



Criminal Liability Of Dental Experts Suspected Of Malpractice

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Abstract. *practicing license in a self-employed capacity. In order to prevent medical malpractice an activity or practice that is incorrect or deviates from the proper provisions or procedures dental experts adopt a professional approach. What constitutes criminal culpability for dental and oral therapists who engage in medical misconduct while working independently is the problem statement for this study. Determining criminal culpability for dental therapists who engage in medical misconduct while working independently is the goal of this study. The relevant law approach, the conceptual approach, and the problem approach are the research methods employed. According to the research findings, dental therapists must be held criminally responsible for any violations of their obligations that resulted in criminal acts while practicing independently. Articles 359 and 360 of the Criminal Code outline the criminal penalties that apply when a dental or oral therapist makes a mistake (negligence) that causes patients to suffer serious injuries or pass away. The therapist faces a maximum prison sentence of five years or a maximum prison sentence of one year. It goes without saying that criminal law theory must be followed in order to establish the criminal liability of dental experts for breaching their duties or engaging in careless behavior while working independently. The study's conclusion is that dental therapists must adhere to all applicable regulations when conducting their private business; if they do not and endanger patients, they will be held accountable and subject to criminal penalties.*

Keywords: *Criminal, Malpractice, Dental Experts*

Abstrak. izin praktik dalam kapasitas wiraswasta. Untuk mencegah malpraktek medis suatu kegiatan atau praktik yang tidak benar atau menyimpang dari ketentuan atau prosedur yang semestinya, para ahli gigi menerapkan pendekatan profesional. Apa yang merupakan kesalahan pidana bagi terapis gigi dan mulut yang melakukan pelanggaran medis saat bekerja secara mandiri merupakan rumusan masalah dalam penelitian ini. Menentukan kesalahan pidana bagi terapis gigi yang melakukan pelanggaran medis saat bekerja secara mandiri adalah tujuan dari penelitian ini. Pendekatan hukum yang relevan, pendekatan konseptual, dan pendekatan masalah merupakan metode penelitian yang digunakan. Berdasarkan temuan penelitian, terapis gigi harus bertanggung jawab secara pidana atas segala pelanggaran kewajibannya yang mengakibatkan tindak pidana saat berpraktik secara mandiri. Pasal 359 dan 360 KUHP menguraikan sanksi pidana yang berlaku bila seorang ahli terapi gigi atau mulut melakukan kesalahan (kelalaian) yang mengakibatkan pasien menderita luka berat atau meninggal dunia. Terapis terancam hukuman penjara paling lama lima tahun atau pidana penjara paling lama satu tahun. Tentu saja teori hukum pidana harus diikuti untuk menetapkan pertanggungjawaban pidana ahli gigi karena melanggar tugasnya atau melakukan perilaku ceroboh saat bekerja secara mandiri. Kesimpulan penelitian ini adalah bahwa terapis gigi harus mematuhi semua peraturan yang berlaku ketika melakukan tindakannya. bisnis swasta; jika tidak melakukannya dan membahayakan pasien, mereka akan dimintai pertanggungjawaban dan dikenakan hukuman pidana.

Kata Kunci: Pidana, Malpraktik, Ahli Gigi

1. INTRODUCTION

Health service efforts carried out by health workers are activities to maintain and improve health status. These efforts can be carried out by the government or together with the community, which are generally grouped into four efforts, namely: promotive, preventive, curative and rehabilitative. Every health worker in providing services must comply with their respective professional standards. Authority of Health workers in providing servants constitute legal authority (Widodo, Kristianti, & Maisyarah, 2021). Health services in accordance with Law Number 17 of 2023 concerning Health are all forms of activities and/or a series of service activities provided directly to individuals or the community to maintain and improve the level

of public health in the form of promotive, preventive, curative, rehabilitative and or palliative. Health services are of course supported by health resources in their implementation in the community. One of the health services is dental and oral health services which are regulated in Law Number 17 of 2023 Article 70. Dental and oral health services are carried out to maintain and improve the level of public health in the form of improving dental health, preventing dental disease, treating dental disease, and restoration of dental health. Dental health services are carried out through dental and oral health service units and/or school health businesses (Dewi & Sastrini, 2024).

