PERTANGGUNGJAWABAN PIDANA BAGI DOKTER DALAM MALPRAKTIK MEDIK DI RUMAH SAKIT

CRIMINAL LIABILITY FOR DOCTORS IN HOSPITAL MEDICAL MALPRACTICE

Amir Ilyas,¹ Aswanto² Andi Sofyan,³ Slamet Sampurno⁴

¹ Bagian Program Pascasarjana Program Doktor Fakultas Hukum, Universitas Hasanuddin, Makassar
²Dekan Fakultas Hukum, Universitas Hasanuddin, Makassar
³Bagian Hukum Pidana, Fakultas Hukum, Universitas Hasanuddin, Makassar
⁴Bagian Hukum Pidana, Fakultas Hukum, Universitas Hasanuddin, Makassar

Alamat Koresponden:
Alamat: BTP Blok M, No. 86
Email: amir_uh_unhas@yahoo.com
Hp. 08134141047
Absrak

Kesehatan merupakan hak asasi manusia dan salah satu unsur kesejahteraan yang harus digarap oleh masyarakat sesuai dengan cita-cita bangsa Indonesia. Penelitian ini bertujuan untuk mengetahui pertanggungjawaban profesi yang ideal terhadap adanya dugaan malpraktik medic bagi dokter di rumah sakit. Bertujuan pula untuk mengetahui pertanggungjawaban pidana bagi dokter dalam malpraktik medic di rumah sakit, serta untuk mengetahui penerapan teori pemidanaan terhadap sanksi tindak pidana malpraktik medic yang dilakukan dokter di rumah sakit. Tipe penelitian yang digunakan adalah tipe penelitian normatif, selanjutnya untuk mendalami dan menilai masalah pertanggungjawaban tersebut, maka pendekatan atau sudut pandang yang digunakan adalah sudut pandang yuridis maupun sosiologis. Hasil penelitian menunjukkan bahwa mekanisme pertanggungjawaban profesi terhadap adanya dugaan malpraktik medic bagi dokter di rumah sakit dilakukan dengan cara mengidentifikasi jenis malpraktik yang dilakukan oleh dokter, jika malpraktik tersebut merupakan pelanggaran etika, maka penyelesaiannya diserahkan kepada MKEK, selanjutnya jika dalam pelanggaran tersebut terdapat unsure pelanggaran disiplin maka penanganannya diserahkan kepada MKDKI. Selanjutnya, jika dalam pelanggaran tersebut terdapat unsure pidananya, maka penyelesaiannya akan dilakukan menurut proses hukum pidana. Mekanisme ini tidak bersifat hierarkis, sehingga meskipun dugaan malpraktik medic terbukti memenuhi unsure tindak pidana proses pemeriksaan MKEK dan MKDKI tetap berjalan. Teori pemidanaan terhadap dokter harus didasarkan pada tingkat kesalahan sebagaimana berikut ini: Jika kesalahannya berupa sengaja sebagai maksud maka teori yang tepat adalah teori pembalasan, jika kesalahannya berupa sengaja sadar aka kepastian dan sengaja sadar akan kemungkinan seharusnya menggunakan teori gabungan, dan jika yang dilakukan adalah delik culpa, baik culpa lata maupun culpa levis maka teori yang digunakan adalah teori tujuan.

Kata kunci: pertanggungjawaban profesi, pertanggungjawaban pidana, malpraktik medic.

Abstarct

Health represent human right and one the prosperity element which must be realized in the form of giving various health effort to entire/all society through management of development health which with quality and reached society as according to Indonesian nation aspiration. This research aim to know responsibility of ideal profession to existence of anticipation of malpractice medic to doctor at home pain. Aim to also to know responsibility of crime to doctor in medic malpractice at home pain, and also to know applying of crime theory to doing an injustice sanction of malpractice conducted by medic is doctor at home pain. Research type the used is type research normative, hereinafter to deepen and assess the problem responsibility, hence viewpoint approach the used is viewpoint yuridis and also sosiologis. Result of research indicate that mechanism responsibility profession to existence anticipation malpractice medic to ill doctor at home conducted identifying type malpractice conducted doctor, if the malpractice represent collision of ethics, hence its solution is delivered to MKEK, hereinafter if in the collision there are unsure malpractice discipline hence its handling is delivered to MKDKI. Hereinafter, if in the collision there are its crime unsure, hence its solution will be conducted according to criminal law process. This mechanism do not have the character hierarkis, so that though anticipation malpractice proven medic fulfill doing an injustice unsure process inspection of MKEK and MKDKI remain to walk. Crime theory to doctor have to be relied on mistake storey;level as following: If its mistake in the form of intending as intention hence correct theory is retaliation theory, if its mistake in the form intending conciousness aka certainty and intend aware possibility ought to use alliance theory, and if taken is glaring at culpa, good of culpa slither and also Levis culpa hence theory which is used is theory is target of.

