

Legal Protection of Health Workers on the Installation of Mechanical Ventilation of Covid-19 Patients in Hospitals

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KEYWORDS

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ABSTRACT

Corona Virus Disease-2019 (Covid-19) is a disease that causes an epidemic with a high number of deaths and morbidity in Indonesia. Covid-19 sufferers often experience respiratory failure, so they need to receive mechanical ventilation assistance. This research aims to find out the rules for legal protection for health workers in the act of installing mechanical ventilation for Covid-19 patients in hospitals and to find out the implementation of legal protection. This type of research is normative juridical based on a legal approach. Data collection is based on literature study, taken from legislation, research results and literature books. The results of the research found that the provision of health services was carried out responsibly, safely, of good quality and evenly and non-discriminatory. The position faced by medical personnel or health workers is sometimes problematic because installing mechanical ventilators for Covid-19 patients from a criminal law perspective is a mistake if it is done outside of their authority, even though the medical personnel or health workers are dealing with the function and task of carrying out actions. for patient safety which is of course tied to the Hippocratic Oath as an ethical and moral basis. The suggestion in this research is that the government must provide legal protection to medical personnel whose rights are not fulfilled by policy organizers, even though their obligations have been fulfilled by health personnel.

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1. Introduction

Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which is the seventh coronavirus found in Wuhan of China's Hubei province spread worldwide, and as of May 20, 2020 has infected 4,806,299 people and caused 318,599 deaths (Ciotti et al., 2020). Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) was officially named *Coronavirus Disease-2019* (Covid-19) by the *World Health Organization* (WHO) on February 11, 2020 (Wu et al., 2020). Covid-19 transmitted through droplets has broad clinical manifestations, ranging from asymptomatic, acute respiratory diseases, respiratory failure that requires support in the Intensive *Care Unit* (ICU), to multiple organ dysfunction syndrome (Multiple Organs Disfunction) Syndrome/MODS). 81% of patients had a CFR of 2.3%, 5% of patients had respiratory failure, septic shock and MODS resulting in a CFR of 50%.

Some patients have symptoms of *happy hypoxia*, a condition in which the patient's oxygen saturation is low ($SpO_2 < 90\%$), but do not experience significant respiratory distress and usually have good clinical symptoms. The results showed that 9%-11% of Covid-19 patients required support in the ICU with a CFR of 26%, and only 16% were discharged from the ICU. Of the patients admitted to the ICU, 99% required breathing assistance, including 88% required mechanical ventilation and 11% received noninvasive ventilation (Widysanto et al., 2020).

The severity of Covid-19 is related to age and underlying comorbidities (hypertension, DM, cardiovascular disease, etc.). The final cause of death in Covid-19 patients is likely to be due to acute respiratory *distress syndrome* (ARDS). Respiratory failure is the main cause, which was also the cause of death in the previous pandemic, the Spanish flu of 1918 (Vincent & Taccone, 2020).

People of any age, whether with or without prior immunity, can progress to a critical stage of ARDS. The Berlin criteria define ARDS with acute hypoxemia respiratory failure after an acute infection such as a respiratory viral infection, which appears as an X-ray image of bilateral lung infiltrates in the absence of cardiogenic and hydrostatic causes. A cohort study reported as many as 85% of ICU patients with Covid-19 met the definition of ARDS according to Berlin criteria and by providing an established supportive intervention for ARDS, resulted in significant improvements in oxygenation and lung capacity (Huang et al., 2020; Torres Acosta & Singer, 2020; Vincent & Taccone, 2020). *Coronavirus Disease-2019* (Covid-19) with ARDS shows different clinical manifestations from other ARDS patients, where symptoms of lack of oxygen (hypoxia) are more prominent and in some studies it appears that the use of mechanical ventilation is 2 times longer in Covid-19 patients than other ARDS patients (Wicky et al., 2021).

The results showed that after Covid-19 patients were hospitalized, some patients developed into MODS especially elderly men who were often associated with underlying diseases such as hypertension, heart disease and other diseases at the same time. During laboratory examination, the patient showed abnormalities in inflammatory indicators, electrolytes and *D-Dimers*, low absolute values of lymphocyte counts, elevated troponin T and low oxygenation index are risk factors for multiorgan failure that make patients need treatment in the ICU (Cui et al., 2021).

