

# IMPLICATIONS OF COMMUNITY'S UNDERSTANDING OF MEDICAL MALPRACTICES IN RELATION TO THE ASPIRATIONS OF FAIR HANDLING OF MEDICAL MALPRACTICE VICTIMS

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**Abstract** — *Its activities provide knowledge and understanding to the public so that they know in detail that every citizen is protected by their rights by the constitution. The right to defend life and life can be interpreted that everyone has the same right to defend his life. One of them is to get health services. Health services are carried out by professional health workers. Based on Law No. 36 of 2014 concerning Health Workers, it regulates the rights and obligations of health workers, while in Law No. 44 of 2009 concerning Hospitals there are rights and obligations of patients. Law No. 29 of 2004 concerning Medical Practice which stipulates that health workers in carrying out their profession are really required to have professional behavior. If cases of malpractice arise, it is hoped that the pattern of settlement of these cases to be more fair and dignified needs to be seen comprehensively. So that there will be no decision that only provides justice to one party while the other party (especially the victim) receives less attention. An alternative model for resolving medical malpractice cases based on a balance between professional duties and existing victims (patients). Medical personnel may not commit malpractice on purpose, where there is a possibility of negligence in carrying out their professional work according to existing operational standards. On the other hand, a patient's great trust in a doctor needs attention too. The settlement approach has been carried out by enforcing a code of ethics and professionally, there are advantages and disadvantages, on the basis of these considerations, an alternative solution is sought for the occurrence of malpractice in the medical field that can produce a balanced and fair decision. A law enforcement construction that is expected to provide justice for all parties. Socialization about the pattern of settlement in a just manner needs to be done to the community so that the community members are aware of the position and conditions that are manifested in their rights and obligations.*

**Keywords** — *Medical Malpractice, Victim, Legal Awareness, Justice*

## I. INTRODUCTION (SIZE 10 & BOLD)

Judging from the legal aspect, health services between doctors (medical personnel) and patients are civil relations. The civil character by Wahyu Rizki Kartika Divine (2018) is described as the concept of a relationship between a doctor and a patient that must be based on values and morals as well as good faith for the implementation of good and sustainable health services.

The doctor-patient relationship in a civil context is a unique therapeutic transaction. This civil relationship is known as *inspanningsverbintenis*, which is an engagement that must be carried out with a careful and careful attitude and hard work and strives for the patient's recovery (*met zorgen inspanning*) and because the achievement is in the form of an effort, the results are uncertain. (Marcel Seran and Anna Wahyu Setyowati: 2006) This uncertain situation can cause problems when there is a difference between the services provided and the results do not match expectations.

The situation mentioned above in the professional world is said to be malpractice. The term malpractice (Muladi: 1997) is defined as a lack of good skills, failure to provide professional services, failure to practice skills by members in learning that can be applied in all circumstances in society, professional / occupational responsibilities resulting in accidents, loss or damage in service delivery. , or on certain people who rely on their expertise.

Meanwhile, malpractice in the medical field occurs when a doctor makes medical service efforts that are not in accordance with the required medical professional standards, then the doctor can be said to have made a professional error.

Malpractice cases were rampant from 2006 to 2012, there were 182 cases of medical negligence and malpractice that were proven to be carried out by doctors throughout Indonesia. This malpractice was proven by a doctor after going through a trial conducted by the Indonesian Medical Discipline Honorary Council (<http://www.tempo.co/read/news/2013/03/25/058469172/Occurs-182-Cases-Malpractice>).

Malpractice that occurred during that time there were 29 doctors whose licenses to practice were temporarily revoked, some for three months, some for six months. (<https://nasional.tempo.co/read/469172/Sampai-akhir-2012-terjadi-182-case-malpractice>).

The demands for cases of malpractice and medical negligence are varied, there are civil, criminal and administrative charges. The results of the research by Sulistyanta (2013) 70% (N: 5) of the victim respondents wish to sue criminally, but these criminal charges often encounter obstacles in proof, especially evidence so that it is possible that the case cannot be continued. So it is natural that the victim's view of the medical malpractice settlement process is not satisfactory. Likewise, civil claims such as the case for compensation claims at the Omni Hospital in Jakarta, it turns out that most of the victims' demands for compensation were not granted. (source: <https://metro.tempo.co/read/1121778/rs-omni-dituduh-malpractice-ke-anak-juliana-jut-rp-20-miliar>).

