

Accountability Crime of Health Services Provided by Non-Health Workers (Study Decision Decision Number : 46/ Pid.Sus /2020/ Pn.Liwa)

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Abstract

Providing health services is a noble task, in accordance with Article 1 (7) of Law of the Republic of Indonesia Number 17 of 2023 concerning Health which states that Health Workers are every person who dedicates themselves to the field of Health and has a professional attitude, knowledge and skills through higher education. for certain types requires authority to carry out Health Efforts. If those who provide health services are not health workers as if they are workers, they can be threatened with Article 439 of the Republic of Indonesia Law Number 17 of 2023 concerning Health which states: "Every person who is not a Medical Personnel or Health Personnel practices as a Medical Personnel or Health Personnel who has "having a SIP is subject to a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah)." In this research include: a. What are the factors that cause perpetrators to commit criminal acts who are not medical personnel to practice as if they were medical personnel in Decision Number: 46/Pid.Sus/2020/PN.Liwa, b. What is the criminal liability for perpetrators of criminal acts who are not medical personnel who practice as if they were Health workers in Decision Number 46/Pid.Sus/2020/PN.Liwa. The problem approach used in this research is a normative juridical and empirical juridical approach. The data in this research comes from library data (library research) and field data (field research). The results of the discussion show that the factors causing perpetrators to commit criminal acts who are not health workers who practice as if they were medical workers include intrinsic factors (unfavorable family environment, age and intelligence, and psychological talent, personality), extrinsic factors (low level of education). low, social environment, intentions and opportunities), weak religious and ethical education, lack of health education, lack of supervision. Criminal liability against officials who deliberately carry out criminal liability against perpetrators of criminal acts who are not medical personnel practicing as if they were medical personnel in Decision Number: 46/Pid.Sus/2020/PN.Liwa in the form of a crime with the legal and convincing conviction of the defendant. as regulated in Article 64 in conjunction with Article 83 of Republic of Indonesia Law Number 36 of 2014 concerning Health Workers, with a prison sentence for the Defendant for 4 (four) years.

Keyword: Criminal Liability, Health Services, Non-Medical Personnel

1. INTRODUCTION

Act criminal matters in the field health in life public moment this, that is negligence professional Because action or negligence by the party provider service health, so care provided No in accordance with procedure standard medical (Standard Operational Procedure) so result condition worsening medical condition, or death a patient. Highlight sufficient society sharp on service service health by energy medical, esp with happen the case that caused it dissatisfaction public bring up issue exists conjecture malpractice medical No direct studied from aspect law in service health. Article 1 (7) Republic of Indonesia Law

Number 17 of 2023 concerning Health states that Health Workers are everyone who dedicates self in Health sector as well own attitude professionalism, knowledge and skills through education tall which is for type certain need authority For do Health Efforts. Health Services are all form activities and/ or series activity services provided in a way direct to individual or public for maintain and improve degree of public health in form promotive, preventive, curative, rehabilitative, and/ or palliative as arranged in Article 1 (3) Republic of Indonesia Law Number 17 of 2023 concerning Health. According to Article 199 (1) Republic of Indonesia Law Number 17 of 2023 concerning Health, Health Workers are grouped as following :

- a. power psychology clinical ;
- b. power nursing ;
- c. power midwifery ;
- d. power pharmacy ;
- e. power health public ;
- f. power health environment ;
- g. relaxed nutrition ;
- h. power therapy physique ;
- i. tenaga technicality medical ;
- j. biomedical engineering staff ;
- k. power health traditional ; And
- l. Other Health Workers determined by the Minister.

Act criminal is one of term for describe something possible actions convicted. Besides term follow criminal, there is also a term deed criminal, offence criminal , as well as the act carried out somebody dangan error and can accountable exists something follow criminal No can regardless from impact action the. Like case malpractice committed no power medical, which is something possible negligence refers happen malpractice, so there is various governing law method treatment and punishment given for perpetrator crime malpractice committed by medical personnel as listed in Article 64 in conjunction with Article 83 of the Law Number 36 of 2014 concerning Health Workers. Provision Article 64 of the Law Number 36 of 2014 concerning Health Workers states that : " Every person who is not a medical worker forbidden do practice as if as a medical worker who has own permission ". Provision Article 83 of the Law Number 36 of 2014 concerning Health Workers states that : " Every person who is not a medical worker do practice as if as a medical worker which has own permission as intended in Article 64 is punishable with criminal imprisonment for a maximum of 5 (five) years ". Constitution Number 36 of 2014 concerning Health Workers states that medical personnel is everyone who dedicates self in field health as well as own knowledge and or Skills through education in the field health for type certain need authority for do effort health. In Constitution Number 36 of 2014 concerning Health Workers are also qualified not medical personnel practice as if as a medical worker who has own permission. Remember big not quite enough responsibility and burden work power medical in serve society, government has strive education for every power medical so you can produce capable graduates give quality and acceptable service role as power medical professionals (Malagano, 2020).

