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Analysis of Exceptional Decisions in Medical Practice Criminal Actions

Decision No. 1441/Pid.Sus/2019/PN Mks

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ABSTRACT

Medical malpractice remains a significant legal issue, with various stakeholders, including patients, families, and doctors, facing difficulties in navigating the legal landscape. The existing laws do not comprehensively define medical malpractice, leading to confusion and inconsistent enforcement of justice in cases involving medical professionals. The purpose of this research is to analyze the legal problems associated with medical malpractice and to provide recommendations for improving the legal framework governing medical practice in Indonesia. This research aims to contribute to law enforcement in handling criminal cases related to medical malpractice and to suggest amendments to the Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice. This research employs a normative legal research methodology, utilizing both statutory and case approaches to examine the legal issues surrounding the imposition of criminal sanctions in medical practice. The research focuses on analyzing existing laws and the decisions made by the Indonesian Medical Ethics Code Court, which often complicate investigations into medical malpractice. The findings reveal that the current legal framework inadequately protects health services, doctors, dentists, and patients in cases of medical malpractice. Investigations are frequently hindered by decisions from the Medical Ethics Code Court, which affects the legal considerations of judges in malpractice cases. The paper concludes that there is a pressing need for legal reform to enhance clarity and protection for all parties involved in medical practice.

Keywords: *Criminal Sanctions, Legal Considerations of the Panel of Judges, Medical Action, Medical Code of Ethics, Medical Malpractice*

INTRODUCTION

The issue of medical malpractice is still a legal problem in its enforcement in society by various groups. There are still medical malpractice cases involving patients and their families by doctors whose handling of the case is considered to lack the weight of justice, both from the perspective of the patient and the patient's family and the doctor. With the increase in medical malpractice cases, it is proven that patients, their families, and doctors have the right to protect themselves from medical actions that are detrimental to them.

If a medical action occurs that is detrimental to the patient, the patient, and the patient's family now have the courage to file legal action, either filing a civil lawsuit and/or making a public complaint or a police report. Regarding these legal efforts, currently patients and their families use the legal services of a lawyer for those who can afford it.

In practice, views regarding alleged criminal acts of medical malpractice often differ from the perspective of law enforcers, namely lawyers, prosecutors, and judges, as well as from the perspective of doctors and/or the Indonesian Doctors Association (hereinafter abbreviated as IDI). This difference of opinion has an impact on various decisions in malpractice cases involving patients and their families and doctors. In the decisions regarding medical malpractice, various considerations were taken by the panel of judges in concluding that the medical action that had been carried out by the doctor was an act of medical malpractice or that medical malpractice was not proven. Dealing with differing opinions regarding medical malpractice should not be necessary. Therefore, it is necessary to formulate the definition of medical malpractice in laws and regulations regarding health and/or medical practice. Therefore, doctors when carrying out medical procedures are obliged to fulfill the specified requirements. If there is a patient or the patient's family who are consciously harmed by the medical treatment carried out by the doctor, the patient or the patient's family cannot immediately state that the medical treatment carried out by the doctor is an act of medical malpractice (Heryanto, 2018).

Talking about health services cannot be separated from the role of health services themselves. One of them is a group of medical personnel consisting of doctors and dentists. A doctor is a person who has received medical education and has passed the doctor/or competency exam of dentist. This profession is bound by ethical and moral rules that are always used and carried out when carrying out their duties as a doctor (Mannas, 2018).

Doctors are part of society because doctors are consistent with valid standards in society. Responsibility as a member of society is to comply with the applicable rules in society, namely: legal regulations or commands against all violators and establishing heavy sanctions for peace and order in the society concerned. Liability arises automatically and has many types, namely civil law, criminal law and

administrative law. In addition, IDI has legal provisions that are very binding for doctors, namely the Code of Medical Ethics which is the basic standard of laws and regulations regarding medical practice.

The term grundnorm is a term put forward by Hans Kelsen to explain one of the things in normative level theory (student theory). Hans Kelsen believes that legal norms are hierarchical in an arrangement or hierarchy. Hans Kelsen further argued: "Basic norms are circumstances in which the subjective meaning of the actions that form the constitution", and the subjective meaning of actions carried out under the provisions of the constitution, are understood as intentions. Hans Kelsen places the grundnorm (basic standard) as the "final validity standard" so that there are no other validity criteria that can be used to assess the validity of the grundnorm. A doctor's civil liability is found in all medical services. This is understandable because every medical treatment has a doctor-patient relationship as a legal subject.

