

CORRECTIVE JUSTICE FOR MEDICAL PERSONNEL WHO VIOLATE THE LAW: WHERE IS THE PROFESSIONAL ORGANIZATIONS INVOLVEMENT?

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Abstract

The provision of criminal sanctions for medical personnel who violate the law in the form of gross negligence creates legal uncertainty apart from the unclear definition of serious negligence and does not involve the role of professional medical professional organizations in determining criminal witnesses for medical personnel. This study aims to formulate aspects of corrective justice for medical personnel who violate the law, especially in the realm of criminal law. This research is a normative legal research with a concept and statutory approach. The results of the study confirm that the criminal responsibility of medical personnel requires the role of the professional organization of the medical personnel concerned. This is because the assessment of the professional organization of medical personnel is important as a form of guaranteeing justice and legal certainty for medical personnel. Corrective justice-based medical personnel accountability orientation can actually be carried out by involving the roles and recommendations of medical professional organizations. In addition, health law reform is also needed by formulating criminal sanctions for medical personnel based on *ultimum remedium*, namely utilizing non-prison criminal sanctions in order to achieve justice for medical personnel.

Keywords: Corrective Justice; Criminal sanctions; Medical personnel.

Abstrak

*Pengaturan sanksi pidana bagi tenaga medis yang melakukan pelanggaran hukum berupa kelalaian berat menimbulkan ketidakpastian hukum selain tidak tegasnya batasan kelalaian berat juga belum melibatkan peran organisasi profesi tenaga medis dalam menentukan saksi pidana bagi tenaga medis. Penelitian ini bertujuan memformulasikan aspek keadilan korektif bagi tenaga medis yang melakukan pelanggaran hukum, khususnya dalam ranah hukum pidana. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan konsep dan perundang-undangan. Hasil penelitian menegaskan bahwa pertanggungjawaban tenaga medis secara pidana membutuhkan peran organisasi profesi tenaga medis yang bersangkutan. Hal ini dikarenakan, penilaian dari organisasi profesi tenaga medis ini penting sebagai bentuk untuk menjamin keadilan dan kepastian hukum bagi tenaga medis. Orientasi pertanggungjawaban tenaga medis berbasis keadilan korektif sejatinya dapat dilakukan dengan melibatkan peran dan rekomendasi dari organisasi profesi medis. Selain itu, pembaruan hukum kesehatan juga diperlukan dengan merumuskan sanksi pidana bagi tenaga medis berbasis *ultimum remedium*, yaitu mendayagunakan sanksi pidana non-penjara supaya dapat mewujudkan keadilan bagi tenaga medis.*

Kata kunci: Keadilan Korektif; Sanksi Pidana; Tenaga Medis.

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Introduction

The health services are an important aspect in society because they are related to the fulfillment of people's constitutional rights, namely rights related to proper health services. Article 28H paragraph (1) of the 1945 NRI Constitution affirms that the state guarantees the right to health of citizens as part of the right to obtain physical and mental welfare. The formulation of the right to health as part of constitutional rights affirms that the state has an obligation to guarantee and fulfill all aspects of public health

(Sidi et al., 2021). This includes the need for the state to regulate and guarantee every profession related to health to be able to provide optimal services for the community. Health professions are understood as any profession related to providing health services to the community (Yusyanti, 2021). This profession has a broad meaning, including professions that support the provision of health services. Professions related to health as in Law No. 36 of 2009 concerning Health (Health Law) do not provide a specific definition of the profession in the health sector and only in passing in Article 24 paragraph (2) which confirms that professional standards are prepared with responsibility to professional organizations.

Furthermore, Law No. 36 of 2014 concerning Health Workers (UU TK) also does not provide a specific definition of the profession in the health sector. However, with reference to Article 1 number 11 of the Health Law which confirms that a health profession has professional standards that include skills, knowledge, and professional behavior that are expected to provide health services professionally and responsibly (Syafitri, 2021). Therefore, it can be concluded that the profession in the health sector is a profession that has the duty and authority to carry out health services to the community so that it must meet aspects of knowledge, skills, and professional attitudes. The provisions of the profession in the health sector have systematically changed after the birth of the Constitutional Court Decision No. 82 / PUU-XIII / 2015 (Decision of the Medical Professional Court) which separates the health profession and the medical profession (Darmawan, 2020). The decision of the Medical Professional Court confirms that the health profession is tasked with providing health services in general while the medical profession specifically provides medical services to people who need special competencies, such as doctors and dentists. The decision of the Medical Profession Constitutional Court actually confirms the importance of the role of the medical profession such as doctors and dentists with heavier and stricter accountability. In general, the UU TK provides two forms of accountability for health workers who cannot carry out their professional duties optimally, both in the form of civil and criminal liability (Rizka et al., 2022). Articles 77-79 of the UU TK regulate civil liability, while Article 84 of the UU TK confirms criminal liability.

