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Legal liability of medical personnel and health workers who commit negligence during medical procedures (Normative Study After the Enactment of Law Number 17 of 2023 Concerning Health)

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Abstract

Medical personnel and health workers are part of health human resources who are basically tasked with providing health services to service recipients, in this case patients and/or providing the necessary medical measures. Medical personnel and health workers who commit negligence when carrying out their duties legally can be subject to legal liability. Since the enactment of Law Number 17 of 2023 concerning Health, there have been several important aspects of health law that have changed, one of which is related to legal liability. For this reason, it is necessary to conduct an assessment, especially about legal liability for medical personnel and health workers if they commit negligence when performing medical procedures. The type of research carried out is normative juridical research. The approach taken is a statutory approach and is descriptive analysis. The resources used for secondary data are by processing data from primary legal materials, secondary legal materials and tertiary legal materials. The data collection tool used is document study (library research) and analyzed by qualitative analysis. Based on the results of the study, it is known that the duties and functions of medical personnel and health workers in carrying out medical actions on patients are mainly to provide health services to patients in the form of promotive, preventive, curative, rehabilitative, and/or palliative. Then it is known that the legal responsibility of medical personnel and health workers when committing negligence after the enactment of Law Number 17 of 2023 concerning Health is divided into 3 (three) forms, namely administrative liability, namely the temporary deactivation of STR; and/or recommendations for revocation of SIP, civil liability in the form of compensation and criminal liability in the form of imprisonment and fines.

Keywords: Medical Personnel; Health Workers; Forgetfulness; Medical Actions

1. Introduction

The law protects a person's interests by allocating a power to him to act in the framework of his interests. The allocation of this power is measured in the sense that its breadth and depth are determined. Such power is called rights. Thus, not every power in society can be called a right, but only a certain power, that is, given by law to a person [1].

Likewise, a person who is given authority by laws and regulations to carry out certain actions or acts that can have legal implications, must first be given his authority in the laws and regulations. In Indonesia, there are various kinds of special professions that can do things that people are not allowed or cannot do legally. These professions include the profession of health workers and medical personnel.

Both health workers and medical personnel have the main task of devoting themselves to the health sector. Health is a human right, meaning that everyone has the same right to access health services. The quality of safe, quality, and affordable health services is also the right of all Indonesia people. With the development of science and technology, in

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order to carry out these health efforts, it is necessary to be supported by adequate health resources, especially health workers, both in terms of quality, quantity, and distribution [2].

Health is a basic need and a human right that is realized by providing various health efforts through the implementation of health development. As an effort to meet the health aspect, health workers are needed to improve the quality of services to the community so that the highest degree of health is realized in accordance with the ideals of the Indonesia nation. Health workers are the strategic or main element in realizing optimal, safe, orderly and professional health services, which take place at any time and continuously [3].

Previously, both related to health workers and medical personnel were regulated in Law Number 36 of 2014 concerning Health Workers. The establishment of Law Number 36 of 2014 concerning Health Workers considering the importance of the legal umbrella or *legal standing* of health workers and medical personnel to carry out medical actions to everyone who needs them, in this case patients as recipients of health services from health workers and/or medical personnel. The legal umbrella for health workers and medical personnel considering that Indonesia is a country of law, which is understood that law is a regulation made by the ruler (government) or custom that applies to everyone in a society (State). Law can also be said to be laws, regulations and as a way to regulate people's life [4]. For this reason, it is associated with the duties and authorities of health workers and medical personnel, the Law on Health Workers was formed as a regulation that protects and regulates the actions of health workers and medical personnel.

Currently, all laws and regulations related to health have been revoked with the enactment of Law Number 17 of 2023 concerning Health. However, it should also be noted that before the birth of Law Number 17 of 2023, related to health workers and medical personnel is regulated in Law Number 36 of 2014 concerning Health Workers, as well as several other laws and regulations that govern. Previously, medical personnel were included in the group of health workers as stipulated in Article 11 paragraph (1) of Law Number 36 of 2014 concerning Health Workers, which stated:

Healthcare workers are grouped into:

- Medical personnel;
- Clinical psychologists;
- Nursing staff;
- Midwifery personnel;
- Pharmaceutical personnel;
- Public health workers;
- Environmental health workers;
- Nutritional energy;
- Physical therapy personnel;
- Medical technicians;
- Biomedical engineering personnel;
- Traditional health workers; and
- Other health workers.

In paragraph (2) Article 11 of Law Number 36 of 2014 concerning Health Workers above, it is stated: "The types of Health Workers who are included in the group of medical personnel as referred to in paragraph (1) letter a consist of doctors, dentists, specialists, and specialist dentists". Here it is clear that medical personnel are also classified as health workers. However, this provision has been amended by the Constitutional Court Decision Number 82/PUU-XIII/2015.

In the consideration of the Constitutional Court Decision Number 82/PUU-XIII/2015, the Panel of Judges considered that doctors and dentists are professions that have a special position related to the human body and life, so that doctors and dentists can independently carry out technical medical interventions and surgical interventions of the human body that are not owned by the type of health workers who are carried out independently [5]. Medical personnel (doctors and dentists) are professionals who are different from vocational personnel whose nature of work is the delegation of authority from medical personnel.

Furthermore, due to the different nature and essence between medical personnel and other health professions and vocations, the regulation of the substance of the medical profession cannot be combined or equalized with other professions. Legal certainty for medical personnel must be able to advance and guarantee medical services that are different from other health workers [5].