A patient with ARDS can be treated with mechanical ventilation, which aims to provide oxygen to the patient during the disease. Proper oxygen delivery is needed in critical conditions such as Covid19 which if it is at the ARDS stage it will risk causing death, so this mechanical ventilation is needed. When a patient requires mechanical ventilation and is not available, the patient's life can be at risk (King et al., 2020). *Corona virus Disease-2019* (Covid-19) with ARDS shows different clinical manifestations from other ARDS patients, where symptoms of lack of oxygen (hypoxia) are more prominent and in some studies it appears that the use of mechanical ventilation is 2 times longer in Covid-19 patients than other ARDS patients (Wicky et al., 2021).

The need for mechanical ventilation is increasing in hospitals and ICU rooms worldwide as a result of the increase in Covid-19 cases with ARDS, but unfortunately, there is not enough ventilation available in hospitals. A report from *Imperial College London* estimates 30% of patients are hospitalized with Covid-19 and require mechanical ventilation. In a recently published study, Yang et al. described their experience in Wuhan China of Covid-19 patients admitted to the ICU, where 56% of them required non-invasive ventilation upon hospital admission and of those patients, 76% required invasive ventilation (Iyengar et al., 2020).

On March 2, 2020, the first case of Covid-19 in Jakarta was announced by the Government of Indonesia. The government through the Ministry of Health has made efforts to optimize 100 referral hospitals stipulated in the Decree of the Minister of Health number 414 of 2007 concerning the Determination of Avian Influenza Prevention Referral Hospitals. Furthermore, the government re-established 132 referral hospitals through the Decree of the Minister of Health number 169 of 2020 concerning the Determination of Referral Hospitals for the Management of Certain Emerging Infectious Diseases (Kementerian Kesehatan RI, 2020).

With an increase in the number of confirmed cases of Covid-19, the Ministry of Health of the Republic of Indonesia issued Circular Letter number HK 02.01/Menkes/11/2021 concerning Increasing the Capacity of Covid-19 Patient Care at Covid-19 Service Provider Hospitals. The number of hospitals in Indonesia is 2,979, with the number of beds prepared for Covid-19 patients totaling 81,032 used for isolation rooms and ICU rooms.

Health laborers are the cutting edge who treat Covid-19 patients each day with a really tall chance of transmission of the infection. Lawful assurance for wellbeing laborers is frequently overlooked, as in case individuals are unconcerned and contend that it is as of now a obligation, and duty as therapeutic staff. And in case we look closely at the flare-up, to supply security, the state has issued a approach in Article 1 letter a of Law Number 4 of 1984 concerning Flare-ups of Irresistible Infections. Moreover, Article 9 passage (1) has moreover explicitly stipulated that certain officers who carry out episode control endeavors as alluded to in Article 5 can be remunerated for the dangers borne in carrying out their obligations. Article 9 of the Irresistible Infection Episode Law is without a doubt reasonable and commensurate with the risks confronted by wellbeing laborers.

Legitimate security for wellbeing laborers can moreover be given through criminal arraignment to individuals who are still jumbled to execute conventions for taking care of irresistible malady episodes that have an affect on the transmission of wellbeing specialists or indeed result within the passing of wellbeing laborers and other individuals who are uncovered. The jumbled usage of standard wellbeing conventions for dealing with Covid-19 can be said to meet the components of purposely discouraging the usage of dealing with the Covid-19 infectious illness flare-up. Typically expressed in Article 14 of the Irresistible Malady Flare-up Law.

The emergence of relationships between patients and doctors and patients with community health centers can be because patients are very urgent to get help. In this situation, the community health center (puskesmas), especially doctors, directly conducts what is called *zaakwaarmeming*, which is where a person voluntarily without getting an order to represent the affairs of others until the person represented by his interests can solve his interests, in addition to the relationship between doctors and patients, the role of puskesmas in implementing legal protection for patients is also very necessary.

In the developing medical world, the role of puskesmas is very important in supporting public health. The progress or retreat of the puskesmas will be determined by the success of those who work at the puskesmas, in this case doctors, nurses and people who are in the place. The puskesmas is expected to be able to understand the recipients of health services as a whole and be able to implement protection for patients. In health services, puskesmas must also pay attention to the professional ethics of health workers who work at the puskesmas concerned. However, professionals who work in puskesmas in giving decisions professionally are independent. The decision must be

based on awareness, responsibility and high morals in accordance with their respective professional ethics. Health workers who are given full trust by patients, and who are employed at the puskesmas must pay attention to the good and bad actions and always be careful in carrying out medical actions, with the aim that protection of patients can be realized and from these medical actions do not rule out the possibility of errors and omissions. Mistakes or negligence made by health workers in carrying out their professional duties can have fatal consequences both on the body and soul of the patient and are very detrimental to the patient.