Regarding criminal liability, there is a provision in Article 84 of the UU TK which confirms that medical personnel who commit "serious mistakes" can be punished by referring to Article 84 paragraph (1) of the UU TK. This provision tends to "threaten" the medical profession because of legal uncertainty regarding the term "gross misconduct" and the absence of other mechanisms and emphasizes criminal sanctions as *primum remedium* in health law has the potential to reduce the nature of justice in health law (Nugraha, 2020). One of the potential criminal sanctions has implications for the lack of medical personnel from the needs that should be met. This can be exemplified in the number of doctors, which in June 2023 is only 159,977, which is ideal for Indonesia, the number of doctors is at least 230,000 (Rizka et al., 2022). This indicates that there is a shortage of 75,000 doctors in Indonesia. One of the causes of the lack of doctors in

Indonesia in addition to the expensive cost of medical education is the fear that when doing medical negligence, doctors actually get criminal sanctions (Rizka et al., 2022). This fear actually indicates the need for legal protection for doctors and other medical personnel in order to get proportionate sanctions in accordance with the applicable professional code of ethics.

Therefore, this study aims to formulate aspects of corrective justice for medical personnel who commit violations of the law, especially in the realm of criminal law. Corrective justice is an idea where the legal orientation is to make "corrections" or recovery after a violation of the law has occurred. This idea developed after the world war which aims to provide legal recovery for a legal action so that it does not always link legal actions with punishment (Leider, 2021). The urgency of this research is reconstruction related to efforts to involve professional organizations in providing criminal sanctions for medical personnel. Professional organizations play a role in minimizing the negligence of medical personnel who are always oriented towards criminal sanctions.

Research related to the accountability of medical personnel or health workers has been carried out by several researchers before, especially by the three researchers, namely: Koto and Asmadi (2021) who analyzed the accountability of medical personnel in hospitals (Ismail Koto, 2021). The novelty of this study is the need for mediation efforts as a "middle way" to account for the mistakes of medical personnel in hospitals. Agustina and Hariri (2022) also explained the responsibility of medical personnel, in this case, doctors related to misdiagnosis (Zola Agustina, 2022). The novelty of this study is that the responsibility of medical personnel, especially involving the role of professional organizations. Syahrir, Alwi, and Indar (2023) also further analyze the civil liability of medical personnel malpractice (Wandani Syahrir, Sabir Alwy & Fakultas, 2023). The novelty of this study is the application of the concept of vicarious liability which makes the hospital also responsible for the malpractice of medical personnel.

Referring to the three previous studies above, the study specifically discusses aspects of corrective justice for medical personnel who commit violations of the law, especially in the realm of criminal law involving professional organizations has actually never been carried out by the three researchers before so this research is an original research.

Research Problems

The main problem of this study is the *primum remidium* approach in the UU TKso that only based on "gross negligence" medical personnel can be punished based on the provisions of Article 84 paragraph (1) of the UU TK. Therefore, the problem of this research is the aspect of corrective justice for medical personnel who commit violations of the law, especially in the realm of criminal law.

Research Methods

Research that discusses aspects of corrective justice for medical personnel who commit violations of the law is a normative legal research. As a normative legal research, this research focuses on the analysis of existing concepts and laws and regulations (Hari Sutra Disemadi, 2022) (Irwansyah, 2020). The concept analyzed in this study is the concept of corrective justice. The primary legal materials in this study include: the 1945 NRI Constitution, the Constitutional Court Decision on the Medical Profession, the Health Law, and the UU TK. Secondary legal materials are journal articles, books, and studies and research that discuss corrective justice and accountability of medical personnel. Non-legal material is a dictionary of languages. The approach used is a concept and legislation approach. The analysis is carried out prescriptively-qualitatively, namely by conducting coherence between existing laws and regulations associated with legal concepts and theories. In addition, the results of the analysis are also oriented to produce legal prescriptions that answer legal issues in this study.

Discussion

The Accountability of Medical Personnel and Professional Organizations's Involvement

The term liability actually comes from the word responsibility which according to the Indonesian Dictionary means that a condition or circumstance that is obliged to bear everything as a result of the consequences of a certain action (Pusat Bahasa Departemen Pendidikan Nasional, 2008). The term liability itself is commonly used in the context of legal science which is termed as liability. Liability itself is understood as a form of liability based on legal provisions in accordance with certain areas regulated in positive law (Budi & Putra, 2019). In the context of legal science, liability is actually divided into three, namely civil, administrative, and criminal liability (Butar-butur, 2021).