Keyword: responsibility of profession, responsibility of crime, medic malpractice
INTRODUCTION

Health represents human right and one the prosperity element which must be realized in the form giving various health effort to entire/all society through management development health which with quality and reached society as according to Indonesian nation aspiration as referred to in Five Principles and Constitution State Republic Of Indonesia Year 1945. Development in health area instructed by tired utilizing awareness, ability and willingness for healthy life for every resident, to be can realize degree optimal health to society with separate characteristic which influenced by growth health science, progress technology and life economic social of society which must fixed can improve more certifiable service and reached by society to be form degree health which at the farthest, in order to reaching Indonesian nation aspiration. Punish its health of him still very relative newly its growth in Indonesia which is initialy developed by Fred Ameln and Alm. Oetama in the form medical jurisprudence. Scope punish health, ( J. Guwandi, 2005). Health law aim to to increase awareness each and everyone to be form degree optimal health, and goodness wisdom, and also protect freedom and importance society to arbitrary so that giving service health can be executed better.

Bibliography doctor law in general mention that in running its profession, a doctor is not can guarantee patient recovering. Like known, human being body full specification and possibilities. Existence doctor is obliged to labour healing its patient, so-called also contract terapeutik. In this case, is not mean doctor have to guarantee its result. If emerging result from medical action which do not be expected by like death, fully become pertinent patient risk, law only requiring a competent and fair medication standard. If patient die caused by indolence its doctor ( indolence) or is reckless, hence will not help x'self if he prove that he have diligent in curing patient if that patient have died because harsh mistake of him and less its its (J. Guwandi, 2006).

Link between patient and doctor based on three link aspect, that is: sis link, moral link, and contractual terms. In elementary sis link between patient doctor is on the basis trust patient ability doctor to cope as maximum heal its suffered disease. In moral link based by moral methods in execution obligation doctor and obligation patient. Contractual terms between patient and doctor relied on reciprocal rights and obligations. Doctor rights become obligation patient rights and patient become obligation doctor, that situation place to domicile patient and doctor at dimiciling is same and on an equal,( Wila Chandrawila Supriadi, 2001).
Mengacu pada KUHP, jenis tindak pidana yang dapat didakwakan kepada dokter yang melakukan mal praktek dalam menjalankan profesiannya, diantaranya adalah tindak pidana kelalaian yang mengakibatkan luka atau luka berat (Pasal 360 KUHP) ataupun mengakibatkan kematian (Pasal 359 KUHP), yang dikualifikasikan dengan pemberatan ancaman pidananya bila dilakukan dalam rangka melakukan pekerjaannya (Pasal 361 KUHP). Sedangkan pidana lain yang bukan kelalaian yang mungkin didakwakan diantaranya adalah pembuatan keterangan palsu (Pasal 267-268 KUHP), aborsi illegal (Pasal 349 KUHP jo Pasal 347 dan 348 KUHP), penipuan (Pasal 382 bis), serta euthanasia (Pasal 344 KUHP).

Is evaluated from criminal law aspect, in the event malpractice in link between patient and doctor a doctor can be punished pursuant to order in criminal law, anticipation malpractice sis intentionally might not so much happened, most malpractice happened outside existence intentional element or because medical negligence which conducted by doctor in running its profession, (Indar, 2004). In a condition this criminal law putting down negligence element as a(n) mistake form course give meaning that the doctor do not free from responsibility crime, For example Case malpractice related/relevant of Number decision 455 K/Pid/2010, with Defendant dr. TAUFIK WAHYUDI, Sp.Og Bin DR. RUSLI MAHADY. broken Ceremony Judge that defendant have neglected in executing its duty as midwifery specialist doctor and content. How do not, operation having taken steps, is in the reality found is sticky of segment under old operation hurt womb contained urine ( old infection anticipation) at stomach victim which because left behind its of lint at the (time) victim in operation by defendant,( Roeslan Saleh,1981).

