Whoever causes the fault of serious injury, be punished with imprisonment for everfive years or confinement forever one year;
- (2) Whoever because kesalahanya causing the injury was such that people become ill while or are unable to perform his or her job temporarily, be punished with imprisonment for ever nine months or imprisonment for ever six months or a fine setingi Rp. 4.500.-.

- 3) Article 361 of the Criminal Code:

If the crimes described in this chapter was conducted in doing an office or employment, the penalty can be added with the third and by mistake can be fired from his job, in which the crime was committed and the judge may order that the decision was announced.

In criminal law, penjajtuhan sanctions based on the error or omission, whether intentional or not in-senggaja. For willful misconduct that resulted in the victim died equated with murder, and if the victim did not die so-called action lawyer-aniayaan with lawyer- aniayaan sanctions.

For a criminal act that no element of intent, criminal act can be categorized as negligence, which can be sanctioned with a penalty.<sup>34</sup>

- 1) If the victim died penalties five years and imprisonment or a fine of Rp 4,500, -
- 2) When severely injured a jail sentence five year or one year imprisonment;
- 3) Minor injuries when a jail sentence of nine months or six months imprisonment.

The above provisions apply to criminals who are not in the line of duty or job, but if all were committed for running errands or work, then sanctions coupled with a third of the basic sanctions and can be fired from his job. The addition of these sanctions is based on responsibility, and because it is the responsibility and duty should be mastered in their duties. With more reason to master the job, it should be the emergence of a risk to be smaller, it can even prevent the occurrence of risk.

Related to the case of dr. HPP, then when seen from the aspect of criminal law, the offender is liable to Article 360 of the Criminal Code, that is, when causing the serious injury then punished with a prison sentence to five years or imprisonment for ever one year, and if it causes people to become ill while or unable to perform his or her job temporarily, be punished with imprisonment for ever nine months or imprisonment for every six months or a fine setingi-high Rp.4.500, -.

- b. As a result of civil law;

All of unlawful discharge of no consequence to the offender. The consequence of this there is a form of compensation for civil law, and also that berentuk criminal sanctions. To replace the unlawful acts must undergo or accept the penalties established by law.

<sup>33</sup> Muhammad Sadi Is, 2017, Health Law Ethics, Theory and Applications In Indonesia, Molds Second, Kencana Prenada Media, Jakarta, p. 75 and 76.

<sup>34</sup> Mudakir Iskandarsyah, op.cit., P. 91 and 92.

For violations of medicine is better known as malpractice, can be classified to a violation of criminal and / or civil, depending on the case. In lieu of damages malpractice compensation could take the form of criminal or civil damages, or both. In the transaction therapeutic health professionals and patient position are equal. Lawsuit to ask health care workers to two air-source legal basis, namely:<sup>35</sup>

- 1) Based on breach of contract (contractual liability) as set forth in Article 1239 of the Civil Code, which reads: "Each of the engagement to do something, if your child does not owe me-filled the obligation to get the solution in the obligation to provide replacement costs, damages and interest";

Default in health services only occur if the fulfillment of the following elements:

- a) The relationship between health personnel and patients occur on the basis of therapeutic contract;
  - b) Health workers have provided health care improper and violated the therapeutic purpose of the contract;
  - c) Patients suffer losses due to health measures air-plugs.
- 2) Based on unlawful acts (onrechmatigedaad) in accordance with the provisions of Article 1365 of the Civil Code, which reads: "Every act of breaking the law, which bring harm to others, require a person who because of his fault publish those losses, to replace these losses".

The lawsuit may be filed if there is a tangible facts an unlawful act between the parties even though there is no agreement. To file a lawsuit based on tort, shall be met 4 (four) criteria, as everywhere under Article 1365 of the Civil Code, namely:

- a) Patients should experience a loss;
- b) There is error;
- c) There is the causal relationship between fault and damages;
- d) The act is unlawful.

In general, the actions of health workers, almost certainly no element of intent to commit malpractice. As compensation in case of malpractice, a health worker-kan obliged to provide compensation for losses suffered by the patient or his family. For civil compensation in the form of rewards that are material. The amount of compensation is certainly based on court decisions, the high and low compensation hakimlah only has the authority determines.

The indemnity provisions as mentioned in:

- 1) Article 1365 of the Civil Code:  
Any unlawful acts that bring harm to others require a person who because of his fault publish it indemnify the loss.
- 2) Article 1366 of the Civil Code:  
Each person is responsible not only for losses caused by his actions, but also for the harm caused to negligence or carelessness, his heart.
- 3) Article 1370 of the Civil Code:  
In the case of intentional killing or less heart-heart person, then abandoned spouses, children or parents of the victim, who typically earn money from the victim's workers. Have the right to demand a right to compensation to be assessed according to the status and wealth of both parties, and according to circumstances.
- 4) Article 1371 of the Civil Code:  
The cause injury or handicap something limbs intentionally or inadvertently provide the victim's right to reimbursement of expenses other than healing, demanding compensation for losses caused by the injuries or disabilities. Also the indemnity is assessed according to the position and the ability of both parties and according to circumstances. This latest provisions generally apply in the case of published menilaikan loss of something of crimes against the person.

