CRIMINAL LIABILITY OF MEDICAL RESPONSIBILITY IN HANDLING OF PATIENTS WITH GASTROINTESTINAL DISORDERS

OK Isnainul[1], Mulyadi[2], Idwan Harris Siahaan[3]

[1]Universitas Prima Indonesia, okisnainul@unprimdn.ac.id
[2]Universitas Prima Indonesia, mulyadi@unprimdn.ac.id
[3]Universitas Prima Indonesia, dr.ram_medic@ymail.com

ABSTRACT

Errors that can occur in medical actions from medical personnel include gastrointestinal handling. Gastrointestinal is commonly found in the intensive care unit (ICU). Errors or omissions are an essential element to determine whether or not a person can be sentenced to a crime, as well as in medical malpractice actions, it is largely determined by the presence or absence of negligence or errors of medical personnel in carrying out medical actions against patients, both professionally and legally. The purpose of the study was to analyze "Criminal Liability of Medical Personnel who are Negligent in Handling Patients with Gastrointestinal Disorders". The results of the study obtained: 1) Criminal provisions against medical personnel who are negligent in handling patients with gastrointestinal disorders are regulated in Article 51 of the Republic of Indonesia Law Number: 29 of 2004 concerning medical practice, where a medical worker is obliged to provide assistance on a humanitarian basis. Looking at these provisions, it can be seen that the medical profession requires special competence and authority because the actions taken contain considerable risks. Medical personnel in carrying out medical procedures already have service standards that serve as guidelines and guidelines that apply to all medical personnel. If the standard is not implemented or implemented but is not in accordance with the required average standard, in the sense of ignoring the obligations stipulated by the applicable laws and regulations and the code of ethics of the medical profession, then it can be said as an error in the form of culpa or negligence. 2) Criminal liability of medical personnel for negligence in handling patients with gastrointestinal disorders is a criminal act by which, of course, can be subject to criminal provisions or sanctions. Criminal provisions that can be applied to medical personnel who are negligent in providing treatment to patients with gastrointestinal disorders are regulated in the general criminal provisions of Articles 267, 299, 304, 322, 344, 346, 347, 348 and Article 349 of the Criminal Code, which includes acts of a deliberate nature. As for what includes negligence, it is stated in Article 359, Article 360, and Article 361 of the Criminal Code, 3) The rights of health workers to the demands of patients with gastrointestinal disorders have been regulated through laws and regulations, namely Article 11 paragraph (1) of the Republic of Indonesia Law Number: 36 of 2014 concerning Health Workers and Article 50 of the Republic of Indonesia Law: Number 29 of 2004 concerning Medical Practice.

Keywords: Criminal liability, Medical personnel, Patients, Gastrointestinal disorders.

INTRODUCTION

The development of the world of health today is quite rapid, not only regarding various diseases that arise, but also disease handling technology and its increasingly sophisticated supporting facilities. Unfortunately, this is not directly proportional to the regulations governing the relationship between health care, so it is possible to create legal problems in

health care, especially those related to the relationship between patients and doctors and hospitals and hospital staff.

Good health services are part of the national development goals, because health services are one of the human rights that must be considered and obtained by everyone equally, without any exceptions. In the preamble to Law Number 36 Year 2009 concerning Health, in letter (a) it is emphasized that health is a human right, and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation is as referred to in Pancasila and the Law. 1945 Constitution of the Republic of Indonesia (RI Government, 2009).

The affirmation of the law implies that health services are required to have maximum arrangements so that everyone gets services in the health sector without exception, both from a political aspect and from an economic aspect, because this concerns human rights that cannot be ignored, on the basis of interests. class or ethnicity, religion and social community. In the Law of the Republic of Indonesia Number 36 of 2009 concerning Health, it also refers to considerations, given in letter (b) it is written that "every activity in an effort to maintain and improve the highest degree of public health is carried out based on the principles of non-discrimination, participatory and sustainability in the context of the formation of Indonesian human resources, as well as increasing the nation's resilience and competitiveness for national development".

The emergence of legal relationships in medical services can be understood if the definition of health services, the principle of providing assistance in health services, and the purpose of providing health services are known and understood. Efforts to restore health are oriented no longer solely from the aspect of the therapeutic agreement between the patient and the doctor as well as the hospital and hospital staff in a civil manner, but also must be shown the implications of an action either by doctors, hospitals or hospital servants that can cause loss or disability, even loss of life from the actions of hospital staff (doctors, nurses, midwives) which are carried out either intentionally or by negligence.

In this case, the therapeutic agreement itself is an agreement between a doctor and a patient that authorizes the doctor to perform a medical action in health care for the patient according to the expertise and skills possessed by the doctor. Therefore, anything that causes health problems for everyone and the Indonesian people will cause not only large economic losses, but also physical disturbances, even loss of life caused by these medical errors (Muntaha, 2019).

Errors that can occur in medical actions from medical personnel include gastrointestinal handling. Gastrointestinal disorders are commonly found in intensive care units (ICU) with an incidence of 60% in critically ill patients (Ladopoulus et al., 2018). Materially, a medical action is not against the law if it meets the requirements, namely having a medical indication, to achieve a concrete goal, carried out according to the rules that apply in medical science and has obtained the consent of the patient (Yunanto & Helmi, 2009). Errors in patient handling are known as malpractice.

