

## Violation of Medical Oath as a Criminal Office of Health Law

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### Abstract

*As rights protected by the constitution, the right to health services is highly demanded by the government. On this basis, the state is obliged to respect, protect, and fulfill these rights, including by providing equal access to health services, preventing actions that can reduce the level of public health. In the 2012 Code of Medical Ethics, the violation of the medical oath is a violation of the Code of Ethics. However, in this paper the author examines more from the criminal side. Can a violation of an oath be considered a criminal offence? Therefore, this study examines Medical Discipline Violations as Violations of Criminal Law. The method that the author uses in this research is a normative legal approach method using secondary data sources which include primary legal materials, secondary legal materials and tertiary legal materials. The results of the research in this paper are: the author concludes that the violation of the medical oath is a form of action that is medical error (malpractice). When viewed from the form of medical ethics violations, it is a violation of the Standard Operating Procedures and Professional Standards and the rules/provisions for the application of science in the implementation of other medical practices. Then it is to be able to prove the error through a medical audit in determining the position of the error (malpractice).*

### Keywords

violation of medical oath;  
malpractice; crime



## I. Introduction

The Government of Indonesia continues to strive to improve health services in Indonesia. One aspect that is very important in supporting the improvement of health services is the availability of health human resources (HR) which refers to health workers. So that professional behavior is very important to be owned by health workers as an effort to improve quality, equitable, and affordable health services.

Several legal instruments related to health services that have been established by the Government of Indonesia include Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice and Law of the Republic of Indonesia Number 44 of 2019 concerning Hospitals, and Law of the Republic of Indonesia Number 36 of 2009 concerning Health. The existence of these three laws seems to provide fresh air for patients in obtaining legal certainty regarding the rights and obligations of patients in receiving health services provided by hospitals and doctors.

"The relationship between doctor and patient in terms of health care is commonly referred to as a therapeutic transaction. A therapeutic transaction is an agreement between a doctor and a patient, in the form of a legal relationship that creates rights and obligations for both parties." In this therapeutic transaction, doctors are obliged to provide the best possible service in accordance with professional (medical) standards that have been determined by law. So before carrying out his professional duties, he is required to take an oath, as a professional promise both for the public (humanity), for "clients" or patients, colleagues, and for oneself. So that doctors in carrying out their obligations in providing services will not make medical mistakes.

Like one case of medical error that occurred to a patient named Hajjah Siti Hanna when she experienced severe bleeding and miscarriage, which was allegedly caused by the negligence and carelessness of the hospital and the treating doctor, she went to GPI Hospital after receiving a referral letter from the Puskesmas. Depok Jaya because he was diagnosed with a blighted ovum and a nonhydatidiform mole. Based on the information, what is meant by a blighted ovum is a kind of embryonic pregnancy or a pregnancy that does not contain an embryo even though fertilization occurs in the uterus. During her pregnancy, Hanna's patient experienced many disorders and bleeding, while the doctors and hospitals that treated her never gave a complete and thorough explanation of the reasons, let alone provided good service."<sup>2</sup>

The examples of cases and realities above, ultimately harm the patient. With the occurrence of several legal events concerning the professionalism of a doctor, all actions carried out by doctors in carrying out medical actions may experience errors which in the end lead to medical malpractice, if carried out in a deviant manner. If it is seen in one of the pronouncements of the medical oath contained in the 2012 Indonesian Medical Ethics Code (KODEKI) which states in point 7 (seven) the medical oath, "I will always prioritize the health of the patient, taking into account the interests of the community". implies that a patient who is willing to surrender himself to the doctor with all trust and awareness, it is proper for a patient to get the main service from the doctor. A doctor should also work 24 hours a day when needed.

Doctors should not be upset if they are woken up to help someone who is seriously ill or in an emergency.

However, if the doctor ignores the patient, it is not immediately helped and even results in the patient being seriously injured and dying. And even omission by a doctor can be said to be a criminal act as regulated in Article 304 of the Criminal Code (KUHP) which states:

"Whoever deliberately causes or leaves someone in a state of misery, while according to the law applicable to him or because of his consent he is obliged to provide life, care and maintenance to that person, is threatened with a maximum imprisonment of two years and eight months or a maximum fine of four thousand five hundred rupiah."