Civil liability is liability by prioritizing aspects of compensation or compensation from one party to another injured party (Purba & Sinaga, 2021). Administrative liability is a form of administrative liability such as administrative fines to license revocation whose orientation is so that the action does not have a broad impact (Susanto, 2019). Criminal liability is a form of liability due to violations of criminal law norms where the orientation of criminal responsibility is one of which is to provide a deterrent effect from behavior (Prihatmini, 2023). Referring to the three types of legal liability above, it can be concluded that each type of legal liability is at least certain based on one of the conceptions of legal liability above.

Legal liability related to medical personnel in carrying out their duties and functions is actually a form of legal responsibility. This is because medical personnel are a group of people / parties who are trained and have an understanding of certain professions and sciences that are expected to provide optimal health services for the community (Balubun et al., 2019). Legal responsibility for medical personnel in carrying out their duties and functions is a form and effort to strengthen the professional aspects of medical personnel so as not to violate the law (Smith, 2022). Related to the term medical personnel themselves, referring to the UU TK, initially medical personnel were a

small part of health workers. This means that medical personnel make up a "small part" of the health workforce (Sholikin & Herawati, 2020). After the presence of the Constitutional Court Decision on the Medical Profession, it was affirmed that between health workers and medical personnel are two different things (Ramadhan & Sari, 2022).

The decision of the Medical Profession Constitutional Court actually confirms that health workers are part of the health profession in general and are not specific in providing medical services. This is different from medical personnel where the Constitutional Court Decision of the Medical Profession states that the medical profession is a provider of specific medical services such as doctors and dentists. From the presence of the Medical Profession Constitutional Court Decision above, three conclusions can actually be drawn, namely: first, the Medical Profession Constitutional Court Decision proportionally affirms the urgency of the importance of the medical profession that gets the orientation of the "main profession" or as a "primum inter pares" profession that is the main profession from the world of health from other equivalent professions (health worker professions)(Puspitasari & Budi Pramono, 2023). This emphasizes that medical personnel have higher ethical and legal responsibilities when compared to health workers.

Second, the Constitutional Court Decision on the Medical Profession also affirms that the medical profession is an "exclusive profession" that cannot be replaced by other professions. The medical profession can only be handled by parties who are considered scientific, competent, and experience as evidenced by certain professional certifications (El-refaie & Alsharqawi, 2021). Third, affirmation in the Decision of the Medical Professional Court as well as mandating the importance of understanding the code of ethics and prudence for the profession of doctors and dentists. As part of the medical profession, doctors and dentists must understand the code of ethics and carry out their duties with prudence and based on established standard procedures (Mullock, 2021). From the three orientations in the Medical Professional Constitutional Court Decision above, it can be concluded that judging from its duties and responsibilities, the medical profession has higher ethical and legal responsibilities compared to the health worker profession.

An important aspect of involving medical professional organizations in relation to imposing criminal sanctions on medical personnel is related to efforts to present aspects of transparency, professionalism and objectivity for medical personnel. In the aspect of transparency, the role of medical professional organizations can show transparently negligence and standards that have been violated by medical personnel. This serves to show the location of errors from medical personnel. In the aspect of professionalism, medical personnel are professionals with special knowledge and training so that determining the negligence of a medical personnel is not only based on general facts in court. Efforts to determine the negligence of a medical personnel are more relevant by referring to the assessment carried out by medical professional organizations. In the aspect of objectivity, the assessment made by medical professional organizations can be said to be clearer and more proportional, especially the standardization related to the negligence itself. This, in addition to guaranteeing legal

certainty for medical personnel, also guarantees legal protection for medical personnel as an implication of criminalization.

The aspects of the assessment or parameters carried out by medical professional organizations in assessing the negligence of medical personnel are oriented towards ensuring justice for medical personnel. Formally, justice for medical personnel can be realized if in the process of the criminal justice system the involvement of medical professional organizations becomes the main aspect that needs to be carried out. This indicates that before there was a process based on the criminal justice system, the involvement of medical professional organizations was an important aspect in assessing the negligence of medical personnel. Materially, the involvement of medical professional organizations is also important to see whether the negligence of medical personnel is actually something that can be tolerated or is something that is criminal in nature so that they must receive criminal sanctions.

Referring to the legal responsibility for medical personnel in carrying out their duties as in the provisions of Article 84 paragraphs (1) and (2) of the UU TK, it should be understood that the UU TK still uses the term health workers as subjects who can be held accountable as in the provisions of Article 84 paragraphs (1) and (2) of the UU TK. Referring to the futuristic interpretation, by reviewing the Decision of the Medical Professional Constitutional Court, it can be said that the term health worker in Article 84 paragraphs (1) and (2) of the UU TK also includes the term medical personnel. This confirms that medical personnel are also subject to the regulation in Article 84 paragraphs (1) and (2) of the UU TK. Based on this understanding, criminal liability as contained in Article 84 paragraphs (1) and (2) of the UU TK also *mutatis mutandis* applies to medical personnel.