Doctors and patients have the same rights and obligations. The doctor's attachment to the patient occurs when a medical action is carried out by the doctor on the patient which is stated in the form of a medical action approval document. This document is an agreement. If there is an agreement, it is subject to the provisions of Article 1320 of the Civil Code. Interactions between doctors and patients related to health services can often be said to be therapeutic transactions. When a patient consults with a doctor/dentist at a health service facility, that is when a doctor-patient relationship is established, known as a therapeutic relationship or some people call it a therapeutic transaction (Indar, 2017).

In Indonesia, there have been many cases of medical malpractice, both in the form of cases that have already been decided and cases that are just allegations and are still being processed in court and at the Indonesian Medical Discipline Honorary Council (MKDKI). Mainly these cases occur in hospitals. Let's say the case of Dr. DA and friends in Manado in 2015 (Sjahdeini, 2020).

In this therapeutic negotiation, the doctor must do the best of his ability following professional (medical) customs regulated in the Code of Medical Ethics and statutory regulations relevant to health and medical manifestations. Public criticism of Indonesian medical personnel is currently widespread in various media, both print and electronic media. In the past, medical actions that caused medical malpractice were considered non-prosecutable. Currently, public awareness has increased, people are increasingly aware of their right to determine their own fate, as a result, medical practice has not only become a civil legal relationship, but also a criminal offense. There are public law malpractice issues raised in civil cases.

This can be seen from the case of Prita Mulyasari. Prita first went to the hospital for treatment at the Omni International Hospital, a hospital that handles complaints. The test showed positive for dengue fever (fever for 3 days, severe tension headache, nausea, vomiting, weakness, sore throat, loss of appetite). After being asked about the test results, arguments emerged about the discrepancy

between the test results and the diagnosis. Prita has received public support and 'Prita Coin' has been featured almost every day in newspapers and TV, radio and internet media. Another incident occurred at Puri Cinere Hospital, Depok City, Dr. Wardani, ENT, performed tonsillectomy on one patient (Santi Marina). After the operation was finished, the doctor gave Marina anesthesia resulting in his voice becoming nasal. Therefore, Santi Marina sued Dr. Wardhani is liable for the consequences of professional misconduct.

In this case, the question is whether the doctor is liable for medical malpractice. The civil law perspective of patient complaints against treating physicians is almost entirely included in lawsuits. The provisions of Article 1365 of the Civil Code stipulate that every wrong act can cause harm to other people, forcing the person who caused the loss to repair it. Acts against the law (onrechtmatige daad) are divided into four criteria. First, it is different from the legal obligations of the creator. Second, it is contrary to the law regarding the rights of other people's subjects. Third, it goes against the moral code. The fourth differs from the politeness, thoroughness and prudence one should have concerning one's own people or those of others. The issue of the responsibility and liability of doctors in medical malpractice cases is relevant to unlawful acts contained in the provisions of Article 1364 and Article 1366 of the Civil Code, namely:

1. The patient must be insolvent;
2. Errors or omissions (in addition to individuals, the hospital is also responsible for its staff);
3. There is a relationship between loss and failure; And
4. Acts violating the law.

Malpractice can be divided into 2 types, namely juridical malpractice and ethical malpractice. Juridical malpractice can be grouped into 3 groups, namely criminal (criminal malpractice), civil (civil malpractice), and administrative (administrative malpractice). Criminal malpractice itself can be divided into 3 groups, namely as follows: 1. On purpose (for example abortion, euthanasia). 2. Due to carelessness (for example taking action without informed consent). 3. Due to negligence (for example leaving surgical tools in the body of the patient being operated on) (Putra, 2020).

Medical malpractice is included in the field of criminal law, if it meets certain qualifications which are regulated in three aspects, including: 1) aspects of medical acts; 2) aspects of the doctor's mental attitude; and 3) aspects regarding the consequences that arise (Chazawi, 2016).

If the person carries out a criminal act knowing full well that his behavior will cause an event that will not benefit another party, then it can be said that he is entirely liable. The condition for it to be said is that a person has complete knowledge about the existence of circumstances that lead to the possibility of an outcome. This error occurred due to the doctor's inaccuracy in observing the patient

so that side effects occurred simultaneously. This inappropriate behavior is classified as inappropriate behavior that is detrimental to the patient.

RESEARCH METHODOLOGY

This research employs a normative legal research method. This approach involves analyzing statutory regulations related to medical malpractice in Indonesia, particularly the Law of the Republic of Indonesia No. 29/2004 concerning Medical Practice. It also incorporates a case study of Decision No. 1441/Pid.Sus/2019/PN Mks to examine how laws are applied in real-world medical malpractice cases and the challenges faced by judges and legal practitioners. The research identifies key legal problems in medical malpractice cases, including the role of the Indonesian Medical Ethics Code Court in investigations. Based on these findings, the study offers recommendations for legal reforms to enhance clarity and protection for health services, doctors, dentists, and patients. By utilizing a combination of statutory and case-based analysis, the research aims to contribute to the development of more effective legal frameworks for medical malpractice in Indonesia.

