

Criminal Law Analysis of Health Crimes in Hospitals in the Context of Health Law

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Abstract— Health crimes in hospitals are a serious problem that can have a direct impact on patient safety and public trust in medical services. Criminal law plays an important role in dealing with various violations in the health sector, such as malpractice, medical negligence, and abuse of authority by medical personnel or hospital management. In the context of health law, criminal regulations aim to provide legal protection for patients and ensure that every provision of health services is in accordance with the set standards. Therefore, the analysis of the application of criminal law in health cases in hospitals is very relevant in efforts to uphold justice and prevent similar violations from occurring in the future. This study aims to examine how criminal law is applied to violations in the field of hospital health, both in terms of regulation and law implementation in the field. This analysis includes determining the elements of health crimes, the sanctions given, and the role of law enforcement officials in cracking down on cases that occur. By understanding how criminal law is applied in the hospital environment, this study is expected to provide recommendations to improve the effectiveness of law enforcement in the health sector. The research method used is a juridical-normative method, which focuses on analyzing the laws and regulations that regulate criminal acts in the health sector, such as Law Number 17 of 2023 concerning Health, as well as the provisions in the Criminal Code (KUHP). In addition, this study also examines legal doctrines and various court decisions related to health crime cases to understand how legal norms are applied in judicial practice. The results of the study show that although criminal law regulations have regulated sanctions against health crimes in hospitals, their implementation still faces various obstacles, such as difficulties in proving the element of negligence, lack of legal understanding among medical personnel, and weak supervision of health practices.

Keywords: *Criminal Law, Health Crimes, Hospitals, Malpractice, Health Law*

I. INTRODUCTION

Health is a fundamental right of every individual guaranteed by the constitution, as stipulated in Article 28H paragraph (1) of the 1945 Constitution which states that everyone has the right to live a prosperous life in birth and mind, to live, and to get a good living environment and the right to receive health services. Hospitals as one of the health service facilities play an important role in realizing these rights. However, in practice, various legal problems often

arise, including health crimes committed by medical personnel or hospital managers. This phenomenon raises the need for criminal law studies in the context of health law, in order to provide protection for patients and ensure the professionalism of medical personnel¹.

The background of this study is based on the fact that health crimes in hospitals are not only a problem of malpractice, but also include actions such as falsification of medical documents, corruption in the procurement of medical devices, abuse of drugs, to fatal negligence that causes the death of patients. Law Number 17 of 2023 concerning Health has updated various legal provisions previously regulated in Law Number 36 of 2009 and Law Number 44 of 2009 concerning Hospitals, providing a more comprehensive legal basis for handling health crimes. With this regulation, it is hoped that there will be no more legal loopholes that allow perpetrators of health crimes to avoid legal liability². The importance of this study lies in efforts to understand how criminal law plays a role in sanctioning violations in the health sector, especially in hospitals. Health crimes not only harm patients physically and mentally, but also damage public trust in health institutions. Therefore, this analysis aims to dig deeper into the role of criminal law in providing a deterrent effect for perpetrators and restoring a sense of security for the community in accessing health services. This study also aims to identify legal loopholes that allow impunity for violators, both individuals and institutions. By analyzing actual cases, it is hoped that patterns of violations and the effectiveness of the application of criminal law can be found. This analysis also helps formulate recommendations to strengthen the supervision and implementation of health laws in hospitals, especially in preventing and dealing with health crimes.

One of the relevant actual cases is a case of medical negligence that occurred at the Makassar City Regional General Hospital (RSUD) in 2023, where a patient died due to an error in administering the dose of anesthetic drugs. This case was then processed legally based on Article 360 of the Criminal Code concerning negligence causing death, and strengthened by the provisions of Law No. 17 of 2023 concerning Health³. The case is in the public spotlight because it raises a debate about the line between medical negligence and professional error, as well as how criminal law should be applied to protect patients' rights⁴.

¹ Constitution of the Republic of Indonesia in 1945, Article 28H paragraph (1).

² Law Number 17 of 2023 concerning Health.

³ Criminal Code (KUHP), Article 360.

⁴ Case of Alleged Medical Negligence at Makassar City Hospital, Doctor Threatened with Criminal Charges," Kompas, November 12, 2023.