Medical malpractice always starts because of an error, both ethically and legally, both of which are carried out simultaneously. So to determine whether there is an error in the form of intentional or negligence in medical malpractice, the first action is taken by looking at

professional standards through the code of ethics for medical personnel. Legal action on medical malpractice is used as the final part. Errors or omissions are an essential element to determine whether or not a person can be sentenced to a crime, as well as in medical malpractice actions, it is largely determined by the presence or absence of negligence or errors of medical personnel in carrying out medical actions against patients, both professionally and legally. Anny Isfandyarie stated that Criminal malpractice occurs when a patient dies or is disabled due to careless health workers. Or less careful in making efforts to treat patients who died or were disabled (Isfandyarie, 2005).

By looking at some of the opinions above, it can be concluded temporarily that the negligence of medical personnel can be punished if the patient dies or has a disability so that based on this, the authors want to examine more deeply about "Criminal Liability of Medical Personnel who are Negligent in Handling Patients with Gastrointestinal Disorders".

METHODOLOGY

This thesis research uses the type of empirical juridical research. Techniques and data collection in this study was done by means of library research. Data collection tools used are document studies to obtain secondary data, by reading, studying, researching, identifying, analyzing primary, secondary and tertiary data related to this research. The data obtained through secondary data collection will be collected and then analyzed in a qualitative way to get clarity on the issues to be discussed.

DISCUSSION

A. Criminal provisions against medical personnel who are negligent in handling patients with gastrointestinal disorders

To provide legal protection and legal certainty to health workers who provide health services directly or indirectly and to the community receiving services, it is necessary to have a strong legal basis or foundation that is in line with the development of science and technology in the health, socio-economic and cultural fields. The law works by regulating the actions of a person or the relationship between people in the community component and every act is regulated in laws and regulations as a form of accountability.

Criminal liability in essence always begins with an error, whether it is intentional or in the form of negligence, and almost all criminal law experts agree that the principle of a crime without error is a principle that has been a reference in determining whether or not someone is liable, not least in criminal acts. malpractice crime. The essence of accountability in criminal law is none other than the person who commits a crime. The criminal law that applies in Indonesia separates the characteristics of the acts that are made into criminal acts with the characteristics of the person who commits the crime.

Doctors in general as perpetrators of malpractice, have a normal mental state. Therefore, according to Moeljatno, the ability to be responsible is considered to exist secretly. A doctor will not be given permission to practice in medical services to patients or other people if his mental state is disturbed. For this reason, the provisions of Article 44 of the Criminal Code cannot be applied in order to provide protection to doctors who commit malpractice. The article reads as follows: "1) Whoever commits an act for which he cannot

be accounted for because his soul is disabled in growth or is impaired due to illness, cannot be punished, 2) If it turns out that the act cannot be held accountable to him because of his growth, if his growth is disabled or is disturbed due to illness, the judge may order so that the person is admitted to a mental hospital for a maximum of one year as a probationary period, 3) The provisions in paragraph (2) apply to the Supreme Court, High Court, and District Court".

The doctor's responsibility is an attachment to the provisions, both concerning ethics as part of the professionalism of doctors and those concerning the law in carrying out their profession. The responsibilities of a doctor in the field of law can generally be classified into three areas, namely civil law, administrative law, and criminal law. However, regarding the responsibility for malpractice, it will be seen from a criminal point of view, although it is possible that other legal fields will be described briefly if they have a significant relationship with medical malpractice problems.

Criminal responsibility always arises from an act if it can be proven that an error was made by a professional doctor. From a legal point of view, the existence of errors in the form of intentional and negligence will always be related to the unlawful nature of an act committed by someone who is capable of being responsible. Like a doctor who commits malpractice, the doctor can realize his actions and the act is considered inappropriate in the community, and the doctor concerned is able to determine the intention or will in realizing the act.

The Criminal Code does not regulate limitatively about the meaning of the ability to be responsible, but in the MvT it is explained negatively about this, where the legislators assume that everyone has a healthy soul / mind so that everyone can be held accountable for their actions and if there is any doubt then it is proven.

Medical personnel in carrying out their professional duties, of course, their mental condition is normal, it can even be said that the mental condition of a medical worker is above average so that every action that is being and will be carried out has been known beforehand, as well as the consequences that may arise from the act. such as an error or omission so that a situation that is not in accordance with medical practice is definitely said to have made an omission or mistake. Therefore, criminal law regarding the ability to be responsible is not seen from the objective aspect (deeds) of the perpetrator, but is seen from the subjective aspect in the sense of the psychological state of the perpetrator. Thus, when viewed from this angle, every act of a doctor with indications of malpractice can be prosecuted for legal responsibility, in this case criminal law.

According to Bambang Poernomo, there are several methods to determine the state of being incapable of being responsible so that people cannot be convicted, namely: a) Biologische method, is a method by describing mental illness. If a psychiatrist has declared a person to be insane by itself, he cannot be punished, b) Psyhologische method, in this way will show the relationship between an abnormal mental state and his actions. This method emphasizes the effect of mental illness on his actions so that it can be said that he is unable to take responsibility and cannot be punished and c) Biologisch-psychologische method or gemischte method, in this way besides stating the state of his soul and the causes of that mental state, then being judged by his actions. to be declared ineligible. The Criminal Code adheres to a combination of biologics and psychologische in determining a person's inability to take responsibility. This is what Bambang Pornomo calls the gemischte method, where in addition to declaring that his mental state is disabled

in its growth or disturbed by the disease (Article 44), in such a situation it is not necessarily free from punishment, but it must be judged that in connection with the mental condition it causes his actions cannot be accounted for, so he cannot be punished" (Poernomo, 1992).