Thus, in the part of the Constitutional Court Decision Number 82/PUU-XIII/2015, it is stated that Article 11 paragraph (1) letter a of Law 36/2014 is contrary to the 1945 Constitution and does not have binding legal force [7]. In other words, medical personnel are no longer classified as health workers. Rather, it has a different scope of authority and essence.

On the basis of the development of the law, it certainly has implications in the future related to legal accountability for medical personnel and/or health workers in carrying out health measures to service recipients, in this case patients. For this reason, everyone, especially law enforcers, must understand that health in its development has changed both in terms of meaning, authority and duties, including legal implications or legal liabilities imposed on hospitals, health workers and medical personnel in the event of negligence/negligence in handling patients.

Compliance with the development of health law is because Indonesia is a country of law. For this reason, it is understood that power is limited by law and at the same time states that law is supreme compared to all existing instruments of power. In other words, the State places the law as the basis of its power and the implementation of that power in all its forms is carried out under the power of law [6].

On the basis of this understanding, of course, in Indonesia, all actions that will cause legal consequences must be studied based on the analysis of the applicable law. The legal analysis is also based on the legal developments that occurred because Indonesia knows *Lex posterior derogat legi priori* is the principle of legal interpretation which states that the latest law (*lex posterior*) overrides the old law (*lex prior*). This principle is usually used in both national and international law. Therefore, to examine the legal responsibility for the occurrence of a forgetfulness or negligence in medical treatment, it is necessary to pay attention to the provisions of the latest health law, namely Law Number 17 of 2023. Through this latest Health Law, the government has repealed all laws related to health as stipulated in Article 454 of Law Number 17 of 2023. In other words, of course, both in terms of duties, functions and legal accountability of medical personnel and health workers are based on the latest legal norms.

In the context of health services, the position of medical personnel in the health sector is not only to cure their patients but also as officers or employees in hospitals [7]. So that between medical personnel, health workers and hospitals there is an interconnection with each other that is not separated, including if there is a forgetfulness committed by medical personnel and/or health workers during medical procedures at the hospital.

All such relationships (between medical personnel, health workers and hospitals) are regulated by law, which is called legal relations (*rechtsbetrekkingen*) [8]. The legal relationship formed through Law Number 17 of 2023 not only regulates administrative and civil liability, but also criminal liability in it.

So that legal subjects who violate the provisions of criminal law, both regulated in the Criminal Code and laws and regulations outside the Criminal Code, can be burdened with criminal liability for them. Of course, when it comes to criminal liability, medical personnel and health workers who commit negligence or negligence when performing medical procedures must refer to the criminal provisions contained in Law Number 17 of 2023 concerning Health.

The above description has clearly explained that the legal relationship that is built between medical personnel, health workers and hospitals, then the legal liability arising due to negligence in medical treatment cannot be separated from each other. Be it administrative, civil or criminal liability. Especially with the existence of new laws and regulations on health law, in this case Law Number 17 of 2023 concerning Health, legal accountability needs to be seen comprehensively, especially if there is a criminal element in the negligence of the medical measures given.

Based on the description above, it is known that in the context of health law, there have been legal developments, especially related to health workers and medical personnel, starting from the separation of medical personnel who are not part of health workers as referred to in the Constitutional Court Decision Number 82/PUU-XIII/2015, to the deletion of all laws and regulations related to the health sector before the formation of the Law Number 17 of 2023 concerning Health. Of course, in terms of administrative, civil and even criminal sanctions, health workers and medical personnel who commit negligence or negligence when handling patients or when performing medical procedures also have different legal responsibilities compared to previous laws and regulations. Therefore, finally the researcher was interested in taking the title of the study, namely: "Legal Liability of Medical Personnel and Health Workers Who Commit Negligence During Medical Actions (Normative Study After the Enactment of Law Number 17 of 2023 concerning Health)".

1.1. Problem Formulation

- What are the duties and functions of medical personnel and health workers in carrying out medical procedures on patients?
- What is the legal responsibility of medical personnel and health workers when committing negligence after the enactment of Law Number 17 of 2023 concerning Health?

2. Research Methods

This type of research is normative legal research (normative juridical) and the approach is based on the legal rules of laws and regulations. Furthermore, the nature of this research is a descriptive analysis. The data sources used to conduct this normative juridical research are sourced from secondary data that uses legal materials in the form of primary legal materials, secondary legal materials and tertiary legal materials. The data collection tool in this study is by studying document studies (*library research*). Document study is a study that examines various documents, both related to laws and regulations and existing documents [9].

In the end, this research will be analyzed for data, data analysis is the most important and decisive stage in this writing. Through the research process, analysis and construction of the data that has been collected and processed are carried out [10]. This study uses qualitative analysis, namely data analysis that does not use numbers, but provides descriptions (descriptions) in words of the findings, and therefore prioritizes the quality/quality of the data [9].

3. Results and Discussion

3.1. Duties and Functions of Medical Personnel and Health Workers in Carrying Out Medical Actions Against Patients

The nation and state of Indonesia is a nation that was born "with the blessing of the Grace of Allah Almighty", and this recognition is officially stated in the highest document of the Preamble to the Constitution of the Republic of Indonesia in 1945 (1945 Constitution), and the One Godhead is included in Chapter XI concerning Religion Article 29 paragraph (1) of the 1945 Constitution. Indonesia is a country of law as stated in the 1945 Constitution which has consequences for all aspects of life in the territory of the Unitary State of Indonesia must be based on the law and all legal products and their derivatives that apply in ensuring justice for all citizens. The existing legal regulations in a country are intended to protect the rights of citizens from the arbitrary actions of the rulers. Likewise, in a legal state, regulations are made to prevent absolute power for the recognition and protection of human rights [2].

