

Juridical Analysis of Negligence in Health Services by Health Personnel Reviewed from Law Number 17 of 2023 Concerning Health

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Abstract

This research aims to analyze juridically the phenomenon of negligence in health services by health workers, by focusing on the provisions regulated in Law Number 17 of 2023 concerning Health. The approach used in this research is normative juridical, through reviewing documents, statutory regulations and related literature to understand the regulation and implications of negligence in the context of health services. The main issues discussed include the definition and parameters of negligence, the mechanism for determining negligence, as well as sanctions and responsibilities determined by law. The research results show that Law no. 17 of 2023 provides a clear legal framework regarding the responsibilities of health workers in cases of negligence, emphasizing the need for concrete evidence and a causal relationship between the actions of health workers and the harm experienced by patients. Suggestions resulting from this research include the need to develop more detailed derivative regulations, increase education and training for health workers, stronger internal supervision in health institutions, increase cooperation between health workers and patients, and strengthen restorative justice mechanisms. This research contributes to a deeper understanding of negligence in health services and the legal efforts that can be taken to prevent and deal with such negligence.

Keyword: Medical Negligence, Responsibility of Health Workers, Law Health Act

1. INTRODUCTION

Health services are a vital element in people's lives. This is because health is a human right that must be fulfilled. However, in the process of providing health services, sometimes negligence is encountered by health workers which can result in physical, psychological and economic losses for the patient. Before discussing further, it is necessary to first understand what "alpa" or negligence is. In terms of language, according to the KBBI, negligent means negligent or lacks attention. However, negligence in a legal context has a deeper dimension. According to Prof. Dr. Soerjono Soekanto, negligence is negligence that occurs because someone does not do something that should be done or does something that should not be done in carrying out a task or obligation. In a medical context, negligence can be defined as an action or omission by a health worker that causes a patient to experience injury, illness or even death that could have been prevented. Dr. Susilo, a health expert, stated that medical negligence is an unintentional error in medical practice that results in harm to the patient. Examples of negligence in health services include errors in administering medication, negligence in carrying out medical procedures, and misdiagnosis. As an illustration, in 2019, there was a case in a hospital in Indonesia where a patient died because he was given the wrong medicine by health workers. The correlation between negligence and crime is an interesting thing to analyze. Article 359 of the Criminal Code states that anyone who, through his fault, causes another person to die, is threatened with imprisonment for a maximum of five years or a fine of a maximum of four thousand five hundred rupiah. This shows that negligence that results in death can have implications for criminal acts of negligence so that the perpetrator can be subject to criminal sanctions. However, applying criminal law in cases of medical negligence is certainly not as easy as imagined. There are many considerations that must be taken into account, such as medical service standards, the patient's condition, and aspects of medical ethics. This is what drives the need for a juridical analysis of negligence in health services

by health workers. It is inevitable that law grows and develops along with the dynamics of society. This also applies in the realm of health law. One interesting aspect that is being debated in society and professional circles is negligence in health services. It cannot be ignored that cases in the health sector have their own characteristics that differentiate them from other cases in the legal sector. Therefore, the principle of "lex specialist derogat generalis" seems to be a guide in understanding this phenomenon. In short, this principle teaches that specific laws (lex specialist) will override general laws (lex generalis) when the two laws conflict. Law of the Republic of Indonesia Number 36 of 2014 concerning Health Workers has previously provided a legal framework regarding criminal acts in health services. Article 84 paragraph (1) of the Law confirms that every Health Worker who commits gross negligence which results in serious injury to the Health Service Recipient can be subject to criminal sanctions. This shows how serious the state is in protecting patient rights and also upholding standards of professionalism for health workers.

However, legal dynamics and societal needs require updates to legal norms. This is the background to the birth of Law no. 17 of 2023 concerning Health. Article 440 of this Law adds new nuances to the regulations regarding negligence by Medical Personnel or Health Personnel. Not only does it emphasize the aspect of imprisonment, this law also provides quite large fines for perpetrators of negligence. In addition, this new law adds a special clause for negligence resulting in death, emphasizing how important the precautionary aspect is in health services. The big question is, what exactly is meant by "negligence" or negligence in the context of the Law on Health? In general, negligence is defined as negligence or lack of attention. However, in the realm of law, especially health law, the interpretation of "alpa" certainly has more complex nuances. What negligence is regulated in the law? Can every form of negligence, including unintentional, cause someone to be subject to legal sanctions? Or are there certain limitations that define which types of negligence can be subject to sanctions? In the world of law, Prof. Dr. Satjipto Rahardjo once stated that law not only functions as a tool to regulate society, but also as a reflection of the values that exist in society. Therefore, the interpretation of the term "alpa" in the Health Law must of course be understood in the cultural, social and medical ethical context that develops in society. One theory that can be used as a basis for analyzing this is the " *Mens Rea* " theory in criminal law. This theory states that a person can only be considered guilty if he had evil intentions when committing an action. In the context of medical negligence, the question that arises is: did the health worker have malicious intent or a mistake of mind (mens rea) when the negligence occurred? Or did the negligence occur purely due to accident or other factors beyond the control of the health worker?. Another relevant theory is the " *strict liability* " theory. In this theory, a person can be considered guilty even without malicious intent, as long as his actions result in loss or injury to others. Applying this theory, is every negligence in health services, even without malicious intent, sufficient to demand criminal responsibility for health workers? By looking at the complexity of the interpretation and implementation of the negligence provisions in the Health Law, as well as the various relevant legal theories, this research is expected to provide a deeper and more comprehensive understanding of negligence in the context of health services in Indonesia.

