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CRIMINAL LIABILITY FOR MALPRACTICE OF DOCTORS AT PEKANBARU HOSPITAL, RIAU PROVINCE

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ABSTRACT. The primary purposes of this research are to investigate the multifaceted role of health workers in the delivery of health services and to explore the legal aspects surrounding medical malpractice within the healthcare system. Specifically, this study aims to examine the evolving perception of health workers in society, moving beyond their traditional role as "healers" to encompass their broader responsibilities. Additionally, it seeks to understand the legal implications of medical errors and malpractice within the healthcare system, with a focus on negligence as a central factor. The issue of malpractice, because of the legal awareness of patients who feel aggrieved, results in the prosecution of doctors who commit medical errors (malpractice) which end up in criminal prosecution of patients who feel aggrieved, it is realized by all parties that doctors are only human beings who can one day be negligent and make mistakes, so that violations of the code of ethics can occur even to the point of violating applicable health regulations.This study employes a normative legal research approach to comprehensively examine the multifaceted role of health workers and the intricate legal dimensions surrounding medical malpractice within the healthcare sector. The result of the study found hospital criminal liability for malpractice committed by the hospital or by its health workers can be based on the doctrines of vicarious liability, hospital liability, and strict liability. Doctor's medical malpractice in medical services can be intentional or negligent. What can be accounted for in medical malpractice is only a doctor's negligence in carrying out medical procedures.

Keywords: criminal liability; doctor; hospital liability; malpractice; vicarious liability

PERTANGGUNGJAWABAN PIDANA ATAS MALPRAKTIK DOKTER DI RUMAH SAKIT PEKANBARU, PROVINSI RIAU

ABSTRAK. Tujuan utama dari penelitian ini adalah untuk menyelidiki peran beragam petugas kesehatan dalam pemberian layanan kesehatan dan untuk mengeksplorasi aspek hukum seputar malpraktik medis dalam sistem layanan kesehatan. Secara khusus, penelitian ini bertujuan untuk mengkaji perubahan persepsi petugas kesehatan di masyarakat, yang melampaui peran tradisional mereka sebagai 'penyembuh' dan mencakup tanggung jawab mereka yang lebih luas. Selain itu, penelitian ini berupaya untuk memahami implikasi hukum dari kesalahan medis dan malpraktik dalam sistem layanan kesehatan, dengan fokus pada kelalaian sebagai faktor utamanya. Persoalan malpraktek, atas kesadaran hukum pasien yang merasa dirugikan berakibat terhadap penuntutan terhadap dokter yang melakukan kesalahan medis (malpraktek) yang berujung penuntutan secara pidana terhadap pasien yang merasa dirugikan, memang disadari oleh semua pihak bahwa dokter hanyalah manusia biasa yang suatu saat bisa lalai dan salah, sehingga pelanggaran kode etik bisa terjadi bahkan sampai melanggar peraturan kesehatan yang berlaku. Studi ini menggunakan pendekatan penelitian hukum *normative* yang mengkaji secara komprehensif peran pekerja kesehatan yang beragam dan dimensi hukum yang rumit seputar malpraktik medis di sektor layanan kesehatan. Penelitian ini menunjukkan bahwa pertanggungjawaban pidana rumah sakit baik terhadap malpraktik yang dilakukan rumah sakit maupun yang dilakukan oleh tenaga kesehatannya dapat didasarkan pada doktrin *vicarious liability*, *hospital liability*, dan *strict liability*. Malpraktik medik dokter dalam pelayanan medis dapat berupa kesengajaan atau kealpaan. Yang dapat dipertanggung jawabkan dalam malpraktek medik itu hanyalah berupa kelalaian dokter dalam melaksanakan tindakan medis.

Kata kunci: dokter; *hospital liability*; malpraktek; tanggung jawab pidana; *vicarious liability*

INTRODUCTION

Humans as social beings are destined to live interconnected and side by side with one another in meeting their needs. Sickness is an example that humans are weak, and powerless to overcome themselves, so at that time they need someone who can help them to be healthy. The main need for that person is the presence of another person who can help cure their illness, namely a doctor. The data of hospitals in Pekanbaru that conduct malpractices view in Table 1.