By understanding the context of criminal law in handling health crimes in hospitals, it is hoped that this research can contribute to the development of health law in Indonesia. Furthermore, the results of this study are expected to be able to encourage increased legal awareness for medical personnel and hospital managers, so as to create a health service system that is safe, professional, and in accordance with applicable legal provisions. Dr. Redyanto Sidi, S.H., M.H., an expert in health law, has put forward several important views related to criminal law analysis of health crimes in hospitals. The following are his three main opinions: (1) Criminal Liability of Hospitals for Negligence of Medical Personnel, he emphasized that hospitals can be held criminally liable if there is negligence by medical personnel that results in losses to patients. He stated that hospitals have an obligation to ensure that all their medical personnel work in accordance with the established operational standards of procedures, and that negligence in supervision can have implications for the criminal liability of the institution⁵. (2) The Importance of Practice Permits for Medical Personnel emphasizes that medical personnel who practice without an official license not only violate administrative law but can also be subject to criminal sanctions. Possession of a practice license is considered a form of legal protection for doctors and patients, ensuring that health care is provided by competent and legally recognized professionals⁶. (3) Legal Protection for Doctors in Independent Practice examines aspects of legal protection for doctors who practice independently. He identified that doctors in independent practice are vulnerable to various lawsuits, both criminal and civil. Therefore, he suggested that doctors understand their rights and obligations in depth, and ensure that all medical and administrative procedures are carried out in accordance with applicable legal provisions to **minimize legal risks**.

II. LITERATURE REVIEW

Health Law Concepts

Health law is a branch of law that regulates the rights and obligations of individuals, health workers, and health institutions in the implementation of health services. The definition of health law includes laws and regulations aimed at protecting patient rights, regulating the practice of medical personnel, and ensuring safe and effective health service standards. According to Nurdin and Suryawati (2018), health law plays a role in maintaining a balance between the interests of individuals and society in the health sector, including legal protection for patients and health workers⁷.

The scope of health law includes various aspects such as medical law, pharmaceutical law, environmental law related to health, consumer protection law related to health products, and labor law in the health sector. In addition, health law also includes regulations on national health insurance, drug and food control, and public health policies.

This regulation is integrated in various legal instruments such as Health Law No. 17 of 2023 and its derivative regulations⁸.

The basic principles of health law include the principles of humanity, justice, benefits, and legal protection. The principle of humanity emphasizes that everyone has the right to health services without discrimination. The principle of justice ensures that the distribution of health resources is carried out evenly and proportionately. The principle of benefits aims to maximize the positive impact of health services on the community. Meanwhile, the principle of legal protection aims to protect the rights of patients and health workers from malpractice or negligence. These principles are the foundation for the formulation of policies and regulations in the health sector⁹.

Health Crimes

Health crimes in the context of hospitals are violations of the law committed by health workers or hospitals that result in losses to patients, both physically and non-physically. These types of crimes include medical malpractice, falsification of medical documents, and fatal negligence. Medical malpractice occurs when a healthcare worker performs an act that is contrary to professional standards or applicable laws, causing harm to the patient. Examples are misdiagnosis, wrong medical procedures, or administration of drugs that are not in accordance with indications. Meanwhile, falsification of medical documents includes altering medical records, fabricating examination results, or creating fake documents for certain purposes. These violations not only harm patients but also hurt public trust in health institutions¹⁰.

Fatal negligence is another form of health crime, where the actions or negligence of medical personnel results in the death or permanent disability of the patient. For example, failure to provide emergency care, neglect of critical patients, or use of non-sterile medical equipment. According to Health Law No. 17 of 2023, this criminal violation can be subject to sanctions in the form of imprisonment, fines, or revocation of practice licenses for health workers who are proven guilty¹¹. In addition, Article 359 of the Criminal Code also stipulates that a person who, due to his negligence, causes the death of another person, can be sentenced to a maximum of five years in prison¹². Therefore, legal awareness for medical personnel and hospital management is an important key to preventing health crimes and protecting the rights of patients.

