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Legal Protection in Medical Disputes for Doctors in Relation to The Principle of Lex Specialist

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Abstract

Health is one of the constitutional rights protected by law. The importance of health in everyday life makes many people hope to get a cure when they see a doctor. Patient expectations that differ from the results obtained sometimes lead to medical disputes. Conflicts that occur between doctors and patients if they cannot be resolved by mediation usually the patient or the patient's family will report to the authorities. Some law enforcers, in this case the police, still use the Criminal Code or Civil Code as the basis for charges without looking at other more specialised laws such as the Medical Practices Act (UUPK). The purpose of this thesis is to find out the procedures for legal protection for doctors in medical disputes and also to find out the application of the Lex Specialist principle of Article 79 letter (C) of the GCPL in relation to the lex generalis principle of the Civil Code in resolving medical disputes for doctors. This research uses a normative juridical approach and is analytically descriptive. From the results of this study, it can be concluded by the author that doctors will get legal protection in medical disputes if they have fulfilled administrative obligations, namely having STR and SIP as a condition for practicing medicine and performing actions according to SOPs, Professional Standards and conducting inform consent completely and clearly and filling out medical records in accordance with the actions performed.

INTRODUCTION

In the world of healthcare, doctors and patients are one and the same and are based on trust in each other. Because of the principle of the patient-doctor-hospital relationship, i.e., talking about a therapeutic relationship in which there is (albeit unwritten) contractual relationship between the patient and the doctor. About the treatment of the patient's illness and the hospital in relation to health services. The provision of standardised facilities and infrastructure. The doctor is a being with medical expertise, while the patient is a sick person who needs the doctor's help to cure his illness (Supriadi, 2001). The main basis for doctors to be able to practice medicine is knowledge, technology, and knowledge gained through education. The knowledge possessed must always be preserved and further developed in accordance with the development of science and technology.

Article 1 of Law No 29 of 2004 states that medical practice is a series of activities carried out by doctors and dentists towards patients in carrying out health efforts. Health services performed by doctors and dentists include preventive, promotive, curative and rehabilitative services. According to Endang Kusuma Astuti that "qualified health workers are

measured by professional standards that have been formulated by professional organisations (IDI), namely skill standards, facility standards, behaviour standards and medical record standards" (Astuti, 2009).

In the relationship between a doctor and a patient, even though the patient is from a party who is unfamiliar with health problems, the doctor should fulfil his obligation to provide health services according to service standards, professional standards and standard operating procedures to patients whether requested or not requested. Because the principle of the therapeutic transaction, the service *provider* (*health provider*) and the service recipient (health receiver) who are both legal subjects who have equal rights and obligations and in accordance with the legal principle of equality before the law and stated in article 1320 of the Civil Code (the validity of an agreement) (Ratman, 2012).

A patient needs a doctor because he is disturbed by his illness and wants to find a cure because when sick, one's productivity will definitely decrease. This makes health important because by being healthy, every human resource can provide welfare for themselves and others and can educate the nation. Thus, everyone has the right to obtain safe, quality and affordable health services (Perangin-Angin et al., 2023).

In this era of increasingly sophisticated technology and science is also growing rapidly: Scientific Journal of PGSD FKIP Independent University (Alfiyanti et al., 2022; Harahap et al., 2020; Mulyani & Haliza, 2021)As a result, the public easily accesses various information, especially about a disease, which sometimes results in the public being too easy to get information from various social media that is not correct coupled with the results of medical actions that are beyond the expectations of the patient or patient's family which often cause medical disputes.

These medical disputes occur when there are predisposing factors in the form of adverse events, which are essentially gaps between the patient's expectations or the expectations of the patient's family and the reality that occurs after medical efforts. Precipitating factors include differences in perception, ambiguous communication, or individual styles originating from the doctor (arrogant, taciturn, reluctant to provide information, etc.) or from the patient himself (for example, patients with chronic complaints or temperamental nature) (Yunanto & Helmi, 2010).

The difference in perception is usually caused by the patient's inability to understand that medical efforts are efforts full of uncertainty, and the results cannot be calculated mathematically, because they depend on many other factors beyond the power and control of the doctor, such as immunity factors, the body's defence mechanisms, the type and level of virulence of the disease, the quality of the drug, the individual response to the drug due to the lack of pharmacodynamics of the drug in accordance with the genetic constitution of each patient) as well as the patient's compliance with the following procedures and doctor's recommendations. Therefore, it is not wrong if some experts state, "Medicine is a science of uncertainty, and an art of propability" (Dahlan, 2006). Article 2 of Law No. 36 of 2009 states that the provision of health is carried out based on respect for rights and obligations, justice, gender and non-discrimination and religious norms.