Health administration is carried out by health workers, in Article 1 paragraph (1) Law Number 36 of 2014 concerning Health Workers states that a health worker is every person who dedicates themselves to the health sector and has knowledge and/or skills through education in the health sector which for certain types requires authority to carry out health efforts. The provision of dental and oral health services is carried out by authorized health workers, namely dentists and Dental and Oral Therapists. Dental and Oral Therapists in carrying out their practices are of course guided by professional standards, standard operational procedures and applicable legal provisions. In accordance with Minister of Health Regulation Number 20 of 2016 concerning Licensing and Implementation of Dental and Oral Therapist Practices, Dental and Oral Therapists are one type of health worker who has the authority to provide dental and oral health care services.

2. LITERATURE REVIEW

Dental and Oral Therapists who carry out their professional practice are required to have a Dental and Oral Therapist practice permit (SIPTGM). A Dental and Oral Therapist practice license is issued by the Government and is valid for one location. One such place is independent practice. Dental and oral health services can be provided by Dental and Oral Therapists who have SIPTGM in independent practice. The professional attitude of Dental and Oral Therapist work is currently applied by Dental and Oral Therapists are increasingly establishing independent practices . Minister of Health Regulation number 20 of 2016, also states that Dental and Oral Therapists who carry out their professional practice independently as intended, must have a minimum education of Diploma Three in Dental Health/Dental Nursing/Dental and Oral Therapist, and put up a name plate containing: Name of the Dental Therapist and Mouth, Registration Certificate (STR) number, and SIPTGM number (Maisyarah, Hasnati, & Afrita, 2022).

In health practice, medical malpractice is often encountered, which is the action/negligence of health workers in treating patients. Negligence here is an attitude and action that is careless and deviates from the norms that apply in the profession (Notoatmodjo, 2010). Proving medical malpractice cases is not easy, because medical science is not widely known by ordinary people (Qomariyah, Ohoiwatun, & Prihatmini, 2018). Dental and oral therapists carry out medical procedures that are within the authority of a dentist without a written mandate from the dentist, so they may commit malpractice (Dewi, 2021). Malpractice is an illegal activity that based on negligence in implementation level of skill and knowledge usually used in the same environment, depending on the size of the patient or injured (Basuki, et al., 2021). Working as a dental expert without permission from the government has big impacts rampant violations and malpractices that occur in society (Gunawan, 2022).

Carrying out the practice of a Dental and Oral Therapist in an independent practice does not rule out the possibility that medical negligence, known as medical malpractice, could occur due to lack of care, carelessness, lack of thoroughness in providing dental and oral health services to patients which results in the patient being injured, injured or even dying. Normatively, criminal liability for medical malpractice committed by Dental and Oral Therapists has not been explicitly regulated in statutory regulations. Based on the description of the background above, the researcher is interested in conducting further research on this problem. The aim of this research is to determine the criminal liability of Dental and Oral Therapists for alleged medical malpractice in independent practice.

If a dental therapist makes a mistake or negligence that results in harm to the patient, the dental therapist can be charged with a criminal offense (Heliyana, 2024). In the Minister of Health Regulation Number 20 of 2016 concerning Licensing and Implementation of Dental and Oral Therapist Practices, there is authority to provide limited medical services to patients (Siregar, 2020).

3. METHODS

The research method used in this research is a normative legal research method which examines document studies using statutory regulations, legal theory, and the opinions of legal experts. The problem approach used is the applicable law approach and the conceptual approach. This conceptual approach is used to discover views and doctrines that have developed in legal science, studying legal principles related to explaining the substance of the legal meaning of criminal liability for Dental and Oral Therapists for alleged medical malpractice in independent practice.