The relationship between doctor and patient shows that the doctor has a dominant position, while the patient only has a passive attitude. Such a position has historically lasted for many years, where the doctor played a leading role, both because of the special knowledge and skills he possessed, and because of the authority he brought because he was a small part of society that for many years had a position as an authority in the health sector to provide medical assistance based on the full trust of patients.

Patients as recipients of health services feel happy if they write a piece of paper to him. From the prescription implicitly has shown recognition of the authority of the field of science possessed by the doctor concerned. The authority of the field of science that arises and the complete trust of the patient is due to the patient's ignorance of what he suffers, and what medicine is needed, and here only the doctor knows, coupled with the closed and secret atmosphere that covers the doctor's position guaranteed by the code of medical ethics. Such a position is getting stronger because coupled with the factor of scarcity of health workers/doctors so that his position is a monopoly for him in providing health maintenance services so that patient protection is guaranteed. Moreover, because the nature of this health service is a psychological party that binds each other and is not equal.

From the description stated above, the issue of legal protection for patients contains very complex and interesting problems to be researched and encourages the author to examine more deeply about legal protection for patients who grow and develop in the medical world, especially in the context of health services. Based on the above, researchers encourage researchers to conduct research with the following title: "Legal Protection of Health Workers in the Installation of Mechanical Ventilation of Covid-19 Patients in Hospitals".

2. Materials and Methods

Types of Research

The type of research used in this study is normative juridical, namely legal research conducted by examining library materials or skunder sources as a basis for research by conducting searches on regulations and literature related to the problems studied with a statutory approach (stature approach), and a decision approach. With this approach, researchers will get information from various aspects about the issues raised, therefore the suggestions generated from the research must be applicable or possible (Soejono & Mamudji, 2011).

Research Approach

The approach method used in writing this thesis is juridical sociological because in this study in addition to using a legal science approach, it also seeks to apply other social sciences. This means that in determining data is focused on the juridical aspect, while social science is used as an auxiliary.

The normative juridical understanding is to approach legal principles and principles by reviewing and viewing and analyzing existing problems. While the sociological understanding is to approach directly to some people who occupy certain positions in accordance with the object of research.

Juridical sociological approach in addition to using legal principles in reviewing and seeing, analyzing the problem, this study also conducts direct respondent approaches.

Sources of Legal Materials

Primary Legal Materials, primary book materials are legal materials that are directly related to the problem, namely the legal protection of health workers in the act of installing mechanical ventilation of COVID-19 patients in hospitals based on Law No. 39 of 1999 concerning Human Rights.

Secondary Legal Materials, secondary data are legal materials in the form of literature books: Constitution of the Republic of Indonesia 1945, Law No. 39 of 1999 concerning Human Rights (HAM), Law Number 36 of 2009 concerning Health, Law Number 44 of 2009 concerning Hospitals, Government Regulation No. 47 of 2016 concerning Health Service Facilities.

Tertiary legal materials in the form of legal dictionaries and encyclopedias.

Techniques for Collecting Legal Data/Materials

Data collection techniques / legal materials carried out by researchers are focused on literature research or can be said to be literature studies. Data obtained from literature studies are studying legal books related to the problem under study, laws and regulations, legal views, and newspapers that are also related to research materials.

Legal Material Processing and Analysis Techniques

The process of analyzing legal materials is carried out based on the results of data processing sourced from secondary data. Secondary data in this study has three parts that become research legal materials, namely 1) primary legal materials; 2) secondary legal materials; and 3) tertiary legal materials. These three legal materials support the process of analyzing data in research so that the data used can provide accuracy and assist researchers in conducting further research.

Previous Research

Until now, there has been no similar research with the title of this study, but previous research that has approached this research includes :

- 1) Legal Protection of Health Workers during the Covid-19 Pandemic by Gerardus Gegen and Aris Prio Agus Santoso, published in the Scientific Journal of Legal Sciences QISTIE Vol. 14 No. 2. November 2021.
- 2) Legal Protection of Health Workers Implementation of Vaccination at Puskesmas Karang Malang, Mijen District, Semarang City During the 2019 Corona Virus Disease Pandemic" by Tri Susilowati, Postgraduate Program of Darul Ulum Islamic Center Sudirman Guppi (Undaris) Ungaran.

Research Location

The location of this research was carried out at the Karno University Campus Library which is located at street. Pegangsaan Timur Number 17A, Menteng, Jakarta, Balikpapan University Library on street Pupuk Raya Gunung Bahagia, South Balikpapan District, Balikpapan City, East Kalimantan.