Based on the explanation of one of the pronouncements of the oath above, medical errors (malpractice) can be said to be a violation of the medical oath and even a violation of the medical oath is a violation of criminal law. Because the consequences of these actions can cause material losses or immaterial to the patient. Whatever the reason, a doctor may not do anything that violates the medical oath. because according to the author the violation of "mistakes" in medical actions in the field of criminal law is definitely a violation of the medical oath, so that the background for the author to present legal writing with the title "BREAKING OF MEDICAL Oath AS A CRIMINAL ACTION OF HEALTH LAW".

## **II. Research Methods**

### **2.1 Type of Research**

The type of normative juridical research is legal research that uses secondary data sources or data obtained through library materials.

### **2.2 Approach Method**

The approach used is a normative legal approach, namely literature review research using secondary data. Analyzing the problem from a point of view or point of view by looking at the provisions of the applicable legislation and relating to existing problems

### **2.3 Research Data Sources**

#### **a. Primary Data Source**

Primary data are those obtained from field research, namely direct interviews with respondents, namely members of the Indonesian Doctors Association (IDI) and general practitioners.

#### **b. Secondary Data Source**

“Secondary data is data obtained from indirect sources from the community but in the form of libraries.

#### **c. Data Collection Method**

- a) Interview is a method of writing that provides direct questions posed to respondents, to obtain data in this study.
- b) Literature research by reviewing legislation, and other related legal literature that is closely related to answer the problems discussed.
- c) Observation is observing the object to be studied directly to obtain accurate and real data.
- d) Respondents in this study were parties involved in the research and the problems discussed, these parties were dr. Sunarto, MSc as a Legal Consultant and Member of BHP2A (Legal Bureau for the Development and Defense of Members of the Indonesian Doctors Association (IDI) Yogyakarta Special Region and General Practitioners dr. Maya Shintia Dewayani.
- e) Research sites  
This research was conducted at the office of the Indonesian Doctors Association (IDI) Yogyakarta and the Practicing Doctor dr. Maya Shintia Dewayani.

#### **d. Data Analysis Method**

Data collected from interviews, literature studies, and documents, were analyzed with qualitative descriptive. Then the research data will be described by describing and interpreting the problem based on theory and considering the opinions, thoughts, and interpretations of those who are competent with the research. Then it is concluded.

## **IV. Discussion**

### **4.1 Determine the Form of Violation of a Criminal Offense Related to the Medical Oath**

The Indonesian medical oath is regulated in the 2012 medical code of ethics which is contained in Article 1. Which consists of 12 points of pronouncing the medical oath including:

1. I will dedicate my life for the benefit of humanity
2. I will carry out my duties in an honorable and ethical manner, in accordance with the dignity of my work as a doctor
3. I will maintain with all my might the dignity and noble traditions of the medical office
4. I will keep everything I know confidential because of my profession
5. I will not use my medical knowledge for anything that is against humanity, even if threatened
6. I will respect every human being from the moment of conception
7. I will always put the patient's health first, taking into account the interests of the community
8. I will make every effort so that I will not be influenced by considerations of Religion, Nationality, Ethnicity, Political Party or Social Position in carrying out my obligations to the sufferer.
9. I will give my teachers the respect and gratitude they deserve
10. I will treat my colleagues like siblings
11. I will obey and practice the Indonesian medical code of ethics
12. I take this oath solemnly and by risking my honor

Based on the 12 points of the oath, there are points that can violate criminal law, only ethical violations and there are those that are ethical violations as well as criminal law, this is one of the oath points that can violate criminal law which reads "I will keep everything I know because of my profession.

Keeping everything related to work confidential is a moral obligation. With the obligation to maintain job secrets, so that everyone can visit the doctor with a feeling of freedom, tell with an open heart all his complaints about his suffering, both physical and spiritual, so that proper and reasonable treatment is achieved. Therefore, keeping the secret means the main joint of public order and peace as contained in Article 16 of the Medical Ethics Code which reads "Every doctor is obliged to keep everything he knows about a patient, even after the patient dies." And Law Number 29 of 2014 concerning medical practice Article 48 "Every doctor or dentist in carrying out medical practice is obliged to keep medical secrets." Article 51 letter (C) "confess everything that is known about the patient, even after the patient dies".

Article 322 paragraph 1 of the Criminal Code (KUHP) regulates the act of revealing a secret position, which reads "Whoever deliberately discloses a secret, which according to his position or work, both now and in the past, he is obliged to keep it, shall be punished. Imprisonment for a maximum of nine months or a fine of a maximum of Rp. 9000, - and paragraph 2 If this crime is committed against a specified person, then the act is only prosecuted on the complaint of that person. Therefore, it is obligatory for doctors to keep secrets, but if a doctor discloses a patient's secret, the doctor can be categorized as violating the medical oath, violating the medical code of ethics and violating criminal law. According to Pratiwi (2020) in social life, law and society are two interrelated things that can never be separated. Through instruments, unlawful behavior is prevented and repressive measures are pursued (Tumanggor, 2019). From the aforementioned provisions, it proves the existence of new developments regulated in this Law (Purba, 2019).