One example of a medical dispute case occurred at Siloam Purwakarta Hospital. A female patient named A.N, 26 years old, a nurse at a hospital in Purwakarta, initially

complained that her left hand felt heavy when moved at night after surgery for a left breast tumour during the day on 12 October 2020. After 24 hours after surgery, the condition did not improve and there was even a feeling of numbness in the left hand, the patient began complaining to the doctor who performed the surgery and then referred to a neurologist. From a neurologist, therapy was given and allowed to go home, then further supporting examinations will be carried out during outpatient care later. After the patient was allowed to go home, the patient sent a message via WhatsApp to the Head of Yanmed Siloam Purwakarta Hospital to ask for an explanation of the conditions experienced by the patient and then asked for easy access to poly control (not included in the queue and so on) and demanded that Siloam Purwakarta Hospital take full responsibility for the patient's current condition and provide maximum care until the patient feels completely cured, even the patient had uploaded his complaint to his Instagram. After receiving a short message from the patient, as already in the Hospital By Laws of Siloam Purwakarta Hospital in dealing with medical disputes that disputes will be resolved by the parties by deliberation Siloam Purwakarta Hospital decided to hold a meeting within 30 calendar days from the time the dispute arose, then the Siloam Purwakarta Hospital team together with the team of doctors who handled the patient and who would handle the patient along with the medical committee discussed this issue together internally. hospital. From the results of the internal discussion, it was decided to hold a meeting of the parties. This meeting was attended by all doctors who have handled and who will handle, the patient and the patient's family as well as representatives of the management of Siloam Purwakarta Hospital. Each specialist doctor explained their respective portions based on the patient's last physical examination and supporting examination. From this joint meeting, it was verbally agreed that the patient's condition was a medical risk, not from the negligence of the doctor due to the surgery that had been performed and Siloam Purwakarta Hospital in good faith would help the patient recover his condition optimally. Then the patient began to carry out further examinations and carry out physiotherapy regularly from 16 October 2020 until it was declared that the improvement was near perfect on 8 February 2021 and there was no need for further treatment. The above case is a medical dispute that can be resolved by non-litigation or outside the court procedure, namely through mediation.

There are several cases of medical disputes that are resolved through litigation or court procedures. Some examples are the case of Sita Dewi who underwent ovarian tumour surgery at Pondok Indah Hospital on 12 February 2005. The Supreme Court sentenced the hospital to pay a fine of 2 billion rupiah due to negligence in the delivery of anatomical pathology results to patients from the hospital and doctors, resulting in late prevention of the patient's disease. Another case was in 2013, a medical dispute with the alleged malpractice of Dr Ayu and friends who were sentenced to 10 months in prison because they were deemed proven to have committed an error as stipulated in Article 359 of the Criminal Code. However, in February 2014, the Supreme Court granted a judicial review filed by Dr Ayu and her colleagues, freeing them from the 10-month prison sentence. Then there is also the case of Dr Taufik who in 2010 was sentenced by the Supreme Court to 6 months imprisonment. Dr Taufik was found guilty of committing a criminal offence "due to his negligence causing injury to another person in such a way that he is temporarily unable to perform work, which is carried out in the exercise

of an office or occupation" as stipulated in Article 360 paragraph (1) of the Criminal Code Jo Article 361 of the Criminal Code.

In addition, there is still a medical dispute case that ended in compensation, namely the case of Siti Chomsatun who was a victim of malpractice committed by Kramat 128 Hospital in February 2010. After 23 months of case examination, on 26 June 2012, MKDKI issued a decision on Siti Chomsatun's complaint, No. 43/P/MKDKI/VIII/2010. In the MKDKI decision, Dr Tantiyo Setiyowati, M.H., Kes and Dr Fredy Melke Komalig, M.K.M. were found to have violated medical discipline for "failing to perform adequate medical treatment/action in certain situations that could endanger the patient". This refers to Article 3 paragraph (2) letter f of Perkonsil 4 Year 2011 concerning Professional Discipline of Doctors and Dentists. The judge through the decision of the Central Jakarta District Court with case number: 287/Pdt.G/2017/PN.Jkt.Pst. only granted and decided to compensate Siti materially in the amount of Rp. 17,620,933 to be paid by the defendant.

