



HEALTH ETHICS AND ADMINISTRATIVE SANCTIONS AGAINST MALPRACTICE BY DOCTORS IN INDONESIA

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Article Info	Abstract
Article History Received : 2024-12-03 Revised: 2024-12-10 Published: 2025-01-01 Keywords: <i>Doctor, Ethics, Administrative Sanctions, Malpractice</i>	Malpractice is an error or negligence committed by health workers in carrying out their profession that is not in accordance with existing professional standards. This study aims to review the forms of administrative sanctions against malpractice by doctors in Indonesia based on a positive legal perspective and review the ethical aspects of health law. Ethics are crucial in the guidelines for behavior and decision-making of health workers, health law ethics include the obligations and responsibilities of a health worker in carrying out daily practice. The method used is the normative legal research method by examining existing library materials, at the level of severe malpractice doctors can be subject to sanctions in the form of revocation of practice licenses, while at other levels doctors can be subject to various forms, such as criminal sanctions, civil, administrative sanctions, and fines. Through this article, it is hoped that it will provide a comprehensive understanding of the ethics of the health profession to strengthen the moral basis in carrying out daily practice, and provide an understanding of the close relationship between ethics and health law. The conclusions of this study can be used as a guide for health practitioners, patients, and related parties to understand and apply ethics and health law as well as possible.

I. INTRODUCTION

A doctor is a profession that applies its knowledge for the public interest and has freedom and independence that is oriented towards humanitarian values based on the code of medical ethics.(Soetrisno, 2010)

A doctor certainly has received a long education and training before entering medical practice, so that patients certainly hope and depend on a doctor for their recovery, but a doctor is not a perfect creature, and of course can make mistakes in providing medical services, this is also called malpractice, errors in the form of health service actions that are not in accordance with standard operating procedures can result in disability or death when treated by a doctor or after being treated by a doctor. However, this can also be categorized as a medical risk, where a doctor has followed standard operating procedures properly which is sometimes considered malpractice by parties outside the medical profession.(Machmud, 2008)

Healthsociety has an important and crucial role in extending life span, preventing disease, and improving health through community organizations, in fact this concept continues to develop, expand, and can include new things such as improving environmental

sanitation, educating the community about personal hygiene, eradicating infectious diseases, organizing the community to provide medical services, and developing social engineering. In terms of language, public health has two basic words, namely healthy and society, which means a prosperous condition of the body, soul, and social so that they can carry out productive activities both socially and economically in a group of people who are interconnected, or a community.(Disantara et al., 2022; Maisyarah et al., 2014)

The profession of doctors and dentists is regulated in the Regulation of the Indonesian Medical Council No. 4 of 2011, which regulates the professional discipline of doctors and dentists. Based on these provisions, there are parties who will supervise and impose sanctions for violations of the professional provisions that have been listed. The organization or special agency was formed to supervise the actions of supervising the profession of doctors and dentists carried out by the Indonesian Medical Disciplinary Council (Article 1 number 3 of the Guidelines for the Organization and Work Procedures of the Indonesian Medical Ethics Honorary Council).

Professional organizations or special bodies that have been formed as supervisors of

the duties of the medical and dental professions can impose sanctions in the form of administrative sanctions on violators of the code of ethics if found guilty. Administrative sanctions that can be imposed include fines, written warnings, temporary suspension, and permanent revocation of licenses. In addition to administrative sanctions, violators can also be subject to criminal sanctions if proven to have committed a crime that has been regulated by law. Of course, in this case, a doctor or dentist must be able to defend themselves by stating the reasons for their actions and defending their rights.(Adi, 2013)

This study aims to examine administrative sanctions against malpractice by doctors or dentists and also to provide a comprehensive understanding of the ethics of the health profession in Indonesia.

According to Munir Fuady, malpractice is defined as any medical action carried out by a doctor or his subordinates or health service providers on his patients, whether in terms of diagnosis, therapeutics, and disease management, which is carried out in violation of the law, propriety, morality and professional principles, whether done intentionally or unintentionally due to carelessness in carrying out duties that cause pain, injury, disability, bodily harm, death, and other losses that cause the doctor or nurse under the doctor to be held responsible administratively, civilly, or criminally.(Fuady, 2005; Heryanto, 2010)

Munir Fuady's opinion can be simplified, that a doctor's actions can be classified as malpractice if:

- a) There is action
- b) Actions are carried out by doctors or people under their supervision (nurses), even health facility providers such as hospitals, clinics, pharmacies, and others.
- c) Actions in the form of medical actions, whether diagnostic medical actions, therapy, or health management
- d) Actions taken on the patient
- e) Actions are taken in the following manner:
 - a. Violating the law, and or;
 - b. Violating propriety, and or;
 - c. Violates decency, and or;
 - d. Violating the principles of professionalism.
- f) Done intentionally or negligently
- g) The action causes the patient to experience:
 - a. Error of action, and or;