4. RESULTS

A Dental and Oral Therapist in accordance with Article 1 of Minister of Health Regulation Number 20 of 2016 concerning Licensing and Implementation of Dental and Oral Therapist Practice is every person who has passed dental health education, a dental nurse or a Dental and Oral Therapist in accordance with the provisions of statutory regulations. To be able to carry out professional practice, dental and oral therapists must have a STRTGM (Dental and Oral Therapist Registration Certificate). STRTGM is written evidence provided by the Government to Dental and Oral Therapists who have a competency certificate in accordance with statutory provisions. Dental and Oral Therapists who already have a STRTGM and wish to carry out their professional practice are required to have a SIPTGM (Dental and Oral Therapist Practice License). SIPTGM is written proof of granting authority to carry out the professional practice of a Dental and Oral Therapist. SIPTGM applies to one place. Dental and Oral Therapists who open independent practices are required to have STRTGM and SIPTGM.

Dental and Oral Therapists can carry out their professional practice independently and/or work in health service facilities. Dental and Oral Therapists who carry out their professional practice independently must have at least a diploma in dental health, dental nursing or Dental and Oral Therapist. In accordance with Art 12 Minister of Health Regulation Number 20 of 2016, Dental and Oral Therapists have the authority to provide dental and oral health care services including efforts to improve dental and oral health, efforts to prevent dental disease, management of dental and oral health services, basic health services in cases of limited dental health, and dental assisting.

Dental and Oral Therapists who will carry out work independently must meet minimum standards for facilities, equipment and medicines in accordance with the needs of dental and oral health care. Dental and Oral Therapists have the following obligations: Respect patient rights, Maintain confidentiality in accordance with statutory provisions, Provide information about health problems and needed services, Obtain approval for the action to be carried out on the patient, Make referrals for cases outside of their competence and authority in accordance with statutory provisions, Comply with professional standards, service standards, standard operational procedures, and professional code of ethics.

The definition of medical malpractice is defined as medical practice that is wrong, inappropriate, violates the law or code of ethics. The wrong practice in question can be interpreted as not being in accordance with provisions or standards. Malpractice is a term that has a bad connotation, is stigmatic, blaming. Bad practices from someone who holds a

profession in the general sense, if directed at the medical profession, will be called medical malpractice (Guwandi, 2004).

Malpractice can be defined as carrying out wrong actions or practices or deviating from standard (correct) provisions or procedures. In the health sector, malpractice is a deviation in the handling of health cases or problems (including diseases) by health workers, causing negative impacts on sufferers or patients.

The term medical malpractice includes actions carried out intentionally (intentional, dolus, opzettelijk) and violate the law. In the meaning of deliberate intent, there is an implied motive (mens rea, guilty mind), while the meaning of negligence (medical negligence) has more of the essence of unintentional (culpa), lack of thoroughness, carelessness, indifference, recklessness, indifference to the interests of other people. , However The consequences that arise are not the goal.

Malpractice in a broad sense can be distinguished from actions carried out: 1) Deliberately (dolus, intentional) which is prohibited by statutory regulations or malpractice in the narrow sense, for example deliberately carrying out an abortion without medical indication, carrying out euthanasia, giving a medical certificate whose contents are incorrect, and so on. 2) Not intentionally (negligence, culpa) or due to negligence, for example neglecting a patient's treatment because of forgetfulness or carelessness so that the patient's illness gets worse and then he dies. A person is said to be negligent if he acts indifferently, does not care, does not pay attention to the interests of other people as is normal in social life in society. As long as the consequences of the negligence do not lead to loss or injury to other people or because it involves trivial matters, there are no consequences. This principle is based on the adage *De minimis not curat lex*. The law does not interfere with things that are considered trivial.

The success of a claim based on negligence must fulfill four elements known as 4-D (Moeljatno, 2008). 1) Duty to Use Due Care (there is an obligation to treat) 2) Dereliction (deviation from applicable professional standards) 3) Damage (causing injuries/injuries/losses) 4) Direct Causation (a reasonable causal relationship between the attitude of health workers and the loss).

Referring to the formulations stated above, it can be concluded that what is meant by medical malpractice is an error, either intentionally or unintentionally (negligent) in carrying out the medical profession which is not in accordance with medical professional standards (SPM) and standard operational procedures (SOP) and bad/fatal consequences and/or result in other harm to the patient (Yunanto, 2010).