The choice of resolving medical disputes is mostly through non-litigation or outside the court procedure because it is considered easier and does not waste much time, such as the case of Siloam Purwakarta Hospital. However, if one party is not satisfied with this non-litigation route, it will usually continue to the litigation route, namely filing a lawsuit. Lawsuits filed with law enforcement are some of them subject to articles in the Civil Code or Criminal Code and do not use Law No. 29 of 2004 concerning Medical Practices. Law No. 29 of 2004 concerning Medical Practice contains provisions on how doctors/dentists practice medicine but when there is a medical dispute, the provisions used by law enforcement are not provisions based on the Medical Practice Act but according to articles in the Civil Code or Criminal Code which contain general articles. Even though at the time of proof in court it will actually stick to the obligations of a doctor that already exist in Law No. 29 of 2004 concerning Medical Practice.

In legislation, there are several principles, one of the principles of conflict of laws used is the so-called lex specialis derogat legi generalis principle. This principle means that special laws override general laws where these rules apply if special rules have been regulated, if they have not been regulated then general legal rules apply. The question that arises is whether the Medical Practices Act (UUPK) does not regulate medical disputes and what is the mechanism of provisions that apply when there is a medical dispute. Explicitly, there is no mention of medical disputes in the GCPL, but Article 66 paragraph (1) of the GCPL states "Every person who knows or whose interests are harmed by the actions of a doctor or dentist in carrying out medical practice may complain in writing to the Chairman of the Indonesian Medical Discipline Honour Council". Then in article 66 paragraph (3) it is also stated "The complaint as referred to in paragraph (1) and paragraph (2) does not eliminate the right of every person to report an alleged criminal offence to the competent authority and/or claim civil damages to the court. If there are criminal allegations, in the Chapter on Criminal Responsibility Article 79 letter (c) of Law No. 29 of 2004 concerning Medical Practice states "Shall be punished with imprisonment for a maximum of 1 (one) year or a maximum fine of Rp. 50,000,000 (fifty million rupiah), every doctor and dentist who intentionally does not fulfil the obligations as referred to in Article 51 letter a, letter b, letter c, letter d, or letter e". With this chapter on criminal liability in the GCPL, the authorities should not use other laws and regulations to

indict in medical disputes. Doctors also have the same rights as other people to obtain legal certainty in accordance with Article 3 paragraph (3) of Law No. 29 of 2004 which states 'Regulation of medical practice aims to provide legal certainty to the public, doctors and dentists".

The existence of conflicting norms between the Criminal Code, Civil Code and Law Number 29 Year 2004 on Medical Practice will be explored by the author through a normative approach related to this issue, as well as a conceptual approach related to legal principles, principles and logic regarding conflicting norms and doctrines developed by legal experts.

METHODOLOGY

This research uses a normative juridical approach. This approach by examining the main legal material, namely legal theories, concepts and legal principles as well as laws and regulations related to the research. The subject of this research is the legal protection of doctors in medical disputes (Soekanto & Mamudji, 2006). In this study, researchers used data collection techniques for medical dispute cases on social media or obtained from the Supreme Court website and from literature studies. Literature study uses books or references as research support. Data analysis can be interpreted as a process of systematically and consistently describing certain symptoms (Soekanto, 1982). The method of data analysis in this research is normative juridical, namely research that refers to legal norms contained in laws and regulations (Ali, 2010). In this research, the interpretation method will be used, especially systematic interpretation and analogy. Systematic interpretation is an interpretation by linking the provisions of more than one legislation to be concluded into a systematic analysis related to medical practice. Meanwhile, the analogy method is used by looking for specific provisions to be applied to general provisions. From this method of analysis, it is continued by drawing conclusions with inductive or qualitative data analysis, namely a specific way of thinking and then drawing general conclusions in order to answer the problems posed.

RESULTS AND DISCUSSION

1. Legal Protection for Doctors in Medical Disputes

From the results of the above research by looking at several cases of medical disputes resolved by litigation or through court procedures, the legal sanctions imposed on doctors use the Criminal Code and Civil Code. As is known, medical disputes are disputes that occur between patients and doctors or patients and health facilities. So that when a medical dispute occurs, it must be seen that there are indications of violations between the rights and obligations of doctors and patients where these rights and obligations exist in Law No. 29 of 2004 concerning Medical Practice.

