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An Analysis of Criminal Responsibility of Health Facility to Refuse Of Services for Emergency Patients

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Abstract

Health facility leaders can be threatened with punishment if there is a refusal emergency patient has been formulated by the Health Act 2009. The Health Act has formulated criminal threats since 2009. is cumulative in the form of imprisonment and fines for the state, which are pretty heavy. As for victims who may experience disability or death, their rights are not clearly stated by Law; although there is room in the Criminal Procedure Code, it is not easy. Efforts to find justice quickly can also be found through the paradigm of restorative justice or the authority of judges with rechtvinding. In the future, there needs to be changes or revisions to the health law regarding the criminal responsibility of leaders so that a sense of justice is obtained for both parties.

Keywords
criminal responsibility; health facility; emergency patients

I. Introduction

Health care is a human right that there is no difference between those who are economically capable or incapable, a universal right that is protected and should not be reduced or taken away by anyone. Neglect of health services is a violation of the constitution of the Republic of Indonesia and laws relating to health services.

The preamble to Law number 36 of 2009 concerning Health has contained the background or main thoughts on protecting public health. a) that health is a human right and one of the elements of welfare that must be realized under the ideals of the Indonesian nation as referred to in Pancasila and the 1945 Constitution of the Republic of Indonesia; b) that every activity to maintain and improve the highest degree of public health is carried out based on non-discriminatory, participatory, and sustainable principles in the context of the formation of Indonesian human resources, as well as increasing the nation's resilience and competitiveness for national development; c) that everything that causes health problems to the Indonesian people will cause substantial economic losses to the state, and every effort to improve the health status of the community also means investment for the country's development for proper health care. The state constitution, namely the 1945 Constitution, states in article 34, paragraph 3, that the state is obliged to provide adequate health facilities for its people.

A health facility is a tool and or place used to carry out health service efforts, whether promotive, preventive, curative or rehabilitative, carried out by the government, regional government and or the community. Public Health or Puskesmas and Hospitals in various classifications. These health service centres are owned by the central government and local governments and are privately owned.

Health is a very important element of the quality of life in national development (Najikhah, 2021). While indirect factors such as economic factors, culture, education and work, health service facilities (Lubis, 2021). Health services in clinics or health centres, and hospitals, emergency patients must be assisted even without asking for an advance payment; the legal norms governing this can be found in Law number 36 of 2014 concerning Health Workers, Law number 36 2009 concerning Health, Law Number 44 of 2009 concerning Hospitals, Law Number 29 of 2004 concerning Medical Practice, Regulation of the Minister of Health Number 19 of 2016 concerning Emergency, Regulation of the Minister of Health Number 9 of 2014 concerning Clinics, Ministerial Regulation Health number 43 of 2019 concerning Puskesmas by taking into account the Permenkes considerations regarding Puskesmas.

Emergency patients are in a sudden or sudden situation requiring quick, precise, and careful handling or assistance so that the patient avoids death or disability.

With the emergence of obligations and also the emergence of rights to these obligations, then automatically, there is a responsibility. According to the Big Indonesian Dictionary (KBBI), responsibility is the obligation to bear everything; if anything happens, it can be sued, blamed, and sued. Meanwhile, according to the Quarterly Point of Accountability, it must have a basis, namely things that give rise to legal rights for a person to sue others and give birth to obligations.

Two terms refer to responsibility, namely: *liability (the state of being liable) and responsibility (the state or fact being responsible*).

Liability is a broad legal term (*a broad legal term*), which implies that *liability* refers to the most comprehensive meaning, covering almost every character. Liability is defined to designate all the characteristics of rights and obligations. Besides that, liability is also; actual or potential subject to liability; the condition of being responsible for actual or possible things such as losses, threats, crimes, costs, or burdens; conditions that create a duty to implement the Law immediately or in the future. *Responsibility* means (things can be held accountable for an obligation and includes decisions, skills, abilities, and skills). *Responsibility* also means the obligation to be responsible for the laws that are implemented and to repair or otherwise provide compensation for any damage that has been caused).

