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Odontogram as an instrument of legal protection dentist

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Abstract. Health is a human right. Efforts to achieve health are not only biological issues that are implemented through health services, but have implications for social, economic, and legal issues. Social issues are closely related to health efforts that are carried out for the whole community and involve all levels of society with non-discriminatory principles, in the framework of forming complete human resources with the aim of increasing resilience and competitiveness of Indonesian nation both nationally and internationally. If public health is disturbed, it will cause huge economic losses for country and cause development to be hindered. Efforts to improve health status implemented in the form of medical services must have a strong and certain legal basis, so that doctors and patients have responsibilities so that the values of justice, humanity, patient safety and protection which are basic values in medical practice can be achieved. The practice of medicine requires making medical records, as stipulated in articles 46 and 47 of the Pradok Law. Article 50 of Pradok Law affirms sanctions if doctors or dentists do not make medical records. However, the existing regulations do not explicitly mention the odontogram. Legal certainty is obtained when the law normalizes odontogram as a dentist's obligation. The odontogram functions as an instrument for legal protection for dentists regarding its use as proof of identification in litigation cases, not only as data that proves that dentists have carried out medical procedures correctly and correctly in accordance with standard operating procedures, but also odontograms can prove a person's identity precisely especially true with regard to the identification of post mortem victims.

Keywords. odontogram, legal, protection

Introduction

Health is a human right. Efforts to achieve health are not only biological issues that are implemented through health services, but have implications for social, economic, and legal issues. Social issues are closely related to health efforts that are carried out for the whole community and involve all levels of society with non-discriminatory principles, in the framework of forming complete human resources with the aim of increasing resilience and competitiveness of Indonesian nation both nationally and internationally. If public health is disturbed, it will cause huge economic losses for country and cause development to be hindered. Efforts to improve health status implemented in the form of medical services must have a strong and certain legal basis, so that doctors and patients have responsibilities so that the values of justice, humanity, patient safety and protection which are basic values in medical practice can be achieved.

Medical practice is supported by three main obligations, namely (*informed consent*), (*medical record*), and (*medical secrecy*). As regulated in articles 45, 46, 47 and 48 of Law No. 29 2004 concerning Medical Practice (hereinafter referred to as the Pradok Law), these three pillars mutually support the success of medical practice. Dentists can only perform medical procedures if they have obtained the consent be patient. Reports on everything related to the patient's condition are recorded and confidential in the medical record which may only be disclosed for benefit patient's health, to fulfill the request of law enforcement officials in the framework of law enforcement, the patient's own request, or based on statutory provisions.

Dentist practice is unique in terms of medical records, namely the existence of an Odontogram as part medical record which contains data about number, shape, arrangement, etc. which is set out in form of a standard picture or plan regarding the condition of the teeth in the mouth. This odontogram is important not only for dentists who practice medicine, but for the purposes of proof, especially in criminal cases.

Article 50 of the Pradok Law states that doctors and dentists in carrying out their profession have the right to receive legal protection as long as they carry out their duties in accordance with professional standards and standard operating procedures. This suitability can be proven if a series of medical actions performed by the dentist are recorded in a document in the form of a medical record.

The obstacle to making medical records is that dentists often ignore or are not aware of the function of medical records, so that medical records are incomplete, unclear and not timely.

The existing medical record guidelines only regulate medical records, but do not specifically state odontogram medical records. On the one hand, an odontogram depicts identity of each patient as a whole, but on the other hand, when a doctor needs data on what actions he has taken, when an odontogram is not available, it means that the doctor loses an instrument to prove compliance with professional standards and medical services.

Research Method

This research is a normative legal research. [1]

Discussion

Medical records

Medical record according to Walters and Murphy cited by Sofwan Dahlan is a compendium (overview) which contains information about the patient's condition while in treatment or during the maintenance of his health. The background to the need for medical records is to document all events related to the patient's health and to provide a medium of communication between health workers for the benefit of treating their illness now and in the future.

Medical record is a document that contains information about the patient's dental health history while being treated for a disease or during health care. Medical records are made by dentists as a respect for the patient's human rights. Making medical records is also a consequence of the patient's right to self-determination, because the body is the most valuable part for a person, therefore legally and morally no one, including dentists, is allowed to take any action on another person's body without the consent of the owner of the body, hereinafter referred to as *informed consent*.

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treatment or during maintenance of his health. The background to the need for medical records is to document all events related to patient's health and to provide a medium of communication between health workers for benefit of treating their illness now and in the future.

