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DOCTOR'S RESPONSIBILITY IN CIVIL LAW

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Abstract

The legal relationship between doctor and patient is born out of a therapeutic transaction. Therapeutic transactions are activities in the implementation of medical practice in the form of individual health services or so-called medical services based on their expertise, skills, and accuracy. A therapeutic agreement is an agreement between a doctor and a patient, in the form of a legal relationship that creates rights and obligations for both parties. In a legal sense, responsibility means "attachment". The research method used is library research, namely secondary data obtained from the 1945 Constitution, the Act, the results of literature studies of books, scientific journals, theses, and relevant references, so this research uses normative legal research methods. . The doctor's liability in civil law can be in the form of civil legal liability due to a doctor's civil liability 3 default due to an unlawful act (onrechtmatige daad) the doctor's civil liability resulting in a loss of the doctor's civil liability as the person in charge. and forms of liability of a doctor who can be prosecuted in civil law And to ensure legal certainty and legal protection for the community or patients who feel aggrieved can file a civil lawsuit through the court on the basis of default or unlawful acts to obtain compensation from the party who cause the loss.

Keywords: liability, doctor, civil law

I. INTRODUCTION

I.1 Background Of The Problem

The legal relationship between doctor and patient is born from the transaction therapeutic. Therapeutic transactions are activities in the administration of medical practice in the form of individual health services or medical services based on their expertise and skills, and accuracy. The relationship cannot be separated from an agreement that This is called a

therapeutic agreement or what is called a therapeutic transaction. Agreement Therapeutic is an agreement between a doctor and a patient, in the form of a law that gives birth to rights and obligations for both parties In a legal sense, responsibility means "attachment". Every human, start from the moment he is born until the time he dies has the right and

obligations and are referred to as legal subjects. Doctor's actions or actions as a legal subject in social interaction, it can be distinguished between daily actions that are not related to the profession and actions that related to the practice of the profession. Likewise in responsibility the law of a doctor, can be unrelated to the profession, and can also be is a legal responsibility related to the implementation of his profession. In carrying out an action, a doctor must be responsible responsibility as legal subjects carrying rights and obligations. On each medical actions carried out by doctors, both diagnostic and therapeutic will always contain an inherent risk (risk of treatment) may or may not arise. Doctor's actions that are not related to implementation of professions that give rise to legal responsibilities, among others: doctors get married, doctors make buying and selling agreements, doctors make wills, etc. Doctor's actions that are not related to the implementation In general, this profession can also be done by anyone who is not

doctor. In the legal responsibility of a doctor as a carrier profession, doctors must always be responsible in carrying out their profession. Because the doctor's responsibilities in the law are so broad, the doctor must also understand and understand the applicable legal provisions in the practice of their profession. This includes understanding the rights and obligations in carrying out the profession as a doctor A thing that What is special about the medical profession is that this profession is very noble in the eyes society, because this profession is directly related to humans as objects and related to human life and death. Since a long time ago The public knows that there are some fundamental characteristics inherent in a doctor, namely the existence of good social integrity and behaving wisely. Therefore, if there is a mishandling of the patient, resulting in disability or death is often ignored by the patient / family because they thought it was God's will. But at the time now that view is starting to change, more and more we

hear and know the existence of a doctor who is sued/sued by the patient or family in both civil and criminal fields. In carrying out The obligation for doctors lies in the burden of legal responsibility in medical malpractice, both from a civil and criminal perspective. For legal circles and the knowledge community also need to be understood so that can see that in health services sometimes doctors and other health professionals can be accused of having done an act that harmed the patient or trapped in the field of health services that violate the law or ethics. This understanding of course aims that all parties involved in the malpractice problems can understand the root cause of this problem and therefore can avoid it so that the goals of health services can be achieved and all parties involved are protected from unwanted things.³ In connection with the legal responsibilities of doctors in the field of Law Civil law, then there are 2 forms of basic liability, namely: 1) liability

liability for losses caused by default, 2) liability liability for losses caused by unlawful acts. Basically, civil liability aims to obtain compensation for losses suffered in addition to preventing the occurrence of unwanted things. Therefore, the basis for demanding responsibility The responsibility of the doctor who is considered to have harmed his patient is regarding: acts against the law or default that give rights to those who harmed to receive compensation from other parties who have obligations to the party who suffers the loss.

I.2 Research Objectives

The purpose of this research is to identify the forms of the responsibility of a doctor under civil law in carrying out profession and to identify efforts that can be a patient if he suffers a loss due to a mistake made by a doctor in providing health services.