If viewed from the side of criminal law, an act is said to be a criminal act. When the act has fulfilled the element of error, and is an act that is against the law, and can be held criminally responsible. Errors in criminal law are further divided into negligence (*culpa*) and intentional (*dolus*). Within the scope of the rules of the medical profession, the theory of deliberate action is also known to identify the doctor's mistakes, where this theory is used as the basis for patients to file charges in criminal law. This theory is in fact rare and very difficult to find a doctor in carrying out actions against patients who have bad intentions to

harm their patients. While the second theory is related to the theory of negligence, which is based on the negligence of a doctor in carrying out medical actions. By law enforcement officers have difficulty proving the omission, to serve as an error in criminal law. The difficulty is influenced by the lack of knowledge of law enforcement regarding the legal rules contained in the medical profession, and the doctors themselves are still closed to open themselves to assess the medical action, whether it is a medical error or not.

Assess an action taken by a doctor that causes disability, injury and even death to the patient. It is not an easy thing to be said to be a doctor's medical error, in carrying out medical actions. Because it must go through a series of evidence contained in the discipline of medical science. In addition, the proof must look at the elements of medical errors, not only from the scope of criminal law, but first look at medical errors from aspects of medical disciplines, aspects of medical ethics and legal aspects, especially criminal law.

These three aspects are related, it will be seen when medical experts conduct medical audits to prove allegations of medical errors in the actions of doctors having violated medical oaths as stipulated in the 2012 Regulation on Medical Ethics Code. Medical audit is regulated in Article 39 of Law Number 44 of 2009 concerning Hospitals to be used as a reference in order to find out how to find out medical errors. The medical audit arrangements are as follows:

- 1) Paragraph (1): In operating a hospital, a medical audit must be carried out.
- 2) Paragraph (2): The audit as referred to in paragraph (1) may be in the form of a performance audit and a medical audit.
- 3) Paragraph (3): Performance audits and medical audits as referred to in paragraph (2) can be carried out internally and externally.
- 4) Paragraph (4): External performance audit as referred to in paragraph (3) may be carried out by supervisory staff.
- 5) Paragraph (5): Implementation of medical audit is guided by the provisions stipulated by the minister.

Regarding medical audits that are guided by the Regulation of the Minister of Health Number 755 of 2011 concerning the Implementation of Medical Committees in Hospitals. The regulation regulates the position of the Medical Committee which is an integral part of the Hospital with a non-structural organizational form, but is formed by the Head/Director of the Hospital. The Medical Committee has the authority to conduct medical audits from the medical discipline aspect, and has the right to conduct examinations on medical staff suspected of violating medical disciplines, and even provide recommendations for follow-up medical audits of alleged medical disciplinary errors. With the right to provide recommendations and follow up on the alleged medical error to the Indonesian Medical Ethics Honorary Council (MKEKI) under the auspices of the Indonesian Doctors Association (IDI).

Therefore, the process of proving fault/intentional, in the discipline of medical science through a medical audit, is urgently needed, so that it can be used as a basis for determining acts of violation of medical oaths that have criminal elements, namely *Dolus* and *culpa*. To determine a doctor's medical error, criminal law must be used as a last resort to resolve (*ultimum remedium*) medical errors in medical actions.

#### **4.2 The Forms of Commitment of Doctors in Carrying out the Medical Oath in their Profession**

Professional behavior is very important to be owned by health workers as an effort to improve and maintain health services. Professionalism is a behavior based on knowledge and skills that reflects the values of professionalism. Professionalism is very important in the world of medicine, has an important role in establishing a diagnosis of disease. Doctor

professionalism includes informed consent, communication, examination procedures and ethics.

In order for every medical profession to always hold fast and behave in accordance with the honor of their profession, before carrying out their professional duties, they are required to take an oath, as a professional promise both to the public (humanity), to "clients" or patients, colleagues, and for oneself.

The goal is that services are provided with a high level of skill, caution, thoroughness, care and ethics so that professional actions and behavior become the main basis for doctors. Karna in carrying out medical practice activities to serve patients. Communities who use medical health services entrust themselves and their lives to doctors in handling their health so that complying with existing rules or regulations is an obligation for doctors.