2. RESEARCH METHODOLOGY

This research adopts a normative juridical methodology, which focuses on the analysis of legal documents and statutory regulations, especially Law no. 17 of 2023 concerning Health, in the context of negligence by health workers. This approach allows research to understand and explain how legal norms are applied in cases of medical negligence. Data collection was carried out through literature studies, including statutory regulations, legal literature, journal articles and related court decisions, all of which function as secondary data in this research. After data collection, analysis is carried out qualitatively by comparing, interpreting and understanding the meaning of the data that has been obtained. This analysis technique aims to identify the relationship between legal norms and practice in the field, evaluating the effectiveness of implementing these legal norms in overcoming negligence by health workers. Thus, this research seeks to provide an in-depth understanding of the issue of medical negligence from a juridical perspective and provide recommendations to stakeholders policy makers, health workers and the general public in dealing with the problem of negligence in health services in Indonesia.

3. RESULT AND DISCUSSION

Definition of Negligence

Negligence is a concept that is often encountered in various aspects of life, from everyday life to the legal realm. This concept is closely related to actions or inactions that cause an error or omission. This narrative will explain the meaning of negligence from various perspectives, including the origin of the term, definition in Dutch, meaning in the Big Indonesian Dictionary (KBBI), as well as its use in legal terminology. The origin of the term "alpa" can be traced back to the Dutch, "alp" or "nalatig", meaning negligence or carelessness. In this context, neglect describes a condition where a person fails to carry out an action that should be carried out, or performs an action that should not be carried out because he is not paying attention or is not intentional. This term then entered Indonesian and became part of the formal and informal lexicon to describe similar phenomena. According to the Big Indonesian Dictionary (KBBI), forgetting is defined as "forgetting; not remembering" or "unintentionally; because of negligence". This definition emphasizes the aspect of inadvertence or negligence which results in the inability to remember or do something that should be done. This reflects that negligence often occurs without the intention to ignore or avoid responsibility, but rather due to carelessness or negligence. In a legal context, negligence has a more specific meaning and is often related to the consequences of the action or inaction. In civil law, negligence is considered as one of the elements that can determine a person's responsibility for an act. For example, in the case of a traffic accident, driver negligence may be the basis for determine responsibility for losses experienced by other parties. Meanwhile, in criminal law, negligence can relate to criminal acts carried out without any intention to violate the law, but due to carelessness or negligence, these actions give rise to legal consequences. The use of the term alpha in Indonesian legal terminology can also be found in various laws and regulations. For example, in Law Number 14 of 2008 concerning Openness of Public Information, failure to provide access to information can result in administrative sanctions for the responsible public official. This shows that in a legal context, negligence is not only related to individual actions, but also to the failure of institutions or officials to carry out their functions and responsibilities. From a legal perspective, negligence is divided into two types, namely minor negligence and gross negligence. Slight negligence occurs when a person fails to carry out an action that should have been carried out with a reasonable degree of care, while gross negligence represents a much more serious level of negligence and is clearly neglected. This division is important in determining the level of responsibility and amount of compensation in certain legal cases.

