

Malpractice: Injustice Doctor - Patient (Creating a Transparent Health System)

By Murry Darmoko Mursidin

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Abstract

This study examines malpractice in the field of health through legal science perspective, especially focused on systems that result in malpractice. MKDKI rejected the term, and replaced it with the terms of medical discipline violations. Malpractice is considered a doorway to the criminalization of doctors. A written protective legislation, both for the doctor and for the patient, has guaranteed both parties. Begin reporting MKDKI, mediation, civil suit to criminal reporting. This study uses the Sociology Approach of Health Law, to uncover the formulation of the problem and provide solutions to the problem. Two formulations of malpractice problems: physician-patient injustice, first, how does the system predominate and influence the incidence of malpractice and physician-patient dependence on malpractice vulnerability? Second, How Malpractice Complaint Process ?. Two solutions, firstly, malpractice is avoided by applying a transparent healthcare system, to physicians, (1) clarity of doctors' scientific track records through government official websites accessible to patients, and (2) every doctor included with government legal counsel. For the patient, (1) understanding and knowing the medical record during the honest treatment and (2) the ease of malpractice complaint by following transparent patterns in malpractice cases. Implementing this solution will significantly eliminate malpractice drastically because previously the official malpractice complained to MKDKI by patients since 2013 until february 2017 there are 9 complaints only.

Keywords: *Malpractice, Sociology of Health Law, Transparent, track record, medical record*

Malpractice, is it considered a doorway to the criminalization of doctors?

Malpractice in health, in general understanding, is often returned to one or more of the injuries and losses suffered by the patient from the cause of the physician's negligence. Although not always like that. The linkage of health malpractice cases, closely related to the procedure of approval of medical action, which regulates the rights and obligations of both parties. A professional doctor with expertise in his field and an honest patient in explaining the state or perceived pain. Both, doctors and patients are protected by law from being the victim of a malpractice.

What is the real malpractice problem?

Patients can be regarded as victims of malpractice when they meet the elements that cause injury and damages to patient. It should be noted, however, that these injuries and damages are not from the disobedience and undisciplined of the patient, meaning the patient follows all the advice given by the doctor. But if on the contrary, the patient does not follow the doctor's advice, for example the drug must be drunk five times a day but only drunk three times a day, or must be drunk three times a day but in fact drink five times a day, then the patient who actually has done malpractice on himself, by doing a medical negligence. Learn Vest in Forbes writes :

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A malpractice claim exists if a provider's negligence causes injury or damages to a patient. However, experiencing a bad outcome isn't always proof of medical negligence. Also, on occasion, health-care providers will inform a patient that the person has received negligent medical care from a previous health-care provider and—presumably in an effort at complete honesty—will sometimes tell a patient that they, themselves, have made a mistake¹.

In the United States, malpractice indications are evidenced through the inadvertence of the doctor and result in disadvantages in the patient. And there are four things for lawsuits :

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The injured patient must show that the physician acted negligently in rendering care, and that such negligence resulted in injury. To do so, four legal elements must be proven: (1) a professional duty owed to the patient; (2) breach of such duty; (3) injury caused by the breach; and (4) resulting damages. Money damages, if awarded, typically take into account both actual economic loss and noneconomic loss, such as pain and suffering.²

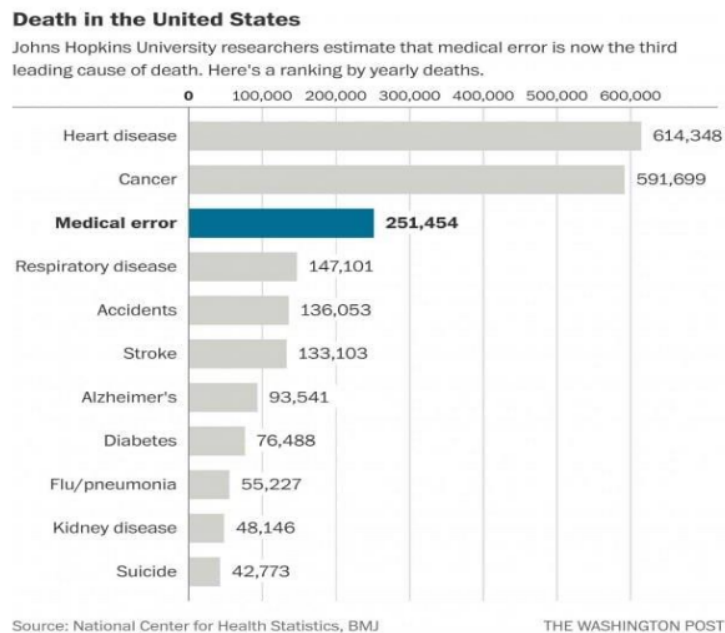
The problems in malpractice relate to three main points : a complaint of losses suffered by patients and doctors in the case of malpractice, the transparency of the physician's ability to handle health problems and the patient's honesty in uncovering matters related to the illness.