Table 1. Pekanbaru Hospital Data

No.	Hospital	Doctor name	Year Event
1	RS Awal Bros Jl. Sudirman No. 117	dr. M. Iqbal. SpS (neurologist)	2014
2	RS Aulia Jl. Hr. Soebrantas	dr. Zul Asdi (surgeon)	2019
3	RS Awal Bros Jl. Ahmad Yani	dr. Rio Alfian Maulana	2020
4	RS Eka Jl. Soekarno-Hatta	dr. Stevanus (Ahli neurologist)	2013

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No.	Hospital	Doctor name	Year Event
5	RS Arifin Ahmad Pekanbaru	dr. FUB (Pediatric Surgery)	2023
6	RS Ibnu Sina	dr. Muhammad Juni	2011
7	RS Aulia Jl. Hr. Soebrantas	Dokter RA (Obgyn)	2022
8	RS Arifin Ahmad Pekanbaru	dr. Taufik	2019
9	RS Awal Bross Jl. Hr. Soebrantas	Dokter Sheandra	2020
10	RS Hermina Pekanbaru	-	2023

Source: Processed by researcher.

The number of medical personnel and doctors in Riau province (Pekanbaru) as conveyed by the resource person, Dr. Zul Asdi who carries out his medical duties has a noble reason, namely to keep people's bodies healthy or to make sick people healthy or at least reduce the suffering of sick people.

In Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it is emphasized that everyone has the right to obtain health services. This article is included in the chapter that regulates human rights, so that health services are part of human rights. To realize these citizens' rights, the government has issued several legal policies in the health sector, such as Law Number 36 of 2009 concerning Health (UUK), Law Number 29 of 2004 concerning Medical Practice (UUPK), Law Number 44 of 2009 concerning Hospitals (UURS).

Errors or omissions of health workers in carrying out the medical profession, constitute health as the main capital in the framework of the growth and life of the nation and have an important role in the formation of a just, prosperous and prosperous society.

Health is one of the elements of general welfare that must be realized in accordance with the ideals of the Indonesian people as stated in the preamble to the 1945 Constitution of the Unitary State of the Republic of Indonesia through sustainable national development based on Pancasila and the 1945 NKRI Constitution. The degree of health is very meaningful for the development and development of human resources human beings as well as one of the capital for the implementation of national development which in essence is the development of the whole human being.

In the implementation of health services, the most important party is the health worker. Health workers as an element in the community and government play a very important role in achieving health development goals. So far, the known role of a health worker is as a "healer". The community's hope when dealing with health workers is to be able to provide solutions to solve their health problems, both basic complaints and complications. The role of a "healer" is very noble and highly valued in the eyes of society. Health workers in question include doctors, nurses, midwives, and so on.

The hospital is a public health service institution that is influenced by technological advances, developments in health science, and the socio-economic life of the community. Technological advances and developments in health science must always be followed by hospitals to improve higher quality services in order to realize the highest degree of health, including avoiding practices that can harm patients' rights to quality health services. One of the practices that can harm the patient's health rights is malpractice, this is because the medical profession and medical personnel can be carried out by hospitals.

Indonesian health law does not explicitly regulate the definition of malpractice by health workers or malpractice by hospitals. There are only three articles in the UUK and UURS that allude to malpractice, namely Article 29 of the UUK which regulates negligence by health workers in carrying out their profession, Article 58 of the UUK namely errors or negligence in health services, and Article 32q UURS which regulates both civil and civil claims. punishment for services that do not comply with standards. While in the literature the forms of malpractice are more diverse, such as: medical practices or health professions or medical services that are wrong, inappropriate, violate the law or code of ethics. (Yunanto, 2010).

The issue of malpractice, because of the legal awareness of patients who feel aggrieved, results in the prosecution of doctors who commit medical errors (malpractice) which end up in criminal prosecution of patients who feel aggrieved, it is realized by all parties that doctors are only human beings who can one day be negligent and make mistakes. , so that violations of the code of ethics can occur even to the point of violating applicable health regulations, therefore in order not to create a void in norms it is necessary to have new regulations in the Criminal Code which specifically regulate criminal liability for doctors who commit malpractice in order to protect the rights of patients from doctors those who carry out malpractice actions and later patients who

are harmed by doctors can sue criminally liable against doctors who commit malpractice actions.