RESULT AND DISCUSSION

Characteristics of Medical Malpractice in Medical Practice

Malpractice comes from mala-practice, mala means wrong/bad/ugly; while practice means work, so it can be interpreted that malpractice is wrong work or bad work or wrong work (Takdir, 2018). In Indonesia, medical malpractice is starting to become a public discussion. The main targets of medical malpractice are doctors who have failed to carry out medical procedures for patients. In its development, related medical procedures were not under the Code of Medical Ethics or doctors failed to carry out medical procedures. Such conditions should be able to be resolved properly, not resolved through legal action. In the saying, doctors are ordinary people who can also make mistakes. This error is called a professional error and is known as medical malpractice. This is what causes malpractice to occur kerugian bagi pasien. This situation has occurred for a long time and in Indonesia has only developed since the 1981 (Djamali, 1998).

Over time, people have increasingly associated doctors' negligence with breaking the law. This worries doctors in their practices. This concern is understandable, because it concerns legal protection for doctors who practice medicine in their field of expertise. Society believes that errors in medical practice should be subject to criminal sanctions. If a legal complaint is filed through a medical institution, hereinafter referred to as the Indonesian Medical Discipline Honorary Council (MKDKI), it will review the doctor's actions before the Indonesian Medical Discipline Honorary Council does not approve it. If the Indonesian Medical Disciplinary Council decides that a medical procedure carried

out by a doctor contains criminal elements as intended in the statutory regulations, the Indonesian Medical Disciplinary Council will issue a recommendation to the Indonesian National Assembly. Police investigators are currently working on cases or people that could be the basis for making a police report.

On the other hand, if the action is carried out through a law enforcement agency, namely the police, then the police will immediately carry out an investigation. If the results of the examination show that there are not enough reasons to prove that the incident being prosecuted was not a criminal act, for example only the doctor's negligence also falls within the scope of the denial of medical ethics, according to him the investigator will stop investigating and then be transferred to a more competent special body for resolution. Medical malpractice can cause harm to patients, not all doctors can carry out legal responsibility. If an act of medical malpractice committed by a doctor has elements of a criminal act, then the doctor must have the capacity to carry out criminal liability.

Sanctions can be applied to those carrying out acts that violate the law or are contrary to existing norms in society. A person can be held criminally liable and subject to criminal sanctions if their actions contain elements of crime. This view is in line with the affirmative doctrine of geen straf zonder schuld (no punishment if innocent). To provide security and legal certainty to beneficiaries of medical services, doctors and dentists, it is necessary to regulate medical practice, Law of the Republic of Indonesia No. 29 of 2004 concerning medical practice and Law of the Republic of Indonesia 17 of 2023 concerning Health were promulgated.

The term medical malpractice is a social term that we will not find in Indonesian legislation. Medical malpractice is not mentioned in health law legislation or medical practice law products in Indonesia because the elements of medical malpractice in the form of errors or negligence have been accommodated in ethical guidelines and disciplinary guidelines for health service practice as well as in terms of health services and medical practice. Not always the medical services provided by health workers in hospitals can provide the results expected by all parties. There are times when in these services there is negligence by health workers, one of which is medical staff which causes disasters, such as disability, paralysis, or even death. There is a relationship between patients, medical personnel and hospitals where all three have equal obligations and rights, must respect each other's rights to minimize violations (Syafrudin et al., 2020).

The terminology currently being developed related to negligence is quite diverse, including: neglect and negligence. The term "violation" was used in a symposium demanding justice in violation cases organized by the Indonesian Law Students Association, which was also published in the October 1986 issue of Tempo. The term "violation" was found in a symposium on negligence organized by Pancasila University in collaboration with the Bunda group. The dictionary does not use an equivalent term or translation of the word negligent. The only words or expressions found were the terms "mala" and "mall". This term does not provide

certainty and cannot be used as a basis. In October 1988, to coincide with the 5th Indonesian Language Congress, the Big Indonesian Dictionary was published. In the KBBI there is the term "negligence". Negligence is defined as medical activities carried out incorrectly or inappropriately, in violation of law or ethical codes. These terms are, of course, congruent and related to the same term negligence as the root word "negligence".

