

CRIMINAL LAW REVIEW OF PATIENT MALPRACTICE WHICH USED AS CONTENT BY HEALTH WORKERS

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Abstract: This research is a criminal law review of the baby's photo content without permission by health workers and a criminal law review of malpractice by health workers that causes death. This research is normative legal research because the problem is the object of this legal research. This research uses library research methodology. The research's results explain that criminal law regulations regarding baby photo content without permission by health workers were not comprehensively regulated in Law No. 17 of 2023 concerning Health Law. Patients have the privacy rights to their health data information in the Health Law regulation. Unfortunately, criminal sanctions regulations relating to patient privacy are regulated separately from government regulations. As we know, the Health Law will only be promulgated in 2023 so there are no government regulations yet that regulate criminal offenses regarding patient health secrets. Criminal law regulations regarding baby photo content without permission by health workers have been comprehensively regulated by Law No. 27 of 2023 concerning Personal Data Protection and Law No. 28 of 2014 concerning Copyright. Criminal law regulations regarding malpractice by health workers, including health workers resulting in death, are regulated in Article 359 of the Criminal Code. Article 359 of the Criminal Code can be overridden by Law No. 17 of 2023 concerning Health Law. Based on Article 308 Paragraph (1) Law No. 17 of 2023, in the case of health workers suspected of committing unlawful health services that may be subject to criminal sanctions, the first recommendation must be requested by the assembly. The conclusion is the recommendations from this panel are the benchmark for imposing criminal sanctions on health workers.

INTRODUCTION

Information and communication technology have a significant role in human life. The use of information and communication technology such as Facebook, Instagram, WhatsApp, and TikTok has changed human behavior significantly. People can communicate without distance and time limits, which makes relationships borderless. Indonesia is certainly not left behind in showing an increase in Internet users. Based on survey results from the Association of Internet Service Providers in Indonesia in 2019-2020, the number of Internet users reached 73.7% of the total population of Indonesia. Internet use has increased with the onset of the Covid-19 pandemic in Indonesia. In the 2021-2022 period,

internet users reached 201.03 million, or around 77.02% of the total population in Indonesia. In 2023 internet users will reach 215.63 million or approximately 78.19% of Indonesia's total population.

The increase in internet users is often a double-edged sword because it is not balanced with the user's knowledge. On the one hand, information and communication technology contributes to improving human welfare, progress, and civilization. On the other hand, information and communication technology raises new problems related to regulation and legal protection. Legal protection for privacy rights arises along with caused material and immaterial losses. Violations of the right to privacy also occur in the health sector.

Everyone who has a secret tries to keep their secret so as not known by others. Protection of the right to privacy has been mandated in Article 28G Paragraph (1) of The 1945 Constitution of the Republic of Indonesia which states that every person shall have the right to protection of his/herself, family, honor, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right. Legal issues arise when a health worker violates a patient's right to privacy. These health workers are taking care of a child who was born prematurely and providing health services that are not appropriate. Remember please, patients also have the right to the best health services as mandated in Article 28 H Paragraph (1) of the 1945 Constitution.

This case started when Erlangga's wife (the patient) came to a clinic in Bungursari, to give birth prepare. The patient asked to go back home even though she was already weak. The patient returned to the clinic in the evening because she could no longer stand the pain. The on-duty health workers were playing on their cellphones, not paying attention to the patients, and asked the patients to wait until 24.00 WIB. At around 22.00 WIB, the patient gave birth to her first child weighing approximately 1.5 kilograms or was categorized as LBW or a baby born weighing less than 2,500 grams. The baby was not placed in incubators. The baby was photographed and used as social media content without the family's permission. Postpartum patients ask to clean their blood-stained bodies. The next day, the patient was asked to go home because the child was in normal and healthy condition. Before leaving the clinic, Erlangga, who uses a Healthy Indonesia Card, was asked for a fee of IDR 1,000,000.00 without a detailed explanation. That evening, at 21.00, the baby's health condition suddenly deteriorated, and his heart stopped beating. Erlangga returned to the clinic, and his child was declared dead.

The unfortunate incident experienced by Erlangga is a phenomenon that often happens. Patients come to get healing and nursing but end up in more severe pain. Some patients even die. Malpractice is a common term intended for criminal acts that arise from people who have professions as health workers. Patients who are malpractice aware, questioning a legal problem occur. Harmin Hadaiti stated that malpractice is bad practice related to applying knowledge about medical technology in carrying out the medical profession and contains various characteristics. This means that malpractice is an act or practice in work that is bad or has disreputable implications in its application.

