



CRIMINAL LIABILITY FOR A DENTIST'S NEGLIGENCE THAT CAUSES INJURY TO A PATIENT IS BASED ON LAW NUMBER 17 OF 2023 CONCERNING HEALTH

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Abstract

The profession as a dentist is not easy because many dentists in the world often commit malpractice acts. Law Number 17 of 2023 concerning Health regulates the qualifications and types of dental malpractice acts. Problems include how negligence by dentists in carrying out their duties is categorized as malpractice and is a criminal act, factors that cause dentists to be negligent in carrying out their duties and how criminal liability for dentist negligence which causes injuries to patients is reviewed from Law Number 17 of 2023 About health. The type of research used in this research is normative legal research. The nature of the research used in this research is descriptive. A dentist's negligence in carrying out their duties which results in injury to a patient can be categorized as malpractice and a criminal act. This occurs when dentists do not comply with professional standards, standard operating procedures, or applicable codes of ethics, which harms patients. The factors that cause dentists to be negligent in carrying out their duties include several important aspects, namely the negligence factor (culpa), the deliberate factor, the misunderstanding factor (dwaling), the error of judgment factor, the contributory negligence factor and the infrastructure factors. Criminal liability for a dentist's negligence which causes injury to a patient is reviewed by Law Number 17 of 2023 Health, regulated in Article 440 of the Law, punishable by a maximum imprisonment of 3 years or a maximum fine of IDR 250,000,000. If the negligence causes death, the sentence can increase to a maximum prison term. 5 years or a maximum fine of IDR 500,000,000. Researchers recommend that dentists regularly participate in training and education regarding professional standards, standard operating procedures (SOP). So that dentists increase awareness regarding the responsibility for negligence which can result in injury to patients..

Keywords: Criminal Liability, Dentists, Wounds, Patients

INTRODUCTION

The Republic of Indonesia is a legal state whose aim is to achieve people's welfare in order to achieve people's welfare by maintaining and improving the level of public health which is the right of every citizen in the context of forming optimal Indonesian human resources. The government plays an important role in ensuring the improvement of the overall health of the Indonesian people, therefore regulations have been drafted that regulate the health of the Indonesian people, namely Law Number 17 of 2023 concerning Health.

Based on Article 1 Paragraph (1) of Law Number 17 of 2023 concerning Health, what is meant by health is a person's healthy condition, both physically, mentally and socially and not just being free from disease to enable them to live a productive life. Health is one of the main assets for the growth and life of the nation and has an important role in the formation of a just, prosperous and prosperous society. This shows that a person's health status is not only measured from physical and mental aspects, but is also assessed based on social or economic productivity.

Improving the health of the Indonesian people cannot be separated from the influence of the availability of resources in the health sector, namely all forms of funds, personnel, health supplies, pharmaceutical preparations, and medical equipment as well as health service facilities and technology that are utilized to carry out health efforts carried out by the government. regions and/or communities, including health human resources consisting of health workers, medical personnel and health support or support personnel.

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Health workers and medical personnel are an important group in the world of health because they are the ones who have direct contact with patients so that medical personnel have the position to be responsible for all actions taken on their patients. Based on Article 198 paragraph (1) of the Health Law, medical personnel are grouped into doctors and dentists. Doctors generally have a noble goal, namely trying to keep the patient's body healthy or trying to make the patient's body healthy or at least alleviate the patient's suffering, but a doctor's health services cannot always be successful and result in harm to the patient. This case can happen to any medical personnel, so in this case it is also possible that failures in health services can occur, especially in the operation of dental practices and result in losses to patients.

The implementation of dental practice is the core of various activities in the implementation of health efforts that must be carried out by dentists who have high ethics and morals. If the operation of a dentist's practice does not comply with what is intended in the statutory regulations, the dentist can be considered to have committed malpractice. Malpractice is any wrongful attitude, lack of skills to an unreasonable degree, failure to provide professional services resulting in injury, loss or harm to the recipient of the service. Based on Article 274 letter a of the Health Law, Medical and Health Personnel in carrying out their practice are obliged to provide Health Services in accordance with professional standards, professional service standards, standard operational procedures and professional ethics as well as patient health needs. This is also confirmed in Article 14 of the Medical Ethics Code. Dental Indonesia 2020 which states that in providing services, dentists in Indonesia must act efficiently, effectively and with quality in accordance with the needs and consent of the patient.