The criminal responsibility of the leader is the responsibility for the wrongdoing of others, which is contained in the principle of *vicarious liability*, the perpetrator's responsibility. This is not found in the Criminal Code.

Accountability is substituted with the *principle of vicarious liability* in the Criminal Code, for those who think *formalistically legalistically* state that they cannot accept punishment for people who have done nothing wrong because they adhere to the adage of Criminal Law; this principle is called *principle of nulla poena sine.*

In Law No. 36 of 2009 concerning Health, this norm can be found in Article 190, which threatens the leadership of health facilities if they do not help patients in an emergency with *cumulative* imprisonment for a maximum of 2 years and a fine of IDR 200 million. Moreover, bill cause disability or death, the threat is even more severe, namely a maximum of 10 years in prison and a fine of Rp. 1 billion.

Example case that ever happened, Debora Simanjorang case 9 September 2017, this baby was born to husband and wife, Henny Silalahi with Rudianto Simanjorang.

Baby Debora, aged 4 months, has had a cold for a week and continues to be taken to Cengkareng Hospital for examination; the doctor gave a nebulizer medicine; at night, Debora's house continued to sweat at 03.00 am, the baby was short of breath. Babies were taken immediately to the nearest hospital from their homes. Namely, Mitra Keluarga

Kalideres Hospital entered the ER, performed suction and was immediately fitted with various monitors, infusions, steam, and medicines. At 03.30 WIB, Deborah was already breathing and was crying loudly. Then the doctor said Debora had to go to the *Pediatric Intensive Care Unit* (PICU). However, the doctor said the hospital did not accept BPJS. They were then offered a down payment of Rp. 19,800,000. The family gave about IDR 5 million. The officer then contacted someone by telephone, which later stated that with the money, the baby could not be admitted to the PICU. The money was returned, and the family asked for a policy. However, the hospital was then referred to another hospital which was then called Hermina. Siloam, RSCM, Harapan Kita, Awal Bros, but not a single PICU room was empty. At that time, the doctor said that the cost of treatment in the PICU room last night reached Rp. 20 million. As efforts to get to the PICU took place, doctors called the family in; Deborah was critical and died. One by one, the equipment was removed from the baby's body while the Sister said condolences.

II. Research Method

This paper uses normative legal research methods because the focus of the study departs from literature study data in the form of laws, documents, books, magazines, and other literature related to writing. The technique of tracing legal materials uses document study techniques and analysis of studies using qualitative analysis.

III. Discussion

Legal responsibility in criminal Law, also called *criminal responsibility*, means "A person who has committed a crime there does not mean he should be punished. He must be held accountable for his actions that have been done". Taking responsibility for an act means finding the wrongdoer or not.

Accountability is an act that is disgraceful to society and it is accountable to the maker. For the existence of criminal liability, it must be clear in advance who can be accounted for, and this means that it must first be ascertained who is declared the maker of a crime.

According to Andi Hamzah explained that the maker (leader) must have an element of guilt and guilt that must meet the elements, namely the ability to be responsible or accountable to the maker, then there is a psychological link between the maker and the act, namely the existence of intentional or error in the narrow sense (culpa).). The perpetrator has an awareness that the perpetrator should be able to know of the consequences arising from his actions. Therefore, there is no basis for eliminating the crime that erases the ability to be held accountable for an act to the maker.

In criminal Law, the concept of *liability* is a central concept known as the teaching of error. In Latin, this teaching of error is known as *men's rea.* The doctrine *of men's rea* is based on the *maxim actus nonfacit reum nisi men's sit rea*, which means "an act does not result in a person being guilty unless the person's thoughts are evil.

According to the traditional view, in addition to the objective conditions for committing a criminal act, the following conditions must also be met." subjective requirements or mental conditions to be accountable and criminally imposed on him. This subjective condition is called "error". According to the Continental legal system *(civil Law*), these subjective conditions are divided into two, namely the form of error (intentional and negligence) and capable of In the Anglo-Saxon legal system *(Common Law),* these conditions are incorporated into the *men's rea.*

Thus, what is meant by criminal liability is an assessment of whether a suspect/defendant can be held accountable for a criminal act that has occurred are three elements that are interrelated with each other and n is rooted in the same situation, namely a violation of a system of rules. This system of rules can be broad and varied. However, diversity is similar in that they all include rules about behaviour followed by a particular group. So the system that gave birth to the conception of error, accountability and punishment is normative.

