

Medical Dispute between Doctor and Patient in Medical Service Effort in Hospital in Semarang, Indonesia

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ABSTRACT : Lately dispute between doctor and patient often happens, and some of them involve the hospital, as the health facilities where the doctor devote themselves also sued. Actually, the people's view on medical profession is a sign that some of them are not satisfied with medical service and medical profession's devotion in society. Generally, patient and their families are dissatisfied with the medical service because their expectations cannot be met by the doctor. In other words, there is a gap between expectations and the reality obtained by the patient.

If the change in the characteristic of doctors as the service provider and the change of people as the medical service consumer are not supported by communication improvement between doctor and patient, it can cause dissatisfaction and conflict between them.

This research uses combination between doctrinal approach and non-doctrinal approach. This research is done in Semarang, Indonesia.

The result shows that most of the conflicts between doctor and patient are caused by differences in perception and communication problem in medical service effort, considering the agreement between doctor and patient is *inspanningsverbintenis*. Most people do not understand that there are a lot of other factors outside the doctor's control which can alter the result of medical effort, such as stage of the disease, physical condition, immunity of the body, quality of the medicine and patient's obedience towards the doctor's advice, therefore the result of a medical effort is full of uncertainty and cannot be calculated. Conflicts between doctor and patient cannot always be referred as malpractice, but most of them happens because of misconception in communication between doctor and patient.

Keywords: Medical dispute, doctor, patient, hospital

Research Background

Lately dispute between doctor and patient occurs often, some of the conflicts involve the hospital as one of the health facilities where the doctors are devoted also sued. Several cases later appeared in the media, but it is just like the visible tip of the iceberg appears on the surface just a bit, but lots of the cases are not published to the media.

Healthy is an absolute necessity, because health is the main capital to face the future, and there is no future if it is not healthy. As the WHO says: health is not everything but without health, everything is nothing (Endang Kusuma Astuti, 2009b: 2)

At first, the medical profession is regarded as a profession that is highly praised for its ability to know things that are not visible from the outside. Today the doctor is seen as a scientist whose knowledge is needed to cure various diseases. The status and role of physicians are respected. Doctors demanded a scientific prowess without compromising in terms of art and artistic by the public.

Basically, changes of the relationship between doctors and patients is also in line with the development of science and technology, both in the fields of law and medicine itself, and also due to growing public awareness, particularly Indonesia, as one of the fruits of development. Changes in characteristics of the physician as a provider of services, and changes in the community as the service user, if not supported by improvement in communication between physicians and patients can lead to dissatisfaction and conflict between the two.

Research Problems

1. What is the legal relationship between doctor and patient?
2. What is the cause of a medical dispute between the doctor and patient in the hospital?

Discussion

1. Relationship between Doctors and Patients Legal
 - a. Legal relationship patterns

The relationship between doctor and patient has been going on since ancient Greece, doctor as someone who provide treatment to people who need it. This relationship is a very personal relationship because it is based on the belief of the patient to the doctor.

The relationship between doctor and patient originated from such paternalistic pattern of vertical relationships between fathers with children departing from the principle of "father knows best" which gave birth to a paternalistic relationship (Hermien Hadiati Koeswadji, 1998:36).

In this connection, the position of the doctors and the patients is not equal, the doctors have higher position because they are supposed to know about all things related to the disease and its cure. While the patients did not know anything about it so that the patients committed himself entirely in the hands of the doctor. (Howard B. Waitzkin and Barbara Waterman, 1993: 31)

Observation of the relationship between doctor and patient in the medical care efforts at the hospital shows a dependence relationship of the patient to the doctor. The doctor is in control of power to the patients who do not know the knowledge of medicine, so doctors tend to be higher position than the patient. Since the abilities and skills of doctors in the health sector is almost hardly doubted by the patient, so virtually all decisions is in the hand of the doctors. The pattern of vertical relationships who gave birth to the paternalistic nature between doctor and patient contains either a positive impact or a negative impact. The positive impact of vertical pattern that gave birth to the concept of a paternalistic relationship is very helpful to the patient, in which case the patient does not know about his illness. On the contrary, it can also be a negative impact, when a doctor's actions which consisted of steps toward the patient wellness were actions that limit patient's autonomy, which in the history of culture and basic human rights have existed since birth. Vertical pattern of paternalistic relationship is then shifted to the contractual horizontal pattern.

