



---

## A LEGAL STUDY OF CONTRIBUTORY NEGLIGENCE IN MEDICAL CIVIL LIABILITY

Lindawati<sup>1</sup>, Arief Suryono<sup>2</sup>, A.Makbul<sup>3</sup>

<sup>1</sup> Mahasiswa Program Doktor Hukum Kesehatan Sekolah Pascasarjana Swadaya Gunung Jati, Indonesia

<sup>2</sup> Dosen Program Doktor Hukum Kesehatan Sekolah Pasca Sarjana Swadaya Gunung Jati, Indonesia

<sup>3</sup> Dosen Program Magister Hukum Kesehatan Sekolah Pascasarjana Sekolah Tinggi Hukum Militer, Indonesia.

**Corresponding Author:** Lindawati, **E-mail:** lindawatizul01@gmail.com

---

### | ABSTRACT

In civil medical cases, a judge can dismiss a patient's lawsuit if it is proven that the patient's negligence contributed to the harm suffered. This study aims to examine and analyze the doctrine of contributory negligence in civil medical liability and to examine and analyze the legal enforcement of medical negligence based on contributory negligence from a civil medical law perspective. The research methodology used is a normative juridical method and is analyzed descriptively and normatively through statutory and conceptual approaches. The results of the study conclude that the doctrine of contributory negligence has important implications for civil medical liability. This doctrine can also be used as a basis for determining whether the patient contributed to the harm suffered and the extent to which this affects the physician's responsibility. In enforcing medical negligence based on contributory negligence, if the judge finds evidence that the patient was also at fault and negligent, the judge can decide to dismiss the civil medical lawsuit. From this research, the author suggests the importance of patient compliance with the advice of doctors or medical personnel so that the goals of treating their illness are achieved and contributory negligence is avoided if a civil medical lawsuit occurs.

### | KEYWORDS

*Contributory Negligence, Liability, Medical civil Lawsuit*

---

## I. INTRODUCTION

Health care is one of the basic rights of the people, as stipulated in Article 28H of the 1945 Constitution (UUD 1945), which states that "every person has the right to live in physical and spiritual prosperity, to have a home, and to enjoy a good and healthy environment, and to obtain health care." [1] Health care is also a basic need and right of every citizen. [2] Health care delivery aims, among other things, to improve healthy living behaviors. [3] The importance of improving healthy living behaviors in society will facilitate increasing the public's hope for a healthier life.

In carrying out his profession as a doctor, one thing that is rarely realized is that when he receives a patient to address health problems, whether in the preventive, promotive, curative, or rehabilitative fields, a transaction or agreement between two parties, namely the doctor and the patient, has occurred in the health sector. This is a legal event regulated in the Civil Code (KUHPPerdata) [4].

According to Article 1365 of the Civil Code (BW) or the Civil Code, if a healthcare professional, while performing their duties, commits an act that results in harm to a patient, the patient or their family may be sued, based on the provisions of Article 1365 of the Civil Code, which states: "Every unlawful act that results in harm to another person, obliges the person whose fault caused the loss to compensate for the negligence or carelessness."

The doctrine of contributory negligence is a private law principle frequently used in practice, giving rise to a number of theoretical issues that require immediate resolution. [5] Contributory negligence is the patient's contribution to the failure of medical treatment. Contributory negligence is a common law doctrine that states that if a person is injured partly due to their own negligence, the injured party is not entitled to collect compensation from the party that caused the accident.

The principle of contributory negligence can be applied when an individual creates an unreasonable risk of harm to themselves. Based on this legal theory, everyone has a duty to act as a reasonable and careful individual to avoid harm to themselves. If the individual acts negligently, even slightly, they may be barred from receiving any compensation. [6] The presence of contributory negligence by the patient can result in the dismissal of the civil lawsuit.

Several factors that can be classified as contributory negligence include: the patient failing to comply with the advice or recommendations of the doctor or hospital, for example, the patient failing to seek follow-up after a medical procedure; the patient undergoing treatment inconsistent with medical guidelines, including seeking treatment from traditional healers or herbal remedies without consulting a doctor.