The profession as a dentist is not easy because many dentists in the world often commit acts of malpractice which result in medical errors that cause patients to become disabled or die, so in practice, in order not to cause abuse by a dentist towards his patients, it is necessary to hold legal accountability as a whole. criminal, with the aim of protecting the rights of victims who suffer from malpractice. In providing health services, health workers cannot be separated from the fact that as humans they will not escape making mistakes. Mistakes can occur on every job, of course with various consequences. This error can be in the form of failure (error) or negligence in carrying out the task being carried out. Malpractice that can have an impact or loss on patients is related to changes in public perception, especially patients. This then resulted in demands from the public, especially patients, regarding the legal accountability of doctors. Criminal liability can only be sought for certain acts that are punishable. Punishments are imposed on individuals who violate laws or societal norms, and a person can only be held criminally responsible if his or her guilt can be proven according to the principle of "geen straf zonder schuld" (no punishment without guilt).

A dentist's mistake is a professional mistake, so it is not easy for anyone, including law enforcers who do not understand the medical profession, to prove it in court, however, this does not mean that the dentist's mistake cannot be proven. Therefore, there is a need for more specific regulations that specifically regulate the qualifications of malpractice acts carried out by doctors, so that doctors can be held criminally responsible for their actions and law enforcers can have a clear juridical basis in enforcing the regulations in Law Number 17 of 2023 concerning Health. against dentists who commit malpractice. Mistakes not only determine whether the perpetrator can be held accountable, but also whether the perpetrator can be punished. Because error is a fundamental principle in criminal law, the error that determines whether the perpetrator can be held accountable is how to see how he did it, while the error that determines whether the perpetrator can be punished by imposing sanctions is how he can be held accountable for the act. Responsibility is based on fault is usually distinguished from absolute liability.

One form of malpractice that occurs in Indonesian medical circles is in accordance with the teachings of guilt (schuld) in criminal law, namely the existence of elements in Articles 359, 360 of the Criminal Code, whether it is done intentionally or negligently, it can be punished. However, in these three laws, the rules are specific (lex specialis) and all the criminal provisions state that it must be intentional, such as intentionally carrying out an abortion, making a false doctor's statement, if the patient feels that he or she has been harmed by the negligence of health workers, including doctors, in providing services, then In accordance with Law Number 44 of 2009

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concerning Hospitals, it is stated: "Hospitals are legally responsible for all losses incurred due to their negligence." Criminal liability always arises from an action if it can be proven that there was an error committed by a professional doctor. From a legal perspective, the existence of a mistake against the law, an act carried out by a capable person, in the form of intent and negligence, is always related to the nature of responsibility. Just like a doctor who commits malpractice, the doctor can realize his actions and these actions are considered inappropriate in society, and the doctor concerned is able to determine the intention or desire to carry out these actions.

RESEARCH METHODS

Research Specifications

In this writing, the author uses qualitative analysis to analyze data. Qualitative analysis is a way of analyzing data sourced from legal materials based on concepts, theories, statutory regulations, doctrine, legal principles, expert opinions or the researcher's own views.

Types of research

The type of research that will be used in this legal writing is Normative Juridical research, namely the type of research carried out based on primary legal material by examining theories, concepts, legal principles and statutory regulations related to this research, with the aim of finding out and finding the facts and data needed, after the required data is collected then it goes to problem identification which ultimately leads to problem solving.

Data Type

The type of data used in this research uses secondary data. Namely data obtained from official documents, research results in the form of reports, theses and legislation

Data Collection Techniques and Data Collection Tools

The data collection technique in the research that the author uses is library research, which is a research method used when prospective researchers look for answers to problem formulations in reading sources. The library research method involves collecting, analyzing, and synthesizing relevant information from various literary sources, such as books, journals, research reports, and statutory documents.

RESULTS AND DISCUSSION

Criminal Liability For The Negligence Of A Dentist That Causes Injury To A Patient Is Reviewed From Law Number 17 Of 2023 Concerning Health

A. Proving Process for Dentist Medical Actions That Cause Injuries to Patients

Dentists who are suspected of committing dental malpractice before entering the examination in accordance with applicable law in Indonesia, must first go through a trial for the alleged malpractice at the Medical Professional Ethics Honorary Council. In the session of the Honorary Council for Medical Professional Ethics, it will be examined whether the doctor has committed a violation of the Medical Code of Ethics that applies in Indonesia, or whether there are professional standards or medical operational standards that have been violated by the doctor.

This Medical Professional Ethics Honorary Council hearing will be the deciding point for doctors whether the actions they take constitute malpractice or not. And from the results of this trial the doctor will also be given sanctions by the Medical Honorary Council which is the doctor's responsibility for what he has done. However, sanctions will only be imposed if the doctor is proven to have committed a violation that leads to medical malpractice. The trial process at the Honorary Council for Medical Professional Ethics has been completed and the decision issued is a reference that can be used as a legal basis for doctors who are accused of committing an act of medical malpractice. However, even though the Honorary Council for Ethics in the Medical Profession decides that the doctor is not guilty, but patients who suffer losses due to the doctor's actions still demand justice based on applicable law, the doctor will still be examined in accordance with the law in force in Indonesia.