## **II. METHOD**

Malpractice socialization in Pucangan village is quite relevant. The significant number of residents and the existence of the city of Kartasura which becomes quite busy traffic in the position of the three lanes of the highway. In addition to being prone to accidents, during the endemic period, several residents were recorded as being affected by the corona virus. It is natural for the city of Kartasura, which is located at a fork in the highway with heavy traffic from various cities, of course there are other residents of the city who stop by so that they can become local recipients.

The existing Puskesmas has grown quite rapidly and has grown in size and area. Beside the puskesmas in Kartasura, there is the PKU Muhammadiyah hospital. So that the socialization team considers it important to provide counseling with the theme of legal awareness of medical practice. Another consideration considering health as a basic human need cannot be separated from the existence of mistakes or inadvertent actions taken by medical personnel. Mistakes by medical personnel in carrying out treatment are actually a natural thing even though there is a need for accountability.

## **III. RESULT AND DISCUSSION**

Socialization of legal awareness of malpractice related to medical malpractice issues is more focused on victims. Because the victim is generally in a weak position. Although patients who come for treatment there has been an agreement, the results of which are not clear. In fact, the patient's resignation to medical personnel who are considered qualified must be balanced with adequate expertise from medical staff. So that if there is medical malpractice, patients who have become "victims" should also get justice. However, the issue of upholding justice is not an easy one. Delivering justice for victims of malpractice is a winding road. However, with this legal awareness socialization, it is hoped that the community members, especially the residents of Pucangan, Kartasura, Sukoharjo villages will get enlightenment, especially about their rights and obligations so that community members can better understand, understand and understand better when they encounter the case from the start.

The purpose of socializing legal awareness is more focused on inculcating an understanding of rights and obligations and understanding how agreements are built between a medical worker (read: doctor) and a patient. With this understanding, it is also hoped that a more balanced and fair solution will occur when cases of medical malpractice arise. A balanced, fair and dignified solution certainly needs to pay attention to and involve the victim. Community members as "prospective" patients need to get more meaningful counseling or socialization as prevention.

Another consideration from the point of view of the composition of the population of Pucangan village, which is almost 50% of productive age, the composition is balanced between the number of men and women of productive age and mainly between the ages of 40-64 years (30%) because the age factor is generally vulnerable and more often experiences problems or problems. health problems that need to be protected. This means how they can access health services safely and at low cost, including protection if they become victims. The cost is cheap and safe because it is related to the composition of the population in Pucangan village, almost 49% (44.90%) of workers in the private sector/entrepreneurs. So that the composition of entrepreneurs who generally have lower secondary education means that services in the field of safe health need to be considered.

**Understanding Legal Awareness**

Before explaining the meaning of legal awareness, first it is known what law is? According to J.C.T. Simorangkir (1992:11) law is coercive regulations that regulate human behavior in the community made by authorized official bodies, which violations of these regulations result in actions taken, namely with certain punishments. .

According to Soerjono Soekanto (2002: 215) that legal awareness is a matter of values contained in humans about existing laws or about laws that are expected to exist. Actually, what is emphasized is the values of the function of law and not a legal assessment of concrete events in the society concerned.

Thus it can be said that self-awareness without pressure, coercion, or orders from outside to comply with applicable law. With legal awareness in society, the law does not need to impose sanctions. Sanctions are only imposed on residents who are actually proven to have violated the law. The law contains commands and prohibitions. The law tells us which actions are contrary to the law which, if done, will be threatened in the form of legal sanctions. For acts that are contrary to the law, of course, are considered to violate the law so that they are threatened with punishment.

In relation to legal awareness, according to Soerjono Soekanto (1982:112), he suggested four indicators of legal awareness successively (step by step), namely:

1. Knowledge of the law is knowledge of a person with regard to certain behaviors regulated by written law, namely about what is prohibited and what is allowed.
2. An understanding of the law is a number of information owned by a person regarding the contents of the (written) rules, namely regarding the content, objectives, and benefits of these regulations.
3. Attitude towards the law is a tendency to accept or reject the law because of an appreciation or realization that the law is beneficial for human life, in this case there is already an element of appreciation for the rule of law.
4. Legal behavior is about whether or not a rule of law applies in society, if a rule of law applies, the extent to which it applies and the extent to which the community obeys it.