Fuady and Fatimah in Nur Fatimah (2019) more fully presented the juridical elements of medical malpractice namely: 1) there is action (doing) or not doing (ignore); 2) done by a doctor or other health worker; 3) in carrying out diagnostics, therapy, or medical management; 4) against patients; 5) by violating the law, decency, and professional standard.

There is not a single article in Indonesian health law that specifically regulates hospital malpractice. There are only provisions regarding patient rights in health services (Articles 4-8 UUK; Article 52 UUPK; Article 32 UURS), obligations of health service facilities, including hospitals (Articles 31-34 UUK; Articles 29 & 43 UURS), housework hospital (Article 4 UURS), hospital requirements (Article 7 paragraph 1 UURS). One of the elements of malpractice includes 'any act violating the law, propriety, decency, professional standards', a violation of patient rights, hospital obligations, hospital duties, and hospital requirements as stipulated in law (UUK, UUPK, UURS) can be included as an element of malpractice.

From the medical and hospital malpractice provisions above, there are still political weaknesses in health law regarding malpractice, especially hospital malpractice, namely: (1) the form of malpractice is limited; (2) patients can sue criminally, but there is not a single article in the UUK, UUPK, or UURS which provides criminal sanctions for hospitals for negligence in health services; (3) their responsibility for hospital malpractice is more directed at acts against the law, not criminally responsible (Retnowati & Sundari, 2021).

UUK leads to an understanding that legal liability for malpractice is only civil liability and only for health workers, not hospitals. Criminal sanctions are only an exception, namely for forms of error or negligence in certain health services, namely the prohibition of organ transplants (Article 192 UUK), as well as the prohibition on abortion that is not in accordance with the Act (Article 194 UUK).

The Indonesian health law does not strictly stipulate criminal sanctions for errors or omissions in health services, whether carried out by health workers or hospitals, provides less protection for society in general and patients in particular, and does not provide a 'deterrent' effect (remedial justice). or not to repeat again for health workers and hospitals.

Liability for criminal acts of malpractice is currently in the spotlight because the legal rules governing it are still unclear. This is because the regulation regarding the qualifications for malpractice is not clearly stated in the legal rules, this malpractice cannot be seen from a scientific point of view only, but from a legal perspective as well. Malpractice acts contain criminal and civil elements. This should be considered so that each party does not give their own interpretation according to their respective knowledge.

Doctor's Criminal Responsibility in Medical Malpractice Cases According to the Criminal Code, criminal responsibility is defined as being responsible for actions that are against the law. Criminal liability can lead to the punishment of the perpetrator if the perpetrator has been proven to have committed a crime and his actions have fulfilled the elements of the offense specified in the law.

From what has been described above, of course, this is the background for the author to discuss further in a study by choosing the title: "Criminal Responsibility for Doctor Malpractice in Hospitals".

Based on the background that has been stated above, the main problems studied are as follows:

1. What is the hospital's criminal liability for malpractice performed by the doctors?
2. What is the doctor's criminal liability for malpractice in hospitals?

METHOD

Judging from the type, this research can be classified into normative legal research or library research methods, namely legal research carried out by reviewing and researching library materials in the form of primary legal materials and secondary legal materials. The choice of this method, as explained by Marzuki (2005), is because legal research is a process to find the rule of law, legal principles, and legal doctrine to answer the legal issues faced. This research is analytical-explorative, namely through library materials.

In normative legal research the data source comes from secondary data. Secondary data in this type of research is divided into three types of data, namely primary legal materials, secondary legal materials, and tertiary legal materials.

Primary legal material is legal material that comes from:

a. 1945 Constitution of the Republic of Indonesia

b. Law Number 44 of 2009 concerning Hospitals
c. Law No. 29 of 2004 concerning Medical Practice

Secondary legal materials, namely legal materials that provide explanations of primary legal materials in the form of draft laws, research results, scientific works from legal experts, and so on.

Tertiary legal materials are materials that provide instructions or explanations. such as, Indonesia Dictionary, legal dictionary and articles that can help this research.

