

The Settlement Of Medical Ethics Code

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The Settlement of Medical Ethics Code Infractions at RSUD Dr. Soewandhie Surabaya

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ABSTRACT

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Indonesian Honorary Council of Medical Ethics (MKEK) is one of the autonomous institutions of the Indonesian Medical Association that is formed especially at the national, regional, and branch levels to perform professional ombudsman duties, foster professional ethics and/or other institutional and ad hoc duties at their respective levels. The Medical Ethic Code in Indonesia has been regulated in the Decree of the Health Minister Number 434/2002 by the IDI management which has revised and established changes to the results of the national working meeting on medical ethics in 2001. The type of research used is empirical jurisdiction which in its research uses a problem approach regarding medical ethics code infractions at RSUD Dr. Soewandhie Surabaya. The ²⁵ sources used are (1) primary data sources, such as observation and interviews; and (2) secondary data sources, such as data sources that support the primary data sources (law books, scientific papers, articles, and so on). This research technique used purposive sampling technique. The research results indicated that legal protection against violation of the medical ethic code can be resolved in two ways, such as the criminal process (litigation) and the civil process (non-litigation) in which the initial settlement process is assisted by the Ethics Honorary Council, then further handled by the Medical Ethics Committee through mediation related to the provision of sanctions.

Keywords: *Ethic Code, Legal Sanctions, Medical Ethics Code Infractions*

INTRODUCTION

Based on Law No. 44/2009 concerning hospitals, it is stated that health services are the right of every person guaranteed in the Indonesian Constitution 1945 which must be realized by efforts to increase the highest degree of public health. In addition, in order to improve the quality and scope of hospital services; and regulation of the rights and obligations of the public in obtaining health services, every service operation in the hospital needs to be supervised and regulated by law.¹ Medical services must be based on the medical professional's ethics code. The ethics code for doctors is a guideline for Indonesian doctors in medical practice. The basis of this ethics code has been regulated in Article 8 letter f of Law No. 29/2004 on medical practice and Article 24 of Law No. 36/2009 on health.² Health and hospitals are related to the existence of legal regulations that have authority according to the legal regulations applicable in the hospital. However, there is a medical ethics code in the healthcare sector, one of which is a secret for every profession. Because medical professionals are already written in the ethics code that every doctor and nurse must be able to protect the privacy of their patients' identities, even all discussions about patients must be held in a closed discussion so that the identity of the patient is camouflaged and cannot be disclosed. Therefore, encryption can be applied to the hospital information system in anticipation of this, this encryption can be applied in the connection section.

The rules in the relationship between medical and medicine have been regulated in the Indonesian Medical Ethics Code (KODEKI) in 2012 regulated in Law No. 23/1992 concerning health based on the medical professional ethics code.³ However, there are violations of the medical and nursing ethics code due to empathy or communication problems between medical personnel and patients, which lead to ethicolegal conflicts to interest conflicts.⁴ These violations need to be addressed with appropriate sanctions in order to provide sanctions as a guidance or deterrent effect for medical personnel who misuse their professional ethics that are not in accordance with the ethical code regulations. The violation of ethics code occurred in one of the public hospitals, named RSUD Dr. Soewandhie Surabaya in November 2020, which there is one person or former doctor who has violated the ethics code. This violation is in their medical services provided by medical

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¹ Menteri Hukum dan Hak Asasi Manusia, *Undang-Undang Nomor 44 Tahun 2009 Tentang Rumah Sakit* (Jakarta, 2009).

² Menteri Hukum dan Hak Asasi Manusia, *Undang-Undang Republik Indonesia Nomor 36 Tahun 2009 Tentang Kesehatan* (Jakarta, 2009); Kepresidenan Negara Indonesia, *Undang-Undang Republik Indonesia Nomor 29 Tahun 2004 Tentang Praktik Kedokteran* (Jakarta, 2004).

³ Nila Kusuma, Arma Sastra, and Hilaire Tegnau, "Law and Medical Disciplinary Sanctions: Enhancing Medical Practice and Health Quality in Indonesia," *Journal of Legal, Ethical and Regulatory Issues* 21, no. 4 (2018): 1-9.

⁴ Panca Narayana, Judhith Vidya Dayati, and Miranti Verdiana, "Resiko Medik Dokter Dalam Operasi Mata Yang Mengakibatkan Kebutaan," *Jurnal Hukum Bisnis Bonum Commune* 3, no. 2 (2020): 266-277.