If understood carefully, the provisions in Article 84 paragraph (1) of the UU TK emphasize that for medical personnel who commit gross negligence and cause serious injury, they can be punished with a maximum prison sentence of three years. Further provisions in Article 84 paragraph (2) of the UU TK also affirm that if gross negligence results in death, it is punishable with a maximum imprisonment of five years. Referring to the provisions of Article 84 paragraphs (1) and (2) of the UU TK above, there is actually a problem regarding the term "gross negligence". Authentically in the UU TK it is not explained about the characteristics and parameters regarding gross negligence. In fact, the element of gross negligence is the main element in the provisions of Article 84 paragraphs (1) and (2) of the UU TK above.

Legal vagueness regarding the element of "gross negligence" can potentially cause injustice to medical personnel because with unclear standards and limits regarding gross negligence, this can easily criminalize medical personnel in carrying out their duties (Wijaya et al., 2021). The term negligence in Indonesian criminal law relates to something whose legal consequences are not desired by the perpetrator, but the perpetrator's lack of caution causes the legal consequence. Negligence is regulated in Indonesian criminal law because Indonesian criminal law substantively regulates criminal acts as *dolus* and *culpa* (Muwardi et al., 2023). *Dolus* is a crime committed intentionally, while *culpa* is related to negligence. In the context of sanctions for medical

personnel in Article 84 paragraphs (1) and (2) of the TK Law, if negligence results in disability or death, the negligence must still be subject to criminal sanctions. However, the inaccuracies in Article 84 paragraphs (1) and (2) of the TK Law only link imprisonment as the main sanction, even though for this negligence there should have been sanctions that were more restitutive in nature or aimed at providing compensation or recovery for the victim.

Another problem regarding the formulation of criminal sanctions for medical personnel in Article 84 paragraphs (1) and (2) of the UU TK which actually places criminal sanctions as *primum remidium* or as the main sanction in violations of the law committed by medical personnel (I Kadek Suar Putra Dana et al., 2021). In fact, referring to the duty of medical personnel in providing optimal health services for the community, of course, as much as possible, criminal sanctions, especially imprisonment must be placed *ultimum remidium* (Soekiswati et al., 2021). Criminal sanctions in the field of health law must be placed *ultimum remidium*, meaning that prison sanctions, in particular, must be the final solution if various other criminal sanctions have been imposed (Wrześniewska-Wal et al., 2022). The imprisonment penalty for medical personnel as affirmed in Article 84 paragraphs (1) and (2) of the UU TK above is too excessive and has the potential to cause injustice to medical personnel.

One of the appropriate orientations in the formulation of criminal sanctions for medical personnel as affirmed in Article 84 paragraphs (1) and (2) of the UU TK should be formulated alternatively, namely fines/imprisonment. This alternative formulation makes there is a choice of criminal sanctions, namely between fines and imprisonment. This can be formulated to minimize the potential for criminalization of medical personnel. The important orientation of the term "gross negligence" in Article 84 paragraphs (1) and (2) of the UU TK also needs to obtain further verification from professional organizations from medical personnel in question. It would be more fair and relevant that the element of "gross negligence" is entirely the result of justification from the professional organization of medical personnel.

The importance of the assessment of the professional organization of medical personnel concerned, especially related to the element of "gross negligence" can at least be based on three arguments, namely: first, the professional organization of medical personnel is a group of people who explore certain fields of medical profession so that they must understand and explore every form of violation of the law committed by medical personnel (Prawiroharjo et al., 2021). This assessment from medical professional organizations is important as a form of ensuring justice and legal certainty for medical personnel. Second, the justification of the professional organization of medical personnel related to the element of "gross negligence" must also be carried out by the professional organization of medical personnel concerned. This is because the professional organization of the medical personnel concerned can formulate standards and parameters of a special and specific nature regarding the element of "gross negligence" based on the provisions of the respective medical personnel profession (Nugroho et al., 2021). Third, the role of medical professional organizations in relation to the assessment of elements of "gross negligence" is also related to the efforts of medical professional

organizations as guardians of the professional code of ethics. The role of medical professional organizations as guardians of the professional code of ethics is important as an effort to ensure the optimization of medical services provided by medical personnel for the community (Darmawan, 2020).

Based on the description above, it can be concluded that the criminal responsibility of medical personnel requires the role of the professional organization of the medical personnel concerned. This is because, the assessment of the medical professional organization is important as a form of ensuring justice and legal certainty for medical personnel. In addition, medical professional organizations can also formulate standards and parameters of a special and specific nature regarding the element of "gross negligence" based on the provisions of their respective medical personnel professions as well as efforts, medical professional organizations to maintain professional ethics.