The patient and/or the patient's family failing to comply with hospital referral procedures, for example, the patient refusing the referral, the patient refusing to be referred to the referral hospital and requesting a referral to another hospital in accordance with the patient's and/or family's wishes. There are also patient habits or attitudes that hinder the achievement of the goals of medical treatment, for example, patients who do not maintain cleanliness and behave unhygienically, patients who are lazy to follow the program designed by the hospital – for example, physiotherapy exercises, patients who commit fatal actions against objects or body parts that have undergone surgery – for example, patients who stab their eyes after surgery [7].

In legal cases, contributory negligence can reduce or even eliminate the responsibility of the doctor or health facility to provide compensation to the patient. This is because, according to the principle of contributory negligence, if the patient is also at fault for causing the loss, then they are not entitled to full compensation. In assessing contributory negligence, the court will consider various factors, including the level of negligence of each party, the causal relationship between the negligence and the loss, and the standards of liability applicable to the doctor and patient.

Due to the importance of the legal aspect in the application of the doctrine of contributory negligence in civil medical cases, an in-depth study is needed that analyzes how the current legal framework functions and the need for reform or adjustment. Through this study, it is hoped that it can provide in-depth insight into how the legal aspect influences the need for the application of the doctrine of contributory negligence in civil medical cases, considering the function of the law as a provider of justice, especially for the protection of medical personnel and health workers who have been serious in providing maximum health care efforts, but due to the contribution of the patient's own negligence, the goal of treatment is not achieved. Current regulations only regulate sanctions for health workers if they are negligent or wrong in their work, but sanctions for patients who violate the rules in healthy living behavior have not been regulated, so the function of the law as a social control is not implemented.

## **II. METHODOLOGY**

This research uses the Normative Juridical method, which focuses on the study of written legal norms or rules, such as statutes, regulations, official documents, legal literature, and court decisions. Normative juridical research uses law as the basis for norms [8].

This research uses Descriptive and Normative analysis. The Statute Approach explores all laws and regulations related to the legal issue being studied [9], and the Conceptual Approach. The data used is secondary data, obtained by studying, reading, and citing literature or legislation related to the research problem formulation. [10]. In legal research, secondary data includes primary legal materials, secondary legal materials, and tertiary legal materials. [11].

## **III. RESULTS AND DISCUSSION**

### **A. Legal Analysis of the Position of Contributory Negligence in Civil Medical Liability.**

In the relationship between a doctor and a patient, cooperation in all healing methods is highly expected. Patients have an obligation to provide correct and clear information about their illness as mandated in the 2023 Health Law (UUK) Article 276 paragraph 1, and hiding information can be considered a patient error, known as contributory negligence[12]. The doctor's responsibility, also known as medical responsibility or medical liability, is based on a professional code of ethics. A professional code of ethics helps efficient decision-making, provides direction to individuals in the profession, and creates expected patterns of professional behavior. A doctor's legal responsibility arises when a doctor's medical actions harm a patient due to negligence or carelessness.

Medical malpractice usually occurs when a doctor violates the ethics, morals, laws, or standards of the medical profession, and involves negligence, carelessness, or gross negligence in medical actions. Medical professional standards require that medical actions be carried out carefully, in accordance with the average doctor's ability in the same category of expertise, with adequate means, and proportional to the concrete objectives of the medical action[13].

Article 280 of the 2023 Health Law states that, in carrying out their medical practice, medical personnel and health workers who provide health services to patients must make the best efforts, in accordance with norms, service standards, professional standards, and patient needs [14]. These best efforts do not guarantee the success of the health services provided. In civil health law, the agreement between a doctor and a patient is referred to as *inspanning verbintenis*. In the context of an agreement, specifically a therapeutic agreement, it refers to the maximum effort (*inspanning*) or endeavor that can be made by the doctor, not a definite result, after the doctor fulfills his obligation to make the best efforts in accordance with his professional standards, but does not guarantee the desired results (healing, improvement of condition, etc.).

Patients must understand that the doctor will make maximum efforts in accordance with professional standards, but there is no guarantee of results. Patients also have obligations as stipulated in Article 277 of the Health Law [15], including complying with the doctor's instructions and following the recommended treatment.