Referring to the large Indonesian dictionary above, the author uses the term Malpractice. The Big Indonesian Dictionary is the result of scientific work from the Center for Language Development and Development of the Ministry of Education and Culture of the Republic of Indonesia. Then with the definition of malpractice, Soerjono Soekanto expressed his views regarding malpractice which can be a temporary benchmark. The standard for whether malpractice occurs or not lies in whether the perpetrator is someone who has a professional background or not. If the perpetrator has a profession, then if he commits a mistake, whether done intentionally or negligently, the act can be considered a form of malpractice. In Indonesia, malpractice is often attributed solely to health workers, particularly doctors, despite the fact that professionals such as lawyers and accountants can also commit malpractice.

Medical actions or actions that cause doctors to carry out medical procedures are not per the Code of Medical Ethics, one of which is because doctors have abilities beyond their capabilities which are contrary to the Code of Medical Ethics. This condition causes doctors to be unable to focus and concentrate in carrying out medical procedures. In carrying out medical procedures, doctors are required to provide health services by the Code of Medical Ethics and have a protective attitude towards patients by prioritizing the precautionary principle in preventing complications and establishing a diagnosis (Nayak, 2023).

Deviant acts in medical malpractice can be measured using various measuring tools in determining whether the medical action is included in medical malpractice. These measuring tools are law, Standard Operating Procedures (SOP), Practice Permit (SIP), Registration Certificate (STR), up to the Medical Code of Ethics. Specifically for Standard Operating Procedures in Indonesia, there are no statutory guidelines, therefore SOPs for each health agency can vary according to the facilities and human resources (HR) that support the hospital or health agency (Rafael, 2019).

There is no specific definition of what medical malpractice is, either in the Criminal Code, Law no. 13 of 2023 concerning Health, and Law no. 29 of 2004 concerning Medical Practice. In addition, in doctors' behavior towards patients, there is no clear benchmark between legal violations and violations of the code of ethics, which shows that legal requirements are very necessary and must be used to resolve problems in medical malpractice (Siregar, 2020).

Criminal Sanctions for Medical Malpractice

Regarding the definition of criminal sanctions, they are the legal consequences of violating criminal regulations in the form of crimes and/or acts. In the Indonesian Encyclopedia, sanctions come from sanctity sanctions. Sanctions are defined as forced actions to ensure the implementation of the provisions, terms of an agreement, etc. The definition of sanctions is also different from the legal dictionary as sanctions are defined as a result of an action or response by another party (human or social organism) or an action. . Crime and punishment are closely connected to the capacity for criminal responsibility.

In Dutch terms, criminal liability is *toerekeningsvatbaar*. Apart from that, it is also known as criminal liability. Criminal liability is also related to the ability of the perpetrator of a criminal act and does not necessarily have to be punished. To be punished, there must be a guilty will. In the Criminal Code there are no definite words about the possibility of criminal liability, Article 44 Paragraph (1) of the Criminal Code in essence has established conditions and standards so that a person cannot avoid being held criminally liable because they are not convicted, are liable for being condemned, which means forming a negative side of the capacity to take responsibility.

Meanwhile, the criteria for the person liable can be interpreted the opposite, namely if there are no 2 (two) mental states as regulated in Article 44 of the Criminal Code. According to Simons, the volume to assume responsibility can be understood as a psychological state such that the implementation of a criminal act, both in general and from a person's point of view, is justified. A perpetrator can be held liable if he falls into two (two) categories, namely: 1. Able to know or realize that his actions are contrary to the law and 2. Able to decide one's will in line with conscience.

According to Van Hamel, *toerekeningsvatbaarheid means een staat van psychische normaliteit en rijpheid welke drieerlei geshiktheid medebrengt* (normal state and psychological maturity which gives a person three kinds of abilities), as follows: a. Can understand the real goal, what they do; b. It can be acknowledged that such actions may or may not be socially justifiable. c. Can choose what to do.

It cannot be denied that there is a theory that says patients can play a role in contributory negligence, for example when patients take medicine, doctors cannot fully monitor whether the medicine given by the doctor is taken or not, taken at the right time or No, take it according to the dosage or not. This is of course beyond the doctor's control. Apart from that, it is also important to know that the relationship between a doctor and his patient is a contractual relationship like a business agreement or (*inspaningverbintenis*) without a results agreement (*resultaatverbintenis*) meaning that the doctor is only tasked with trying to provide his services in the treatment of the patient, but success in the treatment does not guarantee that it will always be succeeded in achieving what we wanted together (Bawono, 2020).

The occurrence of a crime does not necessarily give rise to a crime for the perpetrator, however, if the act is related to the person who will be punished, if there is doubt about that person's soul, it needs to be taken into account or questioned, mentioned because it cannot be held liable, and must also be able to show that the perpetrator has not been convicted.