Criminal liability can be carried out as long as the maker does not have a defense when committing a criminal act. The exclusion of criminal liability as regulated in the provisions of Article 44 of the Criminal Code is a negative liability, which only describes things that can exclude the maker from criminal prosecution. Thus, criminal exceptions are caused due to the exception of faults.

In taking responsibility for an action, a maker is given space to explain why he did such an act. The law, including criminal law, always opens up such a space, if not, it can be said that a due process does not occur, and in turn such a situation will be faced with the principles of justice as a very important part of the essence of law. Hart has criticized this context by stating: "If a legal system did not provide facilities allowing individuals to give legal effect to their choices in such areas of conduct, it would fail to make one of the laws most distinctive and valuable contributions to social life. " This view explains that the law is considered a failure if it cannot provide input in social life, if it does not open up opportunities for the offense maker to explain why he cannot avoid the occurrence of the crime.

An act will be good for the maker if the act is carried out as early as possible with preventive actions. Thus, the maker is not legally liable. In this concept, the possibility must be opened for as early as possible, the maker is fully aware of the legal consequences of his actions. The existence of demands for legal responsibility is different from demands for responsibility in professional ethics, because in the demands of the profession it only concerns administrative procedural proof. Another case when it concerns legal responsibility, then there will be a reciprocal relationship between the obligations and rights between the parties.

Errors in the form of intentional and negligence in medical malpractice can not only be held responsible professionally, but also legally responsible. Therefore, the medical profession, especially doctors, applies general legal provisions as the basis of legal responsibility in carrying out special health tasks in their daily profession.

Juridically, the legal responsibility of a medical professional who appears in a state that he is proven to have committed medical malpractice in the criminal field is regulated in Articles 267, 299, 304, 322, 344, 346, 347, 348 and Article 349 of the Criminal Code, which includes deliberate actions. . Those that include negligence are listed in Article 359, Article 360, and Article 361 of the Criminal Code. For more details, the provisions of these articles will be described.

In order to clearly determine whether the act is a criminal act or not so that it can be accounted for according to law, the guilt of an alleged medical professional must be proven first whether it has fulfilled the elements in accordance with the formulation of the offense contained in the Criminal Code as well as in the provisions of the Criminal Code. other legislation, in this case the law on health and the law on medical practice. There is a doctor's error in the form of intentional and negligence in medical malpractice, it is not enough to prove it through a formal legal approach, but a material legal approach is also

needed, because in a malpractice case it is very difficult to prove an error in the form of intentional or negligence.

Often judicial practice in Indonesia is very difficult to determine whether there is an error in the form of intentional or negligence in malpractice cases. Therefore, the evidence must be assisted by other disciplines, in this case medicine, namely through professional organizations set out in a medical code of ethics which has been used as a guideline and standard in carrying out medical actions on patients. The scientific evidence is intended to determine the existence of errors by doctors, the relationship is of course the basis for demanding accountability, both ethically and legally.

Juridically, the criteria for determining the existence of accountability through criminal law can be seen from the side of the act. In this case, whether the actions taken by the doctor have been regulated in a law. This is also an embodiment of the principle of nullum dellictum nulla poena sine pravia legi poenali or known by our law as the principle of legality. This principle is contained in Article 1 paragraph (1) of the Criminal Code which reads: "An act cannot be punished, except based on the strength of the provisions of the existing criminal legislation". Although this provision does not limitatively explain malpractice, it is explicitly regulated in the Criminal Code in the form of acts committed intentionally or by negligence.

Criminal law experts state that for a criminal liability to exist, at least three requirements must be met, namely: a) There must be an act that can be punished which is included in the formulation of a statutory offense. This reflects the principle in Article 1 paragraph (1) of the Criminal Code that acts cannot be punished, unless previously regulated in laws and regulations, b) The act that can be punished must be contrary to the law, not only in a formal sense, but also in a material sense, c) There must be an error in the form of intentional and/or negligence committed by the perpetrator, and the error has causality with the resulting consequences.

If viewed from the aspect of criminal law, an act contains an element of error, if: a) The act is against or contrary to the law, b) The consequences that may occur can be avoided, in the sense that the perpetrator is not careful, c) The perpetrator of the act can accountable.

Looking at the formulation of the elements of error, if an act fulfills the elements mentioned above, it can be held accountable both legally and professionally, because violations of legal reproaches are implicitly included as reproaches in an ethical sense. Even so, there are some actions of doctors that cannot be held materially responsible, in which case these actions have become routine activities for health workers, especially doctors who perform surgery, which of course will cause injury and pain for patients, but this is cannot be held legally responsible because the action is not a malpractice.

