Criminal Legal Liability for Health Workers in Cases of Medical Malpractice

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Abstract
Medical malpractice is an event that involves errors, negligence, or actions that do not comply with medical standards which can cause serious injury and even death to the patient. Liability for criminal acts of malpractice is presently in the spotlight due to the lack of clarity surrounding the applicable legal rules. Due to the lack of clarity in the legal standards regarding the criteria for malpractice, this is the case. The purpose of this study is to investigate aspects of criminal law pertaining to the responsibility of healthcare professionals in cases of medical malpractice. This study will compile data from relevant laws and regulations, court decisions, and the most recent literature on medical malpractice cases using normative legal research methods. A data analysis will be conducted in order to comprehend the criminal law mechanism applicable to health care professionals who commit medical malpractice. Article 360 paragraphs (1) and (2) of the Criminal Code, which contain elements of negligence (kulpa) of doctors or medical personnel, as well as the principal laws governing matters pertaining to the subject and objects in health, namely Law Number 29 of 2004 concerning Medical Practice and Law Number 44 of 2009 concerning Hospitals and Health Law, contain the legal regulations pertaining to medical malpractice. In addition, criminal liability for medical personnel who perpetrate malpractice may take the form of written warnings, revocation of licenses to practice, and re-schooling, which is the requirement to attend medical

educational institutions. However, criminal responsibility can be requested for actions that result in severe injury or death due to a doctor's negligence towards a patient.

I. INTRODUCTION

Protection and law enforcement in Indonesia for criminal cases in the health sector still raise concerns (Nurdin, 2015). Many cases do not get enough attention and only a few are exposed in the media, while there are actually many other cases that are not seen. This phenomenon is like an iceberg, where only a little is visible on the surface while many things are hidden underneath (Arthani & Citra, 2013).

People are becoming more aware of their rights regarding health and medical services, as well as their right to equal legal protection in the health sector (Supriyatin, 2018). The Law No. 36 of 2009 concerning Health enables users of services or goods who believe their rights have been violated to register lawsuits or lawsuits against business actors. This also applies in the context of health services, where patients as consumers have the right to sue hospitals, physicians, or other health workers if conflicts or losses occur as a result of negligence or actions that do not adhere to medical standards (Siringoringo et al, 2017).

Due to the complexity of their service to society, medical personnel are one of the professions that garner public attention in the current global era (Rosidnato, 2016). Recent attention has been paid to the performance of medical personnel, both the highlights delivered directly to the Indonesian Doctors Association (IDI) as the primary organization of doctors, as well as those broadcast via print and electronic media (Widiyanto, 2021). Most people are unable to comprehend that factors beyond the control of medical personnel, such as disease stage, physical condition, immune system, drug quality, and patient compliance with doctor's orders, can affect the outcomes of medical efforts (Kurniawan, 2013). These factors can render even the finest medical efforts ineffective. Consequently, it is not incorrect to assert that the outcomes of a medical endeavor are uncertain and cannot be calculated mathematically (Alfarizi, 2021).

In Indonesia, there have been many cases in the medical field that have occurred, some of which have been brought to court, while many others have never been uncovered. In fact, cases in the medical field are difficult to know with certainty,

because there are various reasons that cause them not to be reported or brought to justice (Dharmawan, 2021).

One of the main reasons is because the patient as a victim does not realize that the case they are experiencing is the result of a doctor's misdiagnosis or treatment therapy, so they do not realize that they have the right to sue in court (Seran, 2016). In addition, in some cases, patients may feel afraid or not confident about reporting or suing doctors or hospitals due to limited legal knowledge or fear of social impacts or stigma that may occur (Dakhi & Telaumbanua, 2020).

Because the legal norms that regulate situations of criminal malpractice are still not entirely apparent, there is currently a significant amount of worry regarding liability in these types of cases. According to Sutarih (2018), this issue is brought on by the absence of clarity regarding the criteria for the classification of malpractice under the rule of law. activities that constitute malpractice cannot be regarded just from a particular scientific standpoint; rather, one must also take into consideration the activities from a legal perspective. It is important to pay attention so that all parties have the same understanding and do not provide interpretations based on their individual areas of expertise because malpractice activities involve both criminal and civil components (Taufani, 2011). As a result of the lack of clarity in the rule of law, this can lead to uncertainty as well as injustice in the processing of cases involving malpractice.