In essence, so that a person can be criminally responsible, first of all, there must be a criminal act; secondly, if the perpetrator of the criminal act has an error, either in the form of negligence or intentional, thirdly that the perpetrator can be responsible for an act that has an error. Moreover, the fourth turns out that there is no forgiving reason. Concerning the sequence or hierarchy of criminal acts and criminal liability, Roeslan Saleh emphasized, "because there is no point in holding the accused accountable for his actions if the actions themselves are not against the Law, then further now it can also be said that first there must be certainty about the existence of a criminal act. , and then all the elements of the error must also be related to the act committed so that for an error that results in the conviction of the defendant, the defendant must: (a) commit a criminal act, (b) be able to take responsibility, (c) intentionally or deliberately, and (d) the absence of forgiving reasons."

Vicarious liability is defined by Henry Black *as the indirect legal responsibility of the employer for the acts of an employee, of principle for tors and contract of an agent*. Agent in a contract).

In Civil Law, it is clear that this norm can be found in Article 1367 of the Criminal Code, which states that a person is not only responsible for losses caused by his actions, but also for losses caused by the actions of people who are his dependents or caused by goods owned by him under his control….

Vicarious *responsibility* is the leader's responsibility for the actions of his subordinates in the scope of work or who also calls it a substitute responsibility for criminal Law, which is unusual because criminal Law recognizes no crime without error. Hence, the criminal responsibility of the leader is an exception.

The birth of this exception is a refinement and deepening of the normative and juridical moral principles; namely, in certain cases, a person's responsibility is deemed appropriate to be extended to the actions of his subordinates who do work or actions for him or within the limits of his orders. Therefore, even though a person does not commit a crime, in the context of criminal liability, he is deemed at fault if the actions of other people in such a position are criminal acts. As an exception, this provision must be limited to specific events expressly determined by Law so as not to be used arbitrarily. This exception principle of responsibility is known as the principle of absolute responsibility or *"vicarious liability."*

The concept *of Vicarious Liability*, according to Ruslan Saleh, is "... *the legal responsibility of one person for the wrongful acts. of another). Vicarious Liability* is often interpreted as "responsibility instead of..."

Ruslan Saleh admits the existence of *vicarious liability* as an exception to the principle of error. Saleh argues that, in general, a person is responsible for his actions. However, there is something called *vicarious liability;* people are responsible for their actions toward others. The Law determines who is seen as a responsible actor.

In English criminal *Law, vicarious liability* is often defined as a person's legal liability for wrongdoing committed by another person. In short, it is often defined as substitute liability. *Vicarious liability* is commonly used in civil Law. However, it is a new

thing in criminal law because it deviates from the principle of error adopted so far. In civil law, *vicarious liability* is applied to cases of loss *(tort). The tort* is the payment of compensation for actions committed by workers that harm third parties. However, in criminal Law, the concept is very different. The application of punishment (criminal) to people who harm or threaten social interests, partly to correct and partly to protect and prevent anti-social activities.

In *Vicarious Liability,* people are responsible for the actions of others. However, the Law determines who is seen as a responsible actor.

The application of *Vicarious Liability* in the realm of criminal Law is a new thing because it deviates, and the principle of error has been adopted so far. Because in Criminal Law, it is clear that there is no crime without guilt.