The Corrective Justice as a Legal Liability Orientation of Medical Personnel

The concept of corrective justice actually has relevance to health law, especially in relation to medical personnel who commit gross negligence, namely: first, corrective justice actually emphasizes efforts to provide compensation (*restituti*) as well as recovery for victims of criminal acts (Muwardi et al., 2023). This confirms that corrective justice actually emphasizes a recovery orientation to the victim. This view is relevant to health law, especially in relation to medical personnel who commit gross negligence because in carrying out their duties and obligations medical personnel base on certain codes of ethics and standard operating procedures so that it is irrelevant if any negligence must be given criminal sanctions (Król-Całkowska et al., 2022). Referring to the essence of corrective justice, criminal sanctions for medical personnel can be given if they have received recommendations from medical professional organizations based on certain codes of ethics and standard operating procedures (Prihatmini, 2023).

Second, corrective justice is oriented towards efforts to minimize imprisonment-based penalties or punishments. This effort to minimize penalization is actually relevant to the idea of modern criminal law which emphasizes the need for other criminal sanctions and does not always refer to imprisonment which can actually cause other problems such as overcapacity of detention centers (Nenda et al., 2022). Modern criminal law also orients sanctions whose orientation is to suppress the deterrent effect of perpetrators such as criminal sanctions for social work to criminal sanctions for supervision (Kurnianingsih & Setiawan, 2023). In the context of criminal sanctions for medical personnel, certain sanctions should be needed that do not always lead to criminal sanctions which can be given after consultation with related professional organizations.

Third, conceptually, the idea of corrective justice is a development of Aristotle's view which initially provided a categorization of justice, namely commutative, distributive justice, and corrective justice (Horn, 2020). Commutative justice in

Aristotle's view is justice in a private perspective that asserts that when one party gets a certain number of benefits, the other party must also get a certain number of benefits. Distributive justice in Aristotle's view emphasizes the view of the division of rights according to their role and contribution in a particular legal act (Blasi, 2021). Parties who have the maximum role and contribution will get maximum rights or benefits as well. Related to Aristotle's view regarding corrective justice, corrective justice according to Aristotle is an effort to provide adequate recovery and anti-loss to the injured party (Johnson & Koenig, 2020).

Referring to Aristotle's view of corrective justice above, the idea of corrective justice is relevant to modern criminal law which emphasizes optimal and maximum recovery of victims. Referring to the formulation of legal liability for medical personnel, especially with regard to criminal liability as in Article 84 paragraphs (1) and (2) of the UU TK, it actually emphasizes criminal sanctions as the "main sanction" if medical personnel commit an act that violates the law, namely in the form of gross negligence. The perspective used by Article 84 paragraphs (1) and (2) of the UU TK has the potential to cause injustice to medical personnel caused by three aspects, namely: First, judging from the profession of medical personnel which in quantity is still small in Indonesia accompanied by high responsibility, the orientation of giving criminal sanctions as *primum remedium* actually reduces the essence of medical personnel (Varava, 2021). With the existence of criminal sanctions as in Article 84 paragraphs (1) and (2) of the UU TK, it has the potential to reduce the interest of the younger generation to become part of medical personnel which in the long term has implications for the number of medical personnel in Indonesia (Amran et al., 2022). Second, referring to the development of criminal sanctions, especially in the era of the development of modern criminal law conceptions, confirms that criminal sanctions, especially imprisonment cannot be the main orientation in the application of criminal sanctions (Cherniei et al., 2021). Criminal sanctions in modern criminal law must have a corrective character so as to minimize penalization and emphasize more on the effectiveness and relevance between criminal acts and criminal sanctions given (Leider, 2021).

Criminal sanctions in modern criminal law must have a corrective character so as to minimize penalization and emphasize more on the effectiveness and relevance between criminal acts and criminal sanctions given. Referring to criminal sanctions applied to medical personnel as stipulated in Article 84 paragraphs (1) and (2) of the UU TK, are actually ineffective and have no relevance to the criminal acts committed. Criminal acts committed as affirmed in Article 84 paragraphs (1) and (2) of the UU TK are gross negligence which in addition to no specific restrictions should also involve the role of professional organizations. Third, criminal sanctions for medical personnel as formulated in Article 84 paragraphs (1) and (2) of the UU TK have not involved the role of professional organizations for medical personnel. The importance of the role of professional organizations in determining sanctions for medical personnel, especially in aspects of technical errors that medical professional organizations can measure and

classify optimally (Darmawan, 2020)(Puspitasari & Budi Pramono, 2023). One of the roles that can be carried out by professional organizations is to formulate categories of negligence, both mild, moderate and major, along with their parameters.

One example of medical negligence that occurred in Indonesia was the medical negligence experienced by AK, a patient at the Ulak Karang Health Center, Padang who initially complained about eye pain and then got the wrong medicine from the puskesmas. The drug was ear drops which caused AK's eyes to go blind. From this incident, AK's family submitted to criminal proceedings with the aim of punishing the medical staff who committed this negligence. From these examples, it can be concluded that the role of professional organizations is especially important in mediating between the two parties.