Uncertainty persists on the factors that contribute to the malpractice crime. On the one hand, those who committed malpractice cannot be held accountable for their acts because they were carried out with the intention of resolving a problem; nonetheless, the resolution of the problem was not assured by the actions they took. According to Damopolii (2017), the sphere of health legislation is plagued with broader concerns, including behaviors that constitute malpractice. Errors in malpractice activities will form criminal liability (depending on the nature of the consequences of the losses incurred). Containing three (three) main aspects as an inseparable unit, these aspects are as follows: firstly, treatment that is not in accordance with the norm; secondly, carried out with negligence; and thirdly, containing the consequences of losses in law (Handoyo, 2020).

Losses in law are losses that are recognized and can be recovered through legal responsibility inflicted on the perpetrators or parties involved through the legal process (Kania, 2014). In the context of medical malpractice, medical treatment that does not comply with standards can cause various forms of harm, such as physical, emotional or financial losses for patients or their families (Widhiantoro, 2021). Medical malpractice cases can involve various aspects, including examination of the tools and methods used, errors in obtaining medical facts, wrong diagnoses based on existing facts, inappropriate therapeutic treatment, or even actions to avoid the consequences of mistakes that have been made (Hakam, 2020).

However, in practice, the concept of negligence or culpa in medical malpractice is still not uniform. This causes uncertainty in law enforcement and decision-making

related to legal responsibility for medical personnel involved in malpractice cases (Adi, 2010). Therefore, it is necessary to clarify and confirm the concept of negligence or culpa in a medical context to provide clear guidelines for law enforcement (Hidayat, 2020).

The determining point of legal liability in cases of medical malpractice is the result of harm caused to patients according to law (Novianto, 2015). It is important to objectively and thoroughly evaluate the consequences of malpractice in order to determine appropriate legal responsibility. By considering the consequences of these losses, it is hoped that legal decisions can provide justice for all parties involved (Yulia, 2012).

The purpose of this research is to analyze and analyse legal restrictions concerning medical malpractice in the framework of criminal law, as well as the many kinds of criminal culpability for health workers in cases of medical negligence. The findings of this study are expected to provide a more in-depth understanding of medical malpractice legal arrangements from a criminal law perspective, as well as how criminal culpability emerges for health workers who commit medical malpractice instances. As a result, this study is likely to help to the formation of a legal system that is more successful in dealing with situations of medical misconduct, defending patients' interests, and ensuring justice for medical workers.

II. METHODS

On the basis of the subject of the research problem, normative juridical research or normative law is employed, in which the law is conceptualized as norms, norms, principles, or dogmas. According to Soerjono Soekanto (2007), normative legal research involves the study of legal principles, legal systematics, the degree of legal synchronization, legal history, and comparative law. The strategy adopted is First, the statutory approach (stature approach) is implemented by analyzing all applicable legal regulatory statutes pertaining to the legal issues being addressed. Second, the case approach is implemented by analyzing court decisions with enduring legal standing that are related to the issues at hand. Thirdly, the conceptual approach departs from the views and doctrines that the science of law has developed. 8 The conceptual approach to law, according to Soetandyo Wignjosoebroto (2013), is a highly moral and philosophical concept.

III. RESULTS AND DISCUSSION

A. Legal Regulations Related to Medical Malpractice in the Context of Criminal Law

Malpractice is medical practice that is done incorrectly or inappropriately, violating laws and medical codes of ethics. "Malpractice can be interpreted as an act of negligence, error or lack of ability of a doctor in treating a patient so that

it causes a bad outcome for the patient ." Malpractice is an action taken by a health worker that is inappropriate or an action outside of existing procedures (Sulistyani & Syamsu, 2015).

