

Nurse's Negligence And Criminal Responsibility: Case Study of Health Worker in North Lampung Regency

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ABSTRACT--Nursing staff in North Lampung Regency are still far from enough, many have voluntary, honorary, and many do not have independent practice licenses, so access to health is vulnerable. Negligence cases that cause patients to die occur. Actions, mistakes, and accountability are discussed. With normative legal research methods and interpretative reflective approaches, will answer the problem of negligence that occurs. The findings and discussion show that the actions of the accused Jrn could not be proven scientifically (scientific evidence). The defendant made a mistake that caused people to die. The defendant Jrn is responsible for the health services carried out without a license based on an independent practice.

Keywords: negligence, nurse, criminal responsibility, regional health worker

I. INTRODUCTION

Negligence in the actions of health services often occurs, although not desired. The study of negligence is interesting to study and discuss, especially if viewed from the perspective of: (1) health services as a human right that must be obtained, (2) Lampung as the area experiencing the most serious shortages of health workers (doctors, nurses, or midwives), both in number lacking and distribution, (3) Lampung is included in 10 poor provinces in Indonesia. [1] North Lampung Regency is ranked 4th poorest region in Lampung with a poor population reaching 122.65 people. [2]

Based on the ratio of nursing staff to population based on the Decree of the Coordinating Minister for People's Welfare Number 54 of 2013 concerning the 2011-2025 Health Workforce Development Plan, the target ratio of nurses in 2019 is 180 per 100,000 population. [3] With these national standards, according to him, Lampung Province occupies the lowest position of 48.90 per 100,000. [4]

Nursing staff in North Lampung Regency based on statistical data in 2018 totaled 348 people with a population of 612,100 people.[5] In addition, there are still many nursing staff who have voluntary or honorary status, and many do not have a Registration Certificate (STR). With such conditions, there are still many people who are certainly not getting access to quality health services, even though with so many nurses, it is intended that the public can access health services.

The shortage of the need for qualified nursing staff in North Lampung Regency was felt. It is not surprising

that Lampung people have recently been shocked by a case of negligence by nurses that caused the death of a patient (in 2018) in the village of PerunganWaras, AbungTimur District. One possible reason is the low access to health and the lack of professional responsibilities in health centers for health services. The case was then brought to trial in October 2019 followed by 3,500 Indonesian National Nurses Association in Lampung who demonstrated demanding the release of nurse Jrn from punishment.[6]

In law, negligence in carrying out the task requires mistakes and responsibility for the actions carried out, as well as nurses who have the responsibility to provide health care while on duty or not on duty in areas in remote parts of Indonesia as happened in the village of PeraduanWaras, AbungTimur District, North Lampung Regency.

The incident began with the arrival of a patient named Als to the house of Jrn. The volunteer nurse at the Kotabumi Regional Hospital, both of whom are neighbors, Als treated for a right leg wound that was swollen and reddened due to being pierced by a nail. Nurse Jrn examined the wound and suggested Als went to the health center.

Two days later, Als's sister, named Arn, went to nurse Jrn's home to treat Als again because her leg injuries had not improved despite being treated at the health center. Als' younger sibling (Arn) showed Jrn the drugs that the puskesmas provides to Als. The drug consisted of Amoxicillin, Paracetamol, Vitamin C, and CTM. Ern insisted on bringing Als to Jrn. Als condition looked pale and endlessly whimpering. Feeling sorry, Jrn examined Als wound which had a severe infection. The wound was swollen, blue, also bleeding and pus. Jrn also checked Als's body temperature. His body heat and body temperature reached 39.5o C.

Because Als wound is already severe, Jrn suggested Als went to the hospital or doctor. But Arn said he did not have the costs to go to the hospital or see a doctor. Arn begged for treatment. Finally, nurse Jrn took wound care measures, namely cleaning with warm water and dissecting the wound to remove pus and blood using anatomical tweezers that had been protected by sterile gauze.