The non-formulation of the involvement of professional organizations in determining criminal sanctions for medical personnel as in the formulation of Article 84 paragraphs (1) and (2) of the UU TK, one of which has the potential to cause legal uncertainty and discrepancy regarding the standard element of "gross negligence" which has not been specifically explained in the UU TK. This has the potential to cause legal uncertainty because between one law enforcement officer and another law enforcement officer can vary in formulating the element of "gross negligence" as in Article 84 paragraphs (1) and (2) of the UU TK. The involvement of professional organizations in determining criminal sanctions for medical personnel as in the formulation of Article 84 paragraphs (1) and (2) of the UU TK also has relevance to the idea of corrective justice. In general, corrective justice is understood as a form of justice that emphasizes recovery and compensation for victims of criminal acts. The main orientation of corrective justice is to minimize prisonization or a legal approach that emphasizes imprisonment as the main sanction in criminal law (Wijaya et al., 2021).

Referring to the three relevance of the conception of corrective justice as the main orientation for the accountability of medical personnel, it is necessary to orient the existence of two aspects related to the accountability of medical personnel in carrying out their duties, namely from internal and external aspects. In the internal aspect, namely the need to strengthen and involve medical professional organizations in an effort to enforce the code of ethics, conduct investigations, and provide recommendations related to gross negligence committed by medical personnel. In the external aspect, it is necessary to update the health law by revising the provisions of Article 84 paragraphs (1) and (2) of the UU TK with two main orientations, namely providing roles and involvement for professional organizations while formulating specific limits regarding the element of gross negligence.

Based on the description above, the orientation of medical personnel accountability based on corrective justice can actually be done by involving the roles and recommendations of medical professional organizations in determining the level of negligence along with recommendations from medical professional organizations. In addition, health law reform is also needed by formulating criminal sanctions for medical

personnel based on *ultimum remedium*, namely utilizing non-prison criminal sanctions in order to realize justice for medical personnel.

Conclusion

Criminal accountability of medical personnel requires the role of the professional organization of the medical personnel concerned. This is because, the assessment of the medical professional organization is important as a form of ensuring justice and legal certainty for medical personnel. In addition, medical professional organizations can also formulate standards and parameters of a special and specific nature regarding the element of "gross negligence" based on the provisions of their respective medical personnel professions as well as efforts, medical professional organizations to maintain professional ethics. The orientation of medical personnel accountability based on corrective justice can actually be done by involving the role and recommendations of medical professional organizations in determining the level of negligence along with recommendations from medical professional organizations. In addition, health law reform is also needed by formulating criminal sanctions for medical personnel based on *ultimum remedium*, namely utilizing non-prison criminal sanctions in order to realize justice for medical personnel.

Suggestion

It is necessary to strengthen the professional organization of medical personnel in determining the criminal responsibility of medical personnel and needs to revise the provisions of Article 84 paragraphs (1) and (2) UU TK.

References

- Amran, R., Apriyani, A., & Dewi, N. P. (2022). Peran Penting Kelengkapan Rekam Medik di Rumah Sakit. *Baiturrahmah Medical Journal*, 1(September 2021), 69–76.
- Balubun, W. H., Suroto, V., & Sumarwanto, E. (2019). Provisions of Indonesian Medical Discipline Sanctions to Protect The Rights of Patient be Reviewed From Theprinciple of The Establishment of Legislation. *Soepra*, 4(2), 298. <https://doi.org/10.24167/shk.v4i2.1495>
- Blasi, F. Di. (2021). *From Aristotle to Thomas Aquinas: Natural Law, Practical Knowledge, and the Person*. St Augustine's Press.
- Budi, M., & Putra, U. S. (2019). Doctor'S Liability for a Patient'S Lawsuit in Health Services At Hospital. *International Journal of Business, Economics and Law*, 20(5), 274–285.
- Butar-butur, M. F. (2021). Exemptions from Liability in Indonesian Criminal Law Reform. *Annals of R.S.C.B*, 25(5), 5528–5533.
- Cherniei, V., Cherniavskiy, S., Babanina, V., & Tykho, O. (2021). Criminal Liability for Cryptocurrency Transactions: Global Experience. *European Journal of Sustainable Development*, 10(4), 304. <https://doi.org/10.14207/ejsd.2021.v10n4p304>