Kartono Mohammad (1987) says that, "Malpractice is a legal term, a term that is often equated with medical negligence." Furthermore, what can also be used as a guide is the notion conveyed by Soerjono Soekanto (1990) who says that: "the term malpractice means a professional error which includes the inability to carry out professional obligations, or neglect to carry out professional obligations.

The government has published multiple statutes concerning medical malpractice; yet, in some of these laws, the government does not confirm what is meant by malpractice. According to Article 2 of Law Number 36 of 2009 concerning Health (hereinafter referred to as the Health Act), any action taken by medical staff must be based on humanity, balance, benefits, protection, respect for rights and obligations, fairness, gender and non-discrimination, and religious norms. However, in actual health care settings, the risks of medical errors and misconduct are well-known.

Anny Isfandyarie distinguishes between medical risks and malpractice in her book "Malpractice and Medical Risks" by stating that negligence is also linked to health services that fall short of medical service standards or professional standards. A medical risk exists when a patient suffers serious injury or death despite receiving care in conformity with accepted medical practice. Malpractice occurs when a doctor provides subpar care that causes substantial harm to a patient or even results in the patient's death.

Law No. 29 of 2004 regarding Medical Practice (hereinafter referred to as the Medical Practice Law), Law No. 44 of 2009 regarding Hospitals (hereinafter referred to as the Hospital Law), and the Health Law are the primary laws that regulate subjects and objects in health. According to this legislation, there is no possibility of committing the intentional act that constitutes malpractice. However, in the provisions of Article 66 paragraphs (1) and (2) of the Medical Practice Law it is stated that:

1. Any person who knows or has had his interest harmed by the actions of a doctor or dentist in carrying out medical practice may submit a written complaint to the Chairman of the Indonesian Medical Discipline Honorary Council;
2. Complaints must at least contain:
   a. complainant's identity;
   b. the name and address of the doctor's or dentist's office and the time the procedure was performed; And
3. plaintiff's reasons

In accordance with Article 67 of the Medical Practice Law, the Indonesian Medical Disciplinary Honorary Council will examine and render a decision

regarding the complaint. In accordance with Article 69, paragraph 2 of the Medical Practice Law, the decision may be a declaration of innocence or the imposition of disciplinary sanctions. Article 69, paragraph 3, of the Medical Practice Law stipulates that if a doctor or dentist is found culpable, the Indonesian Medical Discipline Honorary Council may impose disciplinary sanctions in the form of censure or suspension:

1. giving a written warning;
2. recommendation for revocation of certificate of registration or license to practice; and/or
3. obligation to attend education or training at medical or medical educational institutions

Article 66 paragraph (3) of the Medical Practice Law explains that complaints as stated in Article 66 paragraph (1) of the Medical Practice Law do not eradicate the right of every individual to report suspected criminal acts to the authorities and/or sue for civil damages in court. Based on these provisions, if a patient's severe injuries and/or death are strongly suspected to be the result of a criminal act committed by a doctor or dentist, then the affected party may file a criminal report or a civil lawsuit.

With the passage of Law Number 29 of 2004 pertaining to Medical Practice, physicians suspected of malpractice are no longer examined by the MKEK (Medical Ethics Honorary Council), but by the Indonesian Medical Disciplinary Honorary Council (MKDKI). This MKDKI will eventually receive complaints, investigate, and decide on violations of doctor discipline. MKDKI should be able to establish stringent policies for all doctors who commit medical malpractice.

Contrarily, the Health Law, the Doctor's Practice Law, and the Hospital Law do not stipulate sanctions for negligence committed by medical personnel; however, Article 46 of the Hospital Law states that hospitals are legally responsible for all losses incurred due to negligence committed by hospital health workers. However, the Hospital Law does not elaborate on what kind of legal responsibility it is for hospitals to cover patients' losses.

