

Mandatory Reporting as a Method of Enforcement of Medical Ethics and Medical Discipline: Between Synergism and Contradiction

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Abstrak Dalam melakukan pekerjaannya sehari-hari, terdapat kemungkinan bahwa seorang dokter melakukan kesalahan dalam pekerjaannya. Sering kali, yang mengetahui kesalahan dokter tersebut adalah dokter lainnya. Kesalahan yang dilakukan bisa bervariasi, mulai dari pelanggaran etik sederhana sampai kesalahan yang dapat mengancam keselamatan pasien. Apabila seorang dokter mengetahui kesalahan sejawatnya, ia akan mengalami dilema etik: haruskah ia melaporkan sejawatnya tersebut atau haruskah ia menutup mata akan kesalahan yang dilakukan. Peraturan perundang-undangan di Indonesia sudah mencoba mengatur penegakan etika dan disiplin kedokteran, namun hal seperti pelaporan kesalahan dokter oleh sejawatnya baru tercantum secara tersirat di Kode Etik Kedokteran Indonesia. Tidak seperti negara-negara lain yang memprioritaskan pelaporan dokter ke pihak berwenang, Kode Etik Kedokteran Indonesia mengutamakan pendekatan personal dalam menyelesaikan kesalahan yang dilakukan oleh seorang dokter. Kesalahan yang dilakukan oleh seorang dokter memang harus diperbaiki atau diselesaikan demi menjaga keselamatan pasien. Walaupun pelaporan dokter oleh sejawatnya adalah sesuatu yang diperbolehkan secara etik, hal tersebut adalah upaya terakhir dalam penegakan etika dan disiplin kedokteran.

Abstract In carrying out their daily work, there is a possibility that a doctor makes mistakes in their work. Often times, it is a doctor who knows the mistakes of other doctors. Mistakes can vary, from simple ethical violations to mistakes or error that can threaten patient safety. When a doctor finds out about mistakes of their colleagues, they will run into an ethical dilemma: should they report these colleagues or should they turn a blind eye to the mistakes made. The laws and regulations in Indonesia have tried to regulate the enforcement of medical ethics and medical discipline, but things such as reporting errors by doctors by their colleagues are only implicitly stated in the Indonesian Medical Code of Ethics. Unlike other countries that prioritize reporting doctors to the authorities, the Indonesian Medical Code of Ethics prioritizes a personal approach in resolving mistakes made by a doctor. Mistakes made by a doctor must be corrected or resolved in order to maintain patient safety. However, although the reporting of doctors by their peers is something that is ethically justifiable, it is a last resort in upholding ethics and medical discipline.

Doctors' daily activities are not only limited to interacting with patients, but also with other health workers. The nature of a doctor's job who interacts with various parties, including health workers and other doctors, makes it easier for doctors to identify problems with their colleagues(1). These problems may vary from a doctor's inability to carry out his practice to a condition in which a doctor does not perform medical procedures properly.

The condition or problem experienced by a doctor raises the possibility of a violation of medical ethics or medical discipline.

Therefore, the obligation for a doctor to report the dangerous acts of his peers has been implemented in several countries. Countries such as the United States, New Zealand, Australia, and Canada have a system called mandatory reporting(1,2). This compulsory system has different criteria. Australia, for example, classifies actions that must be reported as practicing while intoxicated, offenses in the form of inappropriate sexual acts, disorders affecting physical or mental conditions, and not following disciplinary standards(3).

The general concept of mandatory reporting stems from the idea of reporting dangerous situations or acts to protect public safety. This is similar to how infectious disease reporting was carried out during pandemic. Other than infectious disease, child abuse was also commonly regarded as one of the reasons for mandatory reporting by healthcare professionals. (4) However, the term mandatory reporting used in this paper will be strictly limited to reporting of doctors due to professional misconduct.

Patient and public safety is arguably one of the most important aspects to consider in daily medical practice. Therefore, any violation of medical ethics or medical discipline – which could threaten patient and public safety – should be reported for the greater good. In countries such as Australia and the United Kingdom, there are publicized cases of negligence or intentional harm by doctors, such as the cases of Dr Harold Shipman(5), Dr Khalafalla(6), Dr Patel(7), and Dr Reeves(8). These cases indirectly formed public opinion about “the need for safer systems within the health sector to identify and thus minimize error.”(4) Mandatory reporting was then recommended as an alternative to upheld medical ethics and medical discipline, which in turn could protect the patient and public safety.