So doctors must have a commitment and responsibility for community service. Because the medical profession is a profession that is often related or deals with the life and death of a person. This means that a doctor is willing to carry out his promise not only at this time, but continuously and continuously. So that it will lead to an attitude of trust in the patient to the doctor, when that trust grows, whatever happens to him, the patient will feel comfortable

The forms of commitment of doctors in carrying out the medical oath in their profession are:

- a) Commitment to work in accordance with professional standards and standard operating procedures and based on his knowledge without hesitation in carrying out his profession by taking the right medical action.

If a doctor works according to ethics and professional standards, the doctor will avoid being accused of violating ethics, violating medical oaths, violating medical discipline and violating criminal law even if he does not succeed in curing the patient's illness or in the end the patient must die.

- b) Commitment to patient rights

The doctor's commitment in providing medical treatment to the patient must pay attention to the patient's rights. which is regulated in Article 52 of Law Number 29 of 2004 concerning Medical Practice which consists of the right to obtain a complete explanation of medical actions as referred to in article 45 paragraph (3), the right to seek the opinion of a doctor or dentist, the right to obtain services according to needs medical treatment, the right to refuse medical treatment.

And the right to get the contents of the medical record.

- c) Commitment to always helping others, maintaining the medical profession

The medical profession as an honorable profession from the past until now occupies the noblest place, his life is devoted to the benefit of humanity. Do not use the doctor's office as a trading company to seek as much profit as possible in the shortest time and an act of self-praise. This act is considered contrary to medical ethics.

#### **4.3 Obstacles Faced in Carrying out the Medical Profession Based on the Medical Oath**

The obstacles faced by the medical profession in carrying out the medical oath are as follows:

##### **1. In terms of Doctor's Motivation**

Doctors are motivated in terms of government programs, not purely in terms of health services. So doctors in providing services are influenced by existing government programs. So this is also an obstacle for doctors in carrying out their duties, called the side of a doctor must work according to standardization, but that is not supported by the existing systems and procedures in government programs.

The Indonesian government established a social security system program through a Social Security Administering Body (BPJS). The existence of government programs in health

services is actually very necessary. However, management is not optimal so that it has the opposite impact on health services. For example, in the health service procedure, which is considered convoluted in its management. It is this kind of thing that makes many doctors face a dilemma. On the one hand, doctors must work according to ethics and standardization, but this is not supported by the system. For example, a doctor must give amoxicillin, but the amoxilin is not available at the hospital. Sometimes doctors are forced to refer, because there is no medicine.

## 2. In terms of the Obstacles Faced by Doctors in the Delivery of Medical Information

Patients may find it difficult to accept all the risks that will be faced when medical services are carried out by doctors, due to the patient's lack of understanding of the medical actions that will be carried out, the patient's lack of understanding of medical therapy that must be carried out during the healing process or low education. the patient so that he is worried that it will lead to an understanding of a condition that he does not want to himself, as well as patient compliance in carrying out any advice given by the doctor during medical action.

## 3. Service Time Constraints

Constraints in service time due to the large number of patients so doctors cannot provide good service. And doctors practice in many places. Unlike the case abroad, it is limited, doctors can only accept 20 patients per day, no more. So that doctors abroad can provide good service according to patient needs. Whereas in Indonesia there is no limit on accepting patients, doctors may accept as many patients as possible.

## 4. Constraints (Internal) in the Inner Attitude of Doctors

Mental attitude is something that is in the mind before someone does something. It can be in the form of will, knowledge, thoughts, feelings, and whatever the name is that describes a person's inner state before acting. When giving a servant a doctor is in a state of irritation so that it has a bad effect on the services provided.

# V. Conclusion

Based on the description as stated above, the conclusions are as follows:

1. Determine the criteria for doctors in violating medical oaths, from the process of proving fault/intentional, in medical disciplines through medical audits can be used as the basis for determining the act of violating the medical oath which has a criminal element, namely Dolus and culpa. So that the results of proving the medical error in criminal law will get material truth.
2. Commitment of doctors in carrying out medical oaths in their profession, among others: First, commitment to work in accordance with professional standards and standard operating procedures. Second, commitment to patient rights. Third, the commitment to always help others and act solely for humanitarian purposes.
3. Barriers that can affect doctors in an effort to enforce the oath, namely the motivation of doctors to government programs, obstacles in efforts to deliver medical information from the patient factor, lack of cooperation, time constraints when providing services due to doctors practicing in many places or excessive patients and internal constraints in the form of an inner attitude constraint.

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