Satochid Kartanegara provides an understanding of criminal responsibility (*toerekeningsvatbaarheid*) which is closely related to the state of a person's soul which must fulfill the following elements: 1. The state of a person's soul is that he can understand or know the value of his actions, so that he can also know his actions; 2. The person's attitude must determine their will; and 3. The person must be aware that the action he or she is taking is legally, socially, or ethically prohibited or unjust. To be found guilty, the three criteria above must be met. A person can be held criminally liable for a crime they commit. Young children cannot be expected to see all the consequences of their actions, nor can they be expected to see the value of their actions. People with mental illness cannot be expected to realize that what they are doing is legally, socially, and morally prohibited.

Medical malpractice is a series of medical and/or non-medical actions that can be carried out by medical personnel by and/or doctors or dentists and/or hospital leaders, and/or which are under medical supervision. and/or medical services to violate the code of ethics, standard operating procedures, medical service standards, and discipline. The violation was resolved by the Indonesian Medical Disciplinary Honorary Council through decision making. The decision of the Indonesian Medical Disciplinary Honorary Council does not eliminate a person's right to file a lawsuit, whether in the form of a criminal lawsuit or a civil lawsuit, in court.

The definition and elements of medical malpractice in Indonesia are not regulated concretely in statutory regulations. Rather, it is regulated in the form of a series of actions that violate medical practice licensing facilities, codes of ethics, and actions that are disgraceful from a health perspective. This influences the imposition of criminal sanctions given to criminal perpetrators. Legal subjects or perpetrators who can be subject to criminal sanctions are doctors, health workers or someone below them, hospital leaders, and individuals or legal entities who consciously commit criminal acts as intended in the Medical Practice Law, Health Law and Law. -Hospital Law, as well as Minister of Health Regulations.

Poernomo (1992) stated that there are several methods for determining a state of incapacity so that a person cannot be convicted, namely as follows:

1. The Biologische method is a method of analyzing mental illness. If an expert, in this case a psychiatrist, has declared that a person is sick or mentally disturbed (crazy) or his mental state is disturbed, he cannot automatically be punished.
2. Psychologische Method, the hope of using this method is to show the relationship between abnormal mental states and behavior. What is important in this method is the impact of mental illness on his actions, so

that it can be said that he cannot bear responsibility and will not be punished/sentenced.

3. The biological-psychological method or gemischte methode, which is a combination of these two methods, apart from stating the state of mental health and the causes of that mental state, is then linked to his actions so that he can be declared incapable of taking responsibility.

From the several criminal liability provisions above, it is necessary to emphasize that the imposition of criminal sanctions adheres to the principle of ultimum remidium, meaning that the use of criminal sanctions is a last resort that can be taken if it cannot be resolved using several methods outside of court. One of these efforts is mediation. The mediation referred to is penal mediation. If a patient feels that he or she has been harmed as a result of inappropriate medical services, he or she can report it first to the hospital where the medical service was provided. Patients can convey complaints or dissatisfaction with the services provided by doctors or other medical personnel.

Based on this report, the hospital or the person acting, namely the hospital director, will summon the doctors and medical personnel concerned as well as the patients who are victims to meet and find a solution. However, it should be remembered that the results of penal mediation cannot stop the legal process. Even though there has been an agreement to compensate the patient by the doctor, this agreement cannot stop the prosecution process. The prosecution process is still ongoing, however, the penal mediation agreement only serves to mitigate the charges, because up to now there are no statutory regulations governing the implementation of penal mediation and the legal force of the penal mediation agreement between the doctor and the patient (Febriani et al., 2023).

If the loss experienced by the patient is the effect of the negligence of the doctor concerned, the hospital will decide who is liable, whether the doctor concerned or the hospital, because the responsibility does not necessarily lie with the hospital (Sibarani, 2017).

Within the scope of responsibility, the hospital is fully liable for all activities carried out by both medical and paramedical personnel. The burden of responsibility is given to the head of the hospital or hospital director who has received a delegation of authority from the hospital owner to carry out all activities related to health services. Liability received by hospitals can also arise due to negligence on the part of medical personnel. The form of civil liability for hospitals is in the form of compensation for losses as intended in Article 1243 of the Civil Code. Meanwhile, administrative responsibility imposed on the hospital can be in the form of a warning letter and revocation of the permit to establish the hospital (Muhlis, 2020).

The Indonesian Hospital Code of Ethics (KODERSI) contains a series of values and moral norms for Indonesian hospitals to serve as guidelines and

guidelines for all parties involved in the organization and management of hospitals in Indonesia. KODERSI is a moral obligation that must be adhered to by every hospital in Indonesia to achieve good, quality hospital services and the noble values of the medical profession (Perhimpunan Rumah Sakit Seluruh Indonesia, 2015).