The enforcement of medical ethics and medical discipline in Indonesia slightly different. It is briefly mentioned in the national legislation. However, the mandatory reporting system as an effort to uphold medical ethics and medical discipline is still not well known. Although the Indonesian Medical Code of Ethics (*Kode Etik Kedokteran Indonesia / KODEKI*) stipulates an obligation for doctors to remind their colleagues(9), various factors influence the implementation of this mandatory reporting system.

Enforcement of Medical Ethics and Medical Discipline from a Legal Perspective

Health services delivery are built upon four pillars of bioethics: beneficence or providing benefits to patients, non-maleficence or preventing harm to patients, autonomy or giving freedom for patients to make choices, and justice or treating patients fairly. Beneficence and non-

maleficence aspects are applied in daily practice, one of which is through the application of medical ethics and medical disciplines. With the proper application of medical ethics and medical discipline, it is expected that patients and the general public will receive the maximum benefit from the health services. However, sometimes there are conditions when a doctor is not able to practice optimally. In order to prevent harm to patients and the general public, as well as in efforts to enforce medical discipline and medical ethics, some argue that doctors who are unable to carry out their duties optimally must report themselves or be reported(10,11). This reporting is primarily for doctors who saw or were aware of the impairment or misconduct of their peers.

In Indonesia, reporting system of a doctor coming from another doctor is an uncommon practice. In terms of the application of professional service standards, it has been regulated in article 51 of Law No. 9 of 2004 on Medical Practice (*Undang-Undang Nomor 9 Tahun 2004 tentang Praktik Kedokteran / ‘Medical Practice Law’*) which reads:

Doctors or dentists in practicing medicine have obligations to:

- a. Give medical service according to the professional standard and the standard operating procedure as well as the medical needs of a patient;

(Dokter atau dokter gigi dalam melaksanakan praktik kedokteran mempunyai kewajiban:

- a. *memberikan pelayanan medis sesuai dengan standar profesi dan standar prosedur operasional serta kebutuhan medis pasien;)(12)*

The above article is followed by the criminal provisions in article 79 of Medical Practice Law which reads:

Shall be punished with imprisonment for a maximum of 1 (one) year or a maximum fine of Rp 50.000.000,00 (fifty million rupiah), every doctor or dentist who:

- c. Intentionally did not fulfil the obligations stated in article 51 letter a, letter b, letter c, letter d, or letter e.

(Dipidana dengan pidana kurungan paling lama 1 (satu) tahun atau denda paling banyak Rp 50.000.000,00 (lima puluh juta rupiah), setiap dokter atau dokter gigi yang:

- c. dengan sengaja tidak memenuhi kewajiban sebagaimana dimaksud dalam Pasal 51 huruf a, huruf b, huruf c, huruf d, atau huruf e).(12)

The enforcement of medical ethics and medical discipline is not limited to regulations on obligations and penalties for doctors. There are also two different organization tasked to enforce medical ethics and medical discipline. The first is the *Majelis Kehormatan Disiplin Kedokteran Indonesia* (MKDKI), an autonomous organization from the *Konsil Kedokteran Indonesia* (KKI). As regulated in Medical Practice Law, MKDKI as an organization is tasked to receive complaints, examine, and decide cases of disciplinary violations by doctors and dentists that are submitted, as well as develop guidelines and procedures for handling cases of disciplinary violations by doctors or dentists.(12)

The *Majelis Kehormatan Etik Kedokteran* (MKEK), an autonomous organization from the *Ikatan Dokter Indonesia* (IDI), is generally tasked to uphold medical ethics. MKEK has several duties, such as deciding medical ethics guidelines and resolving cases of ethical violations.