Criminal Sanctions in Health Law

Criminal sanctions in health law in Indonesia are regulated in various laws and regulations, including the Criminal Code (KUHP) and the Health Law. The latest Criminal Code, namely Law Number 1 of 2023, classifies criminal sanctions into principal crimes, additional crimes, and crimes that are specific to certain criminal acts. The main crimes include prison sentences, cover-up crimes, supervision crimes, fine crimes, and social work crimes. Additional crimes include the revocation of certain rights, the confiscation of certain goods,

⁵ dewapublishing.com redyanto sidi

⁶ Riski Darwaman, RedyantoSidi, Yasmirah Mandasari Saragih (2023), "Legal Protection for Doctors in Health Services for Independent Doctor Practice", Journal of Nurses Vol. 7 No.1 Pages 225-231

⁷ Nurdin & Suryawati. (2018). *Health Law in Indonesia*. Jakarta: Kencana.

⁸ Law Number 17 of 2023 concerning Health.

⁹ Soekanto, S. (2019). *Basic Principles of Health Law*. Jakarta: Rajawali Press.

¹⁰ Nurdin & Suryawati. (2018). *Health Law in Indonesia*. Jakarta: Kencana.

¹¹ Law of the Republic of Indonesia Number 17 of 2023 concerning Health

¹² Law Number 1 of 2023 concerning the Criminal Code (KUHP)

the announcement of judges' decisions, the payment of compensation, the revocation of certain permits, and the fulfillment of local customary obligations. This arrangement provides a comprehensive legal framework in criminal law enforcement, including in the health sector¹³

In addition, Law Number 17 of 2023 concerning Health also regulates criminal sanctions for medical personnel or health workers who violate the law in health services. Article 308 paragraph (1) of the Health Law states that medical personnel or health workers who are suspected of committing unlawful acts in the implementation of health services can be subject to criminal sanctions, but must first go through a recommendation from the professional disciplinary assembly. This emphasizes the importance of professional assessment before criminal law enforcement is carried out, in order to ensure fairness and objectivity in the legal process¹⁴

Furthermore, Article 304 of the Health Law emphasizes the implementation of professional discipline enforcement to support the professionalism of medical personnel and health workers. The Minister of Health establishes a panel in charge of professional discipline, which is permanent or ad hoc, to determine whether there are disciplinary violations committed by medical personnel or health workers. This panel plays an important role in maintaining ethical and professional standards in the health sector, as well as being the initial filter before cases are brought to the criminal realm.

Legal Theory

Legal theory is a conceptual foundation used to understand, apply, and develop law in a society. One of the important theories is the theory of justice which is rooted in the idea that the law must create justice for all parties. Justice not only means formal equality in the eyes of the law, but also takes into account the social, economic, and cultural context in order to achieve substantive justice. According to Aristotle, justice is divided into distributive justice (granting rights in proportion) and corrective justice (correcting imbalances due to actions against *huku*)¹⁵ In addition, the theory of criminal liability discusses the principles of when a person can be held accountable for criminal acts committed. This theory is closely related to the principle of legality and the principle of error, where a person can only be sentenced if he has an element of error (*mens rea*) and commits an unlawful act (*actus reus*). In Indonesian criminal law, this principle is reflected in Article 2 of the 2023 Criminal Code which states that a person cannot be convicted except based on criminal provisions in the applicable laws and regulations before the act is¹⁶ committed.

The theory of legal certainty emphasizes that the law must be clear, consistent, and unchanging so that people can understand their rights and obligations. Legal certainty protects citizens from arbitrary actions by rulers and provides clarity regarding the legal consequences of each action. Gustav Radbruch stated that legal certainty is one of the purposes of law besides justice and utility¹⁷. In practice, legal

certainty helps judges in making objective decisions, thereby preventing bias and injustice in law enforcement.

III. METHOD

The research method used in the criminal law analysis of health crimes in hospitals is a qualitative approach with normative and descriptive legal analysis methods. The qualitative approach aims to understand the meaning, concepts, and legal principles related to health crimes through literature study and analysis of legal documents. Meanwhile, normative legal analysis is used to review relevant laws and regulations, such as Law Number 17 of 2023 concerning Health and the latest Criminal Code (KUHP), namely Law Number 1 of 2023. The study is also descriptive, which means it systematically describes how criminal provisions are applied in cases of health violations in hospitals, including malpractice, falsification of medical documents, and fatal negligence.