On that basis, every subject of law, be it an individual, a legal entity, including the State, which will have implications for the emergence of legal consequences, must be based on legal norms that have been previously regulated. This existing legal norm was born from the legal sources that started it. Including in determining the duties and functions of medical personnel and health workers in carrying out medical actions against patients, there needs to be legal regulations that govern it first.

The enforcement of legal regulations comes from the existence of legal sources. The source of law is everything that gives rise to binding and binding rules, so that if these rules are violated, it will cause firm and real sanctions for the violators [11]. Inseparable from the actions of medical personnel and health workers in providing health services, if there is an act that has not previously been regulated by law, then the medical personnel and health workers can be subject to legal consequences. Therefore, the duties and functions carried out by medical personnel and medical personnel in providing health services and/or medical procedures need to refer to the rules set by existing laws and regulations.

Health workers (including medical personnel) as one of the elements in society and the government are very much needed to achieve health development goals. So far, the known role of a health worker is as a "healer". The hope of the community when dealing with health workers is to be able to provide solutions to solve their health problems, both basic complaints and complications are asked to them. The role of a "healer" is very noble and highly appreciated in the eyes of the community. Usually the public only knows, the officers who serve them for their treatment are called "doctors". In fact, as is known, it is not only a person who works as a doctor who performs and provides treatment [2].

The birth of the Health Workers Peace Law is actually based on the idea that the Preamble to the 1945 Constitution lists the ideals of the Indonesia nation which is also the national goal of the Indonesia nation, namely to protect the entire Indonesia nation and all of Indonesia's bloodshed and to promote the general welfare, educate the life of the nation One

of the forms of advancing general welfare is Health Development which is aimed at increasing awareness' of will, and the ability to live a healthy life for everyone to achieve the highest degree of public health as an investment in productive human resource development.

Health is a human right, meaning that everyone has the same right to access health services. The quality of safe, quality, and affordable health services is also the right of all Indonesia people. With the development of science and technology, in order to carry out these health efforts, it is necessary to be supported by adequate health resources, especially health workers, both in terms of quality, quantity, and distribution [12].

Prior to the birth of Law Number 17 of 2023 concerning Health, there have been many laws and regulations that regulate health laws. However, after the enactment of Law Number 17 of 2023, the previous law has been declared repealed as mentioned in 455, namely:

At the time this Law comes into force:

- Law Number 419 of 1949 concerning the Hard Drug Ordinance;
 - Law Number 4 of 1984 concerning Infectious Disease Outbreaks;
 - Law Number 29 of 2004 concerning Medical Practice;
 - Law Number 36 of 2009 concerning Health;
 - Law Number 44 of 2009 concerning Hospitals;
 - Law Number 20 of 2013 concerning Medical Education;
 - Law Number 18 of 2014 concerning Mental Health;
 - Law Number 36 of 2014 concerning Health Workers;
 - Law Number 38 of 2014 concerning Nursing;
 - Law Number 6 of 2018 concerning Health Quarantine;
 - Law Number 4 of 2019 concerning Midwifery.
- Is revoked and declared invalid.

On that basis, the duties and functions of medical personnel and health workers in carrying out medical procedures against patients are no longer based on the previous laws and regulations that have been revoked, but must be based on the latest provisions, namely Law Number 17 of 2023 concerning Health.

Referring to the provisions of Article 1 number 6 of Law Number 17 of 2023 concerning Health, it is stated: "Medical personnel are any person who devotes themselves to the health sector and has a professional attitude, knowledge, and skills through medical professional education or gtgr medicine that requires the authority to carry out health efforts". Meanwhile, according to the provisions of Article 1 number 7 of Law Number 17 of 2023 concerning Health, it is stated: "Health workers are any person who devotes themselves to the field of health and has a professional attitude, knowledge, and skills through higher education which for certain types requires the authority to carry out health efforts".

Both health workers and medical personnel are part of health human resources who work actively in the health sector, whether they have formal health education or not, which for certain types requires authority in carrying out health efforts. As Article 197, health workers and medical personnel are part of the Health Human Resources, which also includes health support or support personnel.

Medical personnel and health workers as one of the main components of health service providers to the community have a very important role because they are directly related to the provision of health care and the quality of services provided. The main foundation for doctors to be able to perform medical procedures in front of others is their science, technology, and competence, which are obtained through education and training. Medical or health personnel with scientific equipment have a distinctive characteristic. This peculiarity can be seen from the justification given by the law, namely the permissibility of performing medical procedures on the human body in an effort to maintain and improve the degree of health [13].

- There is a division of groups between medical personnel and health workers according to Law Number 17 of 2023 concerning Health. According to Article 198 of Law Number 17 of 2023, it is stated:
- Medical Personnel as referred to in Article 197 letter a are grouped into:
 - doctor; and
 - dentist.

- The type of medical personnel as referred to in paragraph (1) letter a consists of doctors, specialist doctors, and subspecialist doctors.
- The type of dentist Medical Personnel as referred to in paragraph (1) b consists of dentists, specialist dentists, and subspecialist dentists.