Data collection in normative legal research is only used as a documentary study/library study technique. In certain circumstances, non-structured interview techniques can be used which serve only as a support, not as a tool to obtain primary data.

After going through the process of data collection and data processing, then the data were analyzed descriptively qualitatively, this analysis technique did not use statistical figures, but rather an explanation in the form of sentences that were presented in a straightforward manner. The data that has been analyzed and described is then concluded with a deductive method, namely concluding from a general statement into a specific statement.

RESULTS AND DISCUSSION

In theory, the hospital's actions that violate the law or agreement that cause harm to the patient can be categorized as unlawful or negligence. With reference to Schaffmeister's opinion, every negligent (culpa) or intentional (dolus) act in a despicable unlawful act is an element of a criminal act, let alone causing someone injury or death.

Hospitals are legal subjects in the form of legal entities (recht persoon) (Article 20 & Article 21 UURS), which can be burdened with rights, obligations, and responsibilities (Astuti, 2009). Hospitals are responsible for providing quality health services that are affordable, based on safe, non-discriminatory, comprehensive, participatory principles, and provide protection for the community as users of health services (Aruan, Balen, 2019). These responsibilities in theory can include civil, administrative, and criminal responsibilities (Enchede, C.H.J., dan Heidjer, 1982).

UUK tends to use civil liability in the event of malpractice of doctors or hospitals. This is evident in the formulation of Article 29 of the UUK which stipulates that in the event that a health worker is suspected of negligence in carrying out his profession, the negligence must be resolved first through mediation.

At the global level, the paradigm of criminal responsibility has also begun to shift from individual responsibility to corporate responsibility, including hospitals. Based on the opinions of Schaffmeister, Keijzer, Sutorius, (2011), Astuti (2009), Enchede and Heidjer (1982), Hetharia (2013), Ide (2012), Roling (2008), Surono (2016), it is necessary to formulate a health law that provides civil liability for any losses suffered by patients due to malpractice committed by hospitals or doctors who work at these hospitals.

Schaffmeister in Roni W (2021) argued that the nature of being against the law and being reprehensible are general requirements for an act to be punished even if it is not stated in the formulation of the offense, and hospitals in reality can also commit acts against the law, especially in the management of patient health care, so that hospitals can also commit criminal acts.

There are several criterias for a hospital to be criminally accountable that have been put forward by experts. Hospitals are criminally responsible if prohibited acts are carried out in the context of carrying out their duties and/or to achieve the objectives.

Hospital criminal liability for malpractice carried out by hospitals and those carried out by health workers can be based on the doctrines of vicarious liability, hospital liability, and strict liability. The doctrines of vicarious and hospital liability relate to the responsibility of superiors to subordinates and have been described previously. The strict liability doctrine relates to the issue of whether there is an element of error in hospital malpractice. This doctrine will also make it easier to prove a crime. Based on the principle of strict liability, a hospital can already be convicted if it has committed a criminal act as formulated in the law, without seeing any element of error. This will facilitate the work of the police and prosecutors in prosecuting hospitals suspected of committing malpractice, as well as supporting the optimization of patient rights as users of hospital services. However, the use of the strict liability principle turns out to be limited to certain criminal acts, so that its application in health law needs to be careful so as not to cause hospital counter-productivity.

The expansion of corporate responsibility for hospitals that commit malpractice, especially

those that cause bodily injury or death, theoretically can be done by expanding the meaning of "whoever" in Article 359 and Article 360 of the Criminal Code, which also includes legal entities, including hospitals. Even this expansion of interpretation has its drawbacks because the Criminal Code is lex generalist towards the Health Law. The dualism of legal politics, namely general criminal law such as Articles 359 and 360 of the Criminal Code and health law which is lex specialist in practice can create ambiguity for law enforcers (Viswandro, Maria, 2015).

General Article 359 or 360 jo. 361 of the Criminal Code is a criminal act, while Article 29 and Article 58 of the UUK that can be used as an excuse are special and civil articles, namely torts. Special provisions of the UUK can be used as a weapon to prevent malpractice perpetrators from being criminalized under the pretext of lex specialis derogaat legi generalis.