3. Results and Discussions

Criminal Liability and Legal Protection of Medical and Health Workers

1. Consequences of Criminal Law,

Criminal law can be understood based on the understanding of criminal law and the functions and objectives of Criminal Law. Didik Edro Purwoleksono summarized the understanding of Criminal Law put forward by several experts, as follows: (Purwoleksono, 2014)

- a. According to Van Hamel, the Criminal Law is the whole basis and rules followed by the State in its obligations in law enforcement, by prohibiting what is contrary to the law (*onrecht*) and causing suffering to those who violate the prohibition;
- b. According to Simons, Criminal Law is divided into three criteria, namely the entire prohibition or order by the State threatened with suffering if not obeyed, all regulations stipulated by the conditions for imposing a crime, and all regulations that provide a basis for imposing and determining the crime;
- c. according to Soedarto, Criminal Law is a legal rule that binds an act that meets certain conditions as a result of a crime, so that criminal law is based on two things, namely actions that meet certain conditions and criminal; According to Moeljatno, the Criminal Law is part of the overall law in force in a country with the basis of rules to determine how criminal imposition can be carried out if there are people suspected of violating the prohibition, determining when and under what conditions violators in violating the prohibition can be charged or sentenced to crime as threatened, and determining which acts are not allowed to be done that are prohibited accompanied by threats or sanctions in the form of certain crimes for those who violate the prohibition.

Based on the above opinion, it can be concluded that in Criminal Law, what is meant by criminal law consequences is a series of threats or sanctions that cause suffering to parties who violate something that is prohibited. The consequences caused by this become important as an effort to be able to prevent people from carrying out these prohibited actions. The functions of Criminal Law are numerous, including: (Purwoleksono, 2014)

- a. to provide protection against legal interests that are considered reprehensible, which based on the explanation of Satochid Kartanegara and Hermen Hadiati Koeswadji, these legal interests are divided into human life, human body or body, one's honor, one's independence, and the price of property;
- b. According to Andi Hamzah, the Criminal Law serves as the moral code of a nation.

2. Legal Protection of Medical and Health Workers,

a. Legal Protection Derived from Autonomous Law

Legal protection for Medical Personnel and Health Workers comes from autonomous law. *Autonomous law* is a type of justice model based on procedures that give strong legitimacy to law enforcement agencies, but in the process of enforcement is constrained by standard or standard processes. The characteristics of autonomous law were outlined by Philippe Nonet and Philip Selznick, namely: (Nonet & Selznick, 2017)

- 1) The separation of law from politics, a distinctive feature of this legal system entails in the independence of judicial power and contains a fine line between legislative and judicial functions;
- 2) Legal order supports the "regulatory model", focusing on helping to implement regulations in measures for accountability of officials while limiting the creativity of legal institutions and the risk of interference by legal institutions in the political sphere;
- 3) Procedure as the heart of law, order and justice are not only for substantive justice, are the main objectives and competencies of legal order;
- 4) Observance of the law is understood as perfect adherence to positive legal regulations, whereas criticism of applicable laws must go through a political process.

Legal protection in autonomous law for medical personnel and health workers is contained in the Health Law, Eleventh Section, Enforcement of Discipline of Medical Personnel and Health Workers and Dispute Resolution. Article 304 of the Health Law regulates:

- “(1) In order to support the professionalism of Medical Personnel and Health Personnel, it is necessary to implement enforcement of professional discipline.
- (2) In order to enforce professional discipline as masked in paragraph (1), The minister establishes an assembly that carries out duties in the field of professional discipline...”

In addition, the protection of medical personnel and health workers can be seen that there is an assembly that will conduct periodic monitoring in terms of the implementation of health administration. In carrying out their duties, medical personnel or health workers resolving disputes prioritize as referred to in Article 310 of the Health Law:

“In the event that Medical Personnel or Health Workers are suspected of making mistakes in carrying out their profession that cause harm to Patients, disputes arising from such errors are resolved first through alternative dispute resolution outside the court.”

Legal protection as stipulated in autonomous law is a right obtained by medical personnel and health workers with the requirements as in Article 273 paragraph (1) letter a of the Health Law, which reads:

“... obtain legal protection while carrying out duties in accordance with professional standards, professional service standards, standard operational procedures, and professional ethics, as well as the health needs of patients.”

b. Legal Protection Derived from Heteronomous Law

Bambang Sutiyoso argues that Indonesia adheres to heteronomous legal findings because so far judges are bound by laws and regulations (Sutiyoso, 2015). At the time of making legal discovery, this is also closely related to the autonomous element because often judges have to use their own views. The understanding of heteronomous law can also be interpreted by positivism in the context of analogy. H.L.A. Hart explains that legal positivism is: (Prasetyo & Baitullah, 2007)

- 1) Laws that have been criticized in the form of positive laws must contain commandments;
- 2) The link between law and morals does not always have to be created (there is no necessary connection between law and morals or law as it ought so be).