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personnel and unscrupulous doctors who have violated the ethics code in the form of medical treatment that is not fast enough to provide emergency action and medical treatment that is not optimal, which causes patients to be at a serious loss when examined. This case described that every patient who came was not immediately treated quickly. One of the doctors who violated the ethics code was Dr. Nugroho Hutomo Sp. A. The doctor refused a 10-year-old Emergency Room (IGD) patient named Aulia who had a medical diagnosis of malaria. When Aulia was in an ambulance and would soon be admitted to the emergency room, the doctor refused to treat the child stating that the emergency room was full of patients. The fact is that there were already many doctors in the room handling these patients. Therefore, Aulia had to be discharged under conditions that did not allow her to survive. However, the family has also warned or reprimanded the doctor for deviant behavior that violates the medical ethics code. Here are the contents of Articles 8 and 17 as follows:

Article 8 contains:

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A doctor is obliged to provide competent services with full technical and moral freedom in his/her medical practice, compassion and respect for human dignity.

Article 17 contains:

Every doctor is obliged to provide emergency aid as a humanitarian duty, unless he/she is convinced that there are other people who are willing and able to provide it.

Based on the previous background, this research examines the settlement of medical ethics code infractions at RSUD Dr. Soewandhie Surabaya. The objective of this research is to find out the settlement of medical ethics code infractions under civil law at RSUD Dr. Soewandhie Surabaya.

LITERATURE REVIEW

Medical Professional Ethics Code

The doctor's profession is based on the ethics code that is implemented in accordance with the professional organization so that the implementation of work in providing health services must not contradict the professional ethics code. However, if this happens, the patient can complain about a violation of discipline in the practice of medicine by the doctor to MKEK.⁵ The medical professional ethics code is a norm that must be applied by the entire medical profession in treating the public with the applicable norms and good behavior to avoid social and

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⁴ Maikel D. Willem, "Sanksi Hukum Atas Pelanggaran Disiplin Dokter Atau Dokter Gigi Menurut Undang-Undang Nomor 29 Tahun 2004 Tentang Praktik Kedokteran," *Lex Et Societatis* 5, no. 10 (2017): 5–11.

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legal problems due to deviant actions against a profession.⁶ Medical ethics in Indonesia has been regulated by the Medical Ethics Honorary Council (MKEK). The ethics of a doctor are based on ethical norms that regulate human relations in general, and the principles in the philosophy of society that are accepted and developed in Indonesia. In addition, the basis used is Pancasila and the 1945 Constitution.⁷ According to Law No. 29/2004, medical practice in the Civil Code Article 66 Paragraph (1) contains that every person who knows or whose interests are affected by the actions of a doctor or dentist in practicing medicine can complain in writing to the Chairman of the Indonesian Medical Disciplinary Honorary Council.⁸ If these rules are violated, doctors or medical personnel will be subject to sanctions in the form of reporting to their professional organization if indicated to be detrimental to the patient. In preventing errors in practicing their profession, a doctor must hold 4 main moral principles in performing their duties, such as (1) the autonomy principle is a moral principle that respects the rights of patients, especially the right to patient autonomy; (2) the beneficence principle is a moral principle that prioritizes actions aimed at the good of patients; (3) the non-maleficence principle is a moral principle that prohibits actions that worsen the patient's condition; and (4) the justice principle is a moral principle that emphasizes fairness and justice in distributing resources.

Civil Law Liabilities for Doctors and Medical Assistance

One important aspect of the implementation of a legal rule is law enforcement. A legal device can be called effective if the law can be implemented on an intended crime.⁹ Legal liability for the profession is regulated in Article 1365 of the Civil Code which explains the characteristics of an act called negligence, such as (1) intentionally violating the law, (2) committed on purpose or by accident, (3) the act violates the law of negligence. The losses suffered by patients can usually cause material and immaterial losses. Legal protection for patients in the Civil Code, such as (1) the doctor's civil legal liabilities to patients due to default related to the legal requirements of an agreement regulated in Article 1320 of the Civil Code; (2) the doctor's civil legal liabilities due to default regulated in Articles 1365, 1366, 1367 of the Civil Code.¹⁰ The principles of liability according to the Civil Code, such as (1) the principle of contractual liability; and (2) the principle of non-

⁶ Dewi Novitasari Suhaed et al., *Etika Profesi Dan Hukum Kesehatan* (Sukoharjo: Pradina Pustaka, 2012).

⁷ Julius Pelafu, "Pelaksanaan Penegakan Kode Etik Kedokteran," *Lex Crimen* 4, no. 3 (2015): 43–49.

⁸ Kepresidenan Negara Indonesia, *Undang-Undang Republik Indonesia Nomor 29 Tahun 2004 Tentang Praktik Kedokteran*.