- b. Pain, and or;
- c. Wounds, and or;
- d. Disability, and or;
- e. Death, and or;
- f. Damage to organs or body parts or soul, and or;
- g. Other losses that cause doctors to be responsible administratively, civilly or criminally.(Miharja, 2018)

II. RESEARCH METHODS

Legal research is a form of scientific activity based on a particular method, system, or way of thinking and aims to study one or more specific legal phenomena through analysis. In addition, a comprehensive review of the legal framework is carried out in order to find solutions to problems arising from each phenomenon. The method used is the normative legal research method or the library legal research method. The data sources used in this study are secondary data sources compiled from primary, secondary, and tertiary legal materials using qualitative data analysis techniques to make it easier for readers to understand.

III. RESULTS AND DISCUSSION

A. Supervision and Sanctions for Doctors' Malpractice Based on Law Number 17 of 2023

The enactment of Law No. 17 of 2023 simultaneously revokes 11 previous laws, including Law No. 29 of 2004 concerning Medical Practice. Law No. 17 of 2023 concerning Enforcement of Medical Discipline and Health Workers has the following articles:(President of the Republic of Indonesia, 2023)

a. Article 304

- 1) Article (1) reads: "In order to support the professionalism of Medical Personnel and Health Personnel, it is necessary to enforce professional discipline."
- 2) Article (2) reads: "In the context of enforcing professional discipline as referred to in paragraph (1), the minister forms a council that carries out duties in the field of professional discipline."
- 3) Article (3) reads: "The assembly as referred to in paragraph 2 determines whether or not there has been a violation of professional discipline committed by Medical Personnel and Health Personnel."

4) Article (4) reads: "The assembly as referred to in paragraph (2) may be permanent or ad hoc."

5) Article (5) reads: "Further provisions regarding the duties and functions of the assembly as referred to in paragraph 2 are regulated by Government Regulation."

b. Article 305

1) Article (1) reads: "Patients or their families whose interests are harmed by the actions of medical personnel or health workers may complain to the panel as referred to in Article 304."

2) Article (2) reads: "The complaint as referred to in paragraph 1 must at least contain:

- a. Identity of the complainant;
- b. Name and address of the medical or health worker's practice location and the time the action was performed; and
- c. Reason for complaint.

c. Article 306

1) Article (1) reads: "Violations of discipline by Medical Personnel or Health Personnel as referred to in Article 304 paragraph (3) shall be subject to disciplinary sanctions in the form of:

- a. Written warning;
- b. Obligation to take part in education or training at the nearest health education provider or teaching hospital that has the competence to conduct such training;
- c. Temporary deactivation of STR;
- d. Recommendation for revocation of SIP

2) Article (2) reads: "The results of the examination as referred to in paragraph (1) are binding on Medical Personnel and Health Personnel.

3) Article (3) reads: "Medical personnel or health personnel who have carried out disciplinary sanctions as referred to in paragraph (1) which are imposed due to alleged criminal acts, law enforcement officers will prioritize resolving disputes through restorative justice mechanisms in accordance with the provisions of statutory regulations.

d. Article 308

1) Article (1) reads: "Medical personnel or health workers who are suspected of

committing unlawful acts in the implementation of health services which can be subject to criminal sanctions must first request a recommendation from the panel as referred to in Article 304."

2) Article (2) reads: "Medical personnel and health personnel who are asked to be responsible for actions/deeds related to the implementation of health services which are detrimental to patients in civil law must request a recommendation from the panel as referred to in Article 304."

3) Article (3) reads: "The recommendation from the panel as referred to in paragraph (1) is given after the Civil Servant Investigator Sipit or the investigator from the Republic of Indonesia National Police submits a written request."

4) Article (4) reads: "The recommendation from the panel as referred to in paragraph (2) is given after the Medical Personnel, Health Personnel, or person given power of attorney by the Medical Personnel or Health Personnel submits a written application regarding the lawsuit filed by the Patient, the Patient's family, or a person given power of attorney by the Patient or the Patient's family."

5) Article (5) reads: "The recommendation as referred to in paragraph (3) is in the form of a recommendation as to whether or not an investigation can be carried out because the implementation of professional practice carried out by Medical Personnel or Health Personnel is in accordance with or not in accordance with professional standards, service standards and operational procedure standards."

6) Article (6) reads: "The recommendations referred to in paragraph (4) are in the form of recommendations regarding whether or not the implementation of professional practices carried out by Medical Personnel or Health Personnel is in accordance with professional standards, service standards and operational procedure standards."

7) Article (7) reads: "The recommendations referred to in paragraph (5) and paragraph (6) shall be given no later than 14 (fourteen) working days from the date the application is received."