Furthermore, according to the provisions of Article 199 of Law Number 17 of 2023 concerning Health, there are several groups that are included as health workers, namely the following:

- Health workers as referred to in Article 197 letter b are grouped into:
 - Clinical psychologists;
 - Nursing staff;
 - Midwifery personnel;
 - Pharmaceutical personnel;
 - Public health workers;
 - Environmental health workers;
 - Nutritional energy;
 - Physical therapy personnel;
 - Medical technicians;
 - Biomedical engineering personnel;
 - Traditional health workers; and
 - Other health workers determined by the minister.
- The type of Health Worker who is included in the group of clinical psychology personnel as referred to in paragraph (1) huruf a is a clinical psychologist.
- Types of Health Workers who are included in the group of nursing personnel as referred to in paragraph (1) b consist of vocational nurses, nurses, and specialist nurses.
- The types of Health Workers who are included in the group of midwifery personnel as referred to in paragraph (1) letter c consist of vocational midwives and professional midwives.
- The types of health workers included in the group of pharmaceutical workers as referred to in paragraph (1) d consist of pharmaceutical vocational personnel, pharmacists, and specialist pharmacists.
- The types of health workers who are included in the group of public health workers as referred to in paragraph (1) e consist of public health workers, health epidemiologists, health promotion and behavioral science personnel, occupational health supervisors, as well as administrative and health policy personnel.
- The types of health workers who are included in the group of environmental health workers as referred to in paragraph (1) f consist of environmental sanitation workers and health entomologists.
- Health Workers who are included in the group of nutrition workers as referred to in paragraph (1) g consist of nutritionists and dietitians.
- The types of health workers who are included in the group of physical therapists as referred to in paragraph (1) h consist of physiotherapists, occupational therapists, speech therapists, and acupuncturists.
- The types of health workers included in the group of medical technicians as referred to in paragraph (1) letter i consist of medical recorders and health information, cardiovascular technicians, blood service technicians, optometrists, dental technicians, anesthesiologists, dental and oral therapists, and audiologists.
- The types of Health Workers who are included in the group of biomedical engineering personnel as referred to in paragraph (1) j consist of radiographers, electromedicalists, medical laboratory technologists, medical physicists, and orthopedic prosthetics.
- The types of health workers who are included in the group of traditional health workers as referred to in paragraph (1) k consist of traditional health workers of herbs or herbal medicine, traditional health workers of traditional medicine, and intercontinental traditional health workers.

Based on the above statement, it is clear that medical personnel and health workers are differentiated based on their groups. However, even so, in terms of main tasks, both have the same duties and functions to provide health that is provided both to individuals (patients) and to society at large.

Especially for the duties and functions of medical personnel and health workers in the context of providing health to individuals (patients), including in the provision of medical measures, you can refer to the provisions of Article 18 paragraph (1) of Law Number 17 of 2023 concerning Health, which states: "Individual Health Efforts as referred to in Article 17 paragraph (2) are promotive, preventive Health Efforts, curative, rehabilitative, and/or palliative that affects only individuals". Further explained in relation to the forms of individual health efforts (for patients), explained as follows:

- What is meant by "Individual Health Efforts that are promotive" is an activity and/or a series of activities to enable individuals to control and improve their health. Individual health efforts that are promotive can be in the form of providing explanations and/or education about healthy lifestyles, risk factors, and health problems.
- What is meant by "Preventive Individual Health Efforts" is an activity and/or a series of activities that aim to prevent the occurrence of disease or stop disease and prevent complications resulting after the onset of disease. Individual health efforts that are preventive can be in the form of immunization, early detection, and early intervention.
- What is meant by "Curative Individual Health Efforts" is an activity and/or a series of treatment activities aimed at curing diseases and/or reducing suffering due to diseases.
- What is meant by "Rehabilitative Individual Health Efforts" is an activity and/or a series of activities that are designed to optimize function and reduce disability in individuals with health problems in their interaction with their environment. Individual health efforts that are rehabilitative can be in the form of speech therapy or physiotherapy.
- What is meant by "Palliative Individual Health Efforts" is a Health Effort aimed at improving the quality of life of patients and their families who are facing problems related to life-threatening diseases. Palliative individual health efforts can be in the form of early identification, correct assessment, pain treatment, and handling of other problems, both physical, psychosocial, and spiritual [14].

So that based on the entire series of explanations above, it is understood that medical personnel and health workers based on the tenancy of Article 1 numbers 6 and 7 *jo* Article 18 paragraph (1) *jo* Article 197, Article 198 and Article 199 of Law Number 17 of 2023 concerning Health are given the authority to carry out medical actions on individual patients, be it in the form of immunization, the provision of drugs, physiotherapy, and other treatment measures needed by the patient concerned which is included in the form of promotive, preventive, curative, rehabilitative, and palliative health efforts. These medical actions must be in accordance with the expertise, knowledge and skills of each health worker and medical personnel who already have a Registration Certificate and Practice License from the Ministry of Health. So that health workers and medical personnel are proven to have a certificate of competence and/or a professional certificate in their respective fields of expertise.