Medical records in dental practice are useful for reminding dentists about conditions, results of examinations and treatments, as well as medical procedures that have been carried out, including treatment. Therefore the identification of odontogram must be carried out carefully and carefully to avoid mistakes that must be legally accounted for. Because dentists use odontogram identification as the basis medical treatment for patients.

Making medical records is a must that must be done by doctors and dentists. This obligation is contained in Article 46 paragraph (1) of Law Number 29 of 2004 concerning Medical Practice, which is formulated: "Every doctor or dentist in carrying out medical practice is obliged to make a medical record". Furthermore, the contents of medical record are specifically regulated in Regulation Minister of Health Republic Indonesia Number 28 of 2022 concerning Medical Records. In this Ministerial Regulation it is stated that contents of medical record belong to patient which is made in form a medical record summary. According to Regulation of the Minister Health Republic Indonesia Number 28 of 2022 concerning Medical Records, that a summary of medical records can be given, recorded, or copied by patient or person authorized or with the written consent of the patient or patient's family who are entitled to do. Regarding parties entitled to obtain a summary of medical records, namely: a).patient; b). patient's family; c).person authorized by patient or the patient's family; d). person who has written consent from the patient or patient's family.

The obligation to keep medical record secrets is contained in Article 47 paragraph (1), which stipulates that medical record documents as referred to in Article 46 belong to doctors, dentists or health care facilities, while the contents of medical records belong to patients. Whereas in paragraph (2), it stipulates that: "The medical records as referred to in paragraph (1) must be kept and kept confidential by doctors or dentists and heads of health care facilities". (3) Provisions regarding medical records as referred to in paragraph (1) and paragraph (2) are regulated by Ministerial Regulation. As a follow-up to paragraph (3), the Minister Health Republic of Indonesia issued Regulation Number 28 (2022) concerning Medical Records.

In addition, the act of medical personnel leaking contents of medical record is also an act that violates discipline of medical practice, and is a violation of Indonesian Medical Council Regulation No. 4 of 2011, which stipulates "A health worker can intentionally disclose patient secrets (contents of a medical record) by how to convey it directly to others. However, he can also open it accidentally, namely when he discusses the patient's condition with other health workers in public or if he places the medical record carelessly, so that unauthorized people can see it.

Odontogram identification

One indicator to assess the quality of a health service is the availability of complete and accurate medical records. Without the completeness and accuracy of the medical record, it gives the impression that health services are not taking place properly and it is difficult to imagine the actual fact that this is happening because the medical record is a collection of all the activities of health practitioners that are written down and described for their activities towards patients.

The identification procedure is the procedure for determining the identity of an individual, both living and dead, which is carried out by comparing various data from the individual being examined with data from the person suspected of being that individual. In

order to be able to determine the identity of the victim, especially in situations where there are a large number of victims, such as in an airplane accident, (two) criteria or methods are needed that must be met, the more criteria that must be met, the better.

Primary identification from clothing and confirmative identification from medical. Article 118 of the Law of the Republic of Indonesia Number 36 of 2009 Concerning Health, states that identification efforts must be made for bodies that are not known and that local governments and communities are responsible for identification efforts. Identification is necessary because the victim's death status has a considerable impact on various aspects of life (humanitarian aspects, social aspects, legal aspects, economic aspects, cultural aspects) for the families left behind.

Forensic identification is also an effort made with the aim of helping investigators to determine a person's identity. Personal identification is often an issue in both criminal and civil cases. Determining personal identity correctly is very important in investigations because any mistake can be fatal in the judicial process. In the process of identifying victims with severe body damage (corpses that are damaged, rotting, charred, burned, human body parts or skeletons).

Odontogram as evidence that provides Dentist Legal Protection in Litigation Cases

Odontogram is a medical record that must be made by a dentist. Like medical records in general, the odontogram serves as evidence. [2]

In Article 184 of Criminal Procedure Code, types of evidence include witness statements, expert statements, letters, instructions, statements of the accused. The odontogram fulfills the criteria as a documentary evidence, which contains data on the number, shape, arrangement, etc., which are presented in the form of a standard drawing or plan regarding the condition of the teeth in the mouth. There are several obstacles to the difficulty of identifying teeth, this is because every dentist does not necessarily record dental medical records properly in accordance with the National Dentistry Medical Record Standards issued by the Ministry of Health in 2004, and storage is well organized.