The legal relationship between a doctor and a patient is essentially a contractual relationship arising from a therapeutic agreement [16]. This agreement is *inspanningverbintenis*, obligating the doctor to make the best efforts in accordance with professional standards and medical service standards, without guaranteeing a specific outcome. Therefore, treatment failure or the emergence of medical complications cannot always be used as a basis for holding a doctor civilly liable.

In many civil medical cases, the harm suffered by the patient is caused not only by the doctor's actions or negligence, but also by the patient's own behavior, such as failing to provide complete medical history information, failing to comply with medical instructions, or unilaterally discontinuing treatment [17]. This situation raises legal questions regarding the extent of the doctor's responsibility if the patient contributed to the harm.

#### **B. Analysis of Medical Negligence Law Enforcement Based on Contributory Negligence from the Perspective of Medical Civil Law.**

In Indonesian judicial practice, although contributory negligence is not explicitly regulated, judges have used a similar approach by considering patient negligence and non-medical factors influencing the occurrence of harm.[18] This demonstrates the clear need for the doctrine of contributory negligence as part of the development of national civil medical law.

Decision Number 23/PDT/2018/PT.DKI[19] states that there was contributory negligence on the part of the patient because the patient only sought medical consultation once after the procedure. Furthermore, the patient underwent examination at another hospital on her own initiative. In this situation, where the patient is also at fault for the harm she experienced, for example, by being dishonest about her health condition or failing to follow the doctor's or medical personnel's instructions, if the judge finds evidence of the patient's contribution and negligence, the judge can decide to dismiss the civil medical lawsuit.

An example of this is a patient who failed to inform the doctor of a drug allergy, and the doctor then prescribed the medication that caused the patient to have an allergic reaction. While the doctor was also at fault for not asking for more details, the patient was also at fault for failing to provide accurate information, which should have been provided to the doctor or medical staff each time he or she sought treatment to prevent an allergic reaction to the medication.

In Court Decision Number 182/Pdt.G/2016/PN.JKT.TIM[20], the patient failed to comply with a referral from the hospital's orthopedic specialist to see a cardiologist at the hospital. Furthermore, the patient sought treatment and medical procedures at several other hospitals on his own initiative. The patient failed to comply with the orthopedic specialist's advice and failed to undergo medical check-ups after the procedures were performed by the orthopedic specialist.

Court Decision Number 511/Pdt.G/2019/PN Sgt [21] stated that the patient's eye swelling was caused by the patient's hand poking his eye. Furthermore, the patient failed to seek medical attention after the procedure. The patient's contributory negligence in this case was upheld during the appeal process by Court Decision Number 152/PDT/2019/PT SMR [22], which stated that there was contributory negligence on the part of the patient, namely, the patient's failure to seek medical attention after the procedure and the patient's failure to maintain good hygiene.

Patients have an obligation to provide accurate and honest information about their medical history and are required to follow the doctor's advice or instructions. If patients fail to fulfill this obligation, they can be considered co-culpable (contributory negligence) in cases of medical negligence, which often result in civil medical lawsuits. This can be a reason for eliminating penalties, leading to the rejection of the lawsuit against the patient (plaintiff), namely due to the patient's own negligence.

Court Decision Number 145/Pdt.G/2021/PN.Jmb[23] also rejected the Unlawful Act lawsuit against the doctor

and hospital. The panel of judges stated that there had been contributory negligence on the part of the patient. In this case, the patient never had a medical check-up with the doctor after the surgery. As a result, within 3 months a medical contraindication emerged due to the patient never having had the medical check-up, namely intestinal obstruction or blockage/thickening of the intestine. Even though the doctor had previously advised the patient to have regular medical check-ups according to the schedule after the surgery to cure his intestinal tuberculosis. However, the patient did not comply with the doctor's advice.

As a medical professional who adheres to generally accepted professional standards, a doctor cannot be held liable for negligence if a decision turns out to be erroneous. A doctor is human and is prone to error, and therefore, errors in clinical judgment are understandable. According to Lord Denning, if a doctor were always held responsible for an accident or a failed cure, this would ultimately be detrimental to society. For a professional, an error in judgment is not negligence. While their judgment may be flawed, they, or any other doctor, cannot always be right.