In relation to the indicators above, Otje Salman (1993:42-43) explains the indicators as follows, among others:

1. The first indicator is an understanding of the law, a person knows about certain behaviors that have been regulated by law. The legal regulations referred to here are written laws and unwritten laws, these behaviors involve behavior that is prohibited by law and behavior that is permitted by law.
2. The second indicator is legal understanding, namely, the amount of information a person has regarding the content of the regulations of a particular law. Understanding the law here is an understanding of the content and purpose of a regulation in a particular law and its benefits for the parties whose lives are regulated by the regulation. A member of the community has their own knowledge and understanding of certain rules. For example, there is correct knowledge and understanding of Regional Regulation No. 7 of 2012 concerning the implementation of public order. Especially about street vendors to create legal awareness and understanding of the law.
3. The third indicator is legal attitude, which is a tendency to accept the law because of the appreciation of the law as something useful or profitable if the law is obeyed. Someone here will have a tendency to make a certain assessment of the law.
4. The fourth indicator is the pattern of behavior, namely where a person or in the community of its citizens comply with applicable regulations. This indicator is the most important indicator because in this indicator it can be seen whether a regulation applies or not in the community, so how far the legal awareness in the community can be seen from the legal pattern.

**Understanding Medical Malpractice**

Medical malpractice is not a legal formulation regulated by law but rather a collection of behaviors that can occur because of an intentional act, an act of negligence (negligence) or an unreasonable lack of skill/incompetence (professional misconduct). (Widodo Tresno Novianto: 2017: 15).

Medical malpractice is the wrong unprofessional attitude of someone who generally has a profession such as a doctor, dentist or veterinarian. Medical malpractice is usually caused by an unreasonable lack of skill/incompetence/incompetence (professional misconduct) or lack of caution/negligence in carrying out professional obligations, intentional wrongdoing or unethical practices. .

Law No. 29 of 2004 concerning Medical Practice states that it is a violation of physician discipline, whereas according to Law No. 36 of 2009 concerning Health mentions in Article 58.

There are terms, each of which has a different meaning, namely malpractice, medical negligence and medical accidents (Widodo Tresno Novianto: 2017: 30). Furthermore, according to Widodo Novianto, a violation of medical action is considered a medical risk if it meets the following requirements: (1) medical action taken by a doctor is in accordance with medical service standards (medical service standards/SPM and operational standards/SOP), (2) the doctor has taken action anticipation or estimating or caution in carrying out medical actions against patients, (3) the violation is not due to medical error or negligence, (4) there are efforts to

overcome the possible consequences of medical action, (5) the patient has a contribution / role / contribute to the occurrence of consequences that arise / occur, and (6) There is a justification and/or forgiving reason as regulated in Article 50 and Article 51 paragraph (1) of the Criminal Code.

It is classified as a medical malpractice if the action/deed done by the doctor meets the following requirements: (1) the medical action taken is not in accordance with the SPM and SOP service standards, (2) the doctor does not take any guesswork or precautionary measures, (3 ) the doctor's actions are carried out by negligence or intentional, (4) the doctor does not make efforts to overcome the consequences arising from the medical actions taken, (5) the consequences that arise there are no contributions/roles/from the patient, and (6) there is no excuse for forgiveness and justification. (Widodo Tresno Novianto: 2017: 31)

There is an interesting opinion: "medical negligence can be classified as malpractice, but in malpractice there is not always an element of medical negligence, in other words malpractice has a wider scope than medical negligence. (underline pen) A clearer difference can be seen from the term malpractice which in addition to including elements of negligence, also includes acts that are carried out intentionally (dolus), carried out consciously and the consequences that occur are the purpose of the action even though he knows or should knowing that his actions are contrary to applicable law. deliberately carrying out an abortion without a clear medical reason (indication), performing an operation on a patient who does not actually need surgery, providing a doctor's certificate whose contents are not true (Bahder Johan Nasution: 2005: 5)

Soerjono Soekanto and Kartono Muhammad (1983: 54) argue that there are no clear parameters regarding the limits of violations of the code of ethics and violations of the law. According to Agus Rahim (Anny Isfandyarie: 2006:60) it is clear that there must be a clear distinction between malpractice and medical disputes. Medical disputes are not legal issues but ethical issues.

Losses for failure to act are always understood by society as malpractice. In fact, malpractice only occurs when there are actions that are not in accordance with professional standards. Meanwhile, if there are interests of patients who are harmed usually involve medical disputes. (<https://www.Hukumonline.com/berita/baca/lt522ebcd1dec98/pentingnya-keberadaan-peradi-lan-medik>).

Apart from the understanding that aims to clarify the meaning of the malpractice, it is the fact that there are victims. Victims here are defined as people who are harmed due to negligence or negligence on the practice of medicine or health services, especially direct victims and the general public who experience disability and death due to services that do not meet standards.