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Criminal law can only be applied if it fulfills two principles, namely the legalist principle and the principle that there is a mistake on the part of the perpetrator of the crime, and that the mistake has a causal relationship. The first principle means that a criminal act can only be punished if the criminal act has previously been regulated in the applicable laws and regulations. In other words, if the doctor's actions have a causal relationship between the action and the consequences, then these provisions can be applied equivalently to the provisions regulated in the Criminal Code. The second principle emphasizes the principle of no crime without error. Even if there is an error, it must have a causal relationship for a result to occur, namely the result which causes harm to someone, both physical and psychological harm.

In this context, the position of informed consent can be seen as a means of proving the existence of malpractice. If a medical action made by a doctor deviates from the conditions agreed upon between the doctor and patient as determined by informed consent, and the deviant action has an impact on the patient. Any deviation from the requirements for medical procedures contained in the informed consent will be a proof formula for malpractice for actions that result in risks for the patient, be it physical disability or even worse, namely loss of life or death. The emphasis of a criminal liability claim, such as in malpractice, lies on the element of error, whether intentional or negligent.

B. Dispute Resolution Over Dentist Negligence Which Causes Injuries to Patients Based on Law Number 17 of 2023 concerning Health

Medical dispute is a term used in the event of a dispute over a legal event involving medical personnel (doctors and dentists) or other health personnel (nurses, midwives, pharmacists, etc.) as a result of the provision of medical services. The legal event in question is an event that can move the law or give rise to legal consequences. Loss, injury, disability or death of a patient resulting from the provision of medical services can move the law or give rise to legal consequences. From the aspect of criminal law, the most important element in distinguishing between medical malpractice and medical risk is the element of doctor negligence. This negligence must be proven as gross negligence that is related to the patient's death or disability. If this element of negligence is not present, it means that the death or disability of the patient is not a result of malpractice, but is a medical risk that may occur or because the course of the disease is like that.

As an example of malpractice in providing health services by dentists, it can be found in a case that occurred in 2019, namely the case of Etri Kartika Chandra being paralyzed and losing her memory after having a tooth extracted at Semen Padang Hospital, patient Etri experienced Bronchospasm (narrowing of the respiratory tract) when under anesthesia for surgery (dental surgery). Oxygen to the brain stops, and as a result the brain's nervous system is damaged. The dentist has tried his best to treat it. Before the operation, the patient's family has also been explained the risks that could occur during and after the operation, and the patient's family understands and agrees, according to the party. The hospital was not malpractice because, from the start, the treatment was in accordance with the medical SOP (standard operating procedure) and had been discussed by the medical committee and the anesthesiologists' association, including the legal team of the Semen Padang hospital.

Medical Disputes are disputes that occur between patients and health workers or between patients and hospitals/health facilities. In this article, what is discussed specifically is disputes between dentists and patients. Medical disputes can take the form of violations of medical ethics, violations of medical discipline, violations of the rights of other people/patients or violations of community interests. The characteristics of a medical dispute include, among other things, the relationship between the doctor and the patient, the existence of negligence/mistakes, the object, namely in the form of healing efforts, the patient, the injured party. New medical disputes arise when there is a claim to the hospital, a complaint to the police, or a lawsuit to court. Medical disputes start from a feeling of dissatisfaction on the part of the patient because the doctor does not fulfill the performance as promised, so the patient or his family looks for the cause of this dissatisfaction.

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If there is a medical dispute, it is necessary to really review whether the action in question is truly malpractice or not. It is said to be malpractice if the medical personnel does not carry out actions that should be carried out by a prudent physician; the procedure does not meet the standards of care established by a particular specialty or group. Standard of care is defined as medical practice carried out by doctors with equal abilities (same degree of skill) in the same or close situations and conditions. Standards of care are not only caused by limited knowledge or lack of competence, but can also be caused by other factors, for example a lack of adequate infrastructure. Therefore, in this medical profession court the participation of the authorized collegium is required. Medical disputes in the form of alleged professional ethical problems, professional disciplinary problems, or legal problems have their own procedures for enforcement/handling. Justice can be fought for until the end by fully understanding the process that needs to be taken. Implementation of regulations regarding the resolution of medical disputes needs to be monitored, evaluated periodically, and continuously developed to answer the challenges of legal problems in the health sector.