Popularly according to Dedi Afandi in the Trilogy of Medical Practice Sociologically, the definition of the practice of medicine is the applying of medical or surgical agencies for the purpose of preventing, relieving, or curing disease, or aiding natural functions, or modifying or removing the results of physical injury which points towards a series of activities. In line with Law Number 29 of 2004 concerning Medical Practice article 1 paragraph (1) makes the

legal definition of medical practice very general, namely a series of activities carried out by doctors and dentists against patients in carrying out health efforts.

In carrying out the profession, a doctor must fulfil the requirements set by the government. These requirements have been included in Law No. 29 of 2004 concerning Medical Practice where in the law there are obligations of doctors that must be carried out. The obligations that must be carried out by doctors to be able to carry out their profession according to the Medical Practice Law (UUPK) are: 1. Every doctor and dentist must have a registration certificate; 2. Every doctor and dentist must have a practice permit equipped with a practice address; 3. Doctors or dentists in carrying out medical practices must follow the standards of medical or dental services; 4. Every medical or dental action that will be carried out by a doctor or dentist against a patient must obtain approval; 5. Every doctor or dentist is obliged to make a medical record by affixing the date, time and signature; 6. Every doctor or dentist in carrying out medical practices must keep medical secrets. Every doctor or dentist in carrying out the practice of medicine or dentistry is obliged to carry out quality control and cost control; 8. Suggesting patients to be sent to other doctors or dentists who have competence in accordance with the patient's needs if the competence currently owned is not appropriate; 9. Performing emergency assistance on the basis of humanity, unless he is sure that there are other people who are on duty and able to do so; and 10. Adding knowledge and following the development of medicine or dentistry.

In high-risk cases, the patient provides information to the doctor either orally or in writing after the doctor provides a complete and clear explanation which at least includes: a. the diagnosis and medical intervention procedure; b. the purpose of the medical procedure performed; c. action options and alternatives and their risks; d. potential risks and complications; and e. prognosis of action.

In carrying out his profession, a doctor who treats his patients has a professional doctor relationship with special characteristics and is different from other service providers. Patients handled by doctors are not consumers or just ordinary customers. The word patient comes from the Latin word "patior" which means "suffering, having a burden, limited in ability". Thus a patient is someone who bears the burden of suffering and is helpless. A doctor does not act merely as a provider or seller of services to patients. The word profession comes from two Latin words "profiteor, profiteri" which means "to affirm or acknowledge openly, and the word "professio" which means "an open declaration to carry out an intention". The doctor solemnly undertakes to bind himself to the patient in a relationship, in such a way, as to make the doctor a party in the event of harm resulting from this relationship. The patient has the right to terminate this engagement unilaterally.

However, Law No 29 Year 2004 on Medical Practice does not mention medical disputes explicitly. However, when studying it, the meaning becomes clear. A dispute, or disagreement, is different from a conflict. In situations where two or more parties have differing interests, a conflict cannot develop or turn into a dispute if the aggrieved party merely harbours his or her feelings of dissatisfaction or concern. Conversely, a conflict may develop or turn into a dispute if the aggrieved party has expressed its dissatisfaction or concern to the party perceived as the cause of the harm or another party. This suggests that disputes are always a subset of conflicts. A dispute is a conflict that cannot be resolved.

Medical is the profession of a doctor, so a medical dispute is a dispute between a doctor and a patient or patient's family. The definition of a medical dispute according to Desriza Ratman defines a medical dispute, the occurrence of conflict between the patient and the doctor or hospital due to one party being dissatisfied or having his rights violated by the other party. So it can be said that a medical dispute is an unresolved conflict involving the doctor's profession. Usually, a medical dispute occurs when a patient feels harmed by the actions of a doctor, which can be interpreted as the possibility that the doctor did not perform his obligations properly.

The settlement of this medical dispute can be done through non-litigation or litigation. Article 66 of the GCPL states that if the patient feels aggrieved by the actions taken by the doctor, the patient or family can report to the MKDKI. Reporting to MKDKI does not eliminate the right of the patient or the patient's family to also report civilly to the district court or criminally to the authorities.