8) Article (8) reads: "In the event that the panel does not provide a recommendation

within the time period referred to in paragraph (7), the panel is deemed to have provided a recommendation for an investigation into the criminal act to be carried out."

- 9) Article (9) reads: "The provisions referred to in paragraph (1), paragraph (3), paragraph (5), and paragraph (7) do not apply to the examination of Medical Personnel or Health Personnel who can be held responsible for alleged criminal acts that are not related to the implementation of Health Services."

e. Article 312

- 1) Everyone is prohibited from:
- Without the right to use an identity in the form of a title or other form that gives the impression to the community that the person concerned is a Medical Personnel or Health Personnel who already has a STR and/or SIP;
 - Using tools, methods or other means in providing services to the public which gives the impression that the person concerned is a Medical Personnel or Health Personnel who has a STR and/or SIP;
 - Practicing as a Medical Personnel or Health Personnel without having a STR and/or SIP.

f. Article 313

- 1) Any Medical Personnel or Health Personnel who practices without having a STR and/or SIP as referred to in Article 312 letter c shall be subject to administrative sanctions in the form of administrative fines.
- 2) Provisions regarding the procedures for imposing administrative sanctions as referred to in paragraph (1) are regulated by Government Regulation.

g. Article 440

- 1) Any Medical Personnel or Health Personnel who commits negligence resulting in serious injury to a Patient shall be punished with a maximum imprisonment of 3 (three) years or a maximum fine of Rp. 250,000,000.00 (two hundred and fifty million rupiah).
- 2) If the negligence as referred to in paragraph (1) results in death, every Medical Personnel or Health Personnel shall be punished with imprisonment for a

maximum of 5 (5) years or a maximum fine of IDR 500,000,000.00 (five hundred million rupiah).

B. Health Ethics

Health Ethics has several principles including:

1) Autonomy

It is a principle of health ethics that respects the patient's autonomous rights to decide on a procedure, this principle is what then gave rise to informed consent.(Irfan, 2018)

2) Beneficence (Doing Good)

It is a principle of health ethics where doctors must ensure that their patients are well cared for, or provide assistance beyond simply fulfilling their obligations.

3) Non-maleficence (Do Not Harm)

It is a principle of health ethics where doctors must take actions that do not harm their patients, such as actions that could injure the patient.

4) Justice

It is a principle of health ethics where a doctor is prohibited from judging someone based on their social status, economic level, politics, religion, nationality, gender, and other things that can lead to unfair treatment of patients.

5) Confidentiality

It is a principle of health ethics where a doctor must maintain the confidentiality of information that could harm a person or group, unless the owner of the information gives permission to provide the information with written consent or other evidence.

6) Fidelity (Keeping Promises)

It is a principle of health ethics where doctors must have a commitment and keep their promises and keep their patients' secrets.

7) Fiduciarity (Trust)

It is a principle of health ethics where doctors must be able to build a relationship of trust with two or more parties that is needed for communication between health professionals and patients.

8) Veracity (Honesty)

It is a principle of health ethics where doctors as health service providers must convey the truth to each patient and must provide accurate information about anything concerning the patient during treatment or future possibilities.(Yanuar Amin, 2017)

C. Ethical Violation

Pure ethical violation(Indonesia, 2012)

- a) Charging unreasonable service fees to patients or charging service fees to the families of fellow doctors or dentists
- b) Taking over a patient without the consent of the colleague who is responsible for the patient
- c) Praising oneself in front of patients (Violating the KODEKI code of ethics, Article 4 paragraph a)
- d) Not following continuous medical education, based on (KODEKI article 18) every doctor must follow developments for the benefit of themselves and their families.
- e) The doctor neglected his own health, based on (KODEKI, article 17) If he falls ill, he should seek treatment from his colleagues and not treat himself.

Ethicolegal violations

- a) Medical services are below standard.
 - a. Based on (KODEKI, Article 2), a doctor must carry out his profession according to the highest standards, (KODEKI, Article 8) pay attention to all aspects of comprehensive health services, both promotive and preventive, curative and rehabilitative, (KODEKI, Article 11) use all his knowledge and skills for the benefit of the patient.
 - b. This action constitutes malpractice and can be subject to Article 350 of the Criminal Code, which states: "Anyone who, through his/her mistake, causes another person to suffer serious injury or such injury that it results in illness or temporary impediment to carrying out his/her position or work, shall be punished with imprisonment for a maximum of 5 years."
- b) Issuing false certificates
 - a. (KODEKI, Article 7) a doctor is required to only provide a certificate and opinion that has been checked for its truth by himself. If proven to have violated it, he will be punished with Article 267 of the Criminal Code which states "A doctor who intentionally provides a false certificate regarding the presence or absence of disease, weakness or disability,

is punished with imprisonment for 4 years."(Putri et al., 2021)