Criminal law regulation of patient malpractice use as content by health workers is necessary. Medical secrets obligation is not only interpreted as a professional obligation. The medical secrets obligation interpreted as a moral obligation based on the norms of decency for health workers states that "everything I see and hear in carrying out my practice will keep as a secret". Criminal law regulations will determine actions that are prohibited and included as criminal acts, as well as what sanctions are imposed on the perpetrators to overcome crime. The research's significance is to carry out malpractice patient reviews used as content by health workers.

RESEARCH METHODS

Based on the background of Criminal Law Review of Patient Malpractice which used as content by Health Workers. The problem formulation in this research is a criminal law review regarding the baby's photo content without permission by health workers and a malpractice criminal law review by health workers that causes death.

This research is normative legal research because the problem is the object of this legal research. This research uses library research methodology. The research methodology chosen by the author is library research. The approach method used in this research is a statutory approach and a conceptual approach, namely by examining statutory regulations and concepts relating to criminal law, the right to privacy, malpractice, and health workers. The law and regulations reviewed are Law No. 28 of 2014 concerning Copyright, Law No. 17 of 2023 concerning Health, and Law No. 27 of 2022 concerning Personal Data Protection.

RESULTS AND DISCUSSION

Improving the quality of Indonesian people's knowledge in utilizing information technology is one of the national development goals that must be achieved to face global

challenges. The quality of science often lags behind technological advances. This inequality in the quality of science and technology often creates new problems. One problem that often arises is invasion of privacy.

Nowadays, there are three privacy principles, namely:

The first principle, namely "the right to be alone" is the basic principle of a person's privacy. There are four (4) types of violations arising from the "right to be alone" namely when someone displays someone who is not in their place, displays someone's data, shares name or telephone number for commercial purposes, publishes "disgrace" about someone's data to the public and not giving someone space to be alone.

The second principle is a person's data where the personal data is written by someone else, such as medical records, a person's habits, tax information, insurance information, criminal record information, and so on. This information can be misused by the person who collects or processes the data as a violation of the owner's privacy rights.

The third principle is privacy regarding communications that a person makes online. The right to be alone, the basic principle of a person's privacy, is then violated when a person's photo is published to the public for commercial purposes without the permission of that person or their family. For example, there are baby patients at a clinic in Tasikmalaya are used as social media content. The patient's child was photographed without the family's permission. Worse yet, the baby was premature.

Nowadays, creating content on social media seems to be a necessity. Content on social media can be used as a source of income or a source of promotion. Unfortunately, if the uploaded social media content is obtained by photographing people without permission, the person has violated the victim's privacy. Indriyanto Seno Aji, Professor of Criminal Law from the Faculty of Law, University of Indonesia, explained that if the person recording or photographing without the person's permission, the person can be punished. It means that the health worker can be punished for carrying out the contents of a baby without the family's permission.

The right to privacy protection is part of international human rights regulated in Article 12 of the General Declaration of Human Rights. Article 12 states that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks." Article 17 International Convention on Civil and Political Rights which regulates privacy rights also states that "1. No one shall be subjected

to arbitrary or unlawful interference with his privacy, family, home, or correspondence, nor unlawful attacks on his honor and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks". Article 28G Republic Indonesia Constitution states that "Every person shall have the right to protection of his/herself, family, honor, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right." Based on this article, every person gets privacy of their personal data protection that is obtained or used by other people. Privacy abuse regarding personal data is a form of violation of constitutional rights. The dissemination of information in the current digital era of information and communication technology is fast, global, and crosses national borders, becoming a new challenge that causes an increased risk of violations of privacy rights.

Privacy protection includes the right to self-determination. Patient privacy protection has not been comprehensively regulated in Law No. 17 of 2023 concerning Health Law. Protection regarding personal data has been regulated in several articles of Law No. 17 of 2023 concerning Health. Article 4 Paragraph (1) letter i Law No. 17 of 2023 concerning Health Law has regulated the patient's right to obtain personal health data privacy and information. Further regulations regarding patient privacy rights based on Article 177 Paragraph (3) legislate with government regulations.

Health workers who know or reasonably suspect a criminal act in health services patients, medical personnel, and Health workers who have the right to report this to law enforcement officials legislate in Article 302 Paragraph (1) of Law No. 17 of 2023 concerning Health Law. Article 302 Paragraph (2) of this law states that the provisions referred to in Paragraph (1) are excluded from patient privacy rights. Based on the articles above, it can be concluded that criminal sanctions regulations relating to personal data are regulated separately from government regulations. Unfortunately, there is no government regulation derived from Law No. 17 of 2023 concerning Health Law regarding patient privacy rights. There is a legal void because there are no government regulations governing it.