In the prosecution of negligence in handling patients with gastrointestinal disorders contained accountability on the basis of propriety (toerekening naar redekijkheid), where the teaching requires accountability based on propriety and circumstances. This teaching of propriety responsibility has been applied in the Netherlands by its inclusion in the provisions of Article 6194 of the new Dutch Burgerlijk Wetboek which emphasizes that: “Losses that can only be considered for compensation are those that are in such a way as to relate to the basic incident of liability of the guilty person. Thus, this loss as a result and incident can be insured, taking into account the nature of the liability of the nature of the

loss. This provision shows that there is a causal relationship between the act and its consequences. Therefore, with these consequences, accountability demands can be made from the perpetrators of the act.

Zainal Asiki Kusumah Atmadja stated that the science of law provides criteria for causality, namely: a) In principle, compensation is only required if there is a violation of the law that forms the basis of liability for the compensation, taking into account the degree of possibility that it can be suspected, is the result of the unlawful act. b) The obligation to pay compensation only includes compensation when committing an unlawful act by taking into account the degree of possibility that it is the result of an unlawful act (Soetrisno, 2010).

In criminal law, the existence of a causal relationship between actions and consequences is the basis for making demands for accountability against the perpetrators of the act. If someone commits an act that violates the law, it is appropriate to be responsible for the losses caused.

For medical personnel who do not carry out their obligations, especially in actions that are negligent in handling patients with gastrointestinal disorders, it is a crime by them, of course, they can be subject to criminal provisions or sanctions. The criminal provisions that can be imposed on hospitals as legal entities that commit negligence in medical treatment of patients with gastrointestinal disorders are as follows: a) The crime of leaving people who need help and the crime of violating people who need help. This provision is regulated in Article 304 of the Criminal Code and Article 531 of the Criminal Code. This criminal provision can be imposed on hospitals and/or health workers in the hospital. As for the provisions of Article 304 of the Criminal Code and Article 531 of the Criminal Code: "Article 304 of the Criminal Code: "Whoever intentionally places or leaves someone in a state of misery, even though according to the law that applies to him or because of his approval he is obliged to give life, care or maintenance to that person. , is threatened with a maximum imprisonment of two years and eight months or a maximum fine of four thousand and five hundred rupiah", Article 531 of the Criminal Code: "Whoever, when witnessing that there is a person facing death, does not provide assistance that can be given to him without properly causing harm to himself or others, is threatened if later that person dies, with a maximum imprisonment of three months or a maximum fine of three months. four thousand five hundred rupiah".

In Articles 304 and 531 of the Criminal Code, it is a passive act, where a person does not do any physical action, but the person has neglected his legal obligations. Elements of Article 304 of the Criminal Code, intentionally leaving someone in a state of misery, including negligence of medical services carried out by hospitals, and in the element of Article 531 of the Criminal Code, intentionally not providing assistance to someone who needs medical treatment is punishable by a criminal offense. The head of the health service facility, in this case the Director of the hospital as well as the doctor, nurse or other officer in the hospital can be charged with Article 304 of the Criminal Code against health services provided by the hospital. And can also be charged with Article 531 of the Criminal Code, because of a criminal offense.

In the case of negligence in handling patients with gastrointestinal disorders, the provisions regarding inclusion in the Criminal Code as stipulated in Article 55 of the Criminal Code, Article 56 of the Criminal Code and Article 57 of the Criminal Code can be applied to hospital directors and doctors, nurses or other officers on duty in hospitals,

but This does not necessarily mean that it must be investigated based on the causes of negligence in medical services to patients. If in the event that negligence occurs because the health worker carries out the hospital director's order, this inclusion provision can be imposed, but if there is no order, then the inclusion provision cannot be imposed.

In this case, it is the duty of law enforcement to carry out investigations related to the construction of the occurrence of the case, so that the application of criminal provisions when a case like this occurs is not wrong. These criminal provisions are general criminal provisions that can be imposed on hospitals, namely: a) The crime of not providing first aid. This criminal provision is regulated in special provisions, namely Law Number: 36 of 2009 concerning Health in Article 190 paragraphs (1) and (2). Article 190 formulates as follows: paragraph (1) “Leaders of health service facilities and/or health workers who practice or work at health service facilities who intentionally do not provide first aid to patients in an emergency situation as referred to in Article 32 paragraph (2), or Article 85 paragraph (2) shall be punished with imprisonment for a maximum of 2 (two) years and a fine of a maximum of Rp. 200,000,000 (two hundred million rupiah)” paragraph (2) “In the case of the act as referred to in paragraph (1) resulting in disability or death, the head of the health service facility and/or health worker shall be sentenced to a maximum imprisonment of 10 (ten) years and a maximum fine of Rp. 1,000,000,000.- (one billion rupiah)”. Article 32 paragraph (2) referred to are: "In an emergency, health care facilities, both the government and the private sector, are prohibited from refusing patients and/or asking for a down payment." Article 85 paragraph (2) refers to: "Health service facilities in providing health services in disasters as referred to in paragraph (1) are prohibited from refusing patients and/or asking for advances".

Article 190 paragraph (1) also contains a criminal act without providing first aid (passive) to a patient in an emergency. Meanwhile, paragraph (2) contains the basis for the weighting of the crime placed on the result of a disability or death. If the formulation of the criminal provisions in Article 190 of the Health Law is detailed, its elements can be seen. The objective element (actus reus) is the act of not providing first aid, the object is the patient who is in an emergency. Meanwhile, the subjective element (mens rea) is that the perpetrator is the head of the health service facility and/or health workers who practice or work in health services. While the element of error is intentional. The crime in this article is aimed at two legal subjects or perpetrators of criminal acts, namely the head of the health facility in this case is the director of the hospital and the second legal subject is a health worker (doctor, nurse or other officer in the hospital).