3.2. Legal Liability of Medical Personnel and Health Workers When Committing Negligence After the Enactment of Law Number 17 of 2023 concerning Health

Referring to professional ethics (especially in medicine), it is understood that in handling a patient, medical personnel or health workers cannot promise a cure, because every body that exists in humans has quite complex properties and cannot be fully understood. It has not been possible to calculate more about the form of variation that exists in each patient, including age/age, a person's psyche, the nature of the disease, a complication and others. In addition to the factors of the patient, a medical and health worker will also not be spared from mistakes in carrying out their daily duties. As a result of this, a negative event occurs as part of the risk that must be borne by the patient. Therefore, the work of a medical worker or health worker is always related to legal issues as liability for the consequences of negative medical actions [15].

Medical personnel and health workers who are by nature human beings created by God must have shortcomings and commit forgetfulness, in every practical action carried out by medical personnel (and health workers) that make their patients disabled and or die [2]. Forgetfulness itself can be interpreted as the action of a person (in this case medical personnel and health workers) who do it less heeding the prohibition so that they are not careful in doing an act that is objectively causal causing a prohibited situation [16].

Legally, forgetfulness is part of the mistake. Mistakes are the basis for accountability. Mistakes are the state of the mind of the maker and the inner relationship between the maker and his actions. If there is a mistake in someone, then that person can be reproached. Regarding the state of the soul of a person who commits an act is what is commonly referred to as the ability to be responsible, while the inner relationship between the maker and his actions is intentionality, forgetfulness, and forgiveness. Thus, to determine the existence of an error, the subject of law must meet several elements, including:

- The ability to be responsible for the maker,
- The mental relationship between the maker and his actions in the form of intentionality (*dolus*) or forgetfulness (*culpa*),
- There is no excuse for erasing the mistake or there is no excuse for forgiveness.

Of course, the elements of error described above must be adjusted to the elements of the article contained in the legal provisions that govern it, including in this case in order to unravel the legal liability of medical personnel and health workers who commit negligence when performing medical procedures, it is necessary to examine the form of negligence that can be held legally accountable in accordance with Law Number 17 of 2023 concerning Health.

In fact, this legal accountability is part of the application of the law that must be carried out, in other words, in order for human interests to be protected, the law must be implemented. The implementation of the law can take place normally, peacefully, but it can also occur due to violations of the law. In this case, the law that has been violated must be enforced. It is through this law enforcement that this law becomes a reality. In enforcing the law there are three elements that must always be considered, namely: legal certainty (*rechtssicherheit*), usefulness (*zweckmassigkeit*) and justice (*gerechtigkeit*) [17].

The concept of application in legal liability (*strict liability*) will later analyze the responsibility of legal subjects or perpetrators who have committed unlawful acts or criminal acts to bear costs or losses or carry out criminal punishment for their mistakes or due to their negligence [9]. In Indonesian Language, the word responsibility means a situation that is obliged to bear everything (if anything happens, it can be sued, blamed, sued, and so on). Bear is defined as being willing to bear the cost (take care of, maintain), guarantee, declare a state of willingness to carry out obligations.

The concept of responsibility was also put forward by the originator of pure legal theory, namely Hans Kelsen. According to Hans, responsibility is closely related to obligations, but they are not identical. This obligation arises because of the existence of legal rules that regulate and provide obligations to legal subjects. Legal subjects who are burdened with obligations must carry out these obligations as an order from the rule of law. As a result of non-implementation of obligations, sanctions will be imposed. This sanction is a forced action of the rule of law so that obligations can be carried out properly by legal subjects. According to Hans, the subject of the sanction is said to be "responsible" or legally responsible for the violation [18].

In principle, the existence of this legal responsibility is also inseparable so that legal benefits are created for every legal subject that deserves to be protected. Legal benefits in terms of normative ethics state that an appropriate action is one that maximizes utility, usually defined as maximizing happiness and reducing suffering [19]. Utilitarianism was first described by Jeremy Bentham and his student, John Stuart Mill [20].

Of course, the benefits of this law can be included in the legal dimensions, especially in this case the civil law dimension and even business law. This is in accordance with one of the goals of the law, which is to provide as many benefits and happiness as possible to the citizens of the community based on a social philosophy that expresses that every citizen craves happiness, and the law is one of the tools [21].

Utility is the most important thing in a legal purpose, regarding the discussion of legal purposes, it is first known what is interpreted as its own purpose and what has a purpose is only human beings, but law is not a human goal, law is only one of the tools to achieve goals in the life of society and the state. The purpose of the law can be seen in its function as a function of protecting human interests, the law has a goal to be achieved [22].

In essence, the purpose of the law is the benefit in producing the greatest pleasure or happiness for the greatest number of people. Based on the opinion of Jeremy Bentham, the law is correct if it can provide happiness for the greatest part of the society in which the law is located (*the greatest happiness of the greatest number*). The value of benefits found in individuals that gives birth to individual happiness (*happiness of individual*) and society (*happiness of community*) [23]. The benefits of this law are considered by some legal experts to be biased so that Utrecht in responding to the benefits of law put forward 3 (three) things, namely:

- It does not provide a place to consider the fairness of concrete things.
- Pay attention only to things that are beneficial and therefore the content is general.
- It is very individualistic and does not give to one's sense of law.

According to Utrecht quoted by Darji Darmodihardjo, the law guarantees legal certainty in human relationships. Utrecht's assumption is based on an assumption that the law is to protect the interests of each human being so that those interests cannot be interfered with (containing considerations of which interests are greater than others). However, in essence, legal certainty certainly aims to obtain the main thing in legal certainty itself, namely usefulness [24]. So that the description of all of them, both in terms of justice, usefulness and legal certainty, can only be created if there is strict *liability* applied to parties who are proven to violate the rule of law.