Legal protection provided to health workers and medical personnel in the context of heteronomous law can be seen in various prohibitions in the Health Law. This protection aims to protect the public as well as medical personnel and health workers, because their authority becomes clear on what is allowed and prohibited,

Table 1 Prohibition to Health Workers

Article	Prohibition
Article 60	prohibition of abortion, except with permissible criteria in accordance with the provisions of the Criminal Code
Article 76	prohibition of shackling, neglect, violence, and/or instructing others to carry out shackling, neglect, and/or violence against people at risk or with mental disorders
Article 111 paragraph (2)	prohibition of refusing patients and/or asking for advances in advance
Article 119 paragraph 119	prohibition of trading human blood
Article 124	prohibition of trading organs and/or body tissues
Article 135	prohibition of unproven safe stem cell and/or stem cell-based therapies for reproduction
Article 138 paragraph (2)	prohibition of procuring, reproducing, storing, promoting, and/or distributing pharmaceutical preparations that do not meet standards and/or safety
Article 138 paragraph (3)	prohibition of procuring, reproducing, storing, promoting, and/or distributing Medical devices that do not meet standards and/or safety
Article 139	prohibition of narcotic and psychotropic abuse
Article 147	Prohibition of trading food and beverages with incorrect and/or misleading information on product information

The problematic position of medical and health workers from the point of view of criminal law is associated with providing services beyond their authority regarding the use of mechanical ventilators

The level of pressure on the health worker profession the author took during the COVID-19 pandemic at the Belitung Regency Health Center as an example, which is illustrated from the results of the study as follows: (Priyatna et al., 2021)

Table 2 The level of pressure on the health profession

Anxiety Level	Frequency	%
Normal Anxiety	130	83,3
Mild Anxiety	9	5,8
Moderate Anxiety	12	7,7
Severe Anxiety	4	2,26
Very Anxiety	1	0,6
Work Sress Level		
Mild work stress	49	31,4
Low work stress	55	35,3
Moderate work stress	43	27,6
Work Sress Level		
Heavy work stress	9	5,8
Total	156	100

Based on the study, it was concluded that health workers were found to experience anxiety by 16.7% and work stress by 68.7%. This finding indicates that health workers are at risk of mental

health disorders due to the COVID-19 pandemic situation (Priyatna et al., 2021).

This psychological condition is important because it will affect the actions of health workers and medical personnel, not least related to the use of mechanical ventilators, which may be categorized as actions outside their authority. However, criminal liability for actions outside the authority carried out on the grounds of being in a state of crisis is certainly important to maintain legal certainty.

1. Priority of Patient Safety or Legal Certainty for Medical and Health Workers.

a. Hippocratic Oaths in the Exercise of the Medical Profession and Medical Personnel.

Moral standards as the core of the medical and health profession as enunciated by Hippocrates from the beginning became a good and important guideline. Although many historians have not found a consensus that can be said to be the beginning of the Hippocratic Oath, it is widely believed that the oath appeared in the Fourth century BC by a famous physician named Hippocrates who is also called the "Father of Western Medicine". Along the way there were still some changes to the version of the text of the Hippocratic Oath, for example in the Middle Ages there were modifications made to conform to Christian doctrine. The first recorded use of the oath outside Greece was at the University of Wittenberg, Germany, in 1508 (Priyatna et al., 2021).

b. Principles in the implementation of the Medical Profession and Health Workers,

Article 2 of the Health Law mentions several principles that must be considered in health administration, all of which aim to know the ontological and axiological aspects of health administration, as follows:

Table 3 Ontological and axiological aspects in health administration

Ontological aspects	Aspek Aksiologis
<ul style="list-style-type: none"> • Balance • Benefit • Scientific • Protection and Safety • Participatory • Alignment • Legal Awareness • State sovereignty • Environmental Sustainability • Cultural wisdom • Order and legal certainty 	<ul style="list-style-type: none"> • Humanity • Equitable • Ethics and Professionalism • respect for rights and obligations • justice • nondiscriminatory • Considerations of Morals and Religious Values • General Importance

c. Ethical Aspects and Legal Aspects in Patient Management

Medical personnel, in this case the medical profession, have the Indonesian Code of Medical Ethics (KODEKI) issued by the Executive Board of the Indonesian Medical Association. KODEKI aims to be more affirmative in terms of fiduciary relationships. KODEKI structurally consists of 21 articles that provide ethical guidelines in carrying out the profession.