#### **Understanding the Rights and Responsibilities of Patients and Doctors**

Regarding the rights and obligations of doctors and patients, it is regulated in Law No. 29 of 2004 concerning medical practice. Based on the therapeutic agreement, the parties bound by the agreement are medical personnel and health service users. Meanwhile, the rights and obligations of each party are regulated in Article 50 – Article 51 of Law No. 29 of 2004.

The rights of a doctor or dentist in carrying out medical practice include:

1. obtain legal protection as long as they carry out their duties in accordance with professional standards and standard operating procedures;
2. provide medical services according to professional standards and standard operating procedures;
3. obtain complete and honest information from patients or their families; and
4. receive a service fee.

In addition, because of a therapeutic agreement, doctors have the right (Zaeni Asyhadie: 2017: 63):

1. the right to work according to professional standards
2. the right to refuse to take medical actions that cannot be professionally accounted for,
3. the right to refuse to take medical actions that are not in accordance with his conscience,
4. the right to terminate the relationship with the patient when cooperation is no longer possible,

Meanwhile, according to M Hatta (Zaeni Asyhadie: 2017: 63) the rights of doctors are:

1. the right to refuse to carry out medical actions because they cannot be professionally accounted for
2. the right to refuse to take a medical action because the voice of conscience cannot be carried out and if a doctor faces a situation like this, he has an obligation to refer the patient to another colleague/doctor.
3. the right to terminate the cooperative relationship with the patient if it must be terminated then the doctor will provide minimal treatment,
4. the doctor's right to privacy, the patient must respect and respect the doctor,
5. the right to information/first notification in dealing with dissatisfied patients,
6. the right to remuneration in accordance with the therapeutic agreement/agreement, in the event that there is insurance, the payment is made by the insurance company,
7. the right to a complete explanation of the patient and his illness,
8. the right to defend oneself from all civil and criminal claims and lawsuits,

9. the right to choose patients, although not absolutely depending on the social conditions of the surrounding community, does not apply to government doctors and doctors who receive scholarships from the government.
  10. the right to refuse to give information about patients in court (vershoningrecht van de art).
- Obligations (Article 51 of Law No. 29 of 2004) doctors or dentists in carrying out medical practice are:
1. provide medical services in accordance with professional standards and standard operating procedures as well as the medical needs of patients;
  2. refer the patient to another doctor or dentist who has better skills or abilities, if unable to carry out an examination or treatment;
  3. keep everything he knows about the patient, even after the patient's death;
  4. carry out emergency assistance on a humanitarian basis, unless he is sure that someone else is on duty and capable of doing it; and
  5. increase knowledge and follow the development of medical science or dentistry.

If viewed from the standard of the medical profession, there are several obligations that must be carried out by a doctor, namely (Zaeni Asyhadie: 2017: 65):

1. Keep abreast of developments in medical science and technology in accordance with their field of expertise. This can be done by reading scientific journals or participating in medical seminars so that doctors do not only provide outdated medical procedures.
2. Make medical records in accordance with the provisions of applicable laws and regulations.

While the rights and obligations of patients, in receiving services in medical practice are as follows:

1. obtain a complete explanation of the medical action as referred to in Article 45 paragraph (3);
2. seek the opinion of another doctor or dentist;
3. get services according to medical needs;
4. refuse medical treatment; and
5. get the contents of the medical record.

Meanwhile, the patient's obligation to receive services in medical practice has the following obligations:

1. provide complete and honest information about their health problems;
2. comply with the advice and instructions of a doctor or dentist;
3. comply with applicable regulations in health service facilities; and
4. provide compensation for services received.

According to Zaeni Asyhadie (2017: 70) in the relationship between doctors and patients, patients are relatively in a weaker position to defend their interests in health care situations. This often creates a desire/need to dispute the rights of patients in dealing with health workers (usually doctors). In the past, the doctor-patient relationship was usually paternalistic, where the patient always followed what the doctor said without asking anything. Now the doctor is the patient's partner and the position of both is equal legally. Patients have certain rights and obligations, as well as doctors in general are entitled to humane services and quality care.

#### IV. CONCLUSION

Based on observations after conducting counseling and or socialization, it can be seen that the community members are quite enthusiastic to know and understand the rights and obligations of both parties, namely in their positions as medical officers (doctors) and as patients. It is also understood that medical malpractice actually exists for negligence or simply because of the lack of professionalism of a doctor in carrying out his duties. Therefore, an out-of-court settlement as proposed by them (the residents) is directed at a win-win solution decision as an alternative settlement pattern that can be profitable and acceptable to both parties.

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