Of the four examples of medical disputes given by the author, there are allegations of negligence during medical procedures or therapy. The alleged violation is then proven through MKDKI before being forwarded to the court, or carried out by the authorities, in this case the police. The way of proving negligence is by alleging that the doctor did not implement the Standard Operating Procedures (SOP) stipulated in the GCPL. Of the four cases provided by the author, three of them show that a breach of the doctor's obligations was committed, which is considered unlawful and requires the doctor to be subject to criminal sanctions or provide compensation to the plaintiff. The MKDKI decision letter shows the alleged negligence of the doctor in the Chomsatun case. The letter states that the doctor committed a violation of Standard Operating Procedures (SOP), namely not providing proper treatment to the patient. As a result, the patient's condition worsened and the family suffered losses. Doctors should treat emergencies first rather than just giving drugs. When the patient is referred to the polyclinic, the patient's condition must be confirmed to be stable; otherwise, the patient must be referred to the ugd through the referral system in accordance with established laws and regulations. The doctors in this case committed several omissions. Firstly, they gave the patient drugs whose indications were not in accordance with the patient's illness. The doctor then had to physically examine the patient to ensure the patient's condition was safe enough to be transferred to another hospital for emergency treatment. Negligent doctors cause harm to patients and their families as they not only incur huge costs but also threaten the patient's death as a result of the doctor's negligence.

In the case that occurred at MMC Hospital, the defendant was one of the obstetricians in addition to the hospital itself as the doctor's workplace. In the case of the patient at MMC Hospital, the obstetrician committed negligence which allegedly resulted in the death of the patient. The negligence was because the doctor did not perform the SOP that should have caused the patient's death which might have been prevented if the doctor had done what he should have done. The death of a patient cannot be used as a basis that the doctor did not perform the procedure correctly but the process in handling a patient can make a different result if done in a different way. It is possible that after a long process of action, the patient still dies, but as long as the process carried out is in accordance with standard operating procedures, the doctor cannot be blamed. But if in the process of medical action there is a negligence or error

that causes harm to another party, then the injured party can file a lawsuit. According to the letter from MKDKI, the specialist neglected several procedures. When the patient and her husband had ANC at the doctor's practice, the doctor did not clearly inform the patient of the condition and risks of her pregnancy because the patient had already been pregnant four times and given birth three times. There are several risks that the doctor should be able to explain during ANC so that patients and families are prepared for all the risks that might occur and the doctor can also explain what procedures the doctor will do to the patient to prevent bad things from happening to the patient. Communication between doctors and patients is very important because currently there are many cases of medical disputes whose problems are due to poor communication between doctors and patients resulting in misunderstandings or doctors do not care about the patient's condition so they feel no need to explain in detail about the patient's condition. The lack of clear communication between doctors and patients, then added by doctors not carrying out standard operating procedures, results in the patient's condition can experience disability / death.

Unlike other cases, Dr Wida's case actually depends on the standard operating procedures in the place where the doctor works. When doctors will perform medical actions, they are usually based on standard operating procedures, which may differ in some hospitals but definitely refer to the Permenkes on the quality of patient safety. The difference in SOPs in hospitals should not make a difference in results because the SOPs made must have been adjusted to the laws and regulations. In Dr Wida's case, when the patient was injected with the drug KCl, which is included in the high alert drug, the family or patient must be informed of the benefits of the drug, how to administer it and the side effects of the drug. By providing clear information and correct procedures, it is hoped that if a risk occurs, the family will not sue the doctor or hospital. Doctors in carrying out medical actions, should have competence in accordance with their profession.

Whereas in the case of Dr Ayu et al, although MKDKI stated that there was no violation of the SOP, the judge in the district court found Dr Ayu et al guilty and punished with criminal sanctions, but then the defendant appealed to the Supreme Court and then in the Supreme Court, the judge stated that Dr Ayu et al did not violate the SOP and were declared free. This proves that if a doctor has carried out his obligations according to statutory regulations, then the doctor will get proper legal protection.

2. The lex specialist principle of Article 79 of UUPK is linked to the lex generalis principle of the Civil Code

When looking at the context of the rights and obligations of doctors and patients, when there is negligence in the implementation of obligations, it should be based on civil law, in this case the Civil Code as said by Toto Tohir Suriadmadja that the relationship between patients and doctors is basically a civil relationship, namely between professionals and service users, or between service providers and consumers. (Suriaatmadja, 2007). There are provisions in the Medical Practices Act (UUPK) and Law No. 36 of 2009 on Health (UUK) that give patients or recipients of health services the right to claim compensation, which is legally within the civil law regime, by involving other people.