Chazawi Adami mention that sis malpractice happened if doctor or one who is in under its comand designedly or because negligence conduct deed ( passive or active) in sis practice to its patient in all level which impinge profession standard, procedure standard, or doctor principles, or impinged punish without authority, by generating effect loss to body, health physical, and also bounce and or patient soul and on that account forming responsibility law to doctor,( Adami Chazawi, 2007). According to Munir Fuady, to be a doctor action can be classified as action malpractice shall fulfill elements yuridis the following: ( 1) Existence action in meaning " doing" or is " no action" ( neglecting); ( 2) the Action conducted doctor or by people below/under its observation ( like by nurse), even also by supervisor health facility, like hospital, clinic, apotek, etc; ( 3) the Action in the form of sis action, good in the form diagnostic
action, therapy or also health management; ( 4) the Action conducted to its patient; ( 5) the Action conducted : ( a) ly Impinge law and or; ( b) Impinge making proper, and or; ( c) Impinge ethics, and or, ( d) Impinge principles profesionalitas, ( Munir Fuadi, 2005). This research aim To know responsibility ideal profession to existence anticipation malpractice sis to doctor at home pain.

METHOD RESEARCH

Approach of Problem

Because this writing represent masterpiece write erudite in area punish hence method the used is method research Law,( Peter Machmud Marzuki, 2001), Type Research in this dissertation is research law normatif using approach legislation ( approach statute) that is with studying and analysing some relevant and interconnected law with this topic problem to check. Besides is also conducted by approach case ( approach case) that is with analysing case malpractice Sis that happened at home Pain. Writing this dissertation also use research empirical law as supporter information where this research will check primary data in the form obtained data directly from responder which have been specified as sampel direct interview and also through kuisioner.

Type Data

Data Primary, that obtained data is direct the than all responder which have been specified as sampel direct interview using guidance interview ( Interview Guide). Data Sekunder, that obtained data by tracing literature which consist rules concerning doctor practice.

Analysis Materials Law

Procedure and processing materialss punish to through bibliography study registering law and regulation, law textbooks, legal dictionary, journals punish and seminar handing out to obtain;get materials punish matching with problem formula to be studied. Is later;then compiled systematically pursuant to discussion fundamental in research and identified by used upon which analyse. Pursuant to result analysis and research will be pulled by a conclusion solution formula is problem and provided with looked into suggestions be benefit to growth criminal law and Law Health Specially.
RESULT

Tables 1 indicating that from 100 responder people digressing doctor secret, respecting patient rights and conduct help emergency have presentation which is good compared honest and transparent there are some reason which is writer get why hesitating doctor in be honest and transparent the core important to patient which condition its difficult health medically healed, there is also about problem drug which ought to use drug exist in hospital but patient transferred by exit to buy certain in place. and most surprising with storey;level permission sis which only conducting till 20 %, in the reality most all conducted operations the core important at home pain which enter education faculty mediciness Unhas Permission this sis is conducted expert assistant or residen from at specialist doctor as underwriter of answer.

Pursuant to picture 2, related/relevant is solving medical dispute and its growth follow change to regulasi going into effect, hence can be concluded that risingly Law Number 29 Year 2004 about practice Doctor that each and everyone which is its importance is harmed doctor action can inform against its case to Honorary Ceremony of Discipline Doctor Indonesia (MKDKI) in writing, or oral otherwise can inform against in writing. MKDKI conduct inspection and give decision denunciating. If found by collision that happened hence MKDKI will continue handling the denunciating MKEK IDI. Hereinafter if there are collision discipline doctor, MKDKI can give discipline sanction in the form commemoration written, recommendation repeal Letter Sign Registration (STR), or Letter Of Licence practice (SIP) is obliged to follow education / training return in Institution Education Doctor. Its Target is the straightening doctor discipline, that is straightening orders and/or rule its applying in link with patient.

DISCUSSION

Mechanism responsibility profession existence anticipation malpractice sis ill doctor at home conducted identifying type malpractice conducted doctor, if the malpractice represent collision ethics, hence its solution is delivered MKEK, hereinafter if in the collision there are element collision discipline hence its handling is delivered to MKDKI.

In verification conference, can MKEK ask attendance expert eyewitness and eyewitness. Eyewitness is medical energy, health energy, health medium head, sis committee, individual or other health practitioner which hear see is existing of its direct bearing with occurence / informed against doctor case. While expert eyewitness is doctor owning science and membership which is
not be direct related/relevant with occurence / case and act to have blood relation on duty with doctor confronted with squealer patient.