Then Jrn also gave Paracetamol, Antacids, Mefenamic Acid, and Allergens (CTM), and covered Als wounds with gauze because it was the rainy season. Jrn

also continued to recommend Als to the hospital and X-rays. However, while handing over IDR 50,000 for Jrn, Arn claimed she did not have money to go to the hospital or doctor. On December 21, 2019, Arn came to Jrn's house around 10:00 WIB notifying that Als was entering Kotabumi Regional Hospital, but at that time Jrn was on duty at the Kotabumi Regional Hospital and could not be met. Because Als wound was so severe, Als finally died in the afternoon at the Kotabumi District Hospital.

North Lampung Regional Police conducts investigation by gathering evidence and examining witnesses, establishing Jrn as a suspect, and submitting it to the Kotabumi District Attorney to be brought to court on alternative charges: First, Jrn is declared to have committed gross negligence and is threatened with criminal sanction in article 84 paragraph (2) RI Law Number 36 of 2014 concerning Health Workers (UUTK); or, Second, threatened with criminal in Article 86 Paragraph (1) RI Law Number 36 Year 2014 concerning UUTK.

According to the public prosecutor, Jrn has been legally and convincingly proven to have committed gross negligence resulting in another death, in violation of article 84 paragraph (2) of the UUTK which demands Jrn be sentenced to imprisonment for 3 (three) years and 6 (six) months.

Finally, the Kotabumi District Court ruled that Jrn had committed a minor negligence, namely not having an Independent Practice License in violation of article 46 Paragraph (1) of the Law on Laws with a fine of Rp. 20,000,000 (twenty million rupiah) provided that the fine is not paid, then it must be replaced with a confinement for 6 (six) months. Based on the background of the problems above, the main question to be answered in this paper is what is the form of negligence that must be blamed on Jrn?

II. RESEARCH METHODS

This research is a type of normative legal research, which is research focused on examining the application of the rules or norms in positive law. [7] Reflective and interpretive approaches refer to the hermeneutic tradition as a specialty in human research, [8] and criminal law basically discusses criminal actions, mistakes, and accountability.

This approach is to show the judge's thought process in reasoning the facts of the legal norms of a regulation of the defendant's actions whose results are repeatedly interpreted [9] in their form as legal considerations, and the researcher tries to reflect the perspectives of judges, public prosecutors, and advocates, which are contained in the text and context carried by the legal bearer, are used to gain an understanding of the findings by explaining the processes of forming meaning and explaining how these meanings are contained in the text and legal actions in enforcing the law.

Data collection techniques in this study were conducted with the study of primary legal materials, [10] which is a way of collecting data by tracing and

examining general and specific criminal laws, case studies of court decisions and literature studies, research results, scientific magazines, scientific bulletins, and scientific journals.

The results of the study are presented in the form of descriptions arranged systematically, meaning that the secondary data obtained will be linked to one another according to the problem under study, so that as a whole is a unified whole in accordance with research needs.

Data analysis techniques by interpreting and discussing the results of research based on the dialectics of fact relationships as follows: [11]

- a. Creator of text and contents of text (the purpose, aim, and values of the text formers). Dialectical reflection is carried out repeatedly to ensure harmony of the meaning contained therein.
- b. Text and origin. The researcher links the essence of the contents of the text with the historical context from which the text was made or born. Both the context of the origin of texts in, as well as formal or procedural legal texts, relate to the history of legal positivism thinking or the history of acceptance of modern law or the history of accepting the principle of error law (culpability). Text dialectics and context, between textual and the context of the origin of the text carried out repeatedly to allow for a hermeneutic circle.
- c. Sounds of texts and researchers. The researcher links the contents of the text with his experiences, hopes, beliefs, and desires which are used as research objectives. Researchers try to see harmony in relationships repeatedly. Reflection on this matter aims to gain new understanding.