Article 17 of the Code on Emergency Relief states in essence that every doctor is obliged to realize humanitarian duties by providing emergency assistance for people in need. This obligation can be fulfilled only if the doctor concerned believes that someone else is willing and able to perform emergency assistance. Associated with the installation of mechanical ventilators which is the topic of this study, from an ethical point of view, that doctors are in principle obliged to perform emergency assistance associated with humanitarian principles which are axiological elements, Article 17 of the Code covers three main scopes, namely:

- a. The doctor must assess whether or not basic life support is needed for each patient when receiving emergency calls in the surrounding environment;
- b. If the patient needs basic life support, the doctor must be willing to carry it out immediately at the scene according to applicable standard operational procedures;
- c. If there is an emergency event that does not require basic life support, the doctor must play a role according to his clinical authority to treat the condition.

Article 286 of the Health Law is regulated as follows:

“(1) Under certain circumstances, Medical Personnel and Health Workers may provide services beyond their authority.

(2) Certain circumstances as referred to in paragraph (1) shall at least include:

- a. the absence of Medical Personnel and/or Health Personnel in an area where Medical Personnel or Health Personnel are on duty;
- b. Government Program Needs;
- c. medical emergency management; and/or
- d. Outbreaks, and/or disaster emergencies.

Furthermore, using a systematic interpretation, in the Regulation of the Minister of Health of the Republic of Indonesia Number 47 of 2018 concerning Emergency Services (Permenkes 47/2018), Article 1 point 3 states:

"An emergency is a clinical condition that requires immediate medical action for lifesaving and disability prevention."

The criteria for determining emergency situations based on Article 3 paragraph 2 of Permenkes 47/2018 are life-threatening, endangering themselves and others/the environment; the presence of disorders of the airway, breathing and circulation; the presence of a decrease in consciousness; the presence of hermodynamic disorders; and/or require immediate action.

2. The Link Between Criminal Responsibility and Professional Administration of Medical and Health Workers,

This research specifically discusses if at one time, the installation of mechanical ventilators is carried out by medical personnel or health workers who actually do not have the authority to do so, which is due to the situation that there are no authorized medical personnel or health workers while the patient really needs it, and it turns out to cause harm to the patient concerned. The provision of services outside the authority is regulated under Article 286 of the Health Law.

More detailed specifications regarding this matter have not been regulated more and Article

289 of the Health Law only mentions that its authority will be regulated in a Government Regulation. The installation of mechanical ventilators to patients in ICU in crisis is guided by the Decree of the Minister of Health of the Republic of Indonesia Number 1778 / MENKES / SK / XII / 2010 concerning Guidelines for the Implementation of *Intensive Care Unit* (ICU) Services in Hospitals (Kepmenkes 1778/MENKES/SK/XII/2010).

a) Willfulness or Negligence as an Element of Fault,

Intentionality or negligence in Criminal Law is a crucial thing that must be understood because it is related to criminal liability and its sanctions. Negligence in history is expressed by Rowe and Silver quoted by Peter F. Lake, (Silver & Rowe, 1995)

“As the eighteenth century gave way to the nineteenth, the word negligence assumed legal significance and began to forge an action destined to replace trespass on the case. But the word made its debut without overt connection to anything called “duty.” Toward the mid-nineteenth century, the word “duty” sounded its first cries”

Ketika abad ke-18 beralih ke abad ke-19, kata kelalaian mempunyai arti hukum dan mulai terbentuk sebagai suatu tindakan yang bertujuan untuk memperbaiki pelanggaran yang dilakukan dalam perkara tersebut. Namun kata tersebut dimulai tanpa kaitan apa pun dengan apa pun yang disebut “seharusnya”. Sekitar pertengahan abad ke-19, kata “tugas” mulai terdengar. Konsep kelalaian di Indonesia dapat dilihat dari sudut pandang Wirjono Prodjodikoro, yaitu kelalaian atau *culpa* sama dengan kesalahan pada umumnya, tetapi dalam Ilmu Hukum tidak memiliki arti teknis, karena dalam tindak pidana kelalaian tidak seberat kesengajaan atau ketidakhati-hatian sehingga menyebabkan akibat yang dilarang itu terjadi (Prodjodikoro, 1989). Terhadap ciri-cirinya kelalaian dapat diidentifikasi sebagai: (Prodjodikoro, 1989)

- a. deliberately doing an act that turns out to be wrong, because using his wrong memory/brain, He should have used his memory as well as possible, but He did not use it, in other words, He did the action without doing caution;
- b. The perpetrator can foresee what might happen, but he believes he can prevent it, and if this effect occurs, the perpetrator will not want to take any action that leads to the effect, but the perpetrator does not cancel the action which is then condemned for breaking the law.