A criminal act is an act that is prohibited by a prohibitive legal rule which is accompanied by threats (sanctions) in the form of certain penalties, for anyone who violates the prohibition (Chazawi, 2005). The elements of a criminal act from a theoretical point of view, in Moeljatno's opinion, the elements of a criminal act are: 1) Action; 2) What is prohibited (legal regulations); 3) Criminal threats (for those who violate the crime) (Guwandi, 2006).

The Criminal Code (KUHP) classifies criminal acts or offenses into two large groups, namely in the second book and the third book, respectively into groups of crimes and violations. Then the chapters are grouped according to the targets that the Criminal Code aims to protect against these criminal acts. 1) Crimes and Violations 2) Formal Offenses (Formal) and Material Offenses (Material) 3) Dolus Offense and Culpa Offense 4) Commissionis offenses and Omissionis offenses.

5. DISCUSSION

Dental and Oral Therapists are health workers who carry out independent practice in accordance with professional standards, service standards, standard operational procedures and professional codes of ethics. If in carrying out independent practice elements of violation of obligations are found that lead to a criminal act, the Dental and Oral Therapist must be held personally responsible (personal liability). Personal liability is the personal responsibility of health workers, especially Dental and Oral Therapists, in the sense that whoever does it is responsible.

Violations of professional standard obligations, service standards, standard operational procedures and professional codes of ethics which result in patients suffering injuries, serious injuries, disabilities and even death, Dental and Oral Therapists can be subject to criminal sanctions in accordance with Articles 359 and 360 of the Criminal Code concerning negligence so that result in injury or death.

The legal protection of patients in the independent practice of Dental and Oral Therapists has not been specifically regulated, however, sanctions for violations committed by Dental and Oral Therapists are regulated in articles 28 and 29 of PMK number 20 of 2016. Efforts for legal protection of patients need to be established by a special institution to supervise Dental and Oral Therapist independent practice, thereby minimizing violations that occur, as well as an effort to protect patients (Nerito, Sutarno, & Lufsiana, 2022). The Health Law also states that health workers who commit negligence or negligence resulting in a patient being

seriously injured or even dying will be subject to criminal sanctions in accordance with Article 440 paragraphs (1) and (2).

The criminal liability of a Dental and Oral Therapist for violating obligations or being negligent in independent practice must of course be proven in accordance with criminal law theory, namely 4-D: 1) Duty to Use Due Care (there is an obligation to treat) 2) Dereliction (deviation from applicable professional standards) 3) Damage (causing injuries/injuries/losses) 4) Direct Causation (a reasonable causal relationship between the attitude of health workers and the loss).

6. CONCLUSION

Dental and Oral Therapists who will carry out work independently must meet minimum standards for facilities, equipment and medicines in accordance with the needs of dental and oral health care. Dental and Oral Therapists who carry out independent practice must comply with professional standards, service standards, standard operational procedures and professional code of ethics. If in carrying out independent practice elements of violation of obligations are found that lead to a criminal act, the Dental and Oral Therapist must be held responsible.

Violations of professional standard obligations, service standards, standard operational procedures and professional codes of ethics which result in patients suffering injuries, serious injuries, disabilities and even death, Dental and Oral Therapists can be subject to criminal sanctions in accordance with Articles 359 and 360 of the Criminal Code. A Dental and Oral Therapist whose mistake (negligence) causes another person to be seriously injured or die is punishable by a maximum prison sentence of five years or imprisonment. a maximum of one year.. The Health Law also states that health workers who commit negligence or negligence resulting in a patient being seriously injured or even dying will be subject to criminal sanctions in accordance with article 440 paragraphs (1) and (2). The criminal sanction is three years' imprisonment if the health worker makes a mistake that results in the patient being seriously injured and five years in prison if the health worker makes a mistake that results in the patient's death. The criminal liability of a Dental and Oral Therapist for violating obligations or being negligent in independent practice must of course be proven in accordance with criminal law theory.

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