Hospitals as legal entities (corporations) can be sued and held liable for malpractice actions by health workers in hospitals. Examining the article above, the article is under the doctrine relating to corporations, namely the doctrine of vicarious liability. This teaching is also known as the teaching of vicarious liability. An employer is responsible for mistakes committed by his subordinates as long as they occur in the course of his work. This provides the possibility for parties who suffer losses due to their unlawful actions to sue their employers to pay compensation. With this teaching, corporations can be responsible for actions carried out by their employees, proxies or mandataries, or anyone responsible to the corporation. The application of this doctrine is carried out after it can be proven that there is subordination between the employer and the person who committed the negligence, and the act was carried out within the scope of the employee's duties (Indar et al., 2020).

Juridical Analysis of the Decision of the Panel of Judges at the Makassar District Court Number: 1441/Pid.Sus/2019/Pn.Mks. July 1, 2020

In criminal case Number: 1441/Pid.Sus/2019/PN.Mks., at the Makassar District Court, the defendant on behalf of dr. Elisabeth Susana, M. Biomed, the problem is: On Friday 15 September 2017 at around 12.00 WITA, witness Agita Diora Fitri and witness Yeni Ariani went to the defendant's office on behalf of Dr. Elisabeth Susana, M. Biomed., Special at Belle Clinic Jl. Loup No. 119 Example Mamajang in Mamajang City District Makassar Makassar City, for the sake of beauty, Witness Yeni Ariani, on behalf of the doctor, was transferred to the defendant. Elisabeth Susana, M. Biomed., that witness Agita Diora Fitri follows the same beauty treatment as witness Yeni Ariani. Before carrying out medical procedures, the defendant, on behalf of Dr. Elisabeth Susana, Mr Biomed., told witness Agita Diora Fitri that her cheeks would be cut first and then filler would be injected into her nose, to make it sharper.

Following medical advice, the defendant acted on behalf of a doctor. Elisabeth Susana, M. Biomed., injected 0.1 cc of hyaluronic acid into the nose of witness Agita Diora Fitri. As a result of medical procedures carried out by the defendant in the name of Dr. Elisabeth Susana, M. Biomed., there was paleness in the eyebrow area of Witness Agita Diora Fitri. In this situation, the defendant, on behalf of doctor Elisabeth Susana, M. Biomed, removed the injection and injected hyaluronidase as an antidote into the nose area. Witness Agita Diora Fitri complained of pain and closed her eyes and when she opened her eyes Witness Agita Diora Fitri said she could not see her left eye. The defendant on behalf of Dr.

Elisabeth Susana, M. Biomed., together with witness Yeni Ariani took witness Agita Diora Fitri to Siloam Hospital Makassar.

The defendant Dr. Elisabeth Susana, M. Biomed on Friday 15 September 2017 at approximately 12.00 WITA in September 2017, at the Belle Clinic Jl. No. 119 Examples of Mamajang in Kec. The city of Mamajang, Makassar, which remains within the jurisdiction of the Makassar District Court, "deliberately carried out medical activities that did not fulfill medical service obligations based on standard procedures and professional operating standards in accordance with the patient's medical needs as stated in article 51 letter A". The defendant's actions are regulated and threatened in Article 360 paragraph (1) of the Criminal Code.

The defendant Dr. Elisabeth Susana M. Biomed., has been charged by the District Attorney with the following charges: a. Statement of the defendant Dr. Elisabeth Susana, Mr. Biomed has been positively and positively found guilty of "indictable offenses in the practice of medicine and for its negligence in causing serious bodily injury to another person." as determined and punished with violations in Law No. 29 of 2004 Article 79 letter c OJ Article 51 letter a concerning medical practice and Article 360 paragraph (1) of the Criminal Code under the indictment filed states. b. The verdict against the defendant Dr. Elisabeth Susana, M. Biomed was sentenced to a maximum imprisonment of 4 (four) years and a fine of IDR 30,000,000 (thirty million rupiah) provided that failure to pay the fine is punishable by a maximum imprisonment of 3 (three) years.) month; c. Statement letter for the destruction of confiscated evidence; And D. Determines that the defendant will be charged a court fee of IDR 5,000 (five thousand rupiah).

In the criminal case mentioned above, the Public Prosecutor must be able to prove the elements of the offense listed in the Indictment that has been submitted at trial. Proving the elements of the offense by the Public Prosecutor is an obligation and necessity because the defendant can be brought to trial if there is an indictment submitted by the Public Prosecutor. When examining and deciding criminal cases, judges refer to the Indictment written and submitted by the Public Prosecutor. If the Public Prosecutor cannot prove the charges presented in the trial, then the legal consequence is that the defendant can be declared not guilty of committing a criminal act and must be declared acquitted purely by law in the Judge's decision.