The fundamental difference between negligence and intentionality lies in the consequences caused as is an expression of the will and real actions of the perpetrator. Criminal liability for a criminal act committed intentionally is certainly more severe than a criminal act due to negligence. If consequential *dolus* is likened to gross negligence (*bewuste schuld* or *culpa lata*), then consequential *dolus* requires awareness of the possibility of something happening, even though one can do something else, but prefers to complete the action even though the perpetrator knows the risks. Conversely, in the case of *culpa lata*, the perpetrator must be able to estimate (*voorzien*) the likelihood of an effect occurring.

Regarding the degree of negligence, the Criminal Code has no rules or explanations at all. Based on legal cases, for criminal acts, the highest level of negligence is used, namely *culpa lata* or *grove schuld*. Negligence should be classified as *gross negligence* or *flagrant negligence*, thus crimes caused by minor negligence (*culpa levis*), the perpetrator is not responsible. In contrast to intentionality, intention (*opzet*) in Indonesian Criminal Law includes three types, namely: (Prodjodikoro, 1989)

- a. The intention to commit actions that are prohibited and threatened with crime for certain purposes, in the sense that the perpetrator does want to achieve a certain result, this is the main reason for the threat of punishment;
 - b. Definite consideration, in the sense that the intention exists if the perpetrator through his actions does not aim to achieve the consequences on which the crime is based, but the perpetrator knows and realizes that the consequences will inevitably arise from the actions he commits;
 - c. The consideration of realizing this possibility, in the sense that the intention is clearly not accompanied by the shadow of certainty that the intended effect will occur, but only by imagining the possibility of the occurrence of the effect.
- c. Criminal Indication of Willfulness or Negligence Caused by Providing Health Services Beyond Authority

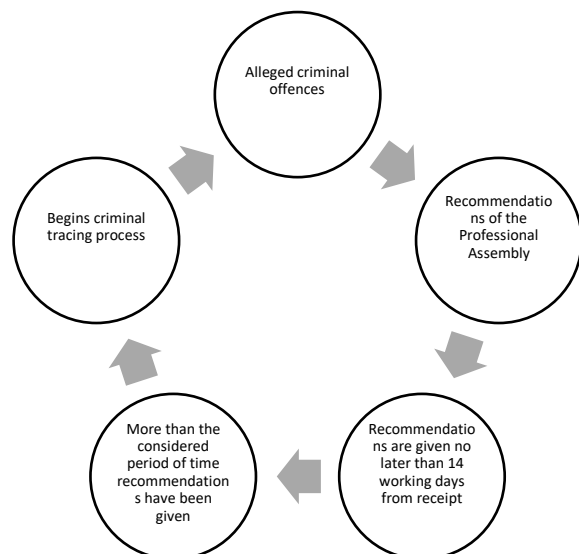
Actions committed by medical personnel or health workers outside their authority from a legal point of view can potentially lead to allegations of intentional or deliberate occurrence that are threatened with criminal sanctions. Although in principle, Article 286 of the Health Law has regulated the provision of health services outside the authority, the problem lies in the legal risks that may occur, which then demand accountability as stipulated in Article 440 of the Health Law which reads:

- “(1) Every Medical Worker or Health Worker who commits negligence that results in serious injury shall be punished with a maximum imprisonment of 3 (three) years or a maximum fine of Rp250,000,000.00 (two hundred fifty million rupiah);.
- (2) If negligence as referred to in paragraph (1) results in death, each Medical Worker or Health Worker shall be loaned with a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah).”