- Darmawan, R. (2020). Penegakan Hukum Terhadap Malpraktek Dokter Yang Melakukan Aborsi (Studi Putusan No.288/Pid.Sus/2018/Pn. Njk). *El-Iqthisadi : Jurnal Hukum Ekonomi Syariah Fakultas Syariah Dan Hukum*, 2(2), 15. <https://doi.org/10.24252/el-iqthisadi.v2i2.13999>
- El-refaie, A. M., & Alsharqawi, A. H. (2021). The Criminal Liability of the Forensic Doctor as a Judicial Expert According to Jordanian Law. *Indian Journal of Forensic Medicine & Toxicology*, 15(4), 254–258. <https://doi.org/10.37506/ijfmt.v15i4.16714>
- Fradhana Putra Disantara, Ruetaitip Chansrakaeo, Mohamad Jazuli, Ni Putu Ratnayutika, Rini Triastutiek Umiasih, C. I. P. (2021). The Enigma of Ethics: Code of Ethics Enforcement on Covid-19 Health Protocol. *De Lega Lata*, 7(1), 3.
- Hari Sutra Disemadi. (2022). Lensa Penelitian Hukum : Esai Deskriptif tentang Metodologi Penelitian Hukum. *Journal of Judicial Review*, 24(2), 289–304. <https://jurnal.unigal.ac.id/>
- Horn, C. (2020). Aristotle on the Legal and Moral Aspects of Law. In *Ethics in Ancient Greek Literature* (pp. 81–100). De Gruyter. <https://doi.org/10.1515/9783110699616-005>
- I Kadek Suar Putra Dana, Anak Agung Sagung Laksmi Dewi, & I Made Minggu Widyantara. (2021). Sanksi Pidana terhadap Tenaga Medis yang Melakukan Pemalsuan Surat Keterangan Rapid Test Covid 19. *Jurnal Interpretasi Hukum*, 2(1), 53–58. <https://doi.org/10.22225/juinhum.2.1.3091.53-58>
- Irwansyah. (2020). *Penelitian Hukum: Pilihan Metode dan Praktik Penulisan Artikel* (3rd ed.). Mira Buana Media.
- Ismail Koto, E. A. (2021). Pertanggungjawaban Hukum Terhadap Tindakan Malpraktik Tenaga Medis di Rumah Sakit. *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 4(2), 153–165. <https://doi.org/10.24090/volksgeist.v4i2.5738>
- Johnson, L. D., & Koenig, M. L. (2020). Walk the Line: Aristotle and the Ethics of Narrative. *Nevada Law Journal*, 20(3), 1039–1074.
- Król-Całkowska, J., Szymański, W., & Wallner, G. (2022). Changes within the scope of criminal liability of healthcare professional as introduced during the COVID-19 pandemic. *Polish Journal of Surgery*, 94(1), 1–5. <https://doi.org/10.5604/01.3001.0015.7095>
- Kurnianingsih, M., & Setiawan, W. T. (2023). Menakar pidana kerja sosial sebagai paradigma baru konsep pemidanaan perkara korupsi berbasis determinisme cultural. *Justisi*, 9(2), 116–132.
- Leider, R. (2021). The Modern Common Law of Crime. *Journal of Criminal Law and Criminology*, 111(2), 412–413.
- Mullock, A. (2021). Surgical harm, consent, and English criminal law: When should ‘bad-apple’ surgeons be prosecuted? *Medical Law International*, 21(4), 343–368. <https://doi.org/10.1177/09685332211057004>
- Muwardi, A., Surono, A., & Nugroho, H. (2023). Restitution as a Requirement for the Implementation of Restorative Justice Against General Crimes Related to Property. *International Conference on Politics, Social, and Humanities Sciences*, 23(2), 374–381. <https://doi.org/10.18502/kss.v8i3.12842>
- Nenda, S., Saputra, E., & Isnawati, M. (2022). Overcrowding Lembaga Pemasarakatan (