Problems faced this moment is the more many power medical negligence in carry out the obligations that give rise to it loss towards other people, so makes it possible appear cases of people who are not medical personnel forbidden do practice as if as a medical worker who has own permission. Social facts that occur that follow a crime that is not power medical do practice as if as power medical occurred in Lampung Province, especially in the West Lampung Regency area, that can seen from Decision Case Liwa District Court Number 46/ Pid.Sus /2020/ PN.Liw about case do follow a crime that is not power medical do practice as if as power medical. In case said, Defendant Samiran Bin Sukir has proven in a way valid and convincing guilty do follow a crime that is not power medical do practice as if as power medical, as in arranged in Article 64 in conjunction with Article 83 of the Law Number 36 of 2014 concerning Health Workers. That with enactment Republic of Indonesia Law Number 17 of 2023 concerning Health, so Lots happen change to rules health , especially about rights and obligations of the parties involved in it effort health as well as protection law for the parties concerned, Because law is symptom social in the middle society, wrong the only one problems in the field health. Article 439 of Republic of Indonesia Law Number 17 of 2023 concerning Health states : " Every person who is not a Medical Personnel or Health Workers do practice as a Medical Personnel or Health Workers who have having a SIP is punishable with criminal imprisonment for a

maximum of 5 (five) years or criminal fine a maximum of IDR 500,000,000.00 (five hundred million rupiah)". Negligence or malpractice committed by non power medical, necessary effort for deal with suspicion malpractice the no repeated again. Effort countermeasures follow a crime that is not power medical do practice as if as power medical can carried out by the authorities enforcer applicable law determine There is or or not error or negligence doctor nor power medical in operate not quite enough answer his profession. As well as the police as enforcer applicable law probe and investigate all follow criminal in accordance criminal procedural law and regulations legislation other. There is case follow a crime that is not power medical do practice as if as power medical in Decision Number 46/ Pid.Sus /2020/ PN.Liwa where people who are not medical personnel forbidden do practice as if as a medical worker when linked with objective punishment give rise to connected problems with objective countermeasures crime (*criminal policy*) as effort protection public For reach justice and prosperity society (*social welfare*), also in accordance with objective law criminal , which complies Soedarto if law criminal want to used so should seen in connection whole political *criminal* (*social defense planning*). Because of That writer interested discuss problem this is later writer give title : " Accountability Crimes for health services provided by non- health workers (Study Decision Decision Number 46/ Pid.Sus /2020/ PN.Liwa) ”.

Formulation Problem

On Research This own there is formulation problem as following : (1) is factor reason perpetrator do follow a crime that is not power medical do practice as if as power medical in Decision Number 46/ Pid.Sus /2020/ PN.Liwa ?; (2) How accountability criminal to perpetrator follow a crime that is not power medical do practice as if as power medical in Decision Number 46/ Pid.Sus /2020/ PN.Liwa ?

Objective Study

Every study have a must goal achieved, then this study aim in accordance with formulation problem above, then objective this study is : (1) For know factor reason perpetrator do follow a crime that is not power medical do practice as if as power medical in Decision Number 46/ Pid.Sus /2020/ PN.Liwa ; (2) for know and analyze accountability criminal to perpetrator follow a crime that is not power medical do practice as if as power medical in Decision Number 46/ Pid.Sus /2020/ PN.Liwa.

2. RESEARCH METHODOLOGY

This study is juridical *Normative* that is something revealing research something problem, situation or incident with give something evaluation in a way comprehensive, broad and deep from corner look knowledge law, that is with research principles law, rules law, and systematics law. In data collection is used studies document that is with learn ingredients secondary, fine form legislation, regulations others, books, papers, and journals related with those researched. Data obtained Then analyzed in a way qualitative, that is something method data analysis that does not based on numbers or statistics, so that the data obtained in study literature then served in logical sentences for obtain description about “ Accountability Crimes for health services provided by non-health workers (Study Decision Decision Number 46/ Pid.Sus /2020/ PN.Liwa).