Negligence in Criminal Law

Chapter XXI of the Criminal Code which regulates acts that result in death or injury due to negligence. The word negligence is often equated with the word negligence. D. Simons explains that negligence consists of two parts, namely not being careful in carrying out an action and being able to foresee the consequences of that action. However, if an action is carried out carefully, it is still possible that there will be negligence if the person doing it knows that the action may result in a consequence that is prohibited by law. Article 359 and Article 360 of the Criminal Code are two articles that define negligence and are often suspected in the health profession when there are reports of suspected malpractice. Article 359 "Whoever, through negligence, causes another person to die, shall be punished with a maximum imprisonment of five years". This article regulates negligence resulting in death and Article 360 defines negligence as resulting in injuries. Meanwhile, Article 360 constitutes a material offense. Paragraph (1) *Whoever, through negligence, causes someone serious injury is punished with a maximum prison sentence of five years or a maximum prison sentence of one year.* The formulation of a material offense requires proof that the prohibited consequences occurred. On the other hand, the unlawful nature of these two articles also requires negligence which is the cause of the prohibited consequences, namely injury or death. The causal relationship between negligence as a cause and the consequences prohibited in the Criminal Code is an important logical relationship to construct its unlawful nature. In medical cases, the application of material offenses requires caution in interpreting negligence. If negligence as negligence is positioned as the cause of prohibited consequences, then negligence and negligence do not have the same meaning. Negligence in general crimes contains the meaning of *state of mind*. Negligence is interpreted as negligence. Negligence is part of error. Negligence with awareness requires that the perpetrator had imagined or expected a result to arise, but even though he tried to prevent it, the result still occurred. Negligence without awareness requires that the perpetrator does not imagine or suspect that a consequence will arise which is prohibited and punishable by law, whereas he

should have taken into account the emergence of a consequence. According to Jan Remmelink, culpa includes less (careful) thinking, less knowledge, or acting less purposefully. Some criminal law experts separate the elements of a criminal act from guilt or responsibility. There are other criminal law experts who see that criminal acts are viewed as one unit. Simon and Van Hamel are criminal law expert who includes fault and responsibility in a criminal act. Negligence is part of a mistake, so it can also be said that such a mental attitude is colored. This means that we always relate it to our inner attitude towards actions that from a legal perspective are wrong. Error is a determining factor in determining whether or not someone can be held criminally responsible. Because a criminal act only refers to the prohibition and the threat of a criminal act, then determining whether the person who commits the act can be sentenced to a crime as has been threatened will really depend on the reason why the perpetrator also made a mistake in carrying out the act.

Negligence in Law Number 17 of 2023 concerning Health

Negligence in the context of health services can be defined as the inability of health workers to carry out their duties and responsibilities in accordance with established professional standards, which ultimately causes harm to patients. Legal and medical experts have long debated the parameters by which to assess negligence. According to Aminuddin Ilmar, negligence is "failure to provide the attention required by law, which results in harm to others". This includes various forms of negligence, ranging from ignoring standard medical procedures, using inappropriate equipment, to a lack of effective communication with patients.

Article 440

1. Every medical worker or health worker who makes a mistake that results in a patient being seriously injured will be punished with a crime imprisonment for a maximum of 3 (three) years or a fine of a maximum of Rp. 250,000,000.00 (two hundred and fifty million rupiah).
2. If the negligence as intended in paragraph (1) results in death, each Medical Personnel or Health Personnel shall be punished with imprisonment for a maximum of 5 (five) years or a fine of a maximum of Rp. 500,000,000.00 (five hundred million rupiah).

Article 440 paragraphs (1) and (2) Law no. 17 of 2023 concerning Health explicitly regulates criminal sanctions for health workers who commit negligence. This provision confirms that the state recognizes the serious impact of medical negligence on patients and places patient protection as a priority. It is hoped that the existence of criminal sanctions and fines will act as a deterrent for health workers to always comply with professional standards. In this context, consideration of this article also includes how it is applied in the field. How the legal process determines "negligence" and what evidence is required to support the claim are crucial aspects. Clarity of evidence, whether in the form of medical documents, witness testimony, or video recordings, is very important in the judicial process. The court must be able to assess whether the health worker's actions deviated from recognized standards and whether there is a direct causal relationship between those actions and the harm suffered by the patient. The implication of the application of this article for medical practice is increased awareness and caution among health professionals. They become more aware of following established protocols and service standards to avoid legal risks. On the other hand, it also encourages health institutions to improve their internal monitoring systems and ensure that all their medical staff receive adequate training in health ethics and law. According to legal and medical ethics figures, negligence covers various aspects, ranging from negligence, indifference, to procedural errors that have fatal consequences for the patient. Criteria for determining negligence include failure to carry out actions that should be carried out in accordance with professional standards, or carrying out actions that should not be carried out in certain situations. In the context of Indonesian law, definitions and parameters of negligence are often general in nature, requiring more detailed derivative regulations to clarify and provide clear guidance for health practitioners.

