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Legal Reasoning of Liability in Indonesian Penal Law among Dental Therapists at Hospital

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ABSTRACT

Currently, regulations related to dental and oral health service efforts, especially those carried out by dental therapists in hospitals, are regulated in several laws and regulations. There's a need to be more arrangements regarding the location of responsibility for every action of dental health care services by dental therapists in hospitals, which are charged by both hospitals and dentists who provide mandatory delegation of activities. This study examines delve into the dynamics of the relationships between patients, dental therapists, dentists, and hospitals, as well as the legal implications of dental malpractice. Utilising a normative juridical approach. By examining relevant statutes, legal theories, and principles, we analyze secondary sources such as primary legislation and scholarly works. The result of this study is that the location of accountability for dental and oral health care services carried out in hospitals can be reviewed based on dental therapists in carrying out a series of health service actions. Healthcare providers must adhere to legal and professional standards. Violations can lead to legal consequences. Patient relationships are based on agreements and consent. Healthcare's primary goal is health promotion, but errors can cause harm. Dental therapists are accountable for their actions, and criminal law addresses healthcare misconduct. The findings contribute to a deeper understanding of the factors influencing liability, informing policy development, education, and practice to promote a more equitable and patient-centered healthcare system.

Keywords: Dental therapist, Dental oral healthcare, Hospital, Malpractice, Penal law

INTRODUCTION

Health services, aimed at maintaining and improving optimal health, are provided by healthcare professionals. While government and community efforts initially centered on illness treatment, a gradual shift has occurred toward a more comprehensive approach that includes health promotion, disease prevention, treatment, and rehabilitation[1]. Investing in health is often seen as expensive, but this perception is misguided. Many people neglect their health until it deteriorates, only then realizing its true value.

It must be based on minimum health service standards to realize the highest degree of health for individuals or communities. These minimum health service standards are carried out

responsibly, safely, quality, equitably, and non-discriminately[2]. As contained in Article 70 of Law Number 17 of 2023 on Health, stipulates that oral health services are provided to maintain and improve the health of the community through the enhancement of oral health, prevention of dental diseases, treatment of dental diseases, and oral health restoration. These services are carried out by the central government, regional governments, and/or the community through oral health service units and/or school health programs.

Health workers provide health services by medical professional standards, service standards, and their authority. If health workers do not carry out work by their authority, the health worker will violate one of the professional standards of

health workers. Juridically, they can break the law because, in professional standards, there is an authority that each health worker has determined [3].

In daily practice, dentists or dental therapists must understand the delegation of authority from dentists to dental therapists in carrying out dental and oral health care services. Some dentists know that the overflow duty is the authority of the dental therapist, and some know that the overflow duty is the dentist's authority. Meanwhile, some oral dental therapists understand overflow duty as an attempt to perform limited medical procedures – which are the authority of dental therapists – without having to get written permission from the dentist. However, dental therapists still do not know that limited medical actions include nursing or dental medical actions [3].

Dental therapists carry out dental and oral health care services as a mandatory delegation of authority and under the supervision of dentists. Such actions are the dentist's responsibility as the required delegate. On the other hand, the provisions in Article 193 of Law Number 17 of 2023 on Health, concerning Hospitals stipulate that when dental and oral health care services are carried out by dental therapists in hospitals, the burden of legal responsibility for all actions taken by dental therapists is the hospital's responsibility. Such condition becomes unclear about the location of responsibility for every action of dental and oral health care services carried out by dental therapists in hospitals. It can be charged by hospitals, dentists who provide mandatory delegation of actions, or assigned to dental therapists.

This article aims to delve into the dynamics of the relationships between patients, dental therapists, dentists, and hospitals, as well as the legal implications of dental malpractice. Exploring the concept of Sharia-based dental and oral health care in hospitals.

RESEARCH METHOD

This study employs a normative juridical approach. In this analysis, statutory regulations, legal theories, and legal principles are used as references. The data sources in this article are secondary data, which include primary law in the form of statutes and secondary law in the form of scientific papers, articles, and the like related to the study topic. The obtained data is then analyzed and correlated with the theories found in the literature study to find answers to the problems that will be formulated.

RESULT AND DISCUSSION

The Relationship Between Patients, Dental therapists, Dentists, and Hospitals

Concerns about the criminal aspects of hospital healthcare stem from the tripartite relationship between the patient, the doctor, and the hospital institution. The relationship between doctor and patient, based on the patient's need for medical care and the doctor's expertise, forms the basis of the therapeutic transaction [4]. This transaction is an agreement between the two parties to achieve the goal of healing.

