

CRIMINAL LIABILITY OF DOCTORS WITHOUT A LICENSE TO PRACTICE IN THE PERSPECTIVE OF PROTECTION & LEGAL CERTAINTY FOR THE MEDICAL PROFESSION

(Analysis of Supreme Court Decision No.1110/K/Pid.Sus/2012)

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ABSTRACT

Background: To provide health services in Indonesia, a doctor must have a standardized License to Practice. When a doctor has completed medical education and is considered competent, according to the rules of the Indonesian Medical Council (KKI), a Registration Certificate will be issued. After the Registration Certificate is issued, then doctor can apply for a License to Practice. Problems related to the License to Practice are of course problematic for a doctor because there is a limit of three places to provide health services, and a doctor will certainly have doubts if he encounters an emergency condition due to the limited ownership of the License to Practice. **Objective:** This study aims to determine the criminal liability of doctors without a License to Practice from the perspective of protection and legal certainty for doctors by analyzing Supreme Court Decision No. 1110/K/Pid.Sus/2012. **Design:** This research uses the normative method. Normative legal research is studied based on rules or norms that are the basis for behavior in accordance with the rules that apply in society that are considered appropriate and in accordance with the national legal system. **Results:** The result of this research is the Supreme Court Decision that imposes a criminal sentence of 1 year and 6 months for the defendant does not realize legal certainty and protection for doctors. **Conclusion:** (1) The involvement of the Medical Committee and/or the Indonesian Medical Discipline Honor Council (MKDKI) is needed in determining the criteria for doctor error. (2) The criminal decision of the Supreme Court has also heeded Constitutional Court Decision Number 4/PPUU-V/2007, which has abolished the criminal act articles in Law Number 29 of 2004 concerning Medical Practice.

Keywords: Doctor, Liability, License to Practice, Legal Certainty and Protection

INTRODUCTION

The development of the world of health today is quite rapid, not only regarding the various diseases that arise but also disease management technology and supporting facilities that are increasingly sophisticated. Unfortunately, this is not directly proportional to the regulations governing health care relationships, so it is possible to cause legal problems in health care, especially those related to the relationship between patients and doctors and hospitals and hospital staff (Muntaha, 2019).

The position of doctors as professionals in the medical field has an active role in medical services, and patients as recipients of medical services have an assessment of the appearance and quality of the medical services they receive. This is because doctors not only carry out work to serve or provide help, but also carry out a profession that is bound by a professional code of ethics. The position of the patient, who was originally only a party dependent on the doctor in determining the way of healing (therapy), has now changed to that of a party equal to the doctor. Doctors should no longer ignore the consideration of the patient's opinion in choosing a method of treatment, including determining whether surgery is needed or not (Widodo, 2017).

In addition, in order to carry out health services in Indonesia, a doctor must have a standardized doctor's license to practice. This practice license has certainly been systematically regulated with a tiered implementation method. When a doctor has completed medical education and is considered competent, the Indonesian Medical Council (KKI) will issue a Registration Certificate (STR). With the issuance of this STR, only then can a doctor apply for and issue a Practice License (SIP) through the health office. In providing health services, a doctor must generally comply with general medical standards, medical professional standards, and operational standards. If the doctor does not do his job according to operational standards, this will certainly be contrary to the medical profession, so violations of the profession and standard procedures are a condition for medical malpractice (Komalawati, 2002).

Forms of violations committed by doctors against their authority and obligations can take the form of ethical violations, disciplinary violations, or administrative violations. If a doctor is found to have committed an act of malpractice, from a legal perspective, the doctor has violated the doctor's discipline. In fact, Indonesian positive law does not recognize the term malpractice, either in Law Number 29 of 2004 concerning Medical Practice, which is only mentioned as a violation of doctor discipline, or in Article 58 of Law 36 of 2009 concerning health, which states the following: (1) Every person has the right to claim compensation against a health worker or health provider who causes losses due to errors or negligence in the health services they receive; (2) The claim for compensation as referred to in paragraph (1) does not apply to health workers who carry out life-saving measures or prevent someone's disability in an emergency; (3) Provisions for procedures for conducting prosecutions as referred to in paragraph (1) shall be regulated in accordance with the provisions of laws and regulations.

Professional mistakes made by doctors include mistakes due to unreasonable actions and mistakes due to a lack of skill or loyalty in carrying out their professional obligations or trust. Therefore, what is called professional error in the medical field (medical malpractice) is an error in carrying out the medical profession in accordance with the standards of the medical profession or not performing medical actions according to certain measures based on the medical knowledge and experience that the average doctor has according to the situation and conditions in which the medical act is carried out.