While the sentence "doing practice or work in health services" is not an element of action, but an element of circumstances that accompanies and is attached to the legal subject (the maker). The element of action is "not providing first aid". The object of the crime is the patient, while the phrase "who is in an emergency" is an element of circumstances that accompanies and is attached to the object of the crime. The two legal subjects can be jointly responsible or one of them can be responsible depending on the case. The hospital director can be held responsible and penalized if he wants or at least knows the patient is in an emergency situation and leaves him without first aid. The reason is based on Article 190 of the criminal act that there is an intentional element, which means wanting and knowing.

While the legal subjects of medical personnel are medical personnel who are on duty at the time of the incident, which can be doctors, nurses or other medical personnel. Based on the location of the word intentionally in the formulation sentence, it is deliberately aimed at

two elements, namely; not provide first aid to patients who are in an emergency. The definition of the act of not providing first aid and the definition of an emergency is of course left to medical science and legal science. The definition of intentional in relation to the two elements is: 1) The head of the health service facility and/or health worker knows about the emergency situation of a patient, 2) The legal subject knows that the patient needs to save life and disability; and 3) The leadership and/or health workers want not to give first aid to the patient (Chazami, 2016) The three mental attitudes are an inseparable unity and need to be proven. Paragraph (2) in that Article states the reasons for the aggravation of the punishment placed on the element resulting from the occurrence of disability or death, which is punishable by a maximum imprisonment of 10 (ten) years and a maximum fine of Rp. 1,000,000,000 (one billion rupiah). This result is not caused by an emergency, but a direct result of not being given first aid.

Proving a direct relationship between not giving first aid and the consequences of death or disability is carried out according to the analysis of medical science and legal science. If first aid has been carried out, the result of death or disability is a mere accident. The evil nature and merit of the act of not providing first aid is placed on the knowledge and will to do nothing herethe maker because of his position is burdened with the obligation to perform first aid to save the life or the patient's record. Meanwhile, he is also aware of the consequences even though he doesn't want it.

The above provisions are criminal provisions that can be imposed on hospitals that neglect medical services to emergency patients. The provisions in the Criminal Code are general criminal provisions, while the provisions in the Health Law are special provisions. So if there is a case of negligence in medical services for emergency patients, it is based on the principle of lex specialis derogate legi generalis, namely that special laws override general laws. So the criminal provisions that can be imposed on hospitals are the criminal provisions regulated in Article 190 paragraph (1) and paragraph (2) of the Health Law.

In addition, the provisions in the Criminal Code do not really benefit the victim or the victim's family in this case are patients with gastrointestinal disorders who have been neglected by the hospital, because the punishment is not proportional to the losses borne by the victim or the victim's family as the injured party. A more appropriate criminal provision imposed on hospitals is to use Article 190 paragraph (1) and paragraph (2) of Law Number 36 of 2009 concerning Health, because the Health Law is more burdensome in terms of punishment for perpetrators who have committed the crime of refusing critical patients. emergency. In this case, either the director of the hospital and/or doctors, nurses or other health workers in the hospital.

B. Criminal Liability Against Medical Personnel Negligent In Handling Patients With Gastrointestinal Disorders

In accordance with its nature and essence, the law plays a major role in regulating every legal relationship that arises, both between individuals and individuals or individuals and communities in various fields of life, including health. The hospital is a non-profit business entity, which is based on morals and ethics and is based on Human Rights (HAM). The hospital is also a social institution that prioritizes social functions and responsibilities that are carried out with humanitarian moral considerations for the common welfare (society).

On the other hand, the increasing public need for medical services is also followed by growth in the field of medical science which is associated with the possibility of wider and deeper treatment of humans. The existence of specialization and division of labor that makes medical services more of a collaboration with accountability among fellow aid providers and accountability to patients. In carrying out an action, medical personnel must be responsible as legal subjects who carry out rights and obligations. The actions or actions of medical personnel as legal subjects in public relations can be distinguished between their daily actions that are not related to the profession and actions related to the implementation of the profession. Medical services must be related to the efforts of medical personnel in helping each patient, this then becomes the juridical basis for medical service providers in this case is a legal act that results in legal relations, even though this is not realized by the medical service implementers at the time. the act in question is carried out (Maskawati, 2018).

Regarding the problem of negligence from medical personnel in handling patients with gastrointestinal disorders, it can be seen in several aspects as follows: 1) Aspects of pain, namely: the relationship between medical personnel and patients in an emergency situation is a more specific relationship in the medical realm. In ordinary circumstances (not an emergency situation), the relationship between medical personnel is based on the agreement of both parties, namely the patient and the doctor, where this relationship will continue until the next medical visit. However, in an emergency, this is abolished because the principle of volutarism from both parties is not fulfilled. 2) Patient handling aspects, namely: death in the most serious emergency treatment usually occurs in a short time (± 4-6 minutes), if there is damage to one of the body systems, such as the nervous system, breathing, bleeding and so on can also cause death even if it takes longer. Thus, the success of handling emergency patients in preventing death or disability is determined by the speed at which patients are found, and the quality of assistance provided by the medical personnel themselves. 3) Aspects of the professionalism of medical personnel, namely: the availability of medical personnel in sufficient numbers is the main requirement that must be met by the emergency department. Hospitals must be able to prepare specialist medical personnel who are often needed in the emergency department (surgery, internal medicine, children, and others). Medical personnel on duty must also be ready and willing to accept all forms of patient conditions. If the medical personnel fails to fulfill their obligations when dealing with emergency patients due to negligence or intentional aspects, then the responsibility lies in addition to the medical personnel, the hospital is also legally responsible. Therefore, human resources who work in hospitals, especially those who carry out responsibilities in the emergency department, must really have high qualifications and professionalism. In Article 1 point 3 of Law No. 23 of 1992 concerning health states: "Health workers are every person who devotes himself to the health sector and has knowledge of funds or skills through education in the health sector for certain types requiring the authority to carry out health efforts".