II. DISCUSSION

II.I. Civil Law Liability Due to Default

The text of Article 1239 of the Civil Code is as follows: "Each"

engagement to do something, or not to do something, if the debt does not fulfill its obligations, get the settlement in obligation to provide compensation for costs, losses and interest. In Language According to the law, default is a condition in which a person does not fulfill obligations based on an agreement or contract. According to science civil law, a person can be deemed to have defaulted if:

1. Do not do what is promised to be done;
2. Late in doing what was promised to be done;
3. Carry out what was promised, but not in accordance with what promised;
4. Doing something that according to the agreement is not allowed to be done;

Examples of cases that cause doctors to be subject to claims for default of patients, including:

1. A patient comes to the obstetrician to be done sterilization, because they do not want to get pregnant again. Obstetrician ready sterilize the patient. It's been a few months

After surgery, another pregnancy occurred. So in this case, doctor

The obstetrician can be sued for not doing

which he agreed to do. The reason for the claim is, patient

willing to undergo sterilization surgery, because they do not want to get pregnant again, but

After surgery, the patient can still get pregnant again.

2. The patient agrees to perform Sectio Caesaria. During operation,

Apparently the doctor also found an inflamed appendix

(appendicitis). Without telling the patient or his family, the doctor

invite the surgeon to perform appendectomy

the patient. With regard to the removal of the appendix (appendectomy),

the doctor can be considered to do what was promised not as

promised. The doctor only promised to do Sectio Caesaria,

without explaining the possibility of an appendectomy. Then against

In this case, the doctor can also be sued as a default.

3. Doctor Sp. OG. perform Sectio Caesaria with the patient's consent. Because

during the operation he noticed appendicitis (inflamed intestine), then perform an appendectomy at once, rather than the patient waiting for the consul

surgeon who will increase the operating time. According to the agreement, actually Doctor Sp. OG can't do an appendectomy because it's not his authority. So if the Sp. OG Doctor does this, the patient can think Doctor Sp. OG has done something that according to the agreement should not be done, so the patient can do Default claim against the doctor.

II.II. Doctor's Civil Liability For Actions Against

Law (onrechtmatige daad)

A lawsuit against an unlawful act can be filed under Article 1365 of the Civil Code. In contrast to claims for compensation based on the engagement that was born because of the agreement (default), then on the act of against the law does not have to be preceded by an agreement. The elements that can be used as a basis for filing a lawsuit against the law is as follows:

- a. There is an unlawful act;
- b. There is a loss;
- c. There is a causal relationship between unlawful acts and losses;
- d. There is a mistake;

Based on the 1919 Jurisprudence, what is meant by an act against law is an act or omission that meets the following criteria:

- a. Violating the rights of others;
- b. Contrary to one's own legal obligations;
- c. Violate ethical views that are generally held (good customs) or good decency;
- d. Contrary to the caution that should be heeded in community association with oneself or other people's objects;

Examples of cases of unlawful acts that may be committed by

a doctor is a general practitioner who performs an internal examination (Vaginal Toucher/VT) to a female patient without a valid medical indication clear. So this doctor's action can be considered as an act against

law, because the act violates ethical views or decency

good, besides that there are several cases of missing instruments or

gauze in the patient's abdomen after surgery, can be considered as against the law, the patient must be able to show a fault doctor who because of negligence as an action that is contrary to the attitude caution should be heeded by the doctor performing the operation. Even though the instrument or gauze is left behind, it's not completely doctor's mistake. In order to be able to sue a doctor with a lawsuit against the law, The patient must be able to show the doctor's error due to negligence in carrying out their professional obligations, causing harm to patient. Losses that occur must be explained as a result of the action negligent doctor, or in other words there is a causal relationship that clear and there is no justification. A doctor can be declared

make a mistake and have to pay compensation, if between the losses incurred caused there is a close relationship with the mistakes made by that doctor. In determining the error, we must refer to professional standards. So that in the implementation of medical practice, actions against the law can be identified with the doctor's actions that are contrary to or not in accordance with professional standards that apply to professional bearers in the field of medicine. Claims for unlawful acts can be filed under Article 1365 of the Civil Code. Unlike the claim for compensation losses that are based on an agreement born out of an agreement (default), then the act against the law does not have to be preceded

there is an agreement. Elements that can be used as a basis for submission

lawsuits against the law are as follows:

- a. There is an unlawful act;
- b. There is a loss;
- c. There is a causal relationship between unlawful acts and losses;
- d. There is a mistake;

III. CLOSING

III.1 Conclusion

Based on the discussion above, it can be concluded that forms of liability of a doctor that can be sued

civil law, because:

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- a. Defaulting (Article 1239 of the Civil Code/BW);
- b. Committing an unlawful act (Article 1365 of the Civil Code);
- c. Doing negligence resulting in a loss (Article 1366 Civil Code);
- d. Neglect of work as the person in charge (Article 1367 paragraph (3) Civil Code);

And to ensure legal certainty and legal protection for

community or patients who feel aggrieved can file a lawsuit

civilly through the court on the basis of default (Article 1239

Civil Code/BW) or acts against the law (Article 1365 of the Civil Code)

to obtain compensation from the party causing the loss.

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