Problems related to the License to Practice are of course problematic for a doctor because there is a limit of three places to provide health services, and a doctor will certainly have doubts if he encounters an emergency condition due to the limited ownership of a License to Practice. Supreme Court Cassation Decision Number: 1110K/Pid.Sus/2012, which sentenced a doctor to imprisonment for 1 (one) year and 6 (six) months. This has consequences for the medical profession and raises the perception of an absence of protection and legal certainty for the medical profession.

RESEARCH METHODS

The research method used by the author in this research are a statutory approach (statue approach) and a case approach, where this approach is carried out by the author to examine all statutory regulations on legal issues and problems to be discussed (Marzuki, 2008). The research conducted by the author uses library research techniques or studies that are better known by examining existing documents. The analysis technique is qualitative analysis to draw conclusions deductively.

RESULTS AND DISCUSSION

Analysis of Criminal Liability in the Judge's Decision from the Perspective of Protection and Legal Certainty for the Doctor Profession

1. Legal Certainty Perspective

Legal certainty will ensure that a person conducts behavior in accordance with applicable legal provisions; otherwise, without legal certainty, a person does not have standard provisions for carrying out behavior. Thus, it is not wrong if Gustav Radbruch suggests certainty as one of the objectives of the law. In the system of community life is closely related to certainty in law. Legal certainty is in accordance with normative provisions and judges' decisions. Legal certainty refers to the implementation of a system of life that is clear, orderly, consistent, and consequent and it cannot be influenced by subjective circumstances in people's lives (Susanto, 2014). The regularity of society is closely related to certainty in law because regularity is the essence of certainty itself. Regularity causes people to live with certainty so that they can carry out the activities needed in social life. Legal certainty is a question that can only be answered normatively, not sociologically. Normative legal certainty is when a regulation is made and promulgated with certainty because it regulates clearly and logically. Clear in the sense that it does not cause doubts (multi-interpretation) and logical in the sense that it becomes a system of norms with other norms so that it does not clash or cause norm conflicts. (Arizona, 2008)

According to Peter Mahmud Marzuki, the concept of legal certainty suggests the following: Legal certainty contains two meanings: first, the existence of general rules that make individuals know what actions can or cannot be taken, and second, the legal security of individuals from government arbitrariness because of the general rules that make individuals know what the state can impose or do to them. Legal certainty is not only in the form of articles in the law but also consistency in other judges' decisions for similar cases that have been decided (Marzuki, 2008).

From the descriptions of legal certainty above, certainty can contain several meanings, namely clarity, it does not cause multiple interpretations, does not contain contradictions, and can be implemented. The law must apply firmly in society and contain openness so that anyone can understand the meaning of a legal provision. Laws must not be contradictory with one another and can be implemented to guarantee the rights and obligations of every citizen in accordance with the existing culture of society (Wignjosoebroto, 2006).

Regarding Supreme Court decision No. 1110 K/Pid.Sus/2012, which decided on imprisonment for 1 (one) year and 6 (six) months, this does not realize legal certainty for the medical profession. The settlement of medical disputes is often brought to court with criminal and civil threats, but the question remains whether the court is able to prove the truth in the medical field, even if doctors or medical personnel are expert witnesses, and whether judges can understand the opinions of the medical world. To determine the criteria for a doctor's medical error, which is not only based on errors in criminal law but it must be proven first from the aspect of medical discipline by means of a medical audit through a medical committee as stipulated in the Minister of Health Regulation No. 755 of 2011 concerning the Implementation of Medical Committees in Hospitals, doctors who are suspected of committing medical errors should be proven guilty first through a medical audit conducted by the Medical Committee. If proven to have committed a medical error, then the results of the audit can be used as a basis for law enforcement to determine guilt under criminal law so that it can be held criminally liable. The medical audit conducted by the Medical Committee is the most important part for law enforcement to determine the criminal guilt of the defendant (the doctor). Because if it is not proven to make medical errors in the absence of violations of medical disciplines through medical audits, then the Public Prosecutor also cannot determine the criminal guilt of the defendant (doctor). It should be noted that to prove the criminal guilt of the defendant (doctor) in the act of medicine, every law enforcer (Police, Public prosecutor, and Judge) must use the medical audit conducted by the Medical Committee as the main benchmark for proving criminal guilt, which, if proven to have made a mistake, it can only be used as a criminal offense so that it can be held criminally liable (Buamona, 2014). In this case, there is no visible role for the Medical Committee in auditing alleged medical errors by doctors.