The three things I mentioned are issues that must be solved in order to balance and comfort in health transactions in terms of economic, legal, social and psychological psychology. If there is no malpractice that is categorized as 'killer' factor of patient and doctor.

¹ LearnVest, *10 Things You Want To Know About Medical Malpractice*, (<https://www.forbes.com/sites/learnvest/2013/05/16/10-things-you-want-to-know-about-medical-malpractice/>)

² B. Sonny Bal, *An Introduction to Medical Malpractice in the United States*, (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2628513/>)

The Washington Post reports, malpractice ² is the third leading cause of death in America ³ :



Negligence deeds were included in the Law of Tort. Tort is breach, an act that causes others to be injured or hurt by not being carefully or break the discipline or violating the rules of the people⁴. Law of Tort entered in the field of civil law. Unlike other countries, including Indonesia, which makes the act of 'negligence' health malpractice included in the criminal category. This difference, in the analysis of researchers is a long glimpse of the history of law and the adaptation of legal development to the customs and cultures of each country. The punishment imposed by a country from a legal case would be varied according to the understanding and experience of the punishment itself.

And the average American health malpractice 200,000/year, only 15% claimed with consideration. Learn Vest states in Forbes :

²'s estimated that medical errors kill roughly 200,000 patients in the U.S. each year. Yet only 15% of the personal-injury lawsuits filed annually involve medical-malpractice claims, and more than 80% of those lawsuits end with no payment whatsoever to the injured patient or their survivors. Consequently,

³(<https://www.washingtonpost.com/amhtml/news/to-your-health/wp/2016/05/03/researchers-med-ical-errors-now-third-leading-cause-of-death-in-united-states/>)

⁴ Murry Darmoko M, *Legal English Compilation*, Surabaya : Ubhara Press, 2017, p. 25

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most experienced medical malpractice attorneys will not pursue a case unless the injuries and damages documented in the records—after they've been reviewed by an expert in the pertinent specialty—are substantial and justify it.⁵

In the New York Times, malpractice occurs because of **'overtreatment'** done by both parties, the patient's desire for excessive examination or some doctors who tend to pursue deposits. This is the beginning of the malpractice. Both are excessive in the face of health problems. Nicholas Bakalar stated :

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Most physicians in the United States believe that overtreatment is harmful, wasteful and common. Researchers surveyed 2,106 physicians in various specialties regarding their beliefs about unnecessary medical care. On average, the doctors believed that 20.6 percent of all medical care was unnecessary, including 22 percent of prescriptions, 24.9 percent of tests and 11.1 percent of procedures. Nearly 85 percent said the reason for overtreatment was fear of malpractice suits, but that fear is probably exaggerated, the authors say. Only 2 to 3 percent of patients pursue litigation, and paid claims have declined sharply in recent decades. Nearly 60 percent of doctors said patients demand unnecessary treatment. A smaller number thought that limited access to medical records led to the problem. More than 70 percent of doctors conceded that physicians are more likely to perform unnecessary procedures when they profit from them, while only 9.2 percent said that their own financial security was a factor⁶.

There are two ways to reform the rules related to malpractice: first, health reforms that malpractice can be prevented by focusing on the health system first and then on the legal system. Medicine first, the law later, because of the high cost of filing a lawsuit over the occurrence of a malpractice and the difficulty of proof and evidence in the filing and error of the procedure to be charged with guilt. Second, the main focus on the legal system governing malpractice, providing rules and sanctions that provide a sense of security for both parties. Aaron E. Carrol states :

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You don't have to look too hard to find backing for the notion that some malpractice claims lack merit. A 2006 New England Journal of Medicine study reviewed a random sample of 1,452 claims from five malpractice insurers. Its authors found that 37 percent of these cases involved no errors, and 3 percent involved no verifiable injuries. It's also undeniable that defending against malpractice suits gets costly. Other research shows that providers and hospitals spent \$81,000 to \$107,000 (in 2008 dollars) to

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⁵ LearnVest, *10 Things You Want To Know About Medical Malpractice*

⁶ Nicholas Bakalar, *Overtreatment Is Common, Doctors Say*, https://www.nytimes.com/2017/09/06/well/live/health-care-overtreatment-doctor-survey.html?ref=collection%2Ftimeopic%2FMedical%20Malpractice&action=click&contentCollection=health®ion=stream&module=stream_unit&version=latest&contentPlacement=2&pgtype=collection