Legal consequences arise from the existence of a relationship between legal subjects and each other, who agree to create a legal relationship in harmony with the laws and regulations. Legal relations are relationships regulated by law [25]. Of course, it is associated with the legal responsibility of medical personnel and health workers when committing negligence after the enactment of Law Number 17 of 2023 concerning Health, the legal relationship to be seen is the legal relationship between medical/health personnel and their patients, which is legally mentioned as a legal one.

Medical personnel or health workers when performing medical actions on patients need informed consent, if the patient agrees to the informed consent, then a therapeutic agreement is made between the medical personnel and the patient. The provision of medical services to patients, between medical personnel and patients arises a legal relationship resulting from the binding of the two parties in an agreement called a therapeutic agreement. A therapeutic agreement is an agreement between medical personnel and patients, in the form of a legal relationship that gives birth to rights and obligations for both parties. The object of this agreement is different from the object of the agreement in general. In a therapeutic agreement, the object of the agreement is the effort/therapy to cure the patient. So that a therapeutic agreement is an agreement to determine or an effort to find the most appropriate therapy for patients carried out by health workers and medical personnel [7].

The main problem is when there is a legal relationship that has been established between medical/health personnel and patients, but it turns out that in its implementation medical/health personnel commit coconut starvation which results in patients suffering losses, whether it is a seriously injured patient or even to the death of the world (resulting in death).

After being reviewed and researched, it turns out that Law Number 17 of 2023 concerning Health, contains several forms of legal liability when patients suffer losses due to negligence committed by medical personnel and health workers. The liability that can be requested by the patient is administrative, civil and criminal liability.

Regarding this administrative accountability, it can refer to the provisions of Article 304 which gives the Minister the authority to form a panel that carries out duties in the field of professional discipline in this case to determine whether there is a violation of professional discipline committed by medical personnel and health workers. In the next provision in Article 305 paragraph (1) of Law Number 17 of 2023, it is further elaborated, namely: "Patients or their families whose interests are harmed by the actions of Medical Personnel or Health Personnel in providing Health Services can complain to the assembly as referred to in Article 304". The forms of administrative responsibility are explained in Article 306 paragraph (1), namely in the form of:

- Written warnings;
- Obligation to participate in education or training at the nearest education provider in the field of health or the nearest teaching hospital that has the competence to conduct such training;
- Temporary deactivation of str; and/or
- Recommendation to revoke sip.

Furthermore, in relation to civil legal liability, in this case compensation, actually the actions of medical personnel and health workers who commit negligence when the medical action is proven to be detrimental to the patient, so it is categorized as an unlawful act. In principle, unlawful acts are generally regulated in Article 1365 of the Civil Code Book III in the section on engagements born for the sake of the Law. Therefore, unlawful acts are the source of engagements born from the law, because as a result of unlawful acts that harm others, it will give rise to covenants, namely the emergence of rights and obligations for the parties. For the victim, the existence of an unlawful act will give rise to the right to sue and get compensation from the perpetrator, therefore the perpetrator has a burden or obligation to compensate for the losses caused by his behavior that is contrary to the law and causes losses to the victim, both loss of property and ideal loss for the victim [26].

Against medical actions carried out by medical personnel and health workers that are detrimental to patients and proven on the basis of their negligence, including unlawful acts that can be claimed for damages. It is stated in Article 1366 of the Civil Code, that: "Everyone is responsible, not only for losses caused by their actions, but also for losses caused by their negligence or recklessness". This means that forgetfulness is also a form of unlawful act that requires the person who commits the forgetfulness or negligence to be legally responsible, including in this case medical personnel and health workers.

Civil legal liability in the form of compensation by medical personnel and health workers when committing negligence in medical procedures is also applied if the patient as a victim dies (dies) or suffers injuries or disabilities. This can be seen in the provisions of Article 1370 and Article 1371 of the Civil Code, which states:

- Article 1370 of the Civil Code, In the event of intentional murder or death of a person due to the carelessness of another person, the abandoned husband or wife, children or parents of the victim who usually receive the victim's support and work, have the right to claim compensation that must be assessed according to the position and wealth of both parties, as well as according to the circumstances.
- Article 1371 of the Civil Code, Causing injury or disability of a person's limb intentionally or due to lack of care, gives the victim the right in addition to demanding reimbursement for medical expenses, as well as to demand compensation for damages caused by the injury or disability of the body. Also, this compensation is assessed according to the position and ability of both parties and according to the circumstances. This last provision generally applies in terms of assessing the harm caused by a crime against a person's person.

Especially in civil legal liability in the form of compensation, from the side of health law, it is not only charged to medical personnel and health workers but also to the hospital where the medical procedure is carried out. Article 193 of Law Number 17 of 2023 concerning Health, states: "Hospitals are legally responsible for all losses incurred due to negligence feared by Hospital Health Human Resources". This means that as long as the health workers and medical personnel carry out medical actions within the scope of the hospital concerned, the hospital is also civilly responsible for compensating for the losses caused to the patient, especially if the patient is seriously injured or even dies.

The responsibility of hospitals as mentioned in Article 193 of Law Number 17 of 2023 above, is also in line with the provisions of Article 1367 paragraph (1) of the Civil Code which states: "A person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of the people he is responsible for or due to goods under his supervision". The medical actions carried out by medical personnel and health workers at the hospital are still under the responsibility and auspices of the relevant hospital. Therefore, specifically civil legal liability in the form of hospital compensation can also be asked for legal liability.