Summing up what Muladi has revealed about the responsibility of the commander for the actions of his subordinates, there are several things about civilian leaders being able to be vicariously responsible for the actions of their subordinates.

a. In the Rome Statute, there are the expression *commanders and other superiors*. The responsibility of commanders in the military can also apply to civilian leaders with the use of generic terminology *superior* and the possibility of criminal responsibility *Head(s) of State or Government* or *responsible Government official(s)* indicates that the doctrine of responsibility The responsibility of the commander/supervisor also applies to civilians, including political figures who have authority.
b. Civil servants or political leaders, or public officials can be held criminally liable if they *deliberately and recklessly disregarded their legal duty, permitted, supported and did not do their utmost to put an end to these abuses*. support and do not do their best to end violations) committed by their subordinates
c. A crime has occurred or is in progress. However, there is no attempt to prevent it from the superior even though the superior. It has all the means to prevent or stop a potential crime. In this case, there is no need to question *men's rea* or the inner attitude or actus reus of the superior.
d. Muladi then underlined that these crimes occurred in the form of *core or principal crimes (*certain crimes*),* war crimes, genocide or crimes against humanity. Then Muladi praised the enactment of Law No. 32 of 2009 concerning the Protection of Environmental Management which regulates the accountability of civil leadership on vicarious liability. He stated that the Law had developed; of course, it meant not only serious human rights violations as previously stated.

Takdir Rahmadi argues that the application of *Vicarious Liability* is developing. In the end, it is also applied to criminal cases. The development of the doctrine is mainly supported by court decisions followed by subsequent court decisions, which adhere to the precedent principle. Rapid developments regarding *Vicarious Liability* occur in countries that adhere to the *Common Law system,* especially in the United Kingdom and the United States.

Furthermore, Takdir Rahmadi stated that the developments in the two countries were also followed by other countries that followed different legal systems, namely *civil Law*. Indonesia, which belongs to the *civil Law,* is no exception to the influence of this doctrine; However, Indonesia does not explicitly acknowledge the existence of this doctrine. In practice, law enforcement recognizes it through court decisions.

The traditional concept related to the application of *Vicarious Liability* has been extended to a situation where the employer is responsible for criminal acts committed by his employees within the scope of his work.

Health facilities in the form of an organizational structure for senate services can be in the form of health clinics, Community Health Centers or Puskesmas, or government or private hospitals.

Leaders at each health facility, both in health clinics or in health centres and hospitals, have their criteria as determined by the Regulation of the Minister of Health Number 971 / Menkes / Per / XI / 2009 concerning Competency Standards for Structural Health Officials Competency standards for leadership in Health Clinics are listed in Article 23

1) The head of the UPT/UPTD has an educational background of medical personnel or a Bachelor of Health with a Bachelor's degree in the health sector.
2) The head of the UPT/UPTD has attended training on Strategic Planning, technical training in their field, Leadership, and Health Management Information Systems.
3) The training as referred to in paragraph (2) must be fulfilled before or no later than the first 1 (one) year after occupying a structural position.

The relationship between the leader of health facilities and health workers working in the emergency unit can be found in Article 12, paragraph 4 of the Minister of Health Regulation number 47 of 2018 concerning emergencies, which states, Doctors or dentists are health resources who are responsible for the designated Emergency Room or Emergency Room. by the head of the health facility service or the director of the head of the health facility.

The 1948 Declaration of Human Rights, article 25 paragraph 1 states that everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and necessary medical care and social services, and the right to security in times of unemployment, sickness and disease. , unable to work, widowed, elderly, or others lack livelihood in the circumstances beyond their control.

Article 28 H paragraph 1 of the 1945 Constitution states that everyone has the right to live in physical and spiritual prosperity, a place to live, a good and healthy environment and the right to obtain health services.

Emergency patients are patients who need health services as soon as possible, as Article 3 of the Minister of Health Regulation Number 47/2018 regulates emergency criteria including 1) threatening life, endangering themselves and others/the environment; 2) the presence of disturbances in the airway, breathing, and circulation; 3) there is a decrease in consciousness; 4) the presence of hemodynamic disorders, and require immediate action to avoid disability or death.

Legal sanctions for the refusal of emergency patients by health workers or health facility leaders have problems in two laws, namely Law Number 36 of 2009 concerning Health Number 36 of 2014 concerning Health Workers, so that it significantly interferes with legal certainty...