Liability is a process of being responsible for the attitude of legal action. In the medical field, the doctor's responsibility is closely related to the medical profession. Therefore, doctors can also have criminal liability if a crime occurs, namely the event contains one of three elements: 1) behavior or attitude of action that violates written criminal law norms; 2) the behavior is against the law; 3) the behavior is based on error.

Errors are the most important element in determining the existence of a criminal liability. Accountability in criminal law in terms of convicting someone besides that person committing a prohibited act is also known as the geen strafzonder schuld principle or no crime without fault. Therefore, to determine the guilt of an act committed by a defendant, as is the case with a doctor who is accused of malpractice, at least the following elements must be met: Committing a criminal act (against the law);

a) The existence of the ability to be responsible means that the state of the soul must act normally;
b) There is an inner connection between the perpetrator and his actions which can be in the form of intentional (dolus) and negligence (culpa);
c) There is no reason to erase mistakes or forgiving.

Errors in practice must be accounted for by the doctor. A doctor can be held criminally responsible if the doctor is proven to meet the elements of an error which consists of the following:

1) The act committed is against the law, meaning that the medical action taken by the doctor must be proven to have violated the laws and regulations.
2) There is the ability to be responsible, meaning that the doctor who performs the medical action is under normal circumstances and is able to take responsibility.
3) The existence of an inner relationship in the form of intentional or negligence, meaning that the doctor in carrying out medical actions must be proven to have committed to negligence that caused harm to the patient.
4) There is no reason to erase mistakes or forgive, meaning that the doctor is not in a state of or has a mental disorder.

Errors in criminal medical malpractice generally occur due to negligence by the doctor. In this case it can happen because the doctor is doing something that should not be done or not doing something that should be done. In the event of a criminal medical malpractice (crime malpractice), the criminal liability must be proven regarding the existence of a professional error, for example a misdiagnosis or an error in the way of treatment or care.

If examined from the Criminal Code, doctors who carry out medical malpractice acts indirectly can be held accountable for their actions under Articles 359 and 360 of the Criminal Code, so that doctors who take medical actions that result in death and serious injury due to the negligence of the doctor against his patient can be criminally responsible. This aims to protect the rights of victims who experience medical malpractice, but the articles in the Criminal Code only regulate indirectly actions that lead to acts of malpractice.

The Criminal Code only regulates actions related to people's lives or acts that hurt people's bodies. Whereas in the medical practice, law against perpetrators who commit medical malpractice, the sanctions that can be imposed by MKKDI are the provision of written warnings, revocation of practice licenses, and also in the form of re-schooling which is an obligation to attend education in medical educational institutions.

The doctor's attachment to the legal provisions in carrying out his profession is a legal responsibility that must be fulfilled by the doctor. One of them is criminal liability for doctors.

Today, the rise of medical malpractice cases that often occur makes people more and

more restless, thus encouraging people to be more critical and more aware and demand their rights as a patient. The number of cases of medical malpractice that often occurs makes the community upset and tries to sue or ask for legal accountability.

Medical malpractice cases are often not resolved and even tend to just disappear. It is appropriate for the general public to know all the arrangements and legal consequences arising from the occurrence of medical malpractice. However, because there is no law that regulates medical malpractice, it makes medical malpractice difficult to prove which of course causes harm to the victim.

According to Guwandi (2005), the arrangements related to medical malpractice contained in the Criminal Code, include:

1) Article 322 of the Criminal Code, namely divulging medical secrets reported by patients.
2) Article 359 of the Criminal Code, namely because a mistake causes someone to die.
3) Article 360 of the Criminal Code, namely because of his mistake he causes a person to be seriously injured and injured in such a way that he becomes sick.
4) Article 361 of the Criminal Code, namely if the crime is committed in carrying out a position or job.
5) Article 386 of the Criminal Code, giving or making fake drugs.
6) Article 531 of the Criminal Code, namely not providing assistance to people who are in danger of a state of death.

In the explanation of the articles above, there is no clear regulation regarding malpractice in the Criminal Code, but the articles above only review based on negligence or intentional negligence of doctors committing malpractice.

With the enactment of Law no. 29 of 2004 concerning Medical Practice, doctors suspected of committing medical malpractice will be examined by the Indonesian Medical Discipline Honorary Council (MKDKI). The MKDKI is authorized to receive complaints, examine and make decisions regarding disciplinary violations committed by doctors.