This relationship gave birth horizontal contractual legal aspects of "inspanningsverbintenis" which is a legal relationship between two (2) legal subjects (patients and physicians) in equal position gave birth to rights and obligations for the parties concerned. This legal relationship is not promising anything (recovery or death) as the object of a legal relationship is maximum effort that is made carefully by a doctor based on science and experience (dealing with the disease) to cure the patient. (Hermien Hadiati Koeswadji, 1998: 37)

b. Occurrence of legal relationship between doctors and patients

When the agreement occurred is the second an agreement is achieved between the parties. The doctor and the patient mutually bind themselves to an agreement whose object is therapeutic healing efforts (Endang Kusuma Astuti, 2009a: 33, Endang Kusuma Astuti, 2009b: 116)

Contractual legal relations that occur between patients and doctors do not start from the moment the patient enters the doctor's office, as widely believed, but rather from the moment doctors expressed willingness which can be expressed orally (oral statement) or implicit (implied statement) indicated by the attitude or action which concludes willingness; such as the receipt of applications, giving numbers, provide medical records, et cetera. In other words the therapeutic relationship also requires the willingness of the doctors. This is in accordance with the principle of consensual and contract. (Sofwan Dahlan, 2000:32-33)

c. Terms of legal relations between doctor and patient (Endang Kusuma Astuti, 2009b :115-123)

1) Agree they were bound themselves (toestemming van die zich degeneration verbinden)

Legally, the agreement in question is the absence of mistake, or duress, or fraud (Article 1321 Book of Civil Law). The agreement, viewed from the original formulation, means approval (toestemming) of those who bound themselves.

Occurrence of the agreement, related to Article 1320 Book of Civil Law, is the time of the agreement between the doctor and patient when the patient stated his complaint and responded by a doctor.

2) Ability to create engagement (bekwaamheid om te gaan aan eene verbintenis)

Legally, is the ability to make a commitment is a person's ability to bind themselves, because it is not prohibited by law. This is based on Article 1329 and 1330 Book of Civil Law.

According to Article 1329 Book of Civil Law that every person is competent to make a commitment, if by the law is not declared incompetent. Then, in the Article 1330 Book of Civil Law Act, mentioned the people who declared incompetent are minors, those placed under guardianship, the women, in terms established by law and in general all persons to whom the law has prohibited certain agreements made.

Based both articles, it can be concluded that, acting prowess is a common authority to bind themselves, while authority is the authority of a special act. Means, inadequacy only hinder a person to perform certain legal actions, and those declared inadequacy is people who generally are not competent to act. In other words, people who are not competent to act is a person who does not have the authority of law, because people who are competent to act is generally competent to act except on certain events when they can not do legal act and inadequate to close certain agreement legally.

3) A certain things (een bepaald onderwerp)

Certain things that can be linked with object agreement / transaction is therapeutic healing efforts. Therefore the object is healing efforts, the results obtained from the achievement of these efforts can not or should not be guaranteed by a doctor. Besides the implementation of relief efforts was not only depend on the seriousness and expertise of doctors in carrying out his professional duties, but many other factors come into play, such as the patient's resistance to a particular drug, severity of the disease and the patient's role in carrying out the doctor's orders in the interest of the patient itself.

4) A valid reason (geoorloofde oorzaak)

Article 1337 Book of Civil Law states that any reason is prohibited, if it is prohibited by law or if contrary to good morals or public order. Thus, a valid reason is a reason that is not prohibited by law, morals or public order, while is the cause is the goal.

2. Causes of Dispute between Doctors and Patients in Hospital

- a. Public and patient awareness of their rights in the field of health care is increasing, so they are more sensitive and more critical for demanding their rights.
- b. In general, dissatisfaction of the patient and the patient's family for the doctor's services are caused by their expectations can not be met by doctors, or in other words there is a gap between the expectations of patients and the fact that obtained by the patient. The patient as doctor's service recipients has hopes and the size of this expectations depends on personal experience, and depends also on information about a doctor's care ever heard, seen or read. The hope was still attached to the patient's mind, when dealing with a doctor. The hope of these patients increase if the patient ever read, seen on a television show or movie about how the good doctor working with devotion. Big gap between the expectations of the patient with the fact obtained afterward is a predisposing factor, but the real source of conflict can be caused by the presence of differences in perception (eg, the nature and purpose of the medical effort), ambiguous communication (eg, certain terms have different meanings for different individuals) and the person's individual style (eg doctor's arrogant attitude or patient's temperament).
- c. Most conflict is due to the problem of communication and perception. So far, people assume that medical treatment done by the doctor is the only variable that can affect the health of a person, so that the catastrophe in question is the quality of medical efforts. The most obvious example can be seen in the case of Nurdin, who was a patient who had to undergo eye surgery at a hospital in Sukabumi. The nurse assigned to informing about the operation has done the assignment, so that later the patient agrees, but the term "operation" that had been captured differently by the patient. As a result, when the gauze was opened, Nurdin screamed when looking that his sick eyes already not in place therefore he sued the doctor. Fortunately, the judge who prosecuted his case is willing to

