

# Health and law: Euthanasia in Indonesian legal perspective

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## A health education law for the community in preventing the lawsuits on medical disputes<sup>☆</sup>



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### KEYWORDS

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### Abstract

**Objective:** This paper aims to provide health law education to the public, in determine a medical action that is detrimental to the patient's category as malpractice.

**Method:** This research using study of literatures by gathering information or theories relevant to the topic of the problem and related to the material being studied using the normative and empirical health and law studies.

**Results:** A number of literatures about malpractice and its theory have been reviewed and it turns out the results of the study indicate that there are no criteria or limits specifically agreed upon as a standard for establishing a medical action that is called malpractice or not. This paper aims to provide health law education to the public, in determine a medical action that is detrimental to the patient's category as malpractice.

**Conclusion:** The results of the study above show that form the legal basis have not been able to explain the process of occurrence that is called medical malpractice. Malpractice theories also only explain the source of the malpractice. Proof of malpractice must be stated by experts, but on the other hand, the verification still faces challenges from the existence of a defense theory for medical personnel who face the demands of malpractice.

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### Introduction

Keeping and improving health is human need but the guarantee healthy effort does always success. The unfortunate conditions and cases if one's efforts could be unsuccessful or even more caused pain or dangerous health problem. If the result of someone's illness is not due to an element of medical error, it can be said there is no problem.

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However, if the illness comes because of an element of error or negligence of medical treatment, it will become a dilemma, because the purpose of a person's treatment is to seek healing or health improvement. When it happened, then this condition is possible caused of mistakes in acting medical personnel better known as malpractice case.

Malpractice is a problem related to health services also being debated in Indonesia. The amount malpractice cases can be easily accessed regarding the number of complaints from the public that are considered harmed patients in providing action. The increasing quantity of complaints shows people aware of their rights, in an effort to protect themselves from the actions of other parties that possible harm them. By using the services of lawyers, the public began to dare to sue the medical services that were suspected of having committed malpractice.<sup>1</sup> There are at least 10 (ten) legal basis<sup>2</sup> used for proper treatment or health facilities related to medical and or also mention about malpractice. Two of them are as follows. First, Law No. 23 of 1992 concerning health and Secondly, Law Number 29 Year 2004 concerning Medical Practices. Even that the law already exists but the still need of more approach in explain and enforce the malpractice, to be a guidance in educated the medical services of their responsibilities in preventing the law suits.

## Methods

This research is a study of literatures by gathering information or theories relevant to the topic of the problem and related to the material being studied using the normative and empirical health and law studies.

## Discussion

### Malpractice theory

There are three theories that mention the source of malpractice, namely:

- a. Contract Violation Theory, the source of malpractice is due to breach of contract. This is based on the principle that legally, a medical person has no obligation to care for someone if between the two there is no contractual relationship between the medical person and the new patient, if there is a contract between the two parties.<sup>3</sup> In connection with the relationship between the patient's contracts with the medical staff, it does not mean that the relationship between the medical staff and the patient always occurs with shared health. In cases where the patient is not self-conscious or in an emergency situation, for example, a person may not give their consent. If this happens, then the approval or contract of the patient's medical personnel can be requested from a third parties, the family of the patient acting on behalf of and representing the interests of the patient.
- b. Theory of Deliberate Acts, the second theory that can be used by patients as a basis for suing medical personnel, because malpractice is an intentional tort, which results in someone physically injured (assault and battery). In other words, patients suffer losses. For example, a doc-

tor will operate on the flesh that grows in the left ear, then because he also finds meat growing in the right ear, the doctor operates on the right side intentionally. Thus, the intent does not have to be intentional which results in a bad outcome for the patient, but the important thing is more directed to the violation or intentional acts.<sup>4</sup>

- c. Theory of Negligence, states that the source of malpractice is negligence. Negligence that causes the source of actions that are categorized in this malpractice must be proven to exist, besides the negligence in question must be included in the category of gross negligence (*culpa lata*).

### Medical malpractice criteria

From the existing understanding of medical malpractice, all scholars agree to interpret medical malpractice as the fault of medical personnel who for not using knowledge and skill levels in accordance with professional standards which ultimately results in injured or disabled patients or even death. In the medical world, malpractice is divided into 2 (two) parts, namely medical malpractice and pure malpractice. According to Alexandra I. Dewi,<sup>5</sup> parameters or indicators of the occurrence of medical malpractice, if they lack knowledge of medical/health science and technology that are generally accepted among medical workers/health professionals, provide health services below professional standards, commit gross negligence or provide careless services, and carrying out medical workers actions that are against the law.<sup>3</sup>

Furthermore, Alexandra I. Dewi also said that in order to declare that medical malpractice occurs, must cover: there was an action in the sense of doing or not doing it of course who did that was medical/medical personnel; actions in the form of medical measures, diagnosis, therapeutic, and health management; performed on patients; done in violation of law, propriety, decency or other professional principles; done intentionally or carelessly in this case negligent or careless; as well as resulting in wrong actions, pain, injury, disability, physical damage, death and loss.

To demand compensation for medical personnel (medical) due to malpractice, required elements must be fulfilled, namely: there is an obligation for doctors, nurses (medical workers) to injured patients, violations of medical service standards that are commonly used (need an expert witness), the plaintiff has suffered a real loss that can be asked for compensation, and in fact the loss is really caused by sub-standard actions.

The view of medical malpractice is linked to factors without authority or without competence can be accepted from the point of law of medical administration. A doctor's mistake because he does not have a Practice License (PL) or does not have a Registration Certificate (RC) is basically a violation of administrative law. Legal analysis or legal argumentation related to medical malpractice had various views. The view that comes from general public about doctor's actions, that starts from the consequences that occur to the patient. If the consequences are fatal, it tends to state that the doctor is malpractice. Some also views see a doctor's malpractice in terms of the doctor's obligations being



If there are scissors or pliers left in the stomach of the patient undergoing surgery, then the scissors or pliers based on the doctrine of *res ipsa loquitur*, can be used as facts that can indirectly prove the doctor's mistake, because the scissors or pliers cannot be left behind if there is no negligence, scissors or the leftover pliers are under the responsibility of the doctor, the patient is anesthetized, so that it is impossible to contribute to the lagging of these devices. From the description above it can be concluded that the cause of the conflict dispute between the medical workers and the patient is an error or neglect that causes malpractice and results in losses suffered by the patient.

### Conclusion

The results of the study above show that form the legal basis have not been able to explain the process of occurrence that is called medical malpractice. Malpractice theories also only explain the source of the malpractice. Proof of malpractice must be stated by experts, but on the other hand, the verification still faces challenges from the existence of a defense theory for medical personnel who face the demands of malpractice. Meanwhile, regarding malpractice criteria, there is no specific agreement as a standard to determine whether a medical action is called malpractice or not. Therefore,

today, tomorrow and in the future, in the context of holding doctors or medical workers accountable, as long as there are no criteria that formulate or limit actions to be categorized as medical malpractice, then malpractice lawsuits are need of the burden prove eventually.

### Conflict of interest

The authors declare no conflict of interest.

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