The mechanism for resolving medical disputes between doctors and patients should be based primarily on the Medical Practices Act, which regulates the rights and obligations of doctors and patients, not just the Civil Code. Because the Civil Code and KHUP do not specifically regulate medical disputes, Law No. 29/2004 on Medical Practice has the principle of lex specialis derogat legi generalis, which means that special laws override general laws. However, Bagir Manan stated that, in the principle of lex specialis derogat legi generalis, several principles must be considered. One of them is that the lex specialis provision must be equal to the lex generalis provision-or the law to the law-and must be in the context of the law. (Manan, 2004).

There is often a mistake in reporting a case of medical dispute by the patient or the patient's family. Some people think that by reporting to the police, the doctor will be sentenced and can compensate the patient or family. On the other hand, the police may not understand that medical dispute cases involving individuals should be civil, not criminal. If the police are aware of this, they may direct the patient or the patient's family to report to the district court or may be criminally processed by the police. According to the author, although Article 66 of the GCPL states that the injured party can report criminally or civilly, the authorities can look at the case first.

Article 51 letter (a) of Law No. 29/2004 on Medical Practice states "Doctors or dentists in carrying out medical practices have the obligation to provide medical services in accordance with professional standards and standard operating procedures as well as the medical needs of patients." The violation of Article 51 of the GCPL can be the basis for criminal sanctions for doctors as stated in Article 79 letter (c) of the GCPL which states "Shall be punished with a maximum imprisonment of 1 (one) year or a maximum fine of Rp 50,000,000.00 (fifty million rupiah), any doctor or dentist who intentionally does not fulfil the obligations as referred to in Article 51 letter a, letter b, letter c, letter d, or letter e. So for criminal cases, the GCPL has the principle of lex specialist derogat legi generalis because the specific law has regulated this matter.

As for civil lawsuits, there are no specific sanctions regulated in the GCPL, but Article 79 letter (c) can be used as the basis of evidence for civil lawsuits. As in the case of Siti Chomsatun, the alleged violation of the SOP was obtained from the MKDKI's decision letter which has proven that there was an error in performing the SOP. MKDKI in this case is based on the obligations and rights of doctors and patients listed in the GCPL, in this case in Article 51 of the GCPL. So that even if not through MKDKI, the defendant can prove the violation with article 79 letter (c) of the GCPL. If the judge finds the defendant guilty criminally and the verdict is final, then the plaintiff can file a civil suit as well. Because civil liability has not been specifically regulated in the GCPL, the lex specialist article 79 letter (c) cannot be applied, but law enforcers can use the Civil Code to apply civil liability.

From some of the examples of medical dispute cases above, it can be seen whether a doctor committed negligence resulting in harm. In this case, the loss suffered by the patient or the patient's family is the death of the patient or the patient's disability.

This theory of negligence is generally caused by the doctor's delay in serving the patient. M. Hatta wrote that to determine the existence of negligence, there are 5 (five) categories of Medical Negligence, namely: a. Malfeasance is when the doctor performs actions

that are contrary to the law or improper; b. Misfeasance is improper action; c. Nosfeasance is not doing what should be done; and d. Maltreatment is unprofessional and improper treatment. Maltreatment is treatment that is unprofessional and not in accordance with the standards of the medical profession; and e. Criminal Error, which is when a person does not pay attention or does not pay attention to the safety of others even though they know that their actions will cause harm to others. (Suhaymi, 2023).

Negligence according to Nusye KI Jayanti is not a punishable act unless it is committed by a person who should be (competent) by nature of profession, act carefully and has caused loss or injury to others. Thus, negligence here must have four elements, namely: 1. an obligation to do or not to do something; 2. a breach or failure to fulfil that obligation; 3. a loss or injury to the patient; and 4. a causal relationship between the breach and failure to fulfil that obligation and the injury or loss (Jayanti, 2009).

Families or patients can use measures to determine whether a doctor has committed negligence. These factors are as follows: a. The existence of an obligation: This means that a doctor must perform medical acts in accordance with professional standards or norms that apply to doctors because they have a legal relationship with patients; b. Neglect of duty: This means that a doctor must perform medical actions as well as possible in accordance with professional standards. If a doctor; c. Causes harm to the patient as a result of the doctor's negligent actions. This harm can be seen materially, for example the doctor's negligence can cause disability to the patient so that the patient can no longer earn money. The victim can also be seen immaterially, for example, the doctor's negligence can cause emotional distress to the patient; d. There is a reason and excuse, meaning that there is a reciprocal relationship between the doctor's negligence in carrying out his obligations and the harm caused. In other words, there must be a reciprocal relationship between the doctor's negligence in carrying out his obligations and the harm caused. This is what jurists often call "lawful cause" (Rewur et al., 2021).