Health workers who take baby photos without the victim's family permission may be subject to Article 65 Paragraph (1) and Article 65 Paragraph (2) of Law No. 27 concerning Personal Data Protection. Article 65 Paragraph (1) states that every person is prohibited from unlawfully obtaining or collecting personal data that does not belong to them to benefit themselves or another person, which could result in loss to the Personal Data Subject. Article

65 Paragraph (2) of Law No. 27 of 2022 concerning personal data Protection states that every person is prohibited from unlawfully disclosing Personal Data that does not belong to him. These health workers may be subject to criminal penalties under Article 67 Paragraph (1) and Article 67 Paragraph (2) of Law No. 27 of 2022 concerning Personal Data Protection. Article 67 Paragraph (1) of Law No. 27 of 2022 concerning Personal Data Protection states that every person who intentionally and unlawfully obtains or collects personal data that does not belong to him to benefit himself or another person could harm the Data Subject. Individuals referred to in Article 65 Paragraph (1) are punished with imprisonment for a maximum of 5 (five) years and/or a fine of a maximum of IDR 5,000,000,000.00 (five billion rupiah). Article 67 Paragraph (2) Law No. 27 of 2022 concerning Personal Data Protection states that every person who intentionally and unlawfully discloses Personal Data that does not belong to him as intended in Article 65 Paragraph (2) shall be punished with a maximum imprisonment of 4 (four) years and/or a maximum fine of IDR 4,000,000,000.00 (four billion rupiah). Law no. 27 of 2022 concerning Personal Data Protection has provided comprehensive protection for babies.

Note Please these health workers can also be subject to Article 12 of Law No. 28 of 2014 concerning Copyright. Article 12 of Law No. 28 of 2014 concerning Copyright states that a person is prohibited from commercially using, duplicating, announcing, distributing, and/or communicating the portraits they have created for advertising or advertising commercially without the person's written consent. This is because health workers take photos of patients for promotion on the clinic website. Health workers can be subject to criminal penalties as regulated in Article 115 of Law No. 28 of 2014 which states that any person who, without the consent of the person being photographed or their heirs, carries out commercial use, duplication, announcement, distribution or communication of the portrait as stated in the article. as intended in Article 12 for advertising or advertisements for commercial use in both electronic and non-electronic media, shall be punished with a maximum fine of IDR 500,000,000.00 (five hundred million rupiah).

Criminal law regulations regarding the baby's photo content without permission by health workers are not comprehensively regulated by Law No. 17 of 2023 concerning Health Law. Unfortunately, criminal sanctions relating to patient's privacy rights are legislated separately from government regulations. As we know, the Health Law was promulgated in 2023 so until now, there are no government regulations governing it. Criminal law regulations regarding baby photo content without permission by health workers have been

comprehensively regulated by Law No. 27 of 2023 concerning Personal Data Protection and Law No. 28 of 2014 concerning Copyright.

Health rights are part of human rights which are recognized and regulated in various international and national conventions. The 1945 Constitution Preamble states that the national goal of the Indonesian nation is to protect Indonesians and contribute to advancing general welfare. The protection referred to in this case is quite broad, including protecting the public from disease and trying to improve the welfare of Indonesian society. Human health context is every person's right, and the state is obliged to respect, uphold, and protect it. Article 28 H Paragraph 1, 1945 Constitution of the Republic of Indonesia states that Every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care. Health services are a human right of every human being and impose obligations and responsibilities for their implementation on the government.

The government is obliged to carry out health efforts that are equitable and affordable to the community, finance health services in the form of public goods such as immunization and infectious disease eradication, and finance health services obligations for the impetuous and the old. The government, to realize its obligation to guarantee and improve the level of public health, established Law No. 17 of 2023 concerning Health Law. Article 3 of Law No. 17 of 2023 concerning Health contains health administration aimed at improving healthy living behavior; improving access and quality of health services and health resources; improving effective and efficient human resource management; meeting community needs for health services; increasing health resilience in the face of outbreaks or epidemics; guarantee the availability of health funding that is sustainable and fair and managed transparently, effectively and efficiently; realizing sustainable development and use of health technology; and provide legal protection and certainty for patients, health human resources and the community.

In practice, there are often discrepancies in the health implementation services with established procedures. Malpractice is an error or negligence made intentionally or unintentionally by medical personnel that can cause harm to the health and safety of the patient they are treating. Negligence occurs when someone accidentally does something that should not be done or does not do something that should be done, by someone who has the same qualifications in the same circumstances and situation.