From these provisions, it can be seen that the medical profession requires special competence and authority because the actions taken contain considerable risks. The regulation of medical actions in general in the implementation of treatment based on medical science and nursing science can only be carried out by medical personnel who have the expertise and authority, for this reason these provisions are intended to protect the public from the actions of someone who does not have the expertise and authority to perform treatment treatment, so that the consequences can be detrimental or harmful to the patient's health, especially medical actions that contain serious risks.

Basically every medical worker has the authority to take various actions, including specific actions in an emergency situation, in the event that the assistance is carried out by medical personnel, the person concerned must require professional standards according to the emergency situation at that time. Pre-hospital emergency services are generally in the form of first aid carried out by ordinary people, both trained and untrained in the medical field. According to its provisions, the authority for medical action in the Health Act cannot be applied because people do this voluntarily in good faith. While pre-hospital actions are carried out by medical personnel in the emergency department, the legal responsibilities are no different from medical personnel in hospitals. Where related to determining whether or not there was negligence, it was seen by comparing the skills of his actions with similar medical personnel.

In many cases of negligence, criminal law experts provide different definitions. Andi Zainal Farid stated that: "Culpa lata or grove schuld (severe error) is mentioned in Dutch with the terms onachtzaamheid (negligence) and nalatigheid (negligence), which is often also mentioned schuld in enge zin, which means error in the narrow sense, because it is not includes intentionality. Actually, error does not have the same meaning as schuld in Dutch, but because no Indonesian language was found, the term error is used, which is of course the meaning of schuld according to criminal law, and not in the social-ethical sense, or in everyday terms." (Farid, 2007).

Furthermore, Zainal Abidin Farid stated that what is relevant for criminal law is only culpa lata, namely negligence and negligence, and not culva levis, namely such a light negligence. For that there is no need to cause someone to be convicted. Between dolus and culpa lata there is a difference, where the principal difference is that the maker who commits the act intentionally (dolus) is willing or has accepted or including the calculation of the consequences that will occur. As for culpa lata, on the other hand, the maker of the culpa offense, even though the perpetrator may know the consequences that will occur, the perpetrator is indifferent or ignores and does not care about the realization of the consequences because the perpetrator will his expertise and skills. Modderman concluded that the Dutch Minister of Justice when submitting the Draft Wetbook van Strafrecht (currently known as the Criminal Code), explained the meaning of schuld as a lack of necessary thought, lack of necessary knowledge or understanding, (gebrek aan het modige denken) and lack of wisdom required (Farid, 2007).

When viewed from the conclusion of Modderman's view above with regard to medical malpractice of medical personnel, it can be said that Schuld is the inner attitude of the offense maker who is less thoughtful, lacks knowledge and lacks understanding or wisdom. Whereas the perpetrator as a member of the community should think, know or be wise in carrying out actions that may cause harm to members of the community. This situation must always be monitored and monitored by the medical commission as part of its main function, namely trying to prevent medical malpractice and finding the best solution for a patient's suffering, at least reducing the pain he suffers. The maker of the offense, in this case the doctor is not careful or less careful in acting so that it causes consequences that are prohibited by the criminal law.

The waiver of these standards means that doctors in carrying out medical actions against their patients are careless in providing services which consequently lead to errors that harm patients. In relation to this, Andi Zainal Abidin Farid stated that: "The absence of prudence includes the culpa lata which is not realized or in Indonesian is called negligence, while it can be expected that there will be consequences (but it is not believed

that this will happen because it relies on skill or dexterity), including culpa lata which is interpreted as negligence". Proving the existence of a dolus or culpa lata is so difficult that in the criminal justice system the objective culva system, or objective negligence, is used. The method used is to analyze the dangerous actions of the suspect. In this way, the judge can conclude that the defendant with his dangerous act had negligence or negligence. An act can be said to be culpa lata or negligence, according to Moeljatno it must at least contain the following conditions: a) Not making assumptions as required by law, b) Not exercising prudence as required by law (Farid, 2007).

In the culpa, the mental attitude has a very important role in determining the realization of an action. The negligent mental attitude towards the unlawful nature of an action is an inner attitude that should be aware of the forbidden or prohibited act. If due to his negligence, lack of knowledge, lack of attention, he does not realize (mistake) that the act he has committed is prohibited, which because of his position should be aware of the prohibited condition, then a medical professional should know about his professional standards, standard operating procedures regarding medical actions that are carried out. want to do. Medical actions taken by medical personnel are based on their knowledge. Thus, the medical personnel should understand that the actions they want to perform, the methods for doing them, or the tools they use are not justified, because they are against professional standards or standard operating procedures, the patient's medical needs, and violate the law, but they are still being carried out.