Danny Wiradharma said that negligence must contain the elements of not making the necessary presumptions as required by law. In the opinion of Van Hamel and Simon, there are three possibilities of negligence: a. The perpetrator thought that the prohibited result would not occur because of his or her actions; b. The perpetrator did not think at all that the prohibited result might occur because of his or her actions; or c. The perpetrator was not careful, as indicated by This shows that no examination of the possibility occurred (Wiradharma, 1996).

If it is proven that there is a violation of the law, the patient or their family can file a lawsuit. This applies even if there is no agreement between the two parties. According to Article 1365 of the Civil Code, four conditions must be met to file a lawsuit for tort: a. the patient must have suffered a loss. b. there is fault. c. there is a causal relationship between the fault and the loss. d. the act is unlawful. According to the Hoge Raad Arrest decision of 31 January 1919, the four criteria for unlawful acts are as follows: 1. the act is contrary to the legal obligations of the perpetrator; 2. the act violates the rights of others; 3. the act violates the rules of morality; and 4. the act is contrary to the principles of decency (Bimasakti, 2018).

Looking at the various cases of medical disputes in the previous notes, the application of civil sanctions is more appropriate than criminal sanctions because in medical disputes there is a civil relationship. Meanwhile, if charged with criminal law, criminal law prioritises the

issue of criminality or crimes that harm the public interest or the state. A doctor is not a criminal or a criminal who deliberately makes his patient experience disability or death although as an ordinary human being sometimes commits a negligence but it must be proven first whether this negligence is done intentionally or not. To prove that a doctor committed an act that made the patient disabled or dead must be based on the obligations that the doctor should do where this obligation is in Law No. 29 of 2004 concerning Medical Practices and criminal liability is in Article 79 letter (c) of the GCPL Law.

According to Toto T. Suriadmadja, in principle, the patient's relationship is in a civil relationship in the form of an engagement law that can be grouped into resultaat verbintennis (outcome engagement) and inspanning verbentenis (endeavour engagement). The prominent difference between the two types of legal relations is that in resultaat verbintenis the most important thing for the patient is the result in accordance with his wishes, while in inspanning verbintenis the patient cannot expect results but the best efforts in conducting health services. Although the legal relationship containing health services can be distinguished from the legal relationship over results and the legal relationship over endeavours, in general, legal issues arising from the legal relationship between doctors and patients are the legal relationship of endeavours. Thus, claims that can be filed between parties (patient-doctor) in the form of civil claims, especially on the basis of default (negligence to fulfil achievements) (Suriaatmadja, 2007).

When a medical dispute occurs and a lawsuit occurs in court, doctors who are also Indonesian citizens have the same rights as others to obtain proper legal protection. The legal relationship that occurs between the patient and the doctor through a therapeutic agreement that occurs when the doctor performs medical actions, if the explanation or informed consent given by the patient agrees to take action to restore health, then the agreement arises the rights and obligations between the doctor and the patient. The provision of informed consent by a doctor who is then approved by the patient can be a form of legal protection for doctors. The provision of informed concent must also be recorded properly in the patient's medical record so that it can be used as evidence if a medical dispute occurs.

The obligation to conduct informed consent is in Article 45 of Law No. 29 of 2004 concerning Medical Practice, namely: (1) Every act of medicine or dentistry that will be performed by a doctor or dentist on a patient must obtain consent. (2) The consent as referred to in paragraph (1) is given after the patient receives a complete explanation. (3) The explanation as referred to in paragraph (2) shall at least include: a. diagnosis and procedure of medical action; b. purpose of the medical action performed; c. other alternative actions and their risks; d. risks and complications that may occur; and e. prognosis of the action performed. (4) Consent as referred to in paragraph (2) may be given either in writing or orally. (5) Every act of medicine or dentistry containing high risk must be given with written consent signed by the person entitled to give consent. (6) Provisions regarding the procedures for approval of medical or dental actions as referred to in paragraph (1), paragraph (2), paragraph (3), paragraph (4), and paragraph (5) shall be regulated by Ministerial Regulation.There are certain conditions that do not require informed consent, namely during emergency conditions. This is stated in article 4 paragraph (1) of Permenkes No. 208 of 2008 concerning Approval of Medical

Actions which reads "In an emergency, to save the patient's life and / or prevent disability, no medical action approval is required."