Authoritative MKEK IDI medical audit according Section 22 sentence ( 1) about denunciating in guidance managery and organization work MKEK IDI. As for medical audit function in service health, place formed medical audit face the problem generated rule law and which complicated enough queer and with very complex problems. By realizing the mentioned, observation possibility collision etic need in improving. Functioned medical audit mechanism, needed by the existence a operational standard as measuring rod to control the quality medical service. this Operational standard aim to arrange until how far boundarys Authority and responsibility etic doctor law and patient, and also hospital responsibility staff medical conversely, (Bahder Johan Nasution, 2005).

this Operational standard also will arrange link between medical energy with all doctor humanity coleage in one team, medical energy with all medical, and also represent yardstick as doctor assess earn do not is him asked by responsibility its law if happened loss to patient. Medical audit at its nucleus;core none other than prevent possibilities the happening and maltreatment malpractice and also try look for solution, (Bahder Johan Nasution, 2005). Medical audit professional which is conducted by MKEK IDI have all conditions determine, do a doctor have acted according do not with medical procedure doctor profession standard. Member MKEK IDI usually consist all experienced senior doctor in the field each him as according its specialization, and also dedicate high is and also confessed its in service health Doctor colleague humanity.

One the MKDKI authority pursuant rule Section 64 sentence ( a) UU No. 29 Year 2004 is accept denunciating, checking and deciding case collision Doctor discipline and Dentist which is raised. In running its duty, Honorary Ceremony of Discipline Indonesia hold responsible tKonsil Doctor Indonesia. Honorary Ceremony is Doctor Indonesia domicile in State'S Capital. Honorary Ceremony of Discipline Doctor in storey;level provinsi can be formed Konsil Doctor Indonesia at the instance Honorary Ceremony of Discipline Doctor Indonesia.

In the case of denunciating in doctor praktik, arranged by at Section 66 sentence ( 1) UU No. 29 Year 2004 determining that Each and everyone knowing or its importance is harmed doctor action or dentist in running doctor practice can inform against in writing to Honorary Chief Ceremony Discipline Doctor Indonesia. This Denunciating shall load squealer identity,
name and place address of practice dentist doctor and action time conducted, and reason denunciating. Responsibility mechanism doctor practice through this MKDKI, pursuant rule Section 66 sentence (3) UU No. 29 Year 2004 do not eliminate rights each and everyone report the existence doing injustice anticipation side charge and sue loss civil justice, (Anny Isfandyarie, 2005).

In solving sis dispute through this MDKI, there procedure finished mediasi, negotiation and also reconciliation between Doctor Dentist with patient and I have the power it, and MDKI unqualified decide indemnation pertinent patient. That why the existence denunciating MDKI do not eliminate patient rights the case reporting the existence doing injustice anticipation side charge sue loss civil justice, (Dwidja Priyanto, 2006).

CONCLUSION AND SUGGESTION

Pursuant breakdown solution have is explained above, hence writer conclude that Mechanism responsibility profession existence anticipation malpractice sis ill doctor home conducted identifying type malpractice conducted doctor, the malpractice represent collision ethics, hence its solution is delivered MKEK, hereinafter in the collision there are element collision discipline hence its handling is delivered MKDKI. Hereinafter, in the collision there are its doing injustice element, hence its solution will conducted according criminal law process. This mechanism do not have the character hierarkis, so that though anticipation malpractice proven sis fulfill doing injustice element process inspection MKEK and MKDKI remain to walk. Profession organization ought and or hospital side the (time) finding the existence collision discipline or etic owning transgression potency can have the character active conduct reporting side in charge, so even also for MKDKI better be formed to be mounted by provinsi accommodate sigh society which feel getting disadvantage service doctor at home pain.
BIBLIOGRAPHY


Tabel 1. Kuesioner terhadap beberapa dokter dengan hasil pengolahan data

<table>
<thead>
<tr>
<th>No.</th>
<th>Pertanyaan</th>
<th>ya</th>
<th>Ragu-ragu</th>
<th>Tidak pernah</th>
</tr>
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<tr>
<td>1.</td>
<td>Menyimpan Rahasia Kedokteran</td>
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<td>(87%)</td>
<td>13</td>
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<tr>
<td>2.</td>
<td>Bersikap Jujur dan transparan</td>
<td>60</td>
<td>(60%)</td>
<td>25</td>
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<tr>
<td>3.</td>
<td>Menghormati hak-hak pasien</td>
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<td>(88%)</td>
<td>12</td>
</tr>
<tr>
<td>4.</td>
<td>Melakukan pertolongan darurat</td>
<td>95</td>
<td>(95%)</td>
<td>5</td>
</tr>
<tr>
<td>5.</td>
<td>Membuat persetujuan/ Informed Consent</td>
<td>20</td>
<td>(20%)</td>
<td>50</td>
</tr>
</tbody>
</table>

Gambar 1: Penanganan Pelanggaran Disiplin Kedokteran