⁹ Shella Kriekhoff, "The Effect of Work Ethic and Discipline on Employee's Productivity at Village Business Office (Bumdes) in Latur Village South North Aru District," *UTSAHA (Journal of Entrepreneurship)* 1, no. 2 (2022).

¹⁰ Suwanto, "Perlindungan Hukum Terhadap Pasien Di Bidang Pelayanan Medis Berdasarkan KUHPerdata," *Mizan: Jurnal Ilmu Hukum* 9, no. 1 (2020): 79–83.

contractual liability consisting of responsibility due to acts, responsibility due to violations, absolute responsibility due to acts. A doctor who is suspected of violating medical ethics (without violating legal norms), then he or she will be summoned and tried by the Medical Ethics Honor Council to be held accountable for ethics and professional discipline. It aims to maintain accountability, professionalism, and nobility of the profession. Therefore, MKEK is the only professional council that holds hearings on alleged violations of ethics and/or professional discipline in the medical community as mandated by Law No. 29/2004. Professional disciplinary proceedings are held by MKEK IDI, while civil lawsuits and criminal charges are held in courts within the general judicial environment. A person who has been decided to violate ethics by MKEK is not always convicted by the court, and vice versa. The MKEK trial is inquisitorial characteristic of the profession, which means that the panel (chairman and members) is active in conducting the examination, without any institutions or individuals as prosecutors.¹¹ Law No. 29/2004 on medical practice is a standardization guideline for the medical profession if its implementation is implemented in accordance with professional requirements.

RESEARCH METHODOLOGY

The type of research used is empirical jurisdiction which in its research uses a problem approach regarding medical ethics code infractions at RSUD Dr. Soewandhie Surabaya. The data sources used are (1) primary data sources, such as observation and interviews; and (2) secondary data sources, such as data sources that support the primary data sources (law books, scientific papers, articles, and so on). This research method used purposive sampling method. The purposive sampling method can be used in several situations. Both qualitative and quantitative sampling methods may be used when samples are chosen purposively, such as participant observation, direct observation, participatory mapping, and interview. According to Etikan et al, the purposive sampling method emphasizes oversaturation, i.e. obtaining a comprehensive understanding by continuing to sample until there is no new substantive information obtained. Subjects are selected based on the research objectives with the expectation that each participant will provide valuable and detailed information specific to the research. Furthermore, sample size is determined by data saturation, not by statistical power analysis.¹² Respondents in this research were the Chairman of the Medical Ethics Honorary

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¹¹ Asep Sukohar and Novita Carolia, "Peran Majelis Kehormatan Etik Kedokteran Indonesia (MKEK) Dalam Pencegahan Dan Penyelesaian Malpraktek Kedokteran," *JK Unila* 1, no. 2 (2016): 363–363.

¹² Ilker Etikan, Sulaiman Abubakar Musa, and Rukayya Sunusi Alkassim, "Comparison of Convenience Sampling and Purposive Sampling," *American Journal of Theoretical and Applied Statistics* 5, no. 1 (2016): 1–4.

Council and the Medical Ethics Committee of RSUD Dr. Soewandhie. Meanwhile, research approach in this research used descriptive qualitative.

RESULT AND DISCUSSION

The Research Result

This case described that every patient who came was not immediately treated quickly. One of the doctors who violated the ethics code was Dr. Nugroho Hutomo Sp. A. The doctor refused a 10-year-old Emergency Room (IGD) patient named Aulia who had a medical diagnosis of malaria on November 22, 2020. The patient was treated at Tambak Rejo Surabaya Public Health Center, but due to limited medical equipment, the patient was referred to Dr. Soewandhie Hospital for further treatment. One of the patient's family asked the doctor about the delay in the patient's treatment but received an unethical and disappointing respond. The doctor said that if you want to get fast treatment then do not use BPJS (Social Security Organizing Agency) services and move to another hospital because the number of patients was overwhelming due to the Covid-19 pandemic case. The doctor's statement caused the patient's family to be disappointed and reported the doctor's unethical actions to the Health Complaint Service and Management of RSUD Dr. Soewandhie Surabaya for follow-up. However, the case involved the doctor not only occurred once. The hospital has also reprimanded the doctor several times because his reprehensible behavior caused psychological disruption to the patient and the emotions of the patient's family.