In accordance with Article 360, paragraphs (1) and (2) of the Criminal Code, doctors who commit medical malpractice and cause serious injury or death to a patient as a result of their negligence may be held criminally liable. with the intention of protecting the rights of malpractice victims.Criminal medical malfeasance only occurs in the context of material criminal acts (KUHP), i.e., a criminal act that prohibits causing particular outcomes and is punishable by criminal sanctions. The occurrence of repercussions, a prerequisite for the conclusion of a crime. Consequences constituting elements of criminal medical malpractice include death, severe injuries, pain, injuries that lead to illness, and injuries that impede tasks and livelihoods.

Articles 359 and 360 of the Criminal Code classify negligent acts that result in the death or serious injury of another individual as crimes. These acts must

have been committed by accident. The following is a list of the components that make up Articles 359 and 360: 1) There is a degree of responsibility for carelessness (culpa). 2) There is a pattern to the acts that are taken. 3) The significant injury or death of another person is the direct consequence of the event. 4) There is a connection, in the form of a causal chain, between the manner in which the act was carried out and the results of the death of the other person. When the four factors discussed above are contrasted with the elements of murder outlined in Article 338, it is clear that the elements 2, 3, and 4 of Article 359 are identical to the elements of murder outlined in Article 338. The only difference is that the error in Article 359 is carelessness (kulpa), whereas the error in Article 338 (murder) is intentional. This distinction is what makes the difference between the two articles.

However, the regulations that govern malpractice crimes in the Criminal Code do not clearly regulate the qualifications and types of malpractice actions in the medical field. Instead, the regulations in the Criminal Code only regulate more the consequences of these malpractice actions. Because of this, there is a need for new regulations in the Criminal Code that specifically regulate the qualifications of malpractice acts committed by doctors, so that doctors can be held accountable for their actions..

B. Criminal Legal Liability for Medical Personnel who commit Medical Malpractice

The responsibility of medical staff/doctors in carrying out their duties or in other words providing services to patients to provide healing, but doctors often make mistakes which result in malpractice against patients. Errors in practice must be accounted for by doctors, one of which is criminal liability for doctors is not clearly regulated in the Criminal Code but can be seen based on the element of intent or negligence of the doctor himself.

The profession of a doctor is indeed a big responsibility, because mistakes in medical practice can cause serious consequences for patients, such as disability or even death. Therefore, it is important to ensure that doctors are legally responsible for the medical actions they take.

Criminal legal responsibility is needed as a step to avoid arbitrary behavior from doctors towards patients. If it is violated, the doctor must be held accountable for the act in accordance with Article 360 of the Criminal Code in paragraphs (1) and (2), which states that a doctor can be punished if his medical actions cause serious injury or death due to the doctor's negligence towards his patient. The purpose of this legal responsibility is to protect the rights of victims from malpractice actions, and provide justice for those who have suffered losses due to medical errors.

However, the qualifications and types of malpractice acts in the medical profession are not adequately outlined in the Criminal Code regulations

governing malpractice crimes. There is a need for a thorough examination and clarification of the criteria and limitations of medical malfeasance. Currently, the Criminal Code regulations put a greater emphasis on the consequences of acts of malpractice than they do on defining clearly which actions constitute malpractice.

Malpractice can result in consequences or harm to patients, which can lead to a shift in public opinion, especially among patients, and ultimately to the emergence of demands from society, especially among patients, for legal accountability from doctors, because only certain actions, namely punishable acts, can be held criminally accountable. A person can be held criminally responsible and subject to sanctions or penalties if he or she can be clearly proven wrong in accordance with the doctrine that states: Geen straf zonder schuld (no punishment without guilt). This brings about developments in the field of law that require careful consideration.

It is also regulated in Law no. 36 of 2009 concerning Health and Law no. 36 of 2014 concerning Health Workers in order to provide stronger legal protections regarding the accountability of medical staff/doctors who commit medical malpractice. Chapter XX of Law No. 36 of 2009 pertaining to Health is governed by Article 190, specifically:

1. Leaders of health service facilities and/or health workers who practice or work at health service facilities who deliberately do not provide first aid to patients in emergency situations as referred to in Article 32 paragraph (2) or Article 85 paragraph (2) shall be subject to criminal punishment maximum imprisonment of 2 (two) years and a maximum fine of Rp. 200,000,000 (two hundred million rupiah);
2. In the event that the act referred to in paragraph (1) results in disability or death, the head of the health service facility and/or health worker shall be punished with imprisonment for a maximum of 10 (ten) years and a fine of up to one billion rupiahs.