The last legal liability is liability from the criminal side. Criminal liability is an act that leads to the criminalization of the perpetrator with the intention of determining whether a defendant or suspect is responsible for a criminal act that occurred or not. Criminal liability itself is the continuation of objective reproaches that exist in criminal acts. For the perpetrator to be convicted, it is indicated that the criminal act committed must meet the elements that have been determined by law. From the perspective of the occurrence of prohibited acts, a person will be held accountable for the act if there is an unlawful act in the act and there is no justification. Judging from the ability to be responsible, a person who is able to be responsible can be held accountable for his actions [27].

Associated with the issue of the actions of medical personnel and health workers who commit negligence when performing medical procedures, if referring to the latest provisions of the health law, namely Law Number 17 of 2023 concerning Health, it is necessary to look at Article 440, which explains as follows:

- Every Medical Personnel or Health Worker who commits negligence that results in serious injury to the patient shall be sentenced to imprisonment for a maximum of 3 (three) years or a maximum fine of Rp250,000,000.00 (two hundred and fifty million rupiah).
- If the negligence as referred to in paragraph (1) results in death, each Medical Personnel or Health Worker shall be sentenced to imprisonment for a maximum of 5 (five) years or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah).

It can be seen that in the provisions mentioned above, medical personnel and health workers can be charged with criminal liability and categorized as having committed a criminal act if proven to have committed negligence when performing medical actions on the patient concerned. However, the criminal liability is limited if the patient is seriously injured or results in death. Before seeing the consequences of these medical actions, indeed in the element of error it is necessary to first prove that the medical personnel and the health workers concerned did indeed commit negligence in their actions. Then based on the criminal provisions in Law Number 17 of 2023, it is also understood that related to this forgetfulness, the crime is only charged to the relevant health human resources and not to the hospital

It should be noted beforehand that if referring to the provisions of Article 308 of Law Number 17 of 2023, administrative sanctions can only be given by the Assembly that carries out duties in the professional field formed by the Minister. Meanwhile, civil and criminal liability through these provisions must first be requested for a recommendation from the assembly.

Regarding the recommendation for the application of civil liability in the form of compensation, the recommendation is given after the Medical Personnel, Health Personnel, or persons authorized by Medical Personnel or Health Personnel submit a written application for a lawsuit filed by the Patient, the Patient's family, or a person authorized by the Patient

or the Patient's family. The recommendation will be in the form of recommendations for the implementation of professional practices carried out by Medical Personnel or Health Workers in accordance with or not in accordance with professional standards, service standards, and operational procedure standards.

Furthermore, regarding the recommendations of the disciplinary council in the context of applying criminal liability to the medical personnel and health workers concerned, the recommendation is given after the Civil Servant Investigator or the National Police investigator of the Republic of Indonesia submits a written application. The recommendation will be in the form of a recommendation that an investigation can or cannot be carried out because the implementation of professional practices carried out by Medical Personnel or Health Personnel is in accordance with or not in accordance with professional standards, service standards, and operational procedure standards.

4. Conclusion

- The duties and functions of medical personnel and health workers in carrying out medical actions against patients refer to the provisions of Article 1 numbers 6 and 7 jo Article 18 paragraph (1) jo Article 197, Article 198 and Article 199 of Law Number 17 of 2023 concerning Health are given the authority to carry out medical actions on individual patients, be it in the form of immunization, the provision of drugs, physiotherapy, and other treatment measures needed by the patient concerned which is included in the form of promotive, preventive, curative, rehabilitative, and palliative health efforts. These medical actions must be in accordance with the expertise, knowledge and skills of each health worker and medical personnel who already have a Registration Certificate and Practice License from the Ministry of Health. So that health workers and medical personnel are proven to have a certificate of competence and/or a professional certificate in their respective fields of expertise.
- The legal liability of medical personnel and health workers when committing negligence after the enactment of Law Number 17 of 2023 concerning Health is divided into 3 (three) forms of legal liability, namely administrative, civil and criminal liability. Administrative liability imposed if proven to have committed negligence is in the form of a written warning, the obligation to attend education or training at an education provider in the health sector or the nearest teaching hospital that has the competence to conduct the training, temporary deactivation of STR; and/or recommendations for the revocation of SIP. Then related to civil liability in the form of compensation to patients or patients' families who suffer losses because medical personnel and health workers are considered to have committed unlawful acts that result in the patient being injured/disabled/dying (experiencing death). Civil liability for this compensation is not only imposed on medical personnel and health workers, it can also be charged to related hospitals. Finally, criminal liability is in the form of imprisonment and fines, the amount of which depends on the consequences of the negligence resulting in serious injury or death. Regarding the three legal liabilities that can be imposed on medical personnel and health workers, they must continue to carry out recommendations from the disciplinary assembly formed by the Ministry of Health.

Suggestion

- The duties and functions of medical personnel and health workers in carrying out medical actions against patients should be described in certain chapters or articles in Law Number 17 of 2023 concerning Health. Although implicitly, the duties and functions of medical personnel and health workers have been described in essence as health service providers to individuals or the wider community. However, in order for these actions to have a more firm legal umbrella, these actions must be explicitly stated in the latest laws and regulations.
- It is recommended that the legal responsibility of medical personnel and health workers when committing negligence after the enactment of Law Number 17 of 2023 concerning Health must be revised because it will harm the patient or the victim's family who is harmed by the act of negligence of medical personnel and related health workers. This is because through this norm, the Court cannot directly impose civil or criminal legal liability before there is a recommendation from the disciplinary assembly. So that it is as if the examination carried out by the court is waiting for the results of the recommendation from the disciplinary assembly, when in fact the court is an independent institution, meaning that it can examine, adjudicate and decide independently with its assessment and evidence in front of the Court.