3. RESULT AND DISCUSSION

Framework Theory

Framework theory is actual concepts abstraction from results thinking or framework purposeful reference for stage identification to dimensions considered social relevant by researchers. On each study always accompanied with thoughts-thoughts theoretical. This matter because there is close reciprocal relationship between theory with activity collection, management, analysis case. Snellbecker interpret that “ theory as device a symbolically integrated proposition and a theory besides works for explain facts, too capable predict or prove the facts are in the middle public ”. Objective theory very clear, that is, in a generalist manner question knowledge and explanation connection between something symptom social and meaningful from observations made. As something activity scientific, then in something study required theory in the form of assumptions, concepts, definitions and prophecies For explained something phenomenon social in a way systematic with method formulate connection between draft . Starting from problem study as has displayed before , then used a number of created theory as knife analysis in dissect problem study thesis This . As for the framework theories used in study This that is :

Grand Theory : Theory legal certainty

Theory certainty law by Gustav Radbruch state that something made certain own goals and objectives. So every rule laws made own aim, this aim is something desired value realized man . Objective the main law there is three, namely : (1) Justice For balance ; (2) Certainty for decree ; (3)Expediency for happiness. Certainty law linked with justice law, then will often not in line One each other. As for this because in one side No seldom certainty law ignore principles justice law, on the contrary no justice is rare law ignore principles certainty law. If deep practice happen contradiction between certainty law and justice law, then justice the law must takes priority. The reason is justice law in general born from heart conscience giver justice, meanwhile certainty law born from something concrete. That certainty law contain two understanding firstly, there is nature rules general make individual know deed what is allowed and what is not can done. Second form security law for individual from arbitrariness government to nature rules general that individual can know What that's all you can charged or carried out by the state against individual. Something certainty law require creation something regulation general or rule generally applicable in a way general, as well result that task law general for reach certainty law (for what it is order and justice for all over people of Indonesia). This matter done to create it safe and peaceful atmosphere in public wide. Rules and implementation rule the give rise to certainty law. Certainty law describe circumstances Where behavior man Good individual, group nor organization can bound and situated in corridor already outlined by the rules law. In law must there is justice and certainty law and certainty law that it's important that people don't confused, but justice and certainty law that alone is two side from one currency. Between justice and certainty law not need disputed. The sentence no can cut, meaning justice certain identical with fair certainty. If uncertainty that happens, meaning happen injustice for many people. Don't because want to realize justice for one person, but precisely create injustice for many people. Besides that must there is certainty law, purpose law is For realize justice and order. Justice, certainty law and order that must realized in a way simultaneously to create peace life together. The law is very close relationship with justice. Even there are people who have views that law must combined with justice, so truly means as law. Therefore through a just legal order that people can get life with peace going to something well-being physical nor spiritual. For part big adherent positivism demand so the law that is formed, has the character fair. The law contains something demands justice. Fair law is something appropriate law with the wisdom and confidence of the people. Certainty law have two facet, that is question can the determination (*bepaalbaarheid*) of the law in concrete things, meaning seeking parties justice want to know what to be the law in special things, before He start something matters, and certainty law means security law, meaning protection for the parties to judge's arbitrariness. Reinhold Zippelius differentiate certainty law in two meaning, namely :

- a) Certainty in implementation, that is that official law invited held with definitely by state. Everyone can demand the law implementation and demands that Certain fulfilled and every violation law will prosecuted and imposed penalty according to law too;
- b) Certainty orientation , that is that law that must clear, so society and judges can guided to him. This matter means that every term in law must formulated with clear and firm so that not there is hesitation about action what do you mean Certainty orientation demanding that the procedure creation and inauguration the law is clear and can be is known general. Certainty orientation this also demands that the law developed in a way continuous and obedient principle. Constitution must each other hook hook , must pointing to One direction for society can make plan into the future, and so do n't made mutual laws contradictory.