2. Legal Protection Perspective

According to Fitzgerald, the theory of legal protection is that the law aims to integrate and coordinate various interests in society because, in traffic of interests, protection of certain interests can only be done by limiting various interests on the other hand. The interest of the law is to take care of human rights and interests, so the law has the highest authority to determine human interests that need to be regulated and protected. Legal protection must see the stages, namely legal protection born from a legal provision and all legal regulations given by the community, which is basically an agreement of the community to regulate behavioral

relationships between members of the community and between individuals and the government, which is considered to represent the interests of society (Rahardjo, 2000).

Legal protection is an action or effort to protect the public from arbitrary actions by the authorities that are not in accordance with the rule of law and to create order and peace so as to enable humans to enjoy their dignity as human beings (Setiono, 2004).

Article 50 of Law Number 29 of 2004 concerning Medical Practice clearly states that doctors or dentists are entitled to legal protection as long as it is in accordance with professional standards and standard operating procedures. Meanwhile, Law Number 26 of 2009 concerning Health states that health workers are entitled to compensation and legal protection in carrying out their duties in accordance with their profession, and in the event that health workers are suspected of negligence, the settlement is first reached through mediation.

Doctors who have carried out their duties in accordance with professional standards, service standards and standard operating procedures are entitled to legal protection. In carrying out medical practices, doctors must fulfill informed consent and medical records as evidence that can free doctors from all lawsuits in the event of alleged medical criminal acts (Satria, 2019).

Regarding Supreme Court Decision Number: 110K/Pid.Sus/2012, which stipulate a criminal sentence of 1 year and 6 months, it can cause the absence of legal protection for the medical profession. The criminal decision of the Supreme Court has heeded Constitutional Court Decision Number 4/PUU-V/2007, in which the contents of the Constitutional Court's decision are: Stating Article 75 paragraph (1) and Article 76 insofar as the words "imprisonment for a maximum of three years or" and Article 79 insofar as the words "confinement for a maximum of one year or" and Article 79 letter c insofar as the words "or letter e" of Law Number 29 of 2004 concerning Medical Practices are contrary to Article 28G of the 1945 Constitution because they do not have binding legal force. The criminal articles in Law Number 29 of 2004 Concerning Medical Practice essentially do not provide legal protection to the medical profession. The Supreme Court's decision imposing imprisonment will lead to the practice of medicine that is full of fear (negative defensive professional practice), namely, doctors tend to examine by using all types of supporting examinations just to obtain medical evidence that can be used as evidence of self-defense (Setiadi, 2006). This has an impact on the cost of treatment, which is more expensive than it should be, and this can affect public trust in doctors and create insecurity in carrying out the doctor's profession in providing health services to the community. Therefore, the criminal decision is not appropriate to be applied to the settlement of the case.

The Constitutional Court Decision Number 4/PUU-V/2007, which abolished criminal sanctions in Law Number 29 of 2004 concerning Medical Practice, provides legal protection for the medical profession in carrying out its profession so as not to criminalize administrative actions carried out by doctors, which can make doctors always threatened and anxious in carrying out their duties. With the decision of the Constitutional Court, the Judge should also not immediately impose imprisonment for doctors related to administrative malpractice. Imprisonment is inappropriate and disproportionate because the provision of criminal sanctions should pay attention to the precepts of humanist legal protection for doctors.

CONCLUSIONS

The Supreme Court Decision No.1110/K/Pid.Sus/2012 which decided on imprisonment for 1 (one) year and 6 (six) months did not realize legal certainty and protection for the medical profession because it was not in accordance with Article 9 paragraph (1) letter e Permenkes No.512 /Menkes/Per/IV/2007 which states that a doctor or dentist in the context of emergency or disaster relief even though he does not have a License to Practice in that place, and in determining the doctor's guilt, it should first be proven that the medical error is from the aspect of medical discipline by means of a medical audit through a medical committee which is regulated in the Minister of Health Regulation Number 755 of 2011 concerning the Implementation of Medical Committees in Hospitals. In addition, the criminal decision of the Supreme Court has also heeded Constitutional Court Decision No. 4/PUU-V/2007, which states that the articles of criminal acts in Law No. 29/2004 on Medical Practice essentially do not provide legal protection to the medical profession. Criminal threats to the doctor's profession will lead to the practice of medicine that is full of fear (negative defensive professional practice), namely, doctors tend to examine using all types of supporting examinations just to obtain medical evidence that can be used as evidence of self-defense.

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