Compliance with ethical standards

Disclosure of conflict of interest

No conflict of interest to be disclosed.

References

- [1] Satjipto Rahardjo. *Legal Sciences*. (Bandung: PT. Citra Aditya Bakti, 2012), pp. 53-54.
- [2] Abdur Rokhim and Sri Endah Wahyuningsih. Regulations on Criminal Liability for Health Workers Who Commit Medical Malpractice (Medical Practice) are reviewed from the perspective of Law No. 36 of 2009 concerning Health and Law No. 36 of 2014 concerning Health Workers. In the *Scientific Journal of Sultang Agung*, Vol. 2, No. 1, 2023, p. 972.
- [3] Maharja Jathi Perkasa. Responsibility of Hospitals to Medical Personnel in Occupational Safety and Health as a Result of Medical Services. In *Journal of Jurispruden*, Vol. 4, No. 2, June 2021, pp. 113-114.
- [4] Sudarsono. *Legal Dictionary*. (Jakarta: Rineka Cipta, 2012), p. 167
- [5] Constitutional Court Decision No. 82/PUU-XIII/2015, p. 217
- [6] Eka N.A.M. Sihombing. *Establishment of Participatory Regional Regulations*. (Malang: Media Intelligence, 2018), p. 11.
- [7] Nanda Dwi Haryanto. Hospitals are responsible for the losses suffered by patients due to the actions of medical personnel in the therapeutic agreement. In *Jurnal Privat Law*, Vol. VII, No. 2, July-December 2019, p. 247.
- [8] L.J. Van Apeldoorn, *Introduction to Law*, (Jakarta: PT. Pradnya Paramita, 2000), p. 6.
- [9] Salim HS and Erlies Septiana Nurbaini. *Application of Legal Theory to Thesis and Dissertation Research*, (Jakarta: PT. RajaGrafindo Persada, 2019), p. 19.
- [10] Soerjono Soekamto, *Sociological Legal Research*, (Jakarta: PT. RajaGrafindo Persada, 2014), p. 1.
- [11] Soeroso. 2009. *Introduction to Law*. Jakarta: Sinar Grafika, p. 117.
- [12] Explanation of Law Number 36 of 2014 concerning Health Workers
- [13] Dhimas Panji Chondro Asmoro. The Legal Responsibility of Doctors in Providing Health Services to Patients. In *Jurnal Maksigama*, Vol. 13, No. 2, November 2019, p. 127.
- [14] Explanation of Article 18 paragraph (1) of Law Number 17 of 2023 concerning Health.
- [15] Zola Agustina and Achmad Hariri. Criminal liability for negligence in diagnosis by doctors resulting in the death of a child in the womb. In *Iblam School Law Journal*, Vol. 2, No. 2, 2022, p. 110.
- [16] Gita Febri Ana and Rehnalemken Ginting. Analysis of the Application of Article 359 of the Criminal Code Regarding Forgetfulness that Causes the Loss of Life of Another Person (Study of Decision Number: 267/Pid.B/2011/PN/SKH). In *Recidive Journal*, Vol. 4, No. 2, May-August 2015, p. 184.
- [17] Sudikno Mertokusumo and A. Pitlo, *Chapters on Legal Discovery*. (Bandung: PT. Citra Aditya Bakti, 2017), p. 1.
- [18] Hans Kelsen. *Pure Theory of Law*, Translated, Raisul Muttaqien, *Pure Legal Theory: Basics of Normative Law*. (Bandung: Nusa Media, 2008), p. 136.
- [19] Lorenz is good. *Dictionary of Philosophy*. (Jakarta: PT. Gramedia Pustaka Utama, 2000), p. 144.
- [20] Bryan Magee. *The Story of Philosophy*. (Jogjakarta: Kanisius, 2001), p. 66.
- [21] Hyronimus Rheti, *Philosophy of Law: Complete Edition (From Classical to Postmodernism)*, (Yogyakarta: Atma Jaya University Press, Yogyakarta, 2011), p. 159.
- [22] Said Sampara et al. *Introduction to Law*. (Yogyakarta: Total Media, 2011), p. 40.
- [23] Jeremy Bentham. *An Introduction to the Principles of Morals and Legislation*. (Kitchener: Batoche Books, 2000), p. 23.
- [24] Darji Darmodihardjo. *Philosophy of Law: From Classics to Postmodernism*. (Yogyakarta: Atma Jaya University, 2011), p. 33.

- [25] Peter Mahmud Marzuki, *Introduction to Law*, (Jakarta: Prenadamedia Group, 2018), p. 216.
- [26] Bing Waluyo. A Study of Unlawful Acts Based on Article 1365 of the Civil Code. In the *Journal of Legal Horizons*, Vol. 24, No. 1, March 2022, p.
- [27] Mahmud Mulyadi and Feri Antoni Surbakti, *The Politics of Criminal Law Against Corporate Crime*, (Jakarta: PT Sofmedia, 2010), pp. 34-35.