The Research Discussion

The settlement of this medical ethics code violation case was mediated between the two parties. The mediation process is assisted by Chairman of the Medical Ethics Honorary Council and the Medical Ethics Committee of RSUD Dr. Soewandhie. In the mediation, the mediator stated that even doctors who violate the norms of decency towards patients will affect the patient's psychology. Every doctor must implement ethical honor which is morality in order to provide good medical services in accordance with professional standards. In the mediation, the mediator stated that doctors who violate the norms of decency towards patients will affect the patient's psychology. Every doctor must implement ethical honor which is morality in order to provide good medical services in accordance with professional standards. Every action of a doctor towards a patient will be assessed by MKEK which is included in the doctor's performance score. The second effort made by the mediator on the second day of mediation stated that if the unscrupulous doctor still committed unethical acts, then the case would be followed up by the medical council to discuss the sanctions to be given according to the level of the case. Therefore, based on the results of the second day of mediation, the unscrupulous doctor was allowed one more chance and if one day the unscrupulous doctor could not follow the medical ethics code, the hospital would impose strict

sanctions that were purely coaching, and a deterrent effect with permanent dismissal of members.

The relationship between a doctor and a patient is the relationship between a person who treats people who need it. In the beginning, the relationship between doctors and patients originated from a paternalistic vertical relationship pattern. The vertical paternalistic relationship means that the doctor's position is higher than the patient's position and the doctor has an important role. However, in its development, the relationship pattern changed into a contractual horizontal relationship pattern in which the position of the doctor is no longer considered higher than the patient, but as equals.¹³ However, every medical activity must still be supervised by a supervisory institution that represents the government in the operation of health services. Therefore, the Medical Practice Act was formed to provide legal certainty for patients or doctors in practicing their profession.¹⁴ There are several supervisory institutions of health services in Indonesia, such as Indonesian Medical Council (KKI), Indonesian Doctors Association (IDI), Indonesian Medical Discipline Honorary Council (MKDKI), and Medical Ethics Honorary Council (MKEK).

If there is a violation of doctor discipline in the implementation of medical practice, it will be detrimental to patients and not fulfill the protection of patients' rights in obtaining proper health services. In addition, there are several impact of medical ethics code infractions, such as (1) bad impact on patients, (2) affect the professional performance, (3) create a bad image of the doctor concerned, (4) affect the economy of the hospital, and (5) impact on colleagues in the medical profession. Unfortunately, the results of the mediation conducted by both parties were not satisfactory because it was not as agreed on earlier. Unfortunately, the results of the mediation conducted by both parties were not satisfactory because it was not as agreed on earlier. Therefore, if there is another case of this kind, the next step is to analyze whether the action violates the general provisions of the medical ethics code or not, and then determine the appropriate sanction for the action.

CONCLUSION AND SUGGESTION

Conclusion

Based on the results of research and discussion, it can be concluded that the role of KODEKI (Indonesian Medical Ethics Code) in resolving cases of medical ethics code infractions is realized through its main function, that is, as a professional ethics code which is a product of the IDI (Indonesian Doctors Association) professional organization as mandated by legislation. The second role is realized through the MKEK institution which is a physician ethics enforcement agency.

¹³ Retno Harjanti Hartiningsih, "Pola Hubungan Hukum Antara Dokter Dan Pasien," *Maksigama* 19.1 (2020): 49–60.

¹⁴ Richard Nuha, "Analisis Hukum Kontrak Terapeutik Terhadap Tindakan Medik Dalam Hubungan Pasien Dengan Dokter Di Rumah Sakit," *Lex et Societatis* 4, no. 3 (2016): 33–40.

MKEK states that if there is a doctor who violates the ethics code, he or she will be tried and sanctioned if guilty or protected if the doctor is right. Because the settlement of a medical ethics code infraction case is based on the results of the MKEK trial which only has binding force on the doctor.

Suggestion

In preventing errors in practicing their profession, a doctor must hold 4 main moral principles in performing their duties, such as (1) the autonomy principle is a moral principle that respects the rights of patients, especially the right to patient autonomy; (2) the beneficence principle is a moral principle that prioritizes actions aimed at the good of patients; (3) the non-maleficence principle is a moral principle that prohibits actions that worsen the patient's condition; and (4) the justice principle is a moral principle that emphasizes fairness and justice in distributing resources.

For professional organizations (IDI and MKEK), these institutions are expected to be able to work, behave with professionalism and integrity in ethical enforcement of doctors, especially related to violations of ethics codes or violations of doctor morality. Meanwhile, the Hospital Ethics and Legal Committee (KEHRS) must develop a broad authority in handling any legal or ethical issues that occur within the hospital, whether involving patients or other resources working at the hospital before the case proceeds to an external hospital institution.

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