Paragraph 1 Leaders of health care facilities and health workers who practice or work at health care facilities who intentionally do not provide first aid to patients in an emergency, as referred to in Article 32 paragraph (2) or Article 85 paragraph (2), shall be sentenced to a maximum imprisonment of 2 (two) years and a maximum fine of Rp. 200,000,000.00 (two hundred million rupiahs)

Paragraph 2: If the act referred to in paragraph 1 results in disability or death, the head of the health facility and health worker should be punished with imprisonment for a maximum of 10 (ten) years and a maximum fine of Rp. 1,000,000,000 (one billion).

1. Heads of Health Facilities

Heads of clinics, leaders of Puskesmas, leaders of government or private hospitals are legal subjects as referred to in the Regulation of the Minister of Health Number 971 /Menkes/Per/XI/2009 concerning Competency Standards for Structural Officials health culture.

The relationship between leaders and subordinates in the organizational structure of health services is found in Article 12, paragraph 4 of the Minister of Health Regulation number 47 of 2018 concerning emergencies; Doctors or dentists are health resources who are responsible for the Emergency Installation or IGD appointed by the head of health facility services or the director of the facility leadership. Health.

The definition of health facilities in article 4 mentions the types of health service facilities Government Regulation Number 47 of 2016 concerning Health Service Facilities, health facilities namely: a) Health workers independent practice place, b) Community health centre, c) Clinic, d) Hospital, e) Pharmacy, f) Blood transfusion unit, g) Health laboratory, h) Optical, i) Medical service facilities for legal purposes, y) Traditional Health Service Facilities.

Are all these units a structure that must be responsible while doctors in the emergency department handle emergency conditions?

2. Health Workers

According to article 1 paragraph 1 of Law Number 36/2014 concerning health: Health workers are every person who devotes himself to the health sector and has the knowledge and skills through education in the health sector which for certain types requires the authority to carry out health efforts.

Article 1 Point 6 of Law Number 36 of 2009 concerning Health states, Health workers are every person who devotes himself to the health sector and has the knowledge and/or skills through education in the health sector which for certain types requires the authority to carry out health efforts.

Article 11 paragraph 2 Number 36 / 2014 concerning health Types of Health Workers included in the group of medical personnel as referred to in paragraph (1) letter consist of doctors, dentists, specialist doctors, and specialist dentists. Health, not just energy, not just health, because if that is the case, there are differences in the terminology of words in the editorial of the formulation of the norms.

3. Leaders of Health Facilities

Clinical leaders, leaders of Puskesmas, leaders of government or private hospitals are legal subjects as referred to in the Regulation of the Minister of Health Number 971 / Menkes / Per / XI / 2009 concerning Competency Standards for Structural Health Officials.

The relationship between leaders and subordinates in the organizational structure of health services is found in Article 12, paragraph 4 of the Minister of Health Regulation number 47 of 2018 concerning emergencies; Doctors or dentists are health resources who are responsible for the Emergency Installation or IGD appointed by the head of health facility services or the director of the facility leadership. Health.

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Are all these units a structure that must be responsible? At the same time, emergency conditions are handled by doctors in the emergency department.

4. Health Workers

According to article 1 paragraph 1 of Law Number 36/2014 concerning health: Health workers are every person who devotes himself to the health sector and has the knowledge and/or skills through education in the health sector which for certain types requires the authority to carry out health efforts.

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a. An example of irresponsible doctors. The doctor has stated that a person must be treated with specific medical devices, but when they arrive at the administrative officer or the counter, they state that the patient's family is required to pay a certain amount of money beforehand and there is no money after the patient dies, the doctor is not responsible, as was the case with Debora.
b. Responsible doctors and health facility leaders. Doctors who know for sure about the patient's condition must be treated with a particular machine, but the machine is expensive, and the doctor reasoned that the machine was used by the patient and the patient had to be connected and this emergency patient had to be taken to another hospital and then died, and it turned out that the machine he needed was not used by other patients, because of the high cost of the device, the doctor lied.

A harsh face on criminal Law is a cumulative sanction imposing two main penalties simultaneously. In the Criminal Code or the Criminal Code, this is not found; the Criminal Code only imposes one of the main types of punishment in article 10 of the Criminal Code. Moreover, the imposition of two main sentences at once is often found in crimes outside the Criminal Code or particular crimes.