IV. RESULT AND DISCUSSION

Forms of Health Crimes in Hospitals

Health crimes in hospitals include various forms of violations that can harm patients and society. One form that often occurs is medical malpractice, where health workers commit negligence or actions that are not in accordance with professional standards, resulting in losses for patients. For example, errors in diagnosis or administration of the wrong dose of drugs can have a fatal impact on the patient's health. In addition, falsification of medical documents is also a serious criminal offense, such as manipulating medical records to cover up errors or for unauthorized insurance claims. Detention of a patient due to inability to pay for treatment is also a violation of the law, as it deprives a person of independence without a lawful basis. Another form is corruption in the procurement of medical equipment and drugs, which can have an impact on the quality of health services in hospitals.

One of the real cases that has occurred is the detention of patients by hospitals due to the inability to pay treatment costs. This act can be categorized as hostage-taking, which is a criminal act of depriving a person of their independence. According to the Explanation of Article 451 of Law Number 1 of 2023 concerning the Criminal Code (KUHP), hostage taking is carried out so that the person being held hostage remains at his place of residence or in another place and is carried out with violence or threats of violence. Therefore, the detention of patients by hospitals without a valid legal basis can be subject to criminal sanctions according to these provisions¹⁸.

In addition, there are cases of medical negligence that result in the exchange of newborn babies in hospitals. This negligence can occur due to the lack of thoroughness of

¹³ <https://peraturan.bpk.go.id/>

¹⁴ <https://www.mkri.id/>

¹⁵ Aristoteles. *Nicomachean Ethics*. Terjemahan: David Ross. Oxford: Oxford University Press, 2009.

¹⁶ Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code.

¹⁷ Radbruch, Gustav. *Philosophy of Law*. Heidelberg: C.F. Müller, 1946.

¹⁸ <https://www.hukumonline.com/>

nurses or other medical personnel in carrying out standard operational procedures. In the perspective of health law in Indonesia, hospitals as corporations can be held criminally liable for negligence committed by their staff, based on the employment relationship established between the two. This is in line with the provisions of the Health Law and the Hospital Law which regulate the responsibility of health service facilities for the actions of their medical personnel¹⁹.

Another case that has occurred is corruption in the procurement of health services, as revealed at the Dr. M. Haulussy Ambon Hospital. In this case, there are allegations of corruption related to medical check-ups for regional head elections from 2016 to 2020. This kind of corrupt practice not only harms the state's finances, but can also have an impact on the quality of health services provided by hospitals. Law enforcement against corruption cases in the health sector is regulated in applicable laws and regulations, including criminal provisions in the Criminal Code and other special laws²⁰.

To prevent and crack down on various forms of health crimes in hospitals, the Indonesian government has enacted comprehensive laws and regulations. Law Number 17 of 2023 concerning Health regulates sanctions for medical personnel or health facilities who commit violations, including provisions regarding malpractice and patient detention. In addition, the latest Criminal Code, namely Law Number 1 of 2023, also contains criminal provisions related to hostage-taking and other criminal acts relevant to the health sector. Firm and consistent law enforcement is expected to improve the quality of health services and protect the rights of patients in Indonesia.

Application of Criminal Law

The application of criminal law in the health sector in Indonesia aims to ensure that medical practices and other health services are carried out in accordance with established standards, as well as to protect patients' rights from adverse acts. Various laws and regulations have been drafted to regulate and supervise health practices, including Law Number 36 of 2009 concerning Health and Law Number 29 of 2004 concerning Medical Practice. These regulations establish criminal sanctions for violations that occur in health practices, such as medical malpractice, falsification of medical documents, and unauthorized practices. One form of violation that often occurs is medical malpractice, where health workers perform actions that are not in accordance with professional standards, resulting in losses for patients. Malpractice cases can be subject to criminal sanctions in accordance with applicable regulations. In addition, falsification of medical documents, such as manipulation of medical records to cover up errors or for unauthorized insurance claims, is also a serious criminal offense that can be subject to legal sanctions.