In addition to the criminal measures established in Law No. 36 of 2009 regarding malpractice, Health Workers are also regulated in Law No. 36 of 2014, which is governed in Chapter XIV in Article 84, namely:

1. Every Health Worker who commits gross negligence resulting in a Health Service Recipient being seriously injured shall be subject to imprisonment for a maximum of 3 (three) years;
2. If the gross negligence referred to in paragraph (1) results in death, every Health Worker shall be punished with imprisonment for a maximum of 5 (five) years

To provide legal clarity in the treatment of cases of malpractice and to ensure that those responsible for criminal activities can be charged in accordance with stringent regulations, the formulation of law in the sphere of health services

is an important step that needs to be taken. In addition, the demands of victims might be more easily met thanks to the existence of legislation connected to health and health infractions.

The Promulgation on October 17, 2014 of Law No. 36 of 2014 Concerning Health Workers, which Provides a Strong Legal Basis for Criminal Enforcement of Malpractice Acts perpetrated by Doctors and Medical employees provides a strong legal basis for the criminal enforcement of acts of malpractice perpetrated by doctors and medical employees. The provisions of this law are more clear and detailed in regard to the responsibilities and obligations that are placed on health personnel when they are performing their jobs.

Law no. 36 of 2014 concerning Health Workers has priority power above other earlier laws in the form of malpractice criminal law. This law was enacted in response to concerns raised by the health care industry. In accordance with the principle of Lex Posterior Derogat Legi Priori, more recent regulations have precedence over more established ones. As a consequence of this, the criminal provisions that are included in this health law apply as the primary laws that govern situations involving medical negligence.

A special law on health professionals, notably Law no. 36 of 2014, takes precedence over more general rules, such as Articles 259 and 360 of the Criminal Code, in accordance with the principle known as Lex Specialis Derogat Legi Generali, which is also applied in this scenario. UU No. 36 of 2014, Concerning Health Workers, Includes Criminal Provisions That Are More Specific And In Accordance With The Medical Context, So That They Have Specificity In Handling Cases Of Medical Malpractice UU No. 36 of 2014, Concerning Health Workers Includes Criminal Provisions That Are More Specific And In.

With the existence of a special law on health workers, it is hoped that law enforcement against malpractice cases can be carried out more effectively and fairly. Victims of malpractice are also expected to obtain proper justice through a more structured and clear legal system. The importance of having a special law in the health sector demonstrates the government's commitment to providing better protection for the public in obtaining safe and quality health services.

IV. CONCLUSION

In the context of criminal law, medical malpractice is an act committed by a health worker that is not in accordance with medical service standards or professional standards, which causes adverse effects on patients. Several statutory provisions related to medical malpractice have been issued by the government, but have not provided a clear explanation regarding the elements of the malpractice act itself. Criminal liability for medical personnel who commit medical malpractice can be seen from several laws, such as Law no. 36 of 2009 concerning Health, Law no. 36 of 2014 concerning Health Workers, and Article

360 of the Criminal Code. However, the regulations regarding malpractice crimes in the Criminal Code are still not clear enough and need to be clarified regarding the qualifications and types of malpractice acts that exist in the medical field. Complaints about medical malpractice can be made to the Indonesian Medical Discipline Honorary Council, and if there are indications of a crime, the public can file a report on alleged criminal acts or civil lawsuits to court. Special laws regarding health workers, namely Law no. 36 of 2014 concerning Health Workers, provides a strong legal basis for criminal enforcement of malpractice acts committed by doctors and medical personnel. With the existence of laws that are more specific and in accordance with the context of medicine, it is hoped that law enforcement against malpractice cases can be carried out more effectively and fairly. Protection for victims of medical malpractice is also expected to be improved through a more structured and clear legal system, so that people can obtain safe and quality health services.

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