The criminal law approach has been dominant in solving problems in the health sector. However, it is important to remember that not all health care offences are criminal offences. The administrative law approach offers a more appropriate alternative to deal with administrative offences. This will provide legal certainty and protect the rights of all parties involved.

The legal basis for the authority of health workers in providing health services is based on the principles of state administrative law. According to H.D. Van Wijk [5], the authority is obtained through three main mechanisms, namely attribution, delegation, and mandate. Attribution refers to the direct granting of authority by the legislature to government organs. Delegation is the transfer of authority from one government organ to another, while mandate occurs when a government organ authorises another party to exercise its authority.

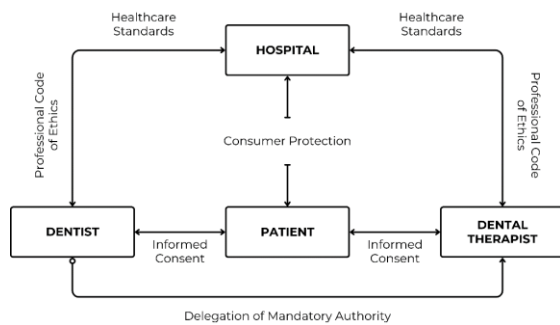


Fig. 1. Patterns of Relationship between Hospitals, Dentists, Dental Therapists, and Patients in Hospitals

The relationship between hospitals, dentists, dental therapists, and patients can be understood through relationship patterns with the following description:

Professional Standards

Dentists or dental therapists are health workers with the status of Civil Servants or Government employees with Work Agreements. They work in the hospital as employees with employment agreements. This is regulated in Article 191 of Law Number 17 of 2023 on Health concerning Hospitals, as well as Article 816 of Government Regulation (PP) Number 28 of 2024 on the Implementation of Law Number 17 of 2023 on Health concerning Management of Health Workers[6];

Informed Consent

There is an agreement between the giver and the recipient of health services so that the deal attaches the rights and obligations of each. This is regulated in Article 293 of Law Number 17 of 2023 on Health concerning consent for health service actions.

Informed consent is a written consent given by the patient after receiving a comprehensive explanation of the medical procedure to be performed[7]. This document has a very crucial role in the relationship between health workers and patients. Legally, informed consent serves as a strong juridical basis for medical actions to be carried out.

Consumer Protection

In this case, hospitals as health service business actors, and patients as consumers receiving health services provided by hospitals. They both are attached to rights and obligations. This is regulated in Article 4, Article 5, Article 6, and Article 7 of Law Number 8 of 1999 concerning Consumer Protection[8].

In providing dental and oral health care services, dental therapists have direct relationships (interactions) with patients and other health workers. From a legal point of view, there are two aspects of the nurse-patient relationship. First, based on their authority, dental therapists can agree with patients about the actions of care services that can and will be carried out. Second, the relationship between patients and nurses only occurs because dental therapists have the status of hospital employees, and patients are people who are entitled to dental and oral healthcare services in health service efforts at the hospital[9].

Health Criminal Law Review of Dental and Oral Health Care Services by Dental Therapists in Hospitals

Realisation of the importance of responsibility in health care is the result of a series of global crisis events. Efforts to enhance human dignity have led to the establishment of various norms and standards in healthcare. Patients, as the main subject in healthcare, have rights that are protected by law, including the right to obtain accurate information and compensation for medical errors[10].

Dental therapists must be responsible to themselves and the community through responsibility and liability in providing dental and oral health care services[11]. Responsibility means the willingness to bear the risk of consequences arising from unlawful actions that cause harm to other people or parties who are criminal, usually in the form of sanctions or penalties. In contrast, liability means the willingness to compensate for losses arising from unlawful actions, civil in nature.

The criminal law aspects of dental therapists healthcare efforts in hospitals relate to their legal responsibility. The ability to be held accountable for an action is closely linked to whether that action is considered a crime[12]. Criminal acts are characterized by illegal or harmful behavior, often violating societal norms. According to the principle of legality, only actions specifically defined as crimes by law can be subject to criminal penalties.

Consequently, dental therapists actions that align with doctors orders or contribute to collaborative functions cannot be considered criminal offenses, even if they may result in losses within healthcare services. Violations of ethical codes, professional standards, or oaths, while not explicitly regulated by law, can still have negative consequences for dental therapists, but they do not necessarily warrant criminal sanctions.