Various cases of malpractice that occurred in Indonesia, have opened up insight into the handling of medical practice, especially regarding the application of law, in this case criminal law, because often the application of law in handling malpractice is still very far from people's expectations. In some cases, judges make decisions based on considerations of objective culpa teachings, where the objective view lays down the condition that the negligence of an act is in common sense and generally accepted habits. That is, if a person in a certain condition and situation, with certain conditions being the same, makes a choice for certain actions as well as for other people in general who are different in such conditions and situations also make the same choice, then there is no negligence. On the other hand, if under the same conditions and conditions for other people in general, they do not have what action that person has chosen, then in making the choice of action there is negligence.

One example of the application of objective culpa is in the case of dr. Setianingrum, where in the Supreme Court's decision it was implied that the Supreme Court used objective culpa considerations in making decisions, stated: "From the defendant as a doctor who has only had 4 years of experience working at a Puskesmas that has very limited facilities, it is impossible to expect him to do what he wants by witness dr. Imam Parsudi who is on duty at the Puskesmas which already has adequate facilities". Comparing the capabilities and facilities available in carrying out their duties, for researchers it is relative, because in many medical actions carried out by medical personnel there are no consequences, even though experience and facilities are very limited. If so, what is important is the inner attitude in carrying out a medical action in accordance with the law and ethics of the medical profession.

Basically, the beginning of an error, both in a broad sense and in a narrow sense (culpa) is about the inner state of the person in relation to the actions and consequences of actions as well as with all the facts surrounding the action, and the consequences of the action. Adam Chazawi stated that the inner attitude of doctors in the culpa of doctor malpractice is aimed

at at least empathy, namely at: a) The form of the act including methods and tools, b) The nature of the unlawful act, c) The patient is the object of the act and d) The consequences of actions and the elements that accompany them. This mental attitude cannot be said to be negligence if it has not been realized in a real act, because to measure the existence of an error from the perpetrator, an unlawful act is required. An action is said to be negligent if it results in the action, as long as the act of negligence does not have a detrimental effect or injury on another person, or because of trivial matters, then it is considered that no legal consequences occur.

In general, malpractice on the basis of intentional or negligence can occur because of the following rights: a) Medical personnel in carrying out their duties serving patients in the medical field do not master the medical practice which is generally accepted in the medical profession, even if the control is carried out carelessly. so as to cause harm to the patient, both physical and non-physical, b) In providing medical services, medical personnel are carried out under professional standards. c) Performing serious negligence or intentional negligence or providing careless services, d) Performing medical actions that are contrary to law and professional ethics.

The profession of medical personnel, both doctors and dentists, is carried out and implemented by humans, where in humans there are elements of imperfection in applying all actions in their lives. Therefore, the doctor or dentist will try to carry out a medical service that is part of his professional duties in order to avoid all demands, both legal and moral. Juridically, medical personnel will avoid lawsuits if a medical action taken by medical personnel does not conflict with the rule of law and does not violate professional ethics, for that it is necessary to fulfill several conditions, including: a) There is an intention that has a medical indication towards a goal. concrete treatment, b) Performed according to the applicable provisions in medical science, c) Does not get the patient's consent.

The requirements described above indicate that malpractice can not only occur in criminal acts committed on the basis of negligence (culpa), but also sometimes occur on the basis of intentional (dolus). Regarding these two terms, the Indonesian Criminal Code does not provide a limited definition so that the meaning of these two terms is mostly found in the doctrines and views of criminal law.

In this regard, Pompe provides a definition of culpa by stating: “Deschuld als zodanig wordt in de wet niet genoemd. Als de wetgever het word schuld gebruikt, verstaat hij er lets anders onder dan hiet in het Wetboek van Strafrecht betekent het onachtzaamheit" here, in the criminal code (KUHP) it means carelessness). In general, the Criminal Code does not provide clear limits on the meaning of culpa, but only refers to the history of the legislation itself. A person can be said to have a culpa in committing a criminal act if that person has committed his act without being accompanied by de nodige en mogelijke voorziclitigheid en oplettendheid or without the necessary care and attention that he may give. In relation to the culpa, Simons stated that the culpa basically has two elements, respectively, lack of caution and lack of attention to the consequences that can arise, het gemis aan voorzichtigheid and het gemis van de voorzienbaarheid van het gevolg (Hiariej, 2012).

C. The rights of medical personnel to The Demands of Patients With Gastrointestinal Disorders

Regulation of the Minister of Health of the Republic of Indonesia Number: 4 of 2018 concerning Hospital Obligations and Patient Obligations in Article 1 paragraph (5) states that "health workers are people who devote themselves to the health sector and have knowledge and/or skills through education in the health sector that certain types require the authority to carry out health efforts". From the article, it can be seen that health workers (doctors or nurses) have the authority or right to carry out health efforts in hospitals. The main health effort carried out in the emergency room is to save the patient's life based on his medical knowledge. The health worker is a component of the hospital. The rights of health workers are also regulated in Article 11 paragraph (1) of the Republic of Indonesia Law Number: 36 of 2014 concerning Health Workers, while doctors have rights which are generally regulated in Article 50 of the Republic of Indonesia Law: Number 29 of 2004 concerning Medical Practices.