- Lapas) Dalam System Pemidanaan Di Indonesia. *Pagaruyuang Law Journal*, 6(1), 52-70.
- Nugraha, Y. (2020). Optimalisasi Asas Oportunitas Pada Kewenangan Jaksa Guna Meminimalisir Dampak Primum Remedium Dalam Pemidanaan. *Veritas et Justitia*, 6(1), 213-236. <https://doi.org/10.25123/vej.3882>
- Nugroho, F. M., Wujoso, H., & Atmoko, W. D. (2021). Hubungan Pengetahuan Kode Etik Kedokteran Tentang Aborsi terhadap Sikap Mahasiswa Kedokteran Terhadap Aborsi. *Smart Society Empowerment Journal*, 1(1), 1. <https://doi.org/10.20961/ssej.viii.48648>
- Prawiroharjo, P., Afdin Rizky Rafiqoh, & Purwadianto Agus. (2021). Relasi Etika, Disiplin, dan Hukum Kedokteran. *Jurnal Etika Kedokteran Indonesia*, 5(1), 45-48. <https://doi.org/10.26880/jeki.v5i1.56>
- Prihatmini, S. (2023). Measuring the Boundaries of Criminal Liability for Obscene Acts in Medical Treatments. *Jurisprudence*, 13(1), 46-58. <https://doi.org/10.23917/jurisprudence.v13i1.1858>
- Purba, M. S., & Sinaga, F. R. (2021). the Legal Liability of Online Driver for Passengers Accident in Consumer Protection Law. *International Journal of Law Reconstruction*, 5(2), 341. <https://doi.org/10.26532/ijlr.v5i2.17945>
- Pusat Bahasa Departemen Pendidikan Nasional. (2008). *Kamus Bahasa Indonesia*. Departemen Pendidikan Nasional.
- Puspitasari, M., & Budi Pramono. (2023). Legal Consequences Of Doctor's Negligence in Making Visum et Repertum and Corpse Autopsis. *Formosa Journal of Applied Sciences*, 2(3), 387-396. <https://doi.org/10.55927/fjas.v2i3.3367>
- Ramadhan, S., & Sari, A. E. (2022). Legal Relations Characteristics between Patients and Medical Personnel in Sharia Hospital Services in Indonesia Karakteristik Hubungan Hukum Pasien dengan Tenaga Medis dalam Pelayanan Rumah Sakit Syariah di Indonesia. *Iltizamat: Journal of Economic Sharia Law and Business Studies*, 2(1), 256.
- Rizka, R., Budiono, A., Prasetyo, Y., Praja, C. B. E., Khairunnisa, H. A., Khairunnisa, H. A., Iriani, D., & Hakim, H. A. (2022). Criminal Liability of People with Mental Disorders: Health Law Perspective. *Open Access Macedonian Journal of Medical Sciences*, 10(1), 435-438. <https://doi.org/10.3889/oamjms.2022.8449>
- Sholikin, M. N., & Herawati. (2020). Aspek Hukum Keselamatan Dan Kesehatan Kerja (K3) Bagi Tenaga Medis Dan Kesehatan Di Masa Pandemi. *Majalah Hukum Nasional*, 50(2), 163-182. <https://doi.org/10.33331/mhn.v50i2.74>
- Sidi, R., Putra, K., & Kesuma, M. (2021). Criminal Liability against a Doctor Who Does Not Have a License Practices in Providing Health Services. *International Journal of Research and Review*, 8(12), 293-300. <https://doi.org/10.52403/ijrr.20211236>
- Smith, S. R. (2022). Criminal liability: What are the risks for medical professionals? *OBG Management*, 34(12), 42-47. <https://doi.org/10.12788/obgm.0239>
- Soekiswati, S., Rahayu, U. B., Pristianto, A., & Maulida, S. R. (2021). Perlindungan hukum bagi tenaga medis dan kesehatan di masa pandemi covid-19. *FISIO MU: Physiotherapy Evidences*, 2(3), 109-219. <https://doi.org/10.23917/fisiomu.v2i3.15210>
- Susanto, S. N. H. (2019). Karakter Yuridis Sanksi Hukum Administrasi: Suatu Pendekatan

- Komparasi. *Administrative Law & Governance Journal*, 2(1), 127.
- Syafitri, I. (2021). Analisis Perlindungan Hukum Terhadap Tenaga Kesehatan Atas Keselamatan dan Kesehatan Kerja di Masa Pandemi Covid-19 Di Indonesia. *Juripol*, 4(2), 190–199. <https://doi.org/10.33395/juripol.v4i2.11130>
- Varava, A. O. (2021). Features of Civil Liability of Medical Workers. *Globus: Economy Sciences*, 7(2(42)), 3–7. <https://doi.org/10.52013/2713-3052-42-2-1>
- Wandani Syahrir, Sabir Alwy, I., & Fakultas. (2023). Tanggung Jawab Hukum Perdata Terhadap Tindakan Malapraktik Tenaga Medis. *Amanna Gappa*, 31(1), 64–76.
- Wijaya, H., Jaya, N. P., Supeno, B. J., & Natalis, A. (2021). Legal Liability for Euthanasia Actions in the Perspective of the Medical Code of Ethics in Indonesia. *Medico Legal Update*, 21(2), 619–624. <https://doi.org/10.37506/mlu.v21i2.2751>
- Wrześniewska-Wal, I., ... D. H.-W., & 2022, undefined. (2022). Criminal and professional liability of medical professionals in Poland-present and future. *Wiedzamedyczna.Pl*, 4(1), 27–32. <https://wiedzamedyczna.pl/index.php/wm/article/view/134>
- Yusyanti, D. (2021). Hospital Criminal Liability for Patient's Damages due to Health Service Errors during the Covid-19 Pandemic. *Jurnal Penelitian Hukum De Jure*, 21(4), 489. <https://doi.org/10.30641/dejure.2021.v21.489-506>
- Zola Agustina, A. H. (2022). Pertanggungjawaban Pidana Atas Kelalaian Diagnosa Oleh Dokter Hingga Mengakibatkan Kematian Anak Dalam Kandungan. *Iblam Law Review*, 2(2), 1–23.