A criminal act is unlawful both in its objective and subjective aspects. Objective unlawfulness involves breaking the law, while subjective unlawfulness is rooted in the accused's intent[13]. Not all unlawful acts are necessarily criminal, as some actions may not be explicitly defined as crimes by law. To establish criminal liability, it must be proven that the accused acted with intent or negligence. Regarding the roles of nurses, they are responsible for independent nursing functions. Collaborative functions and responsibilities fall under the purview of the Head of the Health Team, while dependent roles and responsibilities lie with doctors who perform specific medical procedures on patients.

The provision of criminal liability for healthcare workers is outlined in Article 440 of Law Number 17 of 2023 on Health: *“Every Medical Worker or Health Worker who commits negligence resulting in severe injury to a Patient shall be punished by imprisonment for a maximum of 3 years or a fine of at most Rp250,000,000.00. If the negligence results in death, shall be punished by imprisonment for a maximum*

of 5 years or a fine of at most Rp500,000,000.00.”

Article 15 paragraph (2) of the Regulation of the Minister of Health of the Republic of Indonesia Number 512/Menkes/Per/IV/2007 concerning Permission to Practice and Implementation of Medical Practice, it has been stated that the actions of dentists who deliberately delegate some of their authority in a delegation that is not by the limits of authority of dental therapists will get disciplined, administrative, civil and criminal sanctions for violating laws and regulations[14].

In addition to the pattern of accountability from health workers and dentists who delegate delegated authority to health workers, hospitals have legal responsibility for all losses incurred by negligence committed by health workers if these actions are carried out at the hospital. This has been regulated in Article 193 of Law Number 17 of 2023 on Health, which *“The Hospital is legally responsible for all losses incurred due to negligence committed by human health resources of the hospital.”*

Juridically, the hospital has the capacity as a legal subject who can carry out rights and obligations in lawful traffic if it has the status of a legal entity (*rechtspersoon*). Hospitals can perform their functions with health workers as an absolute condition for implementing health service efforts. Nurses are health workers who are quite dominant in hospitals regarding the number and presence of accompanying patients[9].

From the consumer protection perspective, legal responsibility for hospitals can also be categorized as business actors regulated by Article 19 to Article 27 of Law Number 8 of 1999 concerning Consumer Protection. The responsibilities of the hospital as a business actor are as follows: *“vicarious liability”, “strict liability”, and “liability insurance”, also known as “no-fault liability.”*[15]

According to the Indonesian Hospital Code of Ethics (KODERSI), hospitals have general and special responsibilities. In this regard, hospitals must constantly adjust their healthcare service policies to the expectations and integrity of the local community, which will be reflected in or through short, medium, and long-term strategic planning. General hospital responsibility is the obligation of hospital leaders to answer questions about problems, events, events, and conditions in the hospital. At the same time, special responsibility arises if there is an assumption that the hospital has violated the rules of law, ethics, and order or discipline[16].

The existence of informed consent provides significant legal protection for health workers. In clinical practice, the risk of malpractice always exists. However, with the informed consent that has been signed by the patient, health workers have a strong legal defense basis if at any time legally sued. This document becomes authentic evidence that the patient has understood the risks, benefits, and alternatives of the medical procedure to be performed, and has given informed and voluntary consent.

In addition to serving as a legal shield, informed consent also contributes to improving the quality of health services. A properly conducted informed consent process will build a better relationship between health workers and patients. Patients will feel more valued and involved in making decisions about their health, so that the level of patient satisfaction will increase.

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medical procedure to be performed, and has given informed and voluntary consent.

Informed consent serves as a legal defense for healthcare providers. If a patient experiences complications or adverse events following a procedure, the informed consent document can demonstrate that the patient understood the risks and voluntarily agreed to the treatment[17]. A properly obtained informed consent can help minimize the likelihood of legal claims against healthcare providers, as it shows that the patient was aware of the potential consequences and made an informed decision.

The informed consent process fosters trust and open communication between healthcare providers and patients. When patients feel informed and involved, they are more likely to adhere to treatment plans and follow recommendations. Patients who feel valued and empowered to participate in their healthcare decisions are more likely to be satisfied with the care they receive. This can lead to improved health outcomes and overall well-being.