Middle Theory : Theory Law enforcement

Law Enforcement is effort used for realize an idea and concept expected law become real. Enforcement law constitute a process that results various thing, with exists thinking the strengthened with habit the so-called society with enforcer law that that is police, prosecutors and judges. Enforcement law is an involved process Lots matter. Enforcement law lies in activity harmonize connection the values outlined in it rules that are solid and answerable attitude follow as Suite explanation mark stage end for create, maintain, and maintain peace association life. The law works as protection for interest every man. For interest man protected, then law must held. Implementation law can in a way taking place Good normally, peacefully, but also can happen because exists violation of the law. In matter this the law has violated so must enforced, with through enforcement law here it is law become reality. By conceptual, the essence of

enforcement law lies in activity harmonize connection the values outlined in it solid rules, attitudes follow as stalk explanation mark stage end, for create, maintain, and maintain peace association live, meanwhile *Black's Law Dictionary* define law enforcement (enforcement law), namely : "the detection and punishment of violations of the law. This term is not limited to the enforcement of criminal law. For example, thr for information complied for law enforcement purposes and furnished in confidence. Then exemption of a variety of noncriminal (such as national security laws)". Enforcement law aim for reach objective law. Through enforcement law, expected objective law can achieved so that law can works as it should be. Law maintain peace and endeavor happen something balance between interests the. With thereby law can reach objective fair with exists balance between protected interests for every person For obtain part through containing regulations continuity interests in Latin is : "*ius suum cuique tribuere* " .

Applied Theory : Theory Law enforcement

Law Enforcement is effort used for realize an idea and concept expected law become real. Enforcement law constitute a process that results various thing, with exists thinking the strengthened with habit the so-called society with enforcer law that is police, prosecutors and judges. Enforcement law is an involved process Lots matter. Enforcement law lies in activity harmonize connection the values outlined in it rules that are solid and answerable attitude follow as Suite explanation mark stage end for create, maintain, and defend peace association life. The law works as protection for interest every man. For interest man protected, then law must held. Implementation law can in a way taking place Good normally, peacefully, but also can happen Because exists violation of the law. In matter This the law has violated so must enforced, with through enforcement law here it is law become reality. By conceptual, the essence of enforcement law lies in activity harmonize connection the values outlined in it solid rules, attitudes follow as stalk explanation mark stage end, for create, maintain, and maintain peace association live, meanwhile *Black's Law Dictionary* define law enforcement (enforcement law), namely : "the detection and punishment of violations of the law. This term is not limited to the enforcement of criminal law. For example, thr for information complied for law enforcement purposes and furnished in confidence. Then exemption of a variety of noncriminal (such as national security laws)." Enforcement law aim For reach objective law. Through enforcement law, expected objective law can achieved so that law can works as it should be. Law maintain peace and endeavor happen something balance between the interests. With thereby law can reach objective fair with exists balance between protected interests for every person For obtain part through containing regulations continuity interests in Latin is : "*ius suum cuique tribuere* " .

Framework Draft

Framework draft also called framework theory or something review bibliography. Framework draft be marked with appearance linkages between facts and theories, yes in form descriptive, images and others. Framework draft show channel study like what is the problem, what is the solution (theory), and what are the results. Framework conceptual can also be called a research map. According to opinion from Roscoe Pound that justice in results concrete that it can provide to public. He saw it too that results obtained should be obtained That should form satisfaction need man as much as possible with the smallest sacrifice, pounds Alone say that he alone like see " increasingly widespread recognition and satisfaction to something needs, demands or desires through control increasingly social widespread and effective exists guarantee to exists interest social in something business for the more effective in avoid formations in enjoy resources or increasingly *social engineering* effective .

Overview About Accountability Criminals and Offenders Act Criminal

Act criminal according to Wirjono Prodjodikuro is deed or series actions to him placed penalty criminal. With thereby seen from in other words, just traits from deed that only covers it something follow criminal whereas the characteristics of the person who does it follow criminal become part from problem others, viz accountability criminal. There is separation between accountability crimes and acts criminal, known with understand dualism, which separates between related elements deed with elements inherent in oneself the person about follow criminal. According to Barda Nawawi Arief that law criminal share follow criminal become two properties, namely :

1. Offense formal, is considered offense has finished with did it prohibited and threatened actions with punishment by law

2. Offense, namely considered offense has finished with it causes prohibited and threatened consequences with punishment by law.

According to Theory Roeslan Saleh explained that For exists resulting error punished him defendant , then defendant must fulfil criteria that is :

1. Oppose deed criminal ;
2. Able to take responsibility answer ;
3. With on purpose or negligence ,
4. No There is reason forgiving .