The prosecutor's indictment is an objective element in criminal procedural law. With the indictment, the judge will examine and decide on a criminal case so that its authenticity can be checked or whether it is proven that there is no element of error, either intentional or negligent. In the Guidebook for Limiting Indictments (BPPD) issued by the Attorney General of the Republic of Indonesia, indictments have 2 (two) aspects, namely:

1. Positive things related to the entire contents of the indictment have been proven at trial which are used as the basis for the judge's decision; And
2. The negative aspects of what is claimed to be proven in the verdict are all set out in the indictment.

The Criminal Code does not regulate the form and structure of charges, but this is regulated in the Criminal Procedure Code. In practice, several forms of indictment will be made by the Public Prosecutor, namely:

1. Single Charge, the defendant is only charged with committing 1 (one) criminal act;
2. Subsidiary Indictment, the defendant is charged with several criminal acts in layers and 1 (one) criminal act must be proven;
3. Alternative Charges, the defendant is charged with several criminal acts with the nature of a choice of criminal acts aimed at. Apart from that, only 1 (one) criminal act must be proven;
4. Cumulative Indictment, the defendant is charged simultaneously with several independent offenses. This indictment is aimed at the defendant who committed several criminal acts; And
5. Mixed charges are a mixture of cumulative charges with alternative charges and subsidiary charges.

In the criminal case mentioned above, the defendant Dr. Elisabeth Susana M. Biomed., Public Prosecutor used a single indictment by outlining 1 (one) element of the offense as contained in Article 360 paragraph (1) of the Criminal Code. The consequence of using a single indictment is to prove 1 (one) criminal act against the defendant. If in the process of evidence at trial the single charge is not proven, then the defendant can be sentenced by the judge with a verdict of acquittal (onslag). In general, the use of a single charge is only used in light criminal cases in the form of violations, while in medium or serious cases a single charge is not used but a cumulative charge and/or alternative charges. In the criminal case mentioned above, the impact resulting from the actions or medical procedures carried out by the Defendant on behalf of Dr. Elisabeth Susana, M.Biomed., is:

1. The patient, witness Agita Diora Fitri, suffered serious injuries to the left eye and the result was that the eye could not function as it should; And
2. The patient, Witness Agita Diora Fitri, was unable to get the results of beauty treatments on the part of the body she desired.

With the consequences caused and suffered by the patient in the name of witness Agita Diora Fitri, the prosecutor should have been able to use the cumulative indictment by indicting the defendant in the name of Dr. Elisabeth Susana, M. Biomed., with criminal threats as referred to in Article 360 paragraph (1) and paragraph (2) of the Criminal Code. The impact suffered by the patient, witness Agita Diora Fitri, is physical disability in the sense of sight and the recovery process cannot be ascertained. Therefore, the patient, Witness Agita Diora Fitri, cannot use her sense of sight perfectly in carrying out work activities and/or daily activities.

The legal considerations of the Panel of Judges in the decision mentioned above are considered to be too shallow and ignore the elements of the offense contained in Article 360 paragraph (1) of the Criminal Code. The elements of the offense contained in Article 360 paragraph (1) of the Criminal Code are:

1. Subjective Element: "Whoever" can be addressed to individuals and/or legal entities. In this criminal case, the subjective element only focuses on a single individual, namely: Defendant Dr. Elisabeth Susana, M. Biomed. As for the identity of the defendant, Dr. Elisabeth Susana, M. Biomed., when the Indictment was read out in the trial there was no exception of error in persona from the Defendant, Dr. Elisabeth Susana, M. Biomed. "Thus, the subjective element of Article 360 paragraph (1) of the Criminal Code is fulfilled."
2. Objective Element: "Fault: this objective element depends on the intention of the perpetrator of the criminal act. The intention to commit a criminal act can be divided from the knowledge of the perpetrator of the criminal act regarding the resulting act. Apart from that, it focuses on the element of intention (dolus) or negligence (culpa).

The defendant Dr. Elisabeth Susana, M. Biomed., has a day job as a doctor in the field of beauty care. Knowledge of the actions that the Defendant intended to carry out, Dr. Elisabeth Susana, M. Biomed., was understood first. Including procedures before carrying out medical procedures and during medical procedures. The defendant Dr. Elisabeth Susana, M. Biomed., has provided medical information to the patient in advance on behalf of Witness Agita Diora Fitri. There was a procedural error before carrying out the action which was not carried out by the Defendant, Dr. Elisabeth Susana, M. Biomed., namely: not making a Written Consent Letter for the medical treatment to be carried out on the Patient in the name of Witness Agita Diora Fitri. Not making this Written Consent Letter causes an element of cause and effect to occur.