It can be argued that the existence of MKDKI and MKEK are considered sufficient to carry out efforts to uphold medical ethics and medical discipline. Additionally, reporting suspected ethical and disciplinary violations to MKEK and MKDKI does not diminish a person's right to report suspected criminal acts or civil losses as stated in the Medical Practice Law. At the same time, the general public does not have the same understanding as doctors regarding medical ethics and medical disciplines. The one who best understands medical ethics and medical discipline - as well as its possible violations - is the medical profession itself. Therefore, it could be argued that the enforcement of medical ethics and medical discipline will be better if there is active participation from fellow doctors. This reason is one of the foundations for implementing mandatory reporting systems in several countries such as the United States,(13) Canada,(14) New Zealand,(15) or Australia.(3)

Mandatory Reporting

The mandatory reporting system is centered on conditions called notifiable conduct. In general, notifiable conduct is the action or behavior of a health or medical professional that has the potential to endanger the public. An example of notifiable conduct can be seen in legislations from country that implements the mandatory reporting system in its health law, such as Australia which classifies notifiable conduct into four types:

- a. practicing the practitioner's profession while intoxicated by alcohol or drugs; or
- b. engaging in sexual misconduct in connection with the practice of the practitioner's profession; or
- c. placing the public at risk of substantial harm in the practitioner's practice of the profession because the practitioner has an impairment; or
- d. placing the public at risk of harm by practicing the profession in a way that constitutes a significant departure from accepted professional standards.(3)

These four behaviors form the foundation for mandatory reporting. If a doctor, for example doctor A, finds another doctor, doctor B, performs or fulfil the criteria of a notifiable conduct, then doctor A has an obligation to report doctor B. In Australia, the report will be submitted through the Australian Health Practitioner Regulation Agency (AHPRA). AHPRA will then forward the report to relevant National Health Practitioner Board. (3,16). Whenever a report was made, it will be used as the base for the relevant national agency to determine the existence of ethical and disciplinary violations in the form of such notifiable conduct. As an example, from November 2011 to December 2012, there were 819 mandatory notifications received by AHPRA in Australia. In the study conducted by Bismark et al, it was found that doctors, nurses, and midwives are the majority of the notifiers and the respondents. The main ground for notifications was departure from standard, such as clinical care violation, professional misconduct, and breach of administrative conditions(1).

Mandatory Reporting from Ethical Perspective

Although a mandatory reporting system does not exist in Indonesian laws and regulations, this system can be found implicitly in the KODEKI. KODEKI is a set of norms and medical ethics that serve as ethical guidelines for doctors in carrying out their duties.

One of the articles that discusses the acts of doctors reporting their colleagues is in article 9 of the KODEKI regarding Honesty and Peer Virtue. This article reads:

A doctor is obliged to be honest when dealing with patients and colleagues, and to endeavour to remind colleagues who, when treating patients, they know to lack character or competence, or who has committed fraud or embezzlement.

(Seorang dokter wajib bersikap jujur ketika berhubungan dengan pasien dan sejawatnya, dan berupaya untuk mengingatkan sejawatnya yang pada saat menangani pasien dia ketahui memiliki kekurangan dalam karakter atau kompetensi, atau yang melakukan penipuan atau penggelapan.)(9)

Then, this article has several verses which are the scope of discussion of the article. In verses 2 and 6, it is stated that:

(2) In order to prevent bad consequences that are detrimental to clients / patients, every doctor is obliged to sincerely take the time to provide advice and provide an example to his colleagues who are categorized as problematic doctors.

(6) If a doctor has reminded a colleague who has committed a violation but there is no change, they may submit a report to the authority.

((2) Setiap dokter dalam rangka mencegah akibat buruk yang merugikan klien/pasien wajib secara tulus dan ikhlas meluangkan waktu untuk memberikan nasihat/kebajikan dan memberi ketauladanan kepada teman sejawatnya yang dikategorikan dokter bermasalah.