Pure Ethical and Ethicolegal Sanctions

Pure ethical and ethical-legal violations can result in sanctions in the form of:

1. Oral or written warnings or demands
2. Demotion or reduction in salary
3. Delay in salary or demotion to a lower rank
4. Temporary or permanent revocation of a doctor's practice license
5. Moral sanctions can be in the form of reprimands from superiors or gossip from the surrounding community.
6. Sanctions issued by professional organizations

In the event of an ethical legal violation, a punishment will be given that is appropriate to the violation based on applicable laws.(Zanariyah, 2024)

IV. CONCLUSIONS AND RECOMMENDATIONS

Based on the explanation above, it can be concluded that malpractice committed by doctors has liability that previously used Law Number 29 of 2004 concerning Medical Practice which has been updated using Law Number 17 of 2023 concerning Health. The administrative sanctions imposed on Medical Personnel or Health Personnel can be in the form of administrative sanctions and criminal sanctions for certain violations.

In addition, health ethics are also regulated based on KODEKI (Indonesian Code of Medical Ethics), where a doctor must follow the applicable Health Ethics and applicable Ethicolegal.

Malpractice is not an action that can be tolerated, because this action can endanger the function of organs or the human body and can result in death, although it has been regulated by the latest law, it is still difficult to determine whether an action is malpractice or not, therefore further learning and in-depth examination are needed to handle malpractice cases to determine whether a doctor is guilty or not.

REFERENCE LISTAN

Adi, P. (2013). Legal Formulation for Handling Medical Malpractice. *Kanun Journal of*

Legal Science, 15(2), 267–282.

Disantara, FP, Chansrakao, R., Jazuli, M., Ratnayutika, NP, Umasih, RT, & Putri, CI (2022). The Enigma of Ethics: Code of Ethics Enforcement on Covid-19 Health Protocol in the Mechanism of Regional Head General Election in Indonesia. *DE LEGA LATA: Journal of Legal Studies*, 7(1), 1–21. <https://doi.org/10.30596/delegalata.v>

Fuady, M. (2005). *Hippocratic Oath (Legal Aspects of Doctors' Malpractice)*. Jakarta: Citra Aditya Bakti.

Heryanto, B. (2010). Physician Malpractice in Legal Perspective. *Journal of Legal Dynamics*, 10(2), 183–191. <http://dinamikahukum.fh.unsoed.ac.id/index.php/JDH/article/view/151>

Indonesia, ID (2012). Executive Board of the Indonesian Doctors Association. <http://www.idai.or.id/professional-resources/ethic/kode-etik-kedokteran-indonesia>

Irfan, I. (2018). The Position of Informed Consent in the Relationship between Doctor and Patient. *DE LEGA LATA: Journal of Legal Studies*, 3(2), 154–165. <https://doi.org/10.30596/dll.v3i2.3155>

Civil Code

Criminal Code

Machmud, S. (2008). *Law Enforcement and Legal Protection for Doctors Suspected of Medical Malpractice*. Bandung: Mandar Maju, 2008.

Maisyarah, Fitria, F., & Fajariyah, R. (2014). Basic Public Health Science (Issue 70200121099). [http://ecampus.poltekkes-medan.ac.id/jspui/bitstream/123456789/6648/2/sertifikat_EC00202227883 %20Basic Public Health Science%29.pdf](http://ecampus.poltekkes-medan.ac.id/jspui/bitstream/123456789/6648/2/sertifikat_EC00202227883%20Basic%20Public%20Health%20Science%29.pdf)

Miharja, M. (2018). Administrative Sanctions Against Malpractice Actions by Doctors and Hospitals in Indonesia. *Law*, 3(2), 204–216.

President of the Republic of Indonesia. (2023). Law of the Republic of Indonesia Number 17 of 2023 Concerning Health. *Law*, 187315, 1–300.

Putri, FH, Pasalbessy, JD, & Hattu, J. (2021). Criminal Law Enforcement Against the Practice of Buying and Selling Falsified Health Certificates During the Covid-19 Pandemic. *TATOHI Journal of Legal Studies*, 1(4), 305–311.

Soetrisno, S. (2010). *Medical Malpractice & Mediation as an Alternative to Dispute Resolution*. Tangerang: PT Telaga Ilmu Indonesia.

Yanuar Amin. (2017). *Professional Ethics and Health Law*.

Zanariyah, S. (2024). Textbook of Health Law. CV. Eureka Media Aksara, 5–24. [http://repo.iain-tulungagung.ac.id/5510/5/BAB 2.pdf](http://repo.iain-tulungagung.ac.id/5510/5/BAB%202.pdf)