The extent to which hospitals can be held accountable for the actions of their health workers is a fundamental understanding of legal certainty. The limitations of criminal liability for this hospital are based on Article 193 of Law Number 17 of 2023 on Health concerning Hospitals which states:

First limitation: "*... for negligence.*"

As stipulated in Article 193 of Law Number 17 of 2023 on Health concerning Hospitals, the Hospital is only legally responsible for losses incurred due to the negligence of health workers (medical negligence). J. Guwandi defines "*medical negligence*" as "*doing something that should not be done, or simply not doing what other peers do.*" Meanwhile, to assess the presence or absence of medical negligence, Budi Sampurna explained that "*the occurrence of a medical malpractice case is assessed not from the results of his actions but from the process of his actions unless the facts have proven that*

there was negligence - the things speaks for itself (inres ipsa loquituror)." This means that if losses arise to patients due to the deliberate actions of health workers in carrying out health efforts, it is not the hospital's responsibility but the health workers' criminal responsibility.

The error of health workers is required in the form of negligence (*culpa*) because, indeed, health workers are in the best possible effort in providing therapy to patients, but because of lack of caution and accuracy arise unwanted consequences. Loebby Loqman argues, *"Intrinsically, negligence only exists if it can be proven that there was a lack of care. The measure of lack of caution is more subjective. Many factors influence the lack of one's caution will differ from one person to another."* Moreover, it becomes challenging to say the presence or absence of malpractice.

Therefore, if health workers commit negligence, it must be seen whether it occurs due to the lack of caution of health workers or violations of health service standards. Loebby Loqman confirms, *"It must be sought on a case-by-case basis both factors that exist in health care providers, patients and factors outside the two subjects."* If health workers are not careful in carrying out health efforts even though they are doing by procedures, the losses incurred will be the hospital's responsibility. Conversely, when health workers do not act according to health care procedures, health workers must be personally responsible for the losses caused.

Second limitation: "perpetrators who are health workers."

Article 213 point 1 of Law Number 17 of 2023 on Health explains that parties included in health workers devote themselves to the health sector, have knowledge and/or skills through education in the health sector, and require the authority to carry out health efforts. Formal requirements include specific health education and permit to undertake health efforts. In contrast, material

requirements are more determined by aspects of competence that are evidenced in mastery of knowledge and health service skills. Dental therapists are one of the health workers with medical technician qualifications.

Third limitation: *"... in the hospital."*

Health workers designated as workers or human resources in the Hospital have the authority to make health efforts. Health workers who have met the formal and material requirements have the power to carry out health efforts. Related to hospital health workers, the health efforts made by these health workers must be in the task/work agreed upon with the hospital. This understanding does not only mean where health services are carried out but also when the working relationship with the hospital is still ongoing. This is very important, considering that only some actions or efforts of health services are carried out in hospitals. For example, in an emergency, health workers (medical teams) make health efforts first while traveling in an ambulance. The Hospital remains responsible for the actions of health workers as long as they are still in a working relationship with the hospital, even if they are carried out outside the hospital premises/locations.

Health workers are entitled to legal rewards and protection in carrying out their duties by their profession. Health workers must develop and improve their knowledge and skill in their duties. If health workers are suspected of negligence, such negligence must be resolved through mediation. Mediation is the resolution of cases through non-litigation channels or not through legal channels. In a dispute, parties disappointed with the costs and legal uncertainty turn to mediation. This mediation has been regulated in Article 310 of Law Number 17 of 2023 on Health concerning dispute resolution, it is regulated that the solution to patient losses as recipients of health services arising from health workers can be read: *"If Health Workers are suspected of negligence in*

carrying out their profession that causes harm to health service recipients, disputes arising from such negligence must first be resolved through out-of-court dispute resolution by the provisions of laws and regulations."

CONCLUSION AND RECOMMENDATION

Healthcare providers operate within established guidelines and legal frameworks. Their actions must be aligned with relevant professional and regulatory standards. Deviations will have legal consequences. The relationship between healthcare providers and patients is governed by agreements and consents. Hospitals and dental professionals have employment contracts, while patients give consent for treatment. The main purpose of healthcare is to promote health. However, errors or omissions can harm patients. Dental therapists must be accountable for their actions, both personally and professionally. Criminal law plays a role in ensuring responsibility for healthcare-related misconduct.

This study offers a comprehensive exploration of the legal framework governing liability among dental therapists in Indonesian hospitals. By intersecting legal principles with professional standards, the research provides valuable insights into the ethical and legal considerations within the field of dental and oral healthcare. The findings contribute to a deeper understanding of the factors influencing liability, informing policy development, education, and practice to promote a more equitable and patient-centered healthcare system.

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