The author reiterates that based on Law Number 17 of 2023 concerning Health, specifically Article 440, medical negligence that results in serious injury or death of a patient is given strict sanctions, reflecting the serious impact resulting from the action. However, determining the occurrence of negligence and imposing sanctions is not carried out haphazardly, but rather through an in-depth assessment process, taking into account certain aspects based on the theory of *strict liability* and *Mens Rea*, and involving the professional disciplinary council as regulated in Articles 304 to Article 307. Article 304 Paragraph (3) *The Assembly as referred to in paragraph (2) determines whether there are violations of professional discipline committed by Medical Personnel and Health Personnel.* Article 305 Paragraph (1) *Patients or their families*

whose interests are harmed by the actions of Medical Personnel or Health Personnel in providing Health Services can complain to the assembly as intended in Article 304.

Article 306

1. Violation of discipline of Medical Personnel or Personnel

Health as intended in Article 304 paragraph (3) is given disciplinary sanctions in the form of:

- a. written warning;
- b. the obligation to attend education or training at an education provider in the Health sector or the nearest teaching hospital that has the competence to conduct such training;
- c. temporary deactivation of STR ; and/or
- d. recommendation for revocation of SIP.

Article 307

The decision of the panel as intended in Article 304 may be submitted for review to the Minister in the event that:

- a. new evidence discovered;
- b. misapplication of disciplinary violations; or
- c. there is an alleged conflict of interest between the examiner and the examinee.

Using the theory of *strict liability* , or absolute responsibility, in the context of medical negligence, means that health workers can be held responsible for losses that occur to patients without requiring proof of error or negligence on the part of the health worker. In this case, the main focus is on the fact that harm has occurred as a direct result of actions taken by health workers. However, the application of strict liability in Indonesian health law requires very careful consideration, because it can have a major impact on medical practice and the professionalism of health workers. On the other hand, the *Mens Rea theory* refers to the existence of intention or awareness in carrying out actions that result in loss or negligence. In the context of medical negligence, this means that there must be evidence that the health worker had the awareness or intent to act recklessly or disregard the standard of care that should be provided to the patient. This theory adds a layer of complexity in determining responsibility in medical negligence cases, because it requires proof of mental error or intent behind the actions taken. Article 440 Law no. 17 of 2023 explicitly stipulates criminal sanctions for medical personnel or health workers whose negligence results in serious injury or death of patients. However, the decision about whether an action can be categorized as negligent and deserves such sanctions, depends greatly on an in-depth assessment of the context and conditions in which the action was carried out. Furthermore, Articles 304 to Article 307 regulate the enforcement of professional discipline, establishing a professional disciplinary council which has the authority to assess and determine any disciplinary violations committed by medical personnel and health workers. This article provides a framework for handling complaints and determining disciplinary sanctions, which can range from written warnings to recommendations for revocation of the SIP (Practicing Permit). This process ensures that each case is handled fairly, taking into account all relevant aspects, including the evidence, the context of the action and the potential impact on the patient. Articles 305 and Article 306 provide a mechanism for patients or their families to file complaints against medical personnel or health workers who they consider to have committed negligence. This demonstrates the law's commitment to the protection of patient rights and the upholding of standards of professionalism in healthcare practice.

Finally, Article 307 allows for review of the panel's decision, giving health professionals the opportunity to defend themselves or correct procedural errors that may have occurred during the assessment process. This shows that there are efforts to achieve balanced justice between patients' rights to receive safe and fair treatment, and the rights of health workers to receive fair treatment in the legal system. Therefore, in this case the importance of derivative legal regulations, such as Government Regulations or Minister of Health Regulations, becomes very significant. These derivative regulations are needed to explain in detail what is meant by negligence in the context of health services, covering aspects such as the expected standard of care, protocols that must be followed in various medical procedures, as well as guidelines for assessing the performance of health workers in certain situations. These derivative rules must also provide guidance on how to evaluate evidence of negligence, including but not limited to, medical documentation, witness testimony, and expert analysis. This will help in the legal process to determine whether negligence occurred and whether there is a causal relationship between the health worker's actions and the harm experienced by

the patient. In addition, the development of derivative regulations should involve multiple stakeholders, including medical professional associations, health education institutions, and patient organizations, to ensure that the standards set are realistic, fair, and reflect current medical practice. Thus, derivative legal regulations will not only provide legal clarity but also improve the quality of health services and protect patient rights.

4. CONCLUSION

The author concludes this research with a statement regarding negligence in health services by health workers, as regulated in Law Number 17 of 2023 concerning Health, revealing the complexity in determining and handling medical negligence. The emphasis on the need for clear evidence and a causal link between the actions of health workers and the harm experienced by patients, highlights the need for thorough and fair legal processes. The application of strict liability theory and *Mens Rea* in this context reflects an effort to balance patient protection and the professional responsibility of health workers. Articles relating to professional discipline and established complaint mechanisms and sanctions underline the importance of standards of professionalism and accountability in health practice.

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