According to Thiroux, "Informed consent is an approach to truth and patient involvement in decisions about their treatment. Often the best approach to obtaining informed consent is if the doctor who will be investigating or performing the procedure gives a detailed explanation in addition to having the patient read the form. Patients and their families should be invited to ask questions as they wish, and should be answered honestly and clearly. The purpose of this oral explanation is to ensure that if the patient signs the form, he/she is fully informed. (Gunawan, 2019). According to Appelbaum, the entire informed consent process depends on reaching an agreement between the doctor and the patient, not just the consent given by the patient. The form is only a confirmation of the consensus (Mukhlis, 2022).

Consent, also known as informed consent, can be given either orally or in writing. However, consent must be given in writing and signed by the person entitled to give consent in cases where the doctor's actions involve significant risks. If the patient experiences gaps in the use of language or terms that are difficult to understand, there is a high chance that the patient will misperceive, which in turn will lead to the patient not agreeing to the medical procedure to be performed. Therefore, communication of information can be done with: a. perfect and written language; b. perfect language orally; c. imperfect language that is acceptable to the other party; d. sign language that is acceptable to the other party; and e. with silence or silence but with real language that is understood or accepted by the other party (Tamher et al., 2022).

In addition to having to inform the patient verbally or in writing, doctors must also write a record immediately after treating the patient. Every health facility must record and record the results of examination, treatment, action, and other services provided to patients. Article 46 of Law No. 29 of 2004 on Medical Practice clearly states that the record in question is a Medical Record, as stated in Article 1 numbers 1,6 and 7 of the Permenkes N0.269/MENKES/PER/III/2008. A medical record is a file that contains records and documents about the patient's identity, examination, treatment, actions, and other services that have been provided to the patient. Permenkes No.24 Year 2022 concerning Medical Records has been amended. It now uses an electronic system, which will be integrated into the Ministry of Health, rather than manual documents. According to Ery Rustiyanto 74, medical records should include sufficient data written about who, where, and how the patient's care was carried out while in the hospital so as to produce a diagnosis, guarantee, treatment, and final results (Rustianto, 2005).

Medical records have several benefits for doctors, patients and hospitals, including (Kurnianingsih, 2020; Sari et al., 2023): 1. Can be used as a reference for doctors and health workers in providing health services both in determining diagnosis, providing treatment, medical action and further services for patients; 2. Good, correct, complete and clear medical records can improve health services for patients; 3. Good, correct and complete medical records can make it easier for doctors and health workers to treat a disease; 4. Good, correct and complete medical records can provide legal protection for doctors and health workers when certain cases occur (law); 5. Medical records can provide information about the development of diseases, treatments, medical actions, especially for the development of science in teaching

and research; 6. Medical records can also be used to determine the amount of fees to be paid by patients in health services; 7. With medical records, statistical figures on disease cases, mortality rates, birth rates and matters relating to health can be determined; and 8. Medical records can also be used to prove legal issues or are evidence to resolve legal cases such as malpractice or other violations.

Thus, if there is a medical dispute, the proof can be by looking at the patient's medical record which contains the patient's medical records during treatment or care. If no violation is found in the process of treatment or care of the patient, then a doctor cannot be charged with negligence or not in accordance with professional standards. The authorities can use Law No. 29/2004 on Medical Practice as the basis for indicting a doctor suspected of committing an offence, in accordance with Article 3 paragraph (3) which states that the purpose of medical practice is to provide legal certainty to the public, doctors, and dentists, in addition to providing legal protection for patients as well.

CONCLUSION AND SUGGESTION

Based on the description above, it can be concluded that: A doctor will get legal protection in a medical dispute if the doctor has carried out his obligations as a doctor both in terms of administration, SOP (Standard Operating Procedures), Professional Standards, conducting inform consent clearly and completely, taking action according to indications and completing medical records in accordance with the actions taken by the doctor. The principle of lex specialist derogat legi generalis of the GCPL as well as in the Health Law and Hospital Law for civil cases cannot be applied because there is no specific article that regulates this, but the criminal verdict of a medical dispute case can be used as evidence of the violation can be evidence of unlawfulness and can be sued for compensation by the plaintiff. The suggestions that can be conveyed by the author are: For law enforcers, when they receive a complaint about a dispute, they should first see whether there is a lex specialist law relating to the case so that not all cases must use the Criminal Code as the basis for charges. For the government and legislative bodies that make laws, when making laws, they should conduct socialisation to all elements of society, especially law enforcers so that when there are allegations of violations of the law, law enforcers can use laws and regulations in accordance with the case being handled.

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