receive a legal defense (secondary defense) proposed by the doctor, because what is done solely in the context of the emergency measures (emergency care) in order to save the healthy eyes based on the theory of Sympatico optalmia.

- d. Some conflicts are caused by the negligence of doctors at the time the medical care efforts, as an example gauze left inside the patient's body and injure organs other than what is treated (truncated channel ureter in abdominal surgery).

It can be concluded that conflicts between the doctor and patient cannot always be interpreted as a malpractice action. Most of them are due to misperceptions or misunderstandings due to communication that does not function properly. Therefore, the role of the Indonesian Doctors Association as professional organizations and consumer organizations that represent the interests of patients is needed to resolve conflicts, or at least, can play a role in screening for conflicts that have not been substantive reasons before the law.

In Semarang in the early period 2010 - 2012 there were 35 cases of medical disputes between doctors and patients filed by the director of the hospital, with the details of 15 cases of medical disputes that occur in the Teaching Hospital and Government Hospital and 20 cases of medical disputes occurring at the Private Hospital in Semarang taken as a sample.

Cases selected as sample are predominantly due to a misunderstanding of the patient or the patient's family about the results of medical services performed by doctors as shown on Table 1 and Table 2. This happens due to the patient and the patient's family do not know about the result of a medical care attempt, where the object of engagement that occurs between them is inspaningsverbintenis.

Table 1: Cause of Dispute between Doctors and Patients Filed to the Director of Private Hospitals in Semarang.

No.	Problem	Number of Dispute	Percentage
1.	Differences in Perception and Communication	9	90 %
2.	Doctor's Negligence	1	10 %
Total		10	100%

Source : Interview with the Director and Medical Committee of the Hospitals and Council of Members Development and Defence, Indonesian Doctors Association Central Java.

Location : Type B and C Private Hospital in Semarang chosen as sample

Table 2: Cause of Dispute between Doctors and Patients Filed to the Director of Government Hospitals and Teaching Hospitals in Semarang.

No.	Problem	Number of Dispute	Percentage
1.	Differences in Perception and Communication	7	70 %
2.	Doctor's Negligence	3	30 %
Total		10	100 %

Source: Interview with the Director and Medical Committee of the Hospitals and Council of Members Development and Defence, Indonesian Doctors Association Central Java.

Location: Type B and C General Hospitals and Teaching Hospitals in Semarang chosen as sample

Conclusion

1. The legal relationship between doctor and patient occurs when the patient expressed his complaint and responded to by a doctor. Here, although there is no agreement in writing, but implied by the movement of the so-called implied consent counts as responding to the patient's complaint.
2. Causes of disputes between doctor and patient
 - a. The gap between the expectations of the medical service consumer and the fact received.
 - b. The big difference in the perception of most people using the medical services of the results of medical services. They do not understand that the object of the engagement between doctor and patient is inspaningsverbintenis, an effort obligations done carefully. They assume the end result is going to sue the doctor to call it malpractice.
 - c. Misunderstanding between doctor and patient because the patient does not understand the medical terms, but are reluctant to ask because of embarrassment.
 - d. Doctor negligence at the time of medical services.

Suggestion

- a. Doctors in performing professional duties must not guarantee the outcome of treatment.
- b. Patients to have better understand that the legal relationship between the doctor and the patient gave birth to the legal aspects of the relationship inspanningsverbintenis because the object of the law is utmost efforts made by the doctor carefully and full of tension based on his knowledge to cure the patient. So, it does not promise a definitive result.
- c. Medical dispute resolution between the doctor and patient are preferred through the medical committee of the hospital and settlement through the courts is last effort.

- d. Doctors in doing their profession need to receive legal protection, given the many demands of patients who only caused by the differences in perceptions and miscommunication.

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