Actions committed beyond his authority so as to cause as stipulated in Article 440 of the Health Law to be criminalized. However, to be able to give or impose the crime, several mechanisms need to be taken as stipulated in the health Law. Based on Article 308 paragraph (1) regulated:

“Medical Personnel or Health Workers who are suspected of committing unlawful acts in the implementation of Health Services that can be subject to criminal sanctions must first be asked for recommendations from the panel as referred to in Article 304”

If you look at Article 304 of the health Law, the assembly carries out duties in the field of professional discipline that determine whether there are violations of professional discipline committed by medical personnel and health workers, whose membership can be permanent or *ad hoc*, whose duties and functions are regulated by Government Regulations. The provision provides protection for the actions of medical and health workers with mechanisms before the alleged criminal act as follows:



d. Use of Mechanical Ventilators by Medical and Health Workers in Health Law Perspective

Referring to the Permanent Procedures of the National University Nursing Laboratory published on August 1, 2017, a mechanical ventilator is a mechanical aid that is "mandatory" in the intensive care unit that functions to provide breathing assistance to patients by providing positive air pressure to the lungs through an artificial airway. The purpose of installing a mechanical ventilator includes reducing respiratory work, increasing the patient's comfort level, providing an accurate amount of air given in one minute, overcoming ventilation imbalances and melagir oxygen flow to the lungs for blood circulation (perfusion), and ensuring oxygen delivery to tissues.

In the point of view of Health Law specifically for COVID-19 conditions, the use of mechanical ventilators is regulated in the Decree of the Minister of Health of the Republic of Indonesia Number HK.01.07/MENKES/5671/2021 concerning Clinical Management of *Corona Virus Disease 2019* (COVID-19) Management in Health Service Facilities (Kepmenkes Clinical Management of COVID-19 Management in Health Service Facilities). Conditions intended for mechanical ventilator use include respiratory failure, shock or multiorgan failure requiring ICU treatment, and preventing *ventilator associated pneumonia/hospital acquired pneumonia*.

The use of mechanical ventilators, of course, must pay attention to special matters related to breathing which are divided into several degrees of symptoms that need professional assessment in determining them, which are also regulated in the Ministry of Health Decree on Clinical Management of COVID-19 Management in Health Service Facilities, Chapter III Degrees of Symptoms and Clinical Management of Adult Covid-19 Patients.

e. Justifying Reasons and Forgiving Reasons in Providing Health Services Beyond Authority,

The reasons for abolishing crime are based on the opinion of Achmad Soema, as follows:
R. Achmad Soema (1982) in (Hadzil et al., 2019)

- a. A justifiable reason is a reason that eliminates the unlawful nature of an act so that what the defendant does then becomes an appropriate and righteous act;
- b. Reason for forgiveness, which is a reason to eliminate the guilt of the defendant even

though the defendant's actions are still unlawful so that they are still a criminal offense, but are not punished because there is no guilt;

- c. the reason for the revocation of the prosecution is for legitimate reasons based on its usefulness or benefit to society.

If it is related to Article 286 of the Health Law, what is meant by "certain circumstances" in the author's view includes justifying reasons, namely holding oaths and professional ethics, especially the reason for saving patients' lives, even though unfortunately the mandate of Article 289 of the Health Law which basically states that the regulation of "certain circumstances" in more detail that should be regulated by Government Regulations, currently does not exist.

4. Conclusion

Based on the research that has been done, the author concludes as follows: 1) The implementation of health services is very important in supporting patient satisfaction and needs to be considered by health workers, this has been regulated in article 54 of the Health Law concerning the provision of health services, namely: the implementation of health services is carried out responsibly, safely, of equitable quality and non-discrimination. Legal protection by using statutory instruments, namely in Law No. 44 of 2009 concerning Hospitals, namely: obtaining information about the rules and regulations applicable in the Hospital, obtaining information about the rights and obligations of patients, obtaining humane, fair, honest, and non-discriminatory services, obtaining quality health services in accordance with professional standards and standard operational procedures, Obtain effective and efficient services so that patients avoid physical and material losses. 2) The phrase "certain circumstances" in Article 286 paragraph (1) of the Health Law has fulfilled legal certainty by regulating the provisions in paragraph (2) which states that certain circumstances at least include the absence of medical personnel and/or health workers in an area where medical personnel or health workers are on duty; the needs of government programs; medical emergency management; and/or extraordinary circumstances, outbreaks, and/or disaster emergencies. 3) The position faced by medical personnel or health workers is sometimes problematic because the installation of mechanical ventilators for Covid-19 patients from the point of view of the Criminal Law is a mistake if done outside the authority, even though the medical personnel or health workers are faced with the function and duty of carrying out actions for patient safety which are certainly bound by the Hippocratic Oath as an ethical and moral foundation. If it is related to Article 286 of the Health Law, what is meant by "certain circumstances" according to the author includes justification reasons that can exempt medical personnel or health workers from criminal liability, namely holding oaths and professional ethics, especially reasons for saving patients' lives, even though it is unfortunate that the mandate of Article 289 of the Health Law basically states that the regulation of "certain circumstances" in more detail that should be regulated by Government Regulations, currently does not exist.

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