#### IV. CONCLUSION

The doctrine of contributory negligence has important implications for civil medical liability. Research shows that this doctrine can be a basis for determining whether a patient contributed to the harm they suffered and the extent to which this affects the physician's liability. This doctrine also states that if a person is injured partly due to their own negligence, the injured party is not entitled to collect compensation from the party that caused the accident. The existence of a causal relationship between the act and the harm resolves the causal relationship between the unlawful act and the harm. This is based on the condition sine qua non theory, which states that a person committing an unlawful act is always liable if their act is a condition sine qua non that causes the harm (what is considered the cause of a change is all the conditions that must be present for the effect to occur).

#### REFERENCES

- [1] Noviriska, Dwi Atmoko. *Hukum Kesehatan*, Malang: CV. Literasi Nusantara Abadi, 2022.
- [2] Republik Indonesia, *Undang-undang RI Nomor 17 Tahun 2023 Tentang Kesehatan LN RI Tahun 2023 Nomor 105 TLN Nomor 6887*, pasal 4.
- [3] Republik Indonesia, *Undang-undang RI Nomor 17 Tahun 2023 Tentang Kesehatan LN RI Tahun 2023 Nomor 105 TLN Nomor 6887*, pasal 3.
- [4] Dewi Harmoni, Fahmi, dan Yetti. *Tanggung Jawab Hukum Tenaga Medis Atas Kelalaian Dalam Pelayanan Kesehatan Di Rumah Sakit*. National Conference on Social Science and Religion (NCSSR 2022).
- [5] Goudkamp James, Nolan Donal, *Contributory Negligence 2nd Edition*. (OUP Oxford. 2023. eText ISBN 9780192867919, 0192867911
- [6]. <https://amaresq.com/blog/legal-library/contributory-negligence/2022>.
- [7]. Wahyu Adrianto, *Contributory of Negligence dan Kegagalan Tindakan Medis* | (kumparan.com. April 2024).
- [8]. Jonaedi Efendi dan Prasetyo Rijadi, *Metode Penelitian Hukum Normatif dan Empiris Edisi Kedua*, Cet. 5, (Jakarta: Kencana, 2022).
- [9]. Marzuki, P. *Penelitian Hukum Edisi Revisi*. Jakarta: Kencana, 2005
- [10] Sekolah Tinggi Hukum Militer, *Buku Pedoman Tesis*. Rev.3.(IPB Press,2024).
- [11] Johnny Ibrahim, *Teori, Metode dan Penelitian Hukum Normatif*, Bayumedia Publishing, Malang, Jawa Timur, 2007
- [12] Diana Haiti. *Tanggung Jawab Dokter Dalam Terjadinya Malpraktik Medik Ditinjau Dari Hukum Administrasi*. Badamai Law Journal, 2017
- [13] Angga Pranavasta Putra. *Penyelesaian Dan Pertanggungjawaban Pidana Dokter Terhadap Pasien Dalam Perkara Malpraktik Medik*. Magistra Law Review, 2020
- [14] Undang-Undang Kesehatan Tahun 2023 pasal 280
- [15] Undang-Undang Kesehatan Tahun 2023 pasal 277
- [16] Guwandi, J. *Hukum Medik*. Jakarta: FKUI, 2010
- [17] Triwibowo, Cecep. *Hukum Kedokteran*. Yogyakarta: Nuha Medika, 2018
- [18] Harahap, M. Yahya. *Hukum Acara Perdata*. Jakarta: Sinar Grafika, 2016
- [19] Putusan Nomor 23/PDT/2018/PT.DKI

- [20] Putusan Pengadilan Nomor 182/Pdt.G/2016/PN.JKT.TIM
- [21] Putusan Pengadilan Nomor 182/Pdt.G/2016/PN.JKT.TIM
- [22] Putusan Pengadilan Nomor 152/PDT/2019/PT SMR
- [23] Putusan Pengadilan Nomor 145/Pdt.G/2021/PN.Jmb