C. Criminal Liability for Dentist Negligence That Causes Injuries to Patients Reviewed by Law Number 17 of 2023 concerning Health

If a patient suffers losses due to a doctor's mistake in carrying out his profession, then the patient can sue for compensation, either based on breach of contract (a situation where a person does not fulfill his obligations based on an agreement/contract) or because of an unlawful act (contrary to his professional obligations), or violating patient rights arising from professional obligations, or contrary to morality, or contrary to propriety in society. Medical Malpractice acts carried out either intentionally or unintentionally/negligently by doctors or medical personnel which result in victims of the patient, the victim in question not only causes disability but can also cause death to the patient. This happens due to negligence or neglect of assistance that should be provided immediately to save the patient. Criminal liability always arises from an action if it can be proven that there was an error committed by a professional doctor. From a legal perspective, the existence of a mistake against the law, an act carried out by a capable person, in the form of intent and negligence, is always related to the nature of responsibility.

The doctor or health worker as an ordinary human being who is full of shortcomings (which is human nature) in carrying out his medical duties which are full of risks cannot escape the power of God's nature and precepts, because it is possible that the doctor's disabled patient has carried out his duties in accordance with professional standards or standard operating procedure (SOP) and/or good medical service standards. This kind of situation should be called medical risk, and this risk is sometimes interpreted by parties outside the medical profession as medical malpractice. Medical malpractice acts involve examinations, drawing diagnoses based on the facts of examination results, forms of therapeutic treatment, or treatment to avoid losses from wrong diagnosis and wrong therapy. Actions in medical treatment by doctors can be active acts and can also be passive acts. Actions in a doctor's medical services or treatment that can be blamed on the perpetrator must contain an unlawful nature.

Criminal liability for dentist negligence that causes injuries to patients is regulated in Law Number 17 of 2023 concerning Health. Article 440 of the Law states that a dentist who is negligent and causes serious injury to a patient can be punished with a maximum prison term of 3 years or a maximum fine of IDR 250,000,000. If the negligence causes death, the sentence can increase to a maximum prison term of 5 years or a maximum fine of IDR 500,000,000. The negligence in question includes violations of medical professional standards, standard operating procedures, applicable laws (such as practicing without SIP or STR), medical ethical codes, general decency, therapy that is not in accordance with medical needs or informed consent, and so on. In addition to criminal liability, dentist negligence also includes civil and administrative aspects. From a civil perspective, patients who are harmed can sue for compensation on the basis of breach of contract or unlawful act. Administratively, dentists can be subject to sanctions by professional authorities, such as revocation of their practice license or the obligation to take additional training. This entire

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mechanism aims to uphold justice, protect patient rights, and maintain integrity and professionalism in medical practice.

CLOSING

Based on the results of the analysis that has been carried out, the researcher can draw the conclusion that:

1. A dentist's negligence in carrying out their duties which results in injury to a patient can be categorized as malpractice and a criminal act. This occurs when dentists do not comply with professional standards, standard operating procedures, or applicable codes of ethics, which harms patients. Medical malpractice includes incorrect diagnosis, inappropriate therapy, or violations of patient rights, such as failure to provide informed consent. This negligence can be seen from the presence of thoroughness (*zorgvuldigheid*), meaning that a doctor has normal abilities, a normal *zorgvuldigheid*, with a reasonable relationship in the aim of treating (the patient), diagnosis and therapy, meaning that these actions are carried out by a doctor who is very dependent from the knowledge he possesses, reasonable abilities and existing experience and the standards of the medical profession.
2. The factors that cause dentists to be negligent in carrying out their duties include several important aspects. First, the negligence factor (*culpa*) which includes the doctor's lack of caution and responsibility in carrying out his duties, both in terms of actions and the consequences they cause. Second, the intentional factor which is divided into intentional with intent, awareness as a necessity, and conditional intentional (*dolus eventualis*). Third, the misunderstanding factor (*dwaling*) which includes misunderstanding regarding the relevant elements of the offense or law. Fourth, clinical judgment errors that often occur in medical situations are complex and vary between doctors. Fifth, the contributing factor is negligence from patients who do not obey the doctor's advice, thereby worsening their own condition. Lastly, the infrastructure factor involves a lack of tools, materials and the latest understanding of medical science, as well as a high workload which interferes with doctors' concentration.
3. Criminal liability for a dentist's negligence which causes injury to a patient is reviewed by Law Number 17 of 2023 concerning Health, regulated in Article 440 of the Law which states that a dentist who is negligent and causes serious injury to a patient can be punished with a maximum imprisonment of 3 years or a maximum fine of IDR 250.000,000. If the negligence causes death, the penalty can increase to a maximum imprisonment of 5 years or a maximum fine of IDR 500,000,000. Health Law Number 17 of 2023 Article 308 paragraph 1 emphasizes that medical personnel or health workers who are suspected of committing unlawful acts in the implementation of Health Services which may be subject to criminal sanctions, must first seek a recommendation from the assembly.

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