In relation to health care when patients or their families consider health personnel have committed acts against the law, it can file a claim for compensation. According to the provisions of Article 58 of Law No. 36 of 2009, which states that:

- (1) Everyone is entitled to claim damages against a health worker or health providers to incur losses due to errors or omissions in the health services received;
- (2) Gantu demands loss referred to in paragraph (1) shall not apply to health workers who perform life-saving actions or prevention of disability during emergencies;
- (3) The procedure of making claims in se-how referred to in paragraph (1) shall be in accordance with the provisions of the legislation.

Basically called civil sanctions are estab The delivery of compensation to the injured party. Sanctions in the form of compensation itself can be classified into two (2) types, namely:<sup>36</sup>

- 1) Sanctions materiel; and

<sup>35</sup> Maskawati, Andriani Misdar, Muji Iswanty, 2018, op.cit., P. 39-41.

<sup>36</sup> Ibid., P. 88.

For sanctions in the form of the material still allows for measurement-kan, meaning that they can be measured by material (money).

2) Sanctions non-material.

In contrast to sanction non-material, to date there is no means of measurement. But in practice often non-material sanction is converted into material value / money so there is a bit of a person suing another party with which the non-material tuntutan measured by the value of money in determining the amount of their own way. This is because there is no presence of the measuring instrument, so that the determination of the number of very high demands regarded as true, although not based on the principle of merit.

Non-material demands are very high, often dikarenakan settlement process using the services of a lawyer. I wonder what the background is a lawyer determine the material demands are too high, artinya juridical background concrete, not abstract. Non-material demands cannot be said to me-nyalahi juridical, in clear violation of merit. Until now, the legal norms never talk about conversion of non- material demands into demands materiel.<sup>37</sup>

The magnitude of the demands, both besifat materiel and non- materiel, there is no definite standard, such as the death of a patient due to malpractice, to determine the level of the price of a human life no definite standard, because the life is not a commodity as befits no standard price. For wounds that do not have disabilities might still be assessed-kan, by calculating all the medical expenses, loss during the patient cannot produce in a given time, and other expenses that are considered inappropriate.<sup>38</sup>

A judge in giving judgment indemnity will use the principles of decorum by local conditional. Because the principle of appropriateness is an initiative of the judges themselves, that it is possible there is still the element of subjectivity, which can cause a lack of uniformity in providing compensation between the case with other cases in the same case. For those who do not have high moral, due to lack any measure this is considered to have the freedom to determine the size of the demand.<sup>39</sup>

In the case of dr. HPP criminal sanction imposed is immaterial damages Rp200,000,000, - jointly and severally with the hospitals pursuant to Article 1365 and Article 1366 of the Civil Code.

c. As a result of administrative law.

Doctors who perform omissions or errors can be magnified legally tanggungjawabkan administration, both for violations of professional discipline or violation of ethics. It magnified disciplined tanggungjawabkan profession is being complained of patients that will be handled by MKDKI and complaints of ethics violations will be handled by MKEK IDI (Honorary Council of Indonesian Medical

Association Medical Ethics) based on the existing rules on Law No. 29 2004.

In the field of administrative law liability of medical personnel, doctor / dentist is contained in Law No. 29 of 2004, among others, in Article 69, which regulates:

- (1) Medical Disciplinary Honorary Council Decision Indonesia binding doctors, dentists, and Council All dokteran Indonesia;
- (2) The decision referred to in paragraph (1) may be found not guilty or disciplinary action;
- (3) Disciplinary sanctions referred to in paragraph (2) could be:
  - a. To a written warning;
  - b. recommendations revocation letter of registration or letterlicensed to practice; and / or
  - c. The obligation to follow education or training in medical education institutions or dentistry.

In the case of Dr. HPP, MKDKI give disciplinary sanction of revocation revocation recommendationletter registration marks for two months.

## CONCLUSION

Legal liability doctor against patient lawsuits in the health services in hospitals is a form of accountability for the doctor of civil law on the basis of tort as stated in Article 1365 and Article 1366 of the Civil Code. Patients filed in material and immaterial damages against the doctor and the hospital where the doctor works, and doctors and hospitals to pay damages jointly and severally to pasieb harmed. As a result of law violations the legal responsibility of the doctor to suit the patient in health services in hospitals, in the legal aspects: (a) criminal law: under Article 360 of the Criminal Code, namely what-if cause serious injury then punished with a prison sentence to five years or confinement forever one year, and if it causes people to become sick while or are unable to perform his or her job temporarily, be punished with imprisonment for ever nine months or imprisonment for ever six months or a fine setinggi high as Rp.4.500; (B) civil: Air-ity of Article 1365 and Article 1366 of the Civil Code shall be liable to the patient material and immaterial; (C) an administrative: a written warning,

<sup>37</sup> Ibid.

<sup>38</sup> Ibid., P. 88 and 89.

<sup>39</sup> Ibid.

## SUGGESTION

Need firmness of doctors to patients who do not follow the instructions in medical action, with denial and made with letter a written statement. Routinely supervision needs to be done in implementing professional standards for doctors who perform medical action

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Marsono Budi Ujianto  
*Law Master Program Universitas Of 17 Agustus 1945*  
*Semarang Indonesia*

Sarsintorini Putra  
*Law Master Program Universitas Of 17 Agustus 1945*  
*Semarang Indonesia*