In Article 190 of the Health Law, the state imposes maximum imprisonment of 2 years and a fine of Rp. Two hundred million for refusing to serve emergency patients. Moreover, if he dies or is disabled, he is threatened with a maximum of 10 years and a fine of Rp. 1 billion.

This article forgets that the victim or patient who may suffer, be disabled, or die does not formulate compensation. If the court decides to punish the head of a health facility or health worker, with a fine for the state, along with physical punishment, it seems that the state takes over the patient's suffering; this hurts the feelings of the patient or victim who gets nothing.

Indeed, there is another legal norm that can be used, namely Article 98 paragraph 1 of the Criminal Procedure Code, which states: If an act which is the basis of an indictment in an examination of a criminal case by a district court causes harm to another person, then the presiding judge at the trial may decide to combine the lawsuit for compensation for the criminal case.

In practice, there are doubts in implementing court decisions containing criminal decisions and compensation decisions as referred to in CHAPTER XIII of the Criminal

Procedure Code, namely whether the compensation decision is executed alone and what is the role of the Prosecutor in the combined civil case.

V. Conclusion

The leader's criminal responsibility or the principle of Vicarious Liability is an expansion of the understanding of criminal responsibility. In its application in the realm of criminal Law, there are at least three essential requirements that must be met, namely there must be a relationship such as a relationship between the employer and employee or worker, criminal acts committed by employees or the worker must be related to or still within the scope of his work, formulated by Law as a prohibited act.

The formulation of the norms of responsibility of the leader under Article 190 of the Health Law is a cumulative crime by combining two main penalties at once, namely the threat of imprisonment and a fine. The state accepts a fine for refusing an emergency patient but ignores a patient who is sick or disabled or dies. Indeed, there is Article 98, paragraph 2 of the Criminal Procedure Code, which can combine criminal charges with compensation; this is not easy because it is not the duty of the Prosecutor to file for civil compensation; at least, it can cause doubts in filling it. Therefore, the patient's condition can be neglected, and it is not easy to get compensation for his suffering.

Article 190 of the Health Law also does not contain a proper gradation of threats, namely that the criminal threat of causing disability and causing death is the same. Moreover, in this article, there is a formulation of legal or editorial norms that are not firm, which can become a debate. Such as the definition of health facilities that are too broad in terms of health personnel and the formulation of Article 190 of the Health Law should use health medical personnel.

Article 82 paragraph 1 of the Law on Health Workers, refusal of service for emergency patients, the sanction is in the form of administration. If this is related to articles 304 and 306 of the Criminal Code as a general offence, it is not appropriate because it is not appropriate for people to be helped, and the Law requires them to help and then people who are suffering or are disabled or die, this provision is included in the criminal law area. So the principle of lex posterior derogat legi priori cannot be used because it disturbs the sense of justice. Culture poena par esto, the Law, must be under his actions.

Emergency patients are patients who are threatened with disability or death. They must be helped without even asking for an advance payment. The legal norm has confirmed this in Article 59 paragraph 1 and paragraph 2 of Law number 36 of 2014 concerning Health Workers, Article 32 paragraph 1 paragraph 2 of Law number 36 of 2009 concerning Health, Article 35 point c of Regulation of the Minister of Health of the Republic of Indonesia Number 9 of 2014 concerning Clinics Article 2 and article 29 paragraph 1 letter ce and f of Law Number 44 of 2009 concerning Hospitals,

Criminal Threats to the leadership of health facilities and or health workers, which are stated in Article 190 of the Health Law, show the face of the harshness of criminal Law, namely with a cumulative nature, combining imprisonment and fines at the same time, this sanction is decisive.

The harsh face of criminal Law in European countries has changed since the 1990s, namely with mediation in criminal cases, public prosecutors mediate between victims and perpetrators until peace is obtained by admitting guilt and willingness to compensate. Penal mediation has long been used by indigenous peoples in Indonesia.

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