A relevant case study is the incidence of cough syrup poisoning that occurred in Indonesia in 2024. In this case, an Indonesian court ruled that local pharmaceutical companies, Afi Farma and CV Samudera Chemical, were

responsible for the deaths and injuries to children who consumed the toxic cough syrup. More than 200 children died, and about 120 others suffered serious injuries from consuming syrups containing ethylene glycol levels that exceeded international safe limits. The court ordered the companies to compensate the affected families, amounting to up to 60 million rupiah per family for the injured children, and 50 million rupiah for the families of the deceased children. However, many families are disappointed with the amount of compensation that is considered not proportional to the losses experienced. In addition, the Ministry of Health and the Food and Drug Supervisory Agency (BPOM) were acquitted of the charges in this case²¹.

Another case that can be an example is the practice of pharmacy without a license. In a study that analyzed court decisions, it was found that perpetrators who did not have the expertise and authority to carry out pharmaceutical practices were sentenced to criminal sanctions in accordance with Article 198 of Law Number 36 of 2009 concerning Health. The implementation of this criminal sanction aims to protect the public from the harm posed by illegal pharmaceutical practices that can endanger public health²². In addition, there are also cases of medical negligence that result in losses for patients. For example, in a court ruling, a medical worker was sentenced to a criminal penalty for performing an act that was not in accordance with professional standards, resulting in a deterioration in the patient's condition. This case shows that negligence in medical practice can lead to criminal liability for the perpetrator²³.

The application of criminal law in these cases of health violations demonstrates the Indonesian government's commitment to upholding safe and professional health practice standards. Through strict law enforcement, it is hoped that it can provide a deterrent effect for violators and prevent similar incidents from occurring in the future. In addition, consistent law enforcement is also important to build public trust in the health service system in Indonesia.

Obstacles to Law Enforcement

Law enforcement in the health sector in Indonesia faces various obstacles that hinder its effectiveness. One of the main factors is the lack of legal understanding among medical personnel. Many healthcare professionals do not fully understand the legal regulations and standards that govern medical practice, potentially leading to unintentional violations. The lack of socialization and legal education for medical personnel exacerbates this situation, resulting in non-compliance with applicable regulations. In addition, complex bureaucracy and complicated regulations are significant obstacles to health law enforcement. Long administrative processes and convoluted procedures often hinder the prompt handling of violations in the health sector. This delay can reduce the deterrent effect for violators and reduce public trust in the existing legal system. Simplification of procedures and bureaucratic reform are needed to increase responsiveness in health law enforcement.

¹⁹ Yandriza, Diana Arma (2023) "Criminal Liability of Hospitals for Nurses' Negligence That Resulted in the Confusion of Newborn Babies in the Perspective of Health Law in Indonesia" *Unes Law Review Journal* Vol. 6, No. 1 2023

²⁰ <https://maluku.bpk.go.id/>

²¹ <https://www.reuters.com>

²² <https://www.swarajustisia.unespadang.ac.id>

²³ Gede Arie Krishna Wirawan Putra, Jimmy Pello, Darius A. Kian "Juridical Review of the Criminal Punishment of Perpetrators of Gross Negligence Resulting in Death for Patients" Vol.2, No.2 May 2024

Weak supervision is also an inhibiting factor in law enforcement in the health sector. The lack of coordination between relevant agencies, such as the Ministry of Health and the Food and Drug Control Agency (BPOM), as well as limited human resources and budgets, leads to suboptimal supervision of medical practices and drug distribution. This opens up loopholes for violations such as malpractice and the circulation of illegal drugs that endanger the community.

A relevant case study is the incidence of cough syrup poisoning that occurred in Indonesia in 2024. In this case, an Indonesian court ruled that local pharmaceutical companies, Afi Farma and CV Samudera Chemical, were responsible for the deaths and injuries to children who consumed the toxic cough syrup. More than 200 children died, and about 120 others suffered serious injuries from consuming syrups containing ethylene glycol levels that exceeded international safe limits. The court ordered the companies to compensate the affected families, amounting to up to 60 million rupiah per family for the injured children, and 50 million rupiah for the families of the deceased children. However, many families are disappointed with the amount of compensation that is considered not proportional to the losses experienced. In addition, the Ministry of Health and the Food and Drug Supervisory Agency (BPOM) were acquitted of the charges in this case²⁴.