Malpractice is not a new phenomenon. Legal protection against malpractice committed by health workers is regulated in Law No. 17 of 2023 concerning Health. Unfortunately, malpractice allegedly committed by health workers still occurs. One of the malpractice cases that occurred recently was experienced by Erlangga Surya Pamungkas' wife at a clinic in Bungursari District, Tasikmalaya City. This case occurred on Monday, 13 November 2023 when a patient came to the clinic to give birth. Upon arrival at the clinic, the patient was asked to go home by a health worker. The patient went home even though she was very faint. In the evening, the patient became increasingly weak and could no longer endure the pain so she returned to the clinic. Upon arrival at the clinic, patients ask to wait until 24.00. Health workers do not care about patients and continue playing with their cell phones. At around 22.00, the patient was treated by health workers and gave birth to a child weighing approximately 1.5 kilograms or in the LBW category or a baby weighing less than 2,500 grams.

After giving birth to an LBW baby, the LBW baby is used in practice for several students who do internships. The baby was even photographed and used as material for social media content, without the family's permission. Patients who have just given birth are asked to clean their blood-stained bodies. Another unpleasant incident occurred when the baby was allowed to go home the next day. Erlangga is not sure that his child will be allowed to go home because the baby's condition is in the LBW category and still requires an incubator. Unfortunately, health workers said the baby was in healthy condition. Before leaving the clinic, Erlangga which used a Healthy Indonesia Card was asked for a fee of IDR 1,000,000.00 without knowing the details. At 21.00 the baby's condition deteriorated, and he was taken back the baby to clinic A. When he arrived at Clinic A, a health worker came out and declared that the baby had died.

The patient did not receive applicable Standard Operating Procedures rights. Article 276 of Law No. 17 of 2023 regulates patient rights, namely the right to obtain health information; receive an adequate explanation regarding health services; obtain health services, professional standards, and quality services. On Monday afternoon the patient arrived, and the patient was asked to go home, in the evening she did not receive proper care to give birth. After the patient finished giving birth the health workers did not clean the blood on the patient's body, the patient's child was used as practice for student interns. The patient's child was photographed and used as content without permission and the baby was not put in the incubator.

Health workers are suspected of negligence in this case. A person can be said to have committed negligence if a trait of heedlessness or carelessness is implied in him. Malpractice is also contrary to the law because it is not by Standard Operating Procedures. Every health worker is required and obliged to provide the best service to the patients who need medical treatment. Standard operational procedures must be carried out according to applicable laws and regulations.

In this case, health workers can be punished by Article 359 of the Criminal Code, which states that anyone, through his fault (negligence), causes another person to die is threatened with imprisonment for a maximum of five years or imprisonment for a maximum of one year. Based on the principle of *lex specialis derogate legi generali*, Law No. 17 of 2023 overrides the Criminal Code. Article 308 Paragraph (1) of Law No. 17 of 2023 states that in the case of medical personnel or health workers who are suspected of committing unlawful acts in the health services implementation can be subject to criminal sanctions, they must first request a recommendation from the assembly. It can be concluded that the panel recommendation is the benchmark for imposing criminal sanctions on medical personnel or health workers.

CONCLUSIONS AND RECOMMENDATIONS

Criminal law regulations regarding the baby's photo content without permission by health workers are not comprehensively regulated by Law No. 17 of 2023 concerning Health Law. Unfortunately, criminal sanctions relating to patient's privacy rights are legislated separately from government regulations. As we know, the Health Law was promulgated in 2023 so until now, there are no government regulations governing it. Criminal law regulations regarding baby photo content without permission by health workers have been comprehensively regulated by Law No. 27 of 2023 concerning Personal Data Protection and Law No. 28 of 2014 concerning Copyright.

Criminal law regulations regarding malpractice by health workers that cause child patients' deaths are regulated in Article 359 of the Criminal Code. Article 359 of the Criminal Code can be overridden by Law No. 17 of 2023 concerning Health Law. Based on Article 308 Paragraph (1) of Law No. 17 of 2023, in the case of health workers who are suspected of committing unlawful acts in health services implementation may be subject to criminal sanctions, a recommendation must requested by the assembly first. The assembly

recommendation is the benchmark for imposing criminal sanctions on medical personnel or health workers.

Government regulations regarding criminal sanctions for privacy rights need to form immediately. The patient's privacy right is prone to abuse because there are no government regulations until now that regulate criminal sanctions for the patient's right to privacy. Void Health law regulations regarding baby content without permission can be punished by Law No. 27 of 2023 concerning Personal Data Protection and Law No. 28 of 2014 concerning Copyright.

Criminal law regulations regarding malpractice resulting in death by health workers have been regulated well. These legal regulations can be found in Article 359 of the Criminal Code and Paragraph 1 of Article 308 Law No. 17 of 2023 concerning Health Law.

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