However, as regulated in Article 66 paragraph 3 of the Medical Practice Law which states that "complaints of any person who knows or whose interests have been harmed by the actions of a doctor in carrying out his practice/ malpractice to the MKDKI does not eliminate the right of everyone to report an alleged criminal act to the authorities or in other words, sue in court."

So, the Law on Medical Practice has not clearly regulated the sanction of doctors who commit malpractice actions and does not even contain provisions on malpractice. Law no. 29 of 2004 concerning Medical Practice only regulates criminal sanctions for competitors, namely doctors who work without having a registration certificate or practice license.

This Law also regulates the rights and obligations of patients as regulated in articles 52 and 53. However, this Law does not at all stipulate criminal sanctions that will be imposed if the patient's rights are violated by the doctor. What is regulated is only criminal sanctions that will be imposed on doctors who intentionally do not make medical records in accordance with the provisions of Article 79 letter b of the Law on Medical Practice. We conducts the mallpractice in the province of Pekanbaru as show in Figure 1.

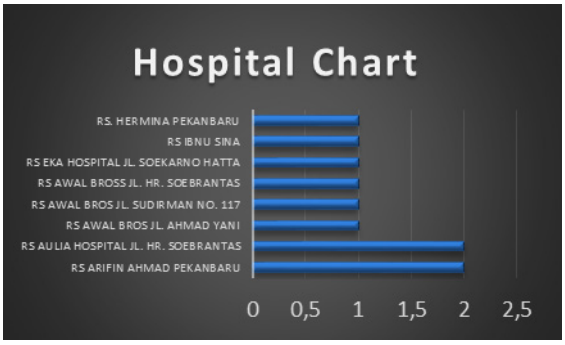

Figure 1. Hospital Malpractice Chart
Source: Processed by researchers

It has not been contextually regulated regarding the qualifications and types of malpractice actions that exist in the medical field, and the limited regulation regarding malpractice is what creates its own problems. So that a new regulation is needed that specifically regulates the qualifications of malpractice acts carried out by doctors, so that doctors can be held criminally accountable for their actions and law enforcers can have a clear juridical basis in enforcing regulations against doctors who commit medical malpractice.

Therefore, every mistake made by a person, of course there must be appropriate sanctions to be accepted by the error maker, so that the occurrence of criminal medical malpractice only occurs in material crimes (Criminal Code), which is a crime that prohibits causing certain consequences which are threatened with sanctions. in the form of a crime. Consequences, is a condition for the completion of the crime. The consequences that become elements of criminal

medical malpractice are death, serious injury, pain, or injury that causes illness, or injuries that hinder duties and livelihoods.

CONCLUSION

Hospital criminal liability for malpractice carried out by hospitals and those carried out by health workers can be based on the doctrines of vicarious liability, hospital liability, and strict liability. The doctrines of vicarious and hospital liability relate to the responsibility of superiors to subordinates and have been described previously. The strict liability doctrine relates to the issue of whether there is an element of error in hospital malpractice.

The responsibility of a doctor who makes a mistake in health services, in the sense of committing a malpractice act, continues to use the articles in the Criminal Code and the Criminal Procedure Code because the Medical Practice Act does not regulate the criminal responsibility of a doctor. Medical malpractice of doctors in medical services can be intentional or negligent. What can be justified in medical malpractice is only the negligence of doctors in carrying out medical actions. Likewise, an error is an offense dolus (deliberately) if there is an element of intention, namely the criminal act is based on an inner will or intentionally to commit the criminal act.

Based on the results of the study, there are still shortcomings that must be considered to fulfilled. The author provides the following suggestions: 1) Accountability for criminal acts of malpractice, although it must follow the provisions of the Criminal Code, not all of them must be resolved by litigation, but it is also hoped that it can be carried out in other ways, namely by non-litigation, which can be resolved through deliberation without having to go to court; 2) It is better if the legislator, especially the House of Representative (*Dewan Perwakilan Rakyat*), can expand or make specific arrangements regarding medical malpractice, and further sharpen and intensify criminal sanctions, especially imprisonment, fines, and administration for doctors who commit medical malpractice acts in the Laws.

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