Understanding Sentencing and Purpose Sentencing

Theory objective punishment and guidelines punishment as stated by R. Sudarto , then in business renewal law criminal in Indonesia, criminal is one of problem urgent For updated. Because of that, deep renewal law criminal, kind criminal and regulatory punishment experience significant complete overhaul as well as put forward aspects social humanity and rights basic man. (Satrio Nur: Hadi & Malagano , 2020). A number of development about crime and punishment in renewal law crimes among them as following :

1. Theory Objective Sentencing Objective punishment that is for prevent did it follow criminal with straighten up norm law for protection society, complete the conflict that arises by follow criminal, recover balance, bringing a sense of peace in society, socialize convict with stage coaching so that be a good and useful person, and relieve the convict of guilt
2. Theory Guidelines Sentencing Guidelines possible punishment made reference for internal judges give criminal. Guidelines punishment that is the judge must notice error perpetrator follow crime, motive and purpose do follow criminal, way do follow criminal, attitude inner perpetrator follow criminal, history life and circumstances social economy perpetrator follow criminal, attitudes and actions perpetrator after do follow criminal, influence criminal towards the future perpetrator follow criminal, view public to follow crime committed, influence follow criminal towards the victim or the victim's family, whether follow criminal done with planned .

Understanding Legal Effectiveness

Studies effectiveness law according to Rizani Puspawidjaja is something showing activities a formulation strategy nature problems general , that is something comparison realistic law with legal ideals . By special seen level between law in action (law in action) with law in theory (law in theory). Or with another word for activity This will show connection between law in book and law in action.

Criminal Law Enforcement and Influencing Factors Law enforcement

According to Barda Nawawi Arif, in fact general seen from facet functionalization, operation and enforcement penalty criminal in something regulation legislation so that it really is can materialized must through a number of stages, namely :

1. Stage formulation, ie stage formulation or determination criminal by the maker law (as policy legislature)
2. Stage application, ie stage giving criminal by enforcers law (as policy judicial).
3. Stage execution, that is stage implementation criminal by the competent authority (as policy executive).

Factor Reason Perpetrator Do Act Criminals Who Are Not Medical Personnel Do Practice As if As a medical worker In Decision Number 46/ Pid.Sus /2020/ PN.Liwa

Factor reason perpetrator do follow a crime that is not power medical do practice as if as power medical in Decision Number 46/ Pid.Sus /2020/ PN.Liwa covers factor intrinsic and extrinsic. Factor intrinsic includes : environment lacking family Good in form pattern connection interaction social, factors age and intelligence, and Psychology or mental someone to see from talent evil, personality, controversial emotions, motivation, and so on. Factor extrinsic includes : factors environment social and work as well as factor Intention and Opportunity is factor available place and time pushing somebody for do crime. Other factors cause happen follow a crime that is not power medical do practice as if as power medical i.e weak religious and ethical education, lack education health, no exists harsh and strict sanctions on perpetrator follow criminal do follow a crime that is not power medical do practice as if as power medical, lack supervision to

deed logging forest, still there is gap for do logging forest, lack control society, NGOs, and the press towards deed logging forest the so that makes it easier perpetrator do follow a crime that is not power medical do practice as if as power medical.

Accountability Criminal To Perpetrator Act Criminals Who Are Not Medical Personnel Do Practice As if As a medical worker In Decision Number 46/ Pid.Sus /2020/ PN.Liwa

Accountability criminal to perpetrator follow a crime that is not power medical do practice as if as power medical in Decision Number 46/ Pid.Sus /2020/ PN.Liwa is based on fulfilling errors element oppose legal and not There is reason deletion / deletion characteristic oppose law on deed done. Accountability the crime is Defendant Aan Setiawan has proven in a way valid and convincing guilty do follow criminal “ offence criminal do follow a crime that is not power medical do practice as if as power medical ”, as arranged in Article 64 in conjunction with Article 83 of the Law Number 36 of 2014 concerning Health Workers. The panel of judges handed down criminal to defendant mentioned above because That with criminal prison for 4 (four) years. Accountability criminal the based on existence element deliberate action by the perpetrator (dolus), ie perpetrator know that his actions prohibited by law but still do deed the so that No There is reason justification nor forgiving for him For spared from punishment.

4. CONCLUSION

Factor reason perpetrator do follow a crime that is not power medical do practice as if as power medical covers factor intrinsic (environment lacking family well, age and intelligence, and psychology talent evil, personality), factors extrinsic (level low education, environment relationships, Intentions and Opportunities), weaknesses religious and ethical education, lack education health, lack of supervision. Accountability criminal to Official with on purpose do Accountability criminal to perpetrator follow a crime that is not power medical do practice as if as power medical in Decision Number 46/ Pid.Sus /2020/ PN.Liwa form criminal with punishment to defendant in a way valid and convincing guilty as arranged in Article 64 in conjunction with Article 83 of the Law Number 36 of 2014 concerning Health Workers, with verdict criminal prison to Defendant for 4 (four) years.

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