Concerning this, the theory of cause and effect (conditio sine qua non) and the theory of Individualization (causa proxima) can be used. The injury to the left eye was caused by medical procedures carried out by the Defendant, Dr. Elisabeth Susana, M. Biomed., who injected 2 (two) times into the nose and cheeks. Could this have occurred not intentionally but due to negligence committed by the Defendant, Dr. Elisabeth Susana, M. Biomed., so that the injection was not precisely in the target area, resulting in injury to the patient's eye.

Of the supporting factors to convince the Defendant, Dr. Elisabeth Susana, M. Biomed., has special expertise as a doctor in the field of unsupported skin care. Thus, it should be seen as a form of fulfillment of the element of error by negligence in carrying out medical procedures. The negligence addressed is not only in procedures for carrying out medical procedures but also negligence in having special skills that are not supported by a Special Registration Certificate and Special

Practice Permit as intended in Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice. Thus, the element of error in Article 360 paragraph (1) of the Criminal Code has been fulfilled. "Causing serious injury to someone": the element of serious injury is seen as a causal element of the element of fault.

It is proven that there are individuals who experience losses due to behavior carried out by criminals. This individual is a patient on behalf of the witness Agita Diora Fitri who has received the consequences of the actions carried out by the defendant Dr. Elisabeth Susana, M. Biomed. Medical services do not comply with professional standards and standardization of operational procedures and medical needs, such as:

1. Not carrying out a preliminary examination of the patient's health;
2. Not making a letter of approval for medical action from the patient;
3. Do not have medical aesthetic expertise certification;
4. Does not have standard operating procedures for filler injections and
5. Because his mistake resulted in serious injuries.

The wound caused damage to one of the patient's eyes. Thus, the element of causing serious injury in Article 360 paragraph (1) of the Criminal Code is fulfilled. With the fulfillment of the elements of the offense in Article 360 paragraph (1) of the Criminal Code, the actions carried out by the Defendant, Dr. Elisabeth Susana, M. Biomed against the patient on behalf of the witness Agita Diora Fitri, must be found guilty of an error due to negligence because she did not have special expertise in carrying out medical skin care procedures. Regarding medical practice, especially the provisions of Article 51 letter a of Law of the Republic of Indonesia no. 29 of 2004 concerning Medical Practices and Regulation of the Minister of Health of the Republic of Indonesia No. 290/Menkes/Per /III/ 2008 concerning consent to medical procedures, the offense was officially dismissed to the extent of the Crown's evidence to support the only charge brought in the previous case.

In the criminal case mentioned above, the problem is that the indictment made by the Public Prosecutor should be made in the form of a cumulative indictment because various acts can be described which contain formal requirements for carrying out medical practice, including:

1. Medical practice licensing facilities, from Belle Clinic to Belle Clinic doctor certification. This is under Article 69 paragraph (1) Republic of Indonesia Law no. 36 of 2009 concerning Health, Article 44 paragraph (1) and Article 46 paragraph (1) and paragraph (4) of the Republic of Indonesia Law No. 36 of 2014 concerning health personnel, namely that all medical personnel who practice must have a registration certificate and practice permit;
2. Approval of medical procedures by medical personnel. This is stated in the provisions of Article 68 paragraph (1) of Law of the Republic of Indonesia Number 36 of 2014 concerning Health Workers, Article 2 Paragraph (1)

of the Regulation of the Minister of Health of the Republic of Indonesia. 290/Menkes/Per/III/2008 concerning approval of medical procedures.

3. The underlying legal basis focuses on accusations of professional misconduct committed by the defendant Dr. Elisabeth Suzana, M. Biomed is regulated by Law Number 29 of 2004 concerning Medical Practice which is contrary to the 1945 Constitution. The burden of proof is that the author's intent or negligence can be proven and used as evidence. to be considered by the jury assigned to review the case.

CONCLUSION

The term medical malpractice in Indonesian laws and regulations is not comprehensively regulated. However, medical procedures that violate professional standards, operational procedural standards and medical ethics can be subject to disciplinary sanctions. The disciplinary sanctions applied are administrative.

The Panel of Judges examining criminal cases in the Decision of the Makassar District Court Number: 1441/Pid.Sus/2019/PN.Mks., dated 01 July 2019, in making legal considerations in criminal cases regarding medical practice, still prioritizes the medical ethics approach which is focused on the results of the MKDKI decision and IDI both regionally and centrally. The imposition of criminal sanctions has the character of an ultimum remedium (last means) rather than a primum remedium (main means).

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