This case illustrates how weak supervision and coordination between institutions can contribute to serious violations in the health sector. The lack of preventive measures and quick response from relevant agencies exacerbates the negative impact felt by the community. Therefore, increased supervision, better coordination between institutions, and strict law enforcement are key in preventing similar incidents in the future.

To overcome these various obstacles, comprehensive efforts involving various parties are needed. Improving legal education and training for medical personnel, bureaucratic reform to simplify law enforcement procedures, and strengthening supervision through increased resources and coordination between institutions are strategic steps that must be taken. Thus, law enforcement in the health sector can run more effectively, protect the public, and ensure high standards of health services.

V. CONCLUSION

Conclusion

Forms of health crimes that occur in hospitals include various serious violations, such as medical malpractice, falsification of health documents, fatal negligence, and drug abuse. Malpractice, for example, includes the actions of medical personnel who are negligent or deviate from standard operating procedures to cause harm to patients. Meanwhile, falsification of medical documents often occurs in the form of manipulation of medical records to avoid legal liability. All of these forms of violations have

a major impact, both on patient safety and the credibility of health institutions.

The application of criminal law to these violations has been regulated in various regulations, including the Criminal Code (KUHP) of 2023 and Health Law No. 17 of 2023. This provision provides a legal basis to take action against perpetrators of health violations, both through imprisonment, fines, and revocation of practice licenses. In certain cases, such as malpractice that results in the death of a patient, criminal law acts as a repressive tool to provide a deterrent effect. However, the implementation of punishment often faces various challenges, especially in gathering evidence and proving elements of error in medical procedures.

The obstacles in criminal law enforcement in the field of hospital health are quite complex. The main inhibiting factors include low understanding of the law among medical personnel, so many are unaware of the legal implications of the actions of medical personnel. In addition, complicated bureaucracy and sluggish legal processes exacerbate efforts to deal with violations effectively. Weak supervision and lack of coordination between agencies also open up opportunities for illegal actions in the health sector. Cases such as cough syrup poisoning involving pharmaceutical companies in Indonesia show how weak supervision can lead to major tragedies for society. Thus, concrete steps are needed to strengthen criminal law enforcement in the health sector. Legal education for medical personnel, bureaucratic reform to speed up the legal process, and strict supervision by relevant institutions are key to preventing violations and ensuring legal protection for patients. Strict and transparent law enforcement is also important to restore public trust in the health system and the law in Indonesia.

Suggestion

To strengthen criminal law enforcement in the context of health, solid collaboration between hospitals, legal practitioners, and the government is needed. Hospitals as the frontline of health services need to increase legal awareness among medical personnel. This can be done through regular legal training, especially related to health law and criminal implications in medical practice. In addition, hospitals must strengthen their internal oversight systems, such as forming a legal compliance team that monitors potential violations and ensures that all medical procedures are carried out in accordance with applicable operational standards.

For legal practitioners, it is important to deepen their understanding of the technical aspects of medicine in order to make the legal process fairer and more objective. Legal practitioners can also play an active role in providing legal advice to medical personnel and assisting hospitals in drafting internal policies that are in line with criminal regulations in the health sector. Furthermore, synergy between lawyers, prosecutors, and judges is needed to handle health criminal cases professionally, ensuring that every legal decision is not only based on formal rules, but also takes into account the principle of justice for all parties.

On the other hand, the government has a strategic role in strengthening regulation and supervision in the health sector. Concrete steps that can be taken include simplifying the

²⁴ <https://www.reuters.com/business/healthcare-pharmaceuticals/indonesia-court-finds-drugmakers-fault-over-toxic-cough-syrup-awards-parents-2024-08-23/>

bureaucracy to accelerate the criminal law process, increasing the budget for supervisory institutions such as the Ministry of Health and BPOM, and strengthening coordination between related agencies. The government also needs to encourage the revision of relevant laws to fill legal loopholes that can potentially be exploited by violators. Finally, transparency in the settlement of health crime cases is important so that the public believes that the law is really enforced indiscriminately.

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