(6) Apabila seorang dokter telah mengingatkan rekan sejawat yang melakukan pelanggaran tetapi tidak ada perubahan, maka dapat menyampaikan laporan kepada pihak yang berwenang.)(9)

Based on the coverage of article 9 KODEKI, it can be concluded that in fact a mandatory reporting system has been implicitly introduced

in Indonesia. Even the concept of notifiable conduct - although in KODEKI is written as “problematic doctors” - is mentioned in article 8 of KODEKI. The scope of “problematic doctors” is categorized as doctors who have a personality disorder, suffer from health issues, experience pressure in work, lack competence, and other factors that may contribute to their professional responsibilities.(9)

We can see that the mandatory reporting system in Indonesia is only limited to ethical guidelines. In countries that implemented mandatory reporting in their legislations, they also have the mandatory reporting system included in their code of ethics. While there are possible differences between each countries code of medical ethics, the most significant difference between Indonesian and other countries’ code of medical ethics exists in the form of recommended reporting sequence for mandatory reporting. It has been mentioned previously that in KODEKI, a doctor must remind their colleagues of their wrongdoings before reporting them to the authorities. KODEKI prioritizes a personal approach before reporting the action to the authorities.

Other countries such as Australia or the United States use different approach for reporting misconducts. For example, in article 9.4.2 of the American Medical Association Code of Medical Ethics, it is stated that doctors who find that their colleagues have acted unethically or are incompetent, must immediately report it to the authorities.(13) Similarly, the Australian Medical Association Code of Ethics states in article 3.1.10 that “suspected unethical or unprofessional conduct by a colleague” must be reported to the appropriate authority.(17)

Regardless, KODEKI emphasized that every doctor is attached to the obligation to prevent medical errors in order to maintain the accountability of colleagues as fellow healthcare service providers as well as for the safety of patient and public. Based on the KODEKI article above and its description, it can be concluded that reporting a doctor as their colleague is ethically justified in a specific context.

Impact of Mandatory Reporting

While this mandatory reporting system serves a good purpose, its adoption is reaping pros and cons from physicians. The main advantage of the mandatory reporting system is that it emphasizes the importance of patient safety due to the identification of actions that might harm the patients.(18) In addition, this policy supports doctors to acknowledge and correct their shortcomings.(1).

There are critics stating that mandatory reporting policy could create a culture of excessive fear,(19) overly subjective judgments,(20) and cause unfair competition for doctors.(21) The COVID-19 pandemic has also made many parties question the mandatory reporting policy.(22) With the increasing workload of doctors, many doctors are experiencing mental health issues. The strict implementation of mandatory reporting will make many doctors deemed unfit to work during this pandemic. In more extreme cases, the implementation of excessive mandatory reporting can have detrimental effects, including the loss of the doctor's own life.(23,24)

Mandatory reporting is not a perfect system. Medical ethics and medical discipline must always be upheld, but there are many factors that must be considered. The implementation of mandatory reporting is still influenced by many factors, such as a lack of understanding of ethical and legal issues, fear of reprisals from colleagues, uncertainty about further action from the authorities, and a sense of fellowship that tends to protect fellow doctors.(25-29)

Doctors cannot say that the medical profession has carried out their profession well, only because they have resolved the behavior problems of their colleagues based on a code of medical ethics and medical discipline. Medical profession is an independent profession, and doctors must continuously give their best efforts to maintain public trust. Mandatory reporting is only a curative effort to recover from ethical or disciplinary mistakes that have been made. But the main goal is to maintain the quality of health services and ensure patient safety, meaning that quality control and capacity building of doctors must be carried out as a preventive measure.

CONCLUSION

The efforts to uphold medical ethics and medical discipline in Indonesia are still far from perfect. Medical Practice Law as the most current legislation on medical practice, has so far regulated the enforcement of medical ethics and medical discipline. There are already sanctions for doctors who do not fulfill their obligations, as well as organizations that are responsible for supporting the enforcement of medical ethics and medical discipline such as MKEK and MKDKI. Even so, there are still many things that can be improved, such as regulations on reporting problematic doctors' actions.

For a doctor, the obligation to report fellow doctors' mistakes or conditions that endanger their patients is an ethically justified behavior. However, the implementation of these measures is still difficult due to various factors. Regardless of the pros and cons surrounding the mandatory reporting system, a rigid or overly excessive implementation of mandatory reporting will only cause more harm to the medical profession than its benefits. Although this reporting is an act that is permitted by various international medical ethical guidelines as well as the KODEKI, this action can only be used as a last resort.

CONFLICT OF INTEREST

There is no conflict of interest in the contents of this article.

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