To save the patient's life, sometimes or even the nature of the administration must be ignored because if the nature of the administration takes precedence over saving the patient's life through medical action, then the patient may not be saved. In general, the community or patient's family prefers their sick family to be saved first than following the hospital administration process. It can be seen that in general the patient's family when bringing their sick family to the hospital does not pay attention to the administrative matters needed when using hospital services so that when the hospital wants it it can cause problems and even legal problems if the family cannot helped just because it couldn't fulfill the hospital administration system.

As it is known that to take the necessary medical action, usually the doctor who handles it requires an approval from the family in order to save the patient. This is a dilemma for doctors who treat patients in the emergency room where on the one hand they have to follow medical procedures, but on the other hand they have a moral responsibility to save their patients and this is where the health law needs to act to defend the doctor's duties. Health law is all provisions or statutory regulations in the health sector that regulate the rights and obligations of individuals, groups or communities as recipients of health services on the one hand, the rights and obligations of health workers and health facilities as health service providers on the other hand which binds each other. each party to a therapeutic agreement and other applicable local, regional, national and even international laws and regulations in the health sector. Van der Mijn 1984 suggests that the limitation as a law that is directly related to health care which includes the application of civil law, criminal law or the definition of health law is as a whole juridical activity and legal regulations in the health sector.

As it is known that there have been many cases that have surfaced and have gone to court where the patient's family has taken legal action by suing the hospital or health worker and many of these cases have ruled that medical personnel are guilty of malpractice committed when performing medical procedures at the hospital. emergency room installation. Therefore, with this health law instrument, every individual can understand the situation they have or experience so that there is no dispute in the law based on the chronology of legal facts in health services in emergency services and the rights of health workers have meaning in the law in the health sector. Through the law in the field of health, health

workers can know and understand their rights in carrying out their duties as health workers, especially in emergency room installations.

Based on the explanation above, it can be seen that the rights of medical personnel have been regulated through laws and regulations, namely Article 11 paragraph (1) of the Republic of Indonesia Law Number: 36 of 2014 concerning Health Workers and Article 50 of the Republic of Indonesia Law: Number 29 of 2014 2004 About Medical Practice.

CONCLUSIONS

1. Criminal provisions against medical personnel who are negligent in handling patients with gastrointestinal disorders are regulated in Article 51 of the Republic of Indonesia Law Number: 29 of 2004 concerning medical practice, where a medical worker is obliged to provide assistance on a humanitarian basis. Looking at these provisions, it can be seen that the medical profession requires special competence and authority because the actions taken contain considerable risks. Medical personnel in carrying out medical procedures already have service standards that serve as guidelines and guidelines that apply to all medical personnel. If the standard is not implemented or implemented but is not in accordance with the required average standard, in the sense of ignoring the obligations stipulated by the applicable laws and regulations and the code of ethics of the medical profession, then it can be said as an error in the form of culpa or negligence.
2. Criminal liability of medical personnel for negligence in the handling of patients with gastrointestinal disorders is a criminal act by which, of course, can be subject to criminal provisions or sanctions. Criminal provisions that can be applied to medical personnel who are negligent in providing treatment to patients with gastrointestinal disorders are regulated in the general criminal provisions of Articles 267, 299, 304, 322, 344, 346, 347, 348 and Article 349 of the Criminal Code, which includes acts of a deliberate nature. As for what includes negligence, it is stated in Article 359, Article 360, and Article 361 of the Criminal Code.
3. The rights of health workers to the demands of patients with gastrointestinal disorders have been regulated through laws and regulations, namely Article 11 paragraph (1) of the Law of the Republic of Indonesia Number: 36 of 2014 concerning Health Workers and Article 50 of the Law of the Republic of Indonesia: Number 29 of 2004 About Medical Practice.

REFERENCES

Chazami, A. (2016). *Malpraktik kedokteran*. Sinar Grafika.

Farid, Z. A. (2007). *Hukum pidana*. Andi.

Hiariej, E. O. . (2012). *Teori dan hukum pembuktian*. Erlangga.

Isfandyarie, A. (2005). *Malpraktek dan resiko medik*. Prestasi Pustaka.

Ladopoulus, T., Giannaki, M., Alexopoulou, C., Proklou, A., Pediaditis, E., & Kondili, E. (2018). Gastrointestinal dysmotility in critically ill patients. *Annals of Gastroenterology*, *31*(1), 1–9.

Maskawati. (2018). *Hukum kesehatan dimensi etis dan yuridis tanggungjawab pelayanan kesehatan*. Litera.

Muntaha. (2019). *Hukum pidana malapraktik: Pertanggungjawaban dan penghapusan pidana*. Sinar Grafika.

Poernomo, B. (1992). *Asas-asas hukum pidana*. Ghalia Indonesia.

RI Government. (2009). *Undang-Undang Nomor : 26 Tahun 2009 Tentang Kesehatan* (pp. 1–21).

Soetrisno, S. (2010). *Malapraktek medik dan mediasi sebagai alternatif penyelesaian sengketa*. Telaga Lima Indonesia.

Yunanto, A., & Helmi. (2009). *Hukum pidana malpraktik medik, tinjauan dan perspektif medikolegal*. Andi.