Medical records are used as medical evidence against medical actions by medical personnel against patients. For this reason, the odontogram medical record is very important for patients and medical personnel, especially as legal, disciplinary and ethical evidence, if the medical action causes adverse consequences for the patient. Because the medical record is a collection of all the activities of health practitioners written and described for their activities towards patients.(Indar, 2010a). So, the odontogram medical record is an important document that is owned by dentists and their patients. However, most dentists are not aware importance of the odontogram medical record, so that the odontogram medical record is not made or is not careful and thorough. The carelessness of making the medical record can have bad consequences which endanger the patient, because the dentist's actions will be based on the results of medical record.

The emergence of medical cases experienced by patients is an indication of an inappropriate medical action caused, among other things, by the inaccuracy of medical staff in making medical records odontograms. These medical cases can trigger patient lawsuits against the medical staff who handle them. This lawsuit is also evidence of increasing public legal awareness of their rights in the health sector. Not a few patients want to know what medical actions will be taken so as not to suffer losses due to mistakes in carrying out medical actions that are not quite right. Currently there are many medical personnel, especially doctors who are

being sued by patients to demand accountability from doctors and hospitals based on Articles 1239 and 1365 Civil Code.

If there is a public lawsuit against health services by medical personnel, and the settlement is through a judicial institution, then the medical record is legal evidence that can protect medical personnel or even become a legal noose for medical personnel who harm themselves. All of that really depends on the quality of the medical records he makes. Medical records are also important for hospitals as institutions where health services are provided, so that they can guarantee legal protection for doctors and medical personnel in providing medical services to patients, as well as patients getting protection from the responsibilities of the hospital and doctors or health workers.

As legal evidence in medical malpractice cases, can medical records be used as a basis for imposing Dentist responsibilities, both civil and criminal, if medical record contains legal defects caused by the Dentist's mistake in identifying the odontogram. According to Hermien (1998), Malpractice literally means *bad practice*, or bad practice. Malpractice is related to use of medical science expertise and medical technology. In addition, it also covers issues related to the expertise and or authority of doctor concerned, as well as permission to exercise the doctor's expertise and or authority. The problem of medical malpractice in Indonesia concerns issues of medical ethics and applicable law in Indonesia.

This concept is a concept of western thought, a definition that is widely applicable in the west, especially Anglo-American which adheres to the tort legal system (*present tort system which is basically the Jury System*). Even though it is known that the law in Indonesia adheres to a continental legal system, so the approach used is different from the approach in the jury system. Therefore the term *medical malpractice* must be redefined in the context of Indonesian law. Hermien (1998) himself underlined that malpractice is different from *medical maltreatment* or literally translated is wrong or *unskillful treatment*.

Civil liability for patient losses can only be carried out if patient can prove the elements contained in Article 1365 Criminal Code. Proving the existence of these elements is certainly not easy, especially related to the dentist's mistakes in carrying out medical procedures. If the doctor has carried out medical delays in accordance with correct standard operating procedures and also based on the correct medical record data, then of course it will be difficult to impose losses on the dentist. This is because it is possible for a patient to experience a loss as a result of a medical procedure, which may be caused by a patient's condition that is different from the patient's condition in general, which if medical action is taken does not cause consequences that endanger the patient's health.[6]

Criminal sanctions can be imposed on a doctor only if he does not make a medical record, or if he makes an imperfect medical record as a result of his intention or negligence, causing the dentist's medical actions to result in losses for the patient. The use of criminal sanctions against Dentists is regulated in Article 79 point b with the provisions "Convicted by a maximum imprisonment of 1 (one) year or a maximum fine of Rp. 50,000,000.- (fifty million rupiah) every doctor or dentist who intentionally does not make a medical record as referred to in Article 46 paragraph (1) or; However, these criminal sanctions are alternative or non-binding options, because the article uses the phrase "or", which legally the judge can choose to impose criminal sanctions or fines.

Taking into account the forms of criminal acts above, if a dentist intentionally or because of his negligence makes a medical record but does not comply with the standards specified in the laws and regulations, then the dentist may be subject to criminal sanctions.

Teeth as evidence on the victim related to crimes against the body and crimes against life, or on the identification of post mortem victims, are urgently needed as evidence for the settlement of criminal cases.

Conclusion

The practice of medicine requires making medical records, as stipulated in articles 46 and 47 of the Pradok Law. Article 50 of Pradok Law affirms sanctions if doctors or dentists do not make medical records. However, the existing regulations do not explicitly mention the odontogram. Legal certainty is obtained when the law normalizes odontogram as a dentist's obligation. The odontogram functions as an instrument for legal protection for dentists regarding its use as proof of identification in litigation cases, not only as data that proves that dentists have carried out medical procedures correctly and correctly in accordance with standard operating procedures, but also odontograms can prove a person's identity precisely especially true with regard to the identification of post mortem victims.

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