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defend cases that went to verdict, on average. Even defending claims that were dropped, withdrawn or dismissed cost \$15,000 per claim. But it is not so clear that the best way to solve malpractice lawsuits is through changes focused on the legal system rather than the medical one.⁷

In the UK, the health suit was divided into two lawsuits. First, a public lawsuit against the National Health Service (NHS) and second, personal claims. Public lawsuit is given the opportunity for its citizens to file a lawsuit on the following six points :

For public claims against care received under the NHS or NHS-affiliated providers, UK medical malpractice laws permit claims to be filed under the following rubric: (1) Claims will be made against the National Health Service and if awarded, paid via the budget of the Department of Health (2) Claims payments made by NHS topped 12,000 claims made in 2013/2014 and had seen a significant increase in the past decade (3) NHS pays out UK citizen claimants billions of pounds annually for claims of clinical negligence made by patients, with the payouts in light of several recent public scandals at the NHS relating to poor-quality care only increasing payout sums over time (4) These claims of clinical negligence apply a reasonable standard of care metric per the nationwide NHS clinical standards, which are frequently breached during the course of ordinary care under the NHS healthcare system (5) Damages claims for increased health risks, wrongful diagnosis, failure to diagnosis, surgical mistakes, prescription drug errors, and other medical harms sustained by patients are common complaints made against the NHS and its employed medical professionals (6) Claims can be filed for NHS-covered dental and vision service providers that fail to provide a reasonable standard of care⁸

Personally filed suit for a personal treatment must at least meet the following requirements as set forth in the UK Medical Malpractice Law :

For private claims against care received under private medical practitioners in the UK, UK Medical malpractice laws permit claims for compensation to be filed in the following cases : (1) Most private clinical negligence claims in the UK fall under breach of contract agreements between the patient and private practitioner (2) Most private clinical negligence claims will be subject to the terms of the contract between the patient and provider, though most case-specific contracts outline specific procedures with reasonable standards of care defined by the law and medical experts (3) Claims that possess sufficient merit for compensation include traditional medical services, as well as dental and vision services obtained via private practitioners (4) If violated,

⁷ Aaron E. Carroll, *For Malpractice Reform, Focus on Medicine First (Not Law)*, (https://www.nytimes.com/2017/04/17/upshot/real-malpractice-reform-investing-in-patient-safety.html?ref=collection%2Ftimestopic%2FMedical%20Malpractice&action=click&contentCollection=health®ion=stream&module=stream_unit&version=latest&contentPlacement=5&pgtype=collection)

⁸ (<http://malpracticecenter.com/states/uk>)

*a solicitor or legal advocate can assist you with moving forward with a claim against a private medical service provider.*⁹

In the United States, a medical lawsuit can be brought to two courts, “*Lawsuits alleging medical malpractice are generally filed in a state trial court. Such trial courts are said to have jurisdiction over medical malpractice cases, which is the legal authority to hear and decide the case... under limited circumstances, a medical malpractice case may be filed or moved to a federal court. This can occur if the underlying case invokes a federal question or federal constitutional issue or if the parties live in different states*”¹⁰. As for the process of lawsuit until the verdict, each country has its own way which is not discussed in this research.

Solutions

The solution given by previous researchers, legal reform first then health or otherwise, in my study, that solution still leaves a problem that will often re-occur. Because both are related to rights and duties and contains 'cure' factors (malpractice has occurred before, then sued, in this case neither doctors nor patients feel safe and necessarily subject to material and non-material harm), not a solution to the prevention rate of an event will occur.

The solutions I offer are two things: first, the establishment of an official government transparency system (from health ministry) applied to computer applications or android apps and iOS that display complete information about all doctors curriculum vitae and all medical actions that they perform, whether in college at the faculty medicine and post inaugurated as a doctor. This system can be read by all patients who install this application. The application also includes health laws and regulations relating to rights and obligations, both to patients and to physicians. And for each one doctor is provided a lawyer who deals with legal matters relating to doctors in the law, “*One Doctor One Lawyer*”.

The second solution, like the doctor, the patient gets his medical record intact in one entity from the beginning of his illness in the form of an app (secret pin) that he and his physician can open. This application can be accessed via computer or android and iOS,

⁹ (<http://malpracticecenter.com/states/uk>)

¹⁰ B. Sonny Bal, An Introduction to Medical Malpractice in the United States

like atm pin bank in android system or iOS system, "*One Patient One Medical Record*". Especially for patients, the ease of complaint in the event of malpractice provided by the government through transparent applications of computers or smartphones that can be accessed easily by patients and regulated by law, like go-jek apps, can give award stars and suggestions or criticism columns.

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