III. FINDINGS AND DISCUSSION

Before discussing more about the negligence of nurses and their responsibilities, Herbert L. Packer conceptualizes three basic problems of criminal law which lie in criminal acts, wrongdoing, and conviction. [13] The concepts of crime, wrongdoing, and conviction represent three basic problems in the application of criminal law. Specifically, the criminal provisions of article 84 paragraph (2) and article 86 paragraph (1) of the Republic of Indonesia Law No. 36 of 2014 concerning Health Workers who have been alternatively charged by the public prosecutor.

Three basic problems in the criminal law can be detailed in the questions: (1) Can the perpetrators' actions be declared as criminal acts of negligence? (2) What is the basis for determining the offender guilty of negligence? (3) What should be done to those who have been proven negligent in providing health services?

To the first question, the court must be able to answer correctly and fairly for the actions carried out by the nurse, whether proven to be gross negligence or minor negligence, in accordance with the criminal provisions of article 84 paragraph (2) or article 86 paragraph (1) UUTK. The answer to the second question (which is the basis for determining the guilty offender for negligence in

health services) relates to answers to questions one and three. The answer to the third question includes UUTK sanctions that will be given to perpetrators, such as imprisonment or fines [14].

Referring to the two articles of UUTK above, it can be seen that the first indictment is a formulation of gross negligence and the second indictment is a mild negligence. Both types of negligence cause another person to die. According to AdamiChazawi, as material offense is due to the emphasis on the prohibition that causes other people to die. [15] Therefore, it must be proven in advance whether there is a causality relationship between the actions of the defendant Jrn and the consequences of negligence that caused the patient Als to die.

In other words, the application of UUTK by judges, public prosecutors, and advocates is based on 3 basic problems of criminal law Herbert L. Packer which is intended to clarify the actions of nurses have actually committed negligence, so that such actions can be blamed on Jrn, and the mistakes can be convicted.

The public prosecutor, advocate, and judge in examining the defendant Jrn at the trial did not see merely as a mechanical and procedural legal process, but must be seen as a parameter whose work process actually operates in the arena of humanitarian values and problems. [16] Officials who carry out noble duties have responsibilities, namely (a) upholding truth and justice; (b) maintaining honor and independence; (c) maintain the authority of the institution; and (d) maintaining public trust. Therefore, this responsibility is expected to be a parameter for the apparatus' thinking and behavior in carrying out its duties, obligations and authorities.

Frank J. Cavico and Nancy M. Cavico [17] define negligence as a duty or obligation to meet certain standards of behavior, breach of duty related to the causality between violation and injury, and the actual injury. Referring to that opinion, the violation of article 84 paragraph (2) which states, every health worker (nurse) who commits gross negligence resulting in another person died, was sentenced to a maximum of 5 years in prison. While Article 86 Paragraph (1) of the Law, every health worker (nurse) who practices without permission is liable to a maximum fine of IDR 100,000,000.

Therefore, in criminal law, the defendant Jrn is accompanied by a legal advisor and Als as a victim represented by the public prosecutor must be able to prove that the accused or the victim has been negligent. The public prosecutor has an obligation to prove that the nurse's actions were negligent and he must prove all the elements of negligence. If it cannot be proven, the nurse is freed from negligence and criminal responsibility. Conversely, if the claim is proven, it is likely that the judge will grant the prosecutor's claim.

In the case of negligence that befell nurse Jrn, interesting things were found to be discussed, not only based on facts and laws explained by witnesses, experts and evidence, but also based on human values, human rights, and political importance regional health.

The study of the Kotabumi District Court ruling No. 109 / Pid.Sus / 2019 / PN Kbu dated 9 December 2019 not only broadened our horizons about the vulnerability of health access to the community, but instead posed a threat to some health service tasks such as nurses in the villages.

A. Nurses and Health Services in North Lampung

The shortage of nursing officers in North Lampung, especially in PeratuanWaras village, AbungTimur District, North Lampung Regency which is the residence of nurse Jrn who was accused, was revealed in the trial by witness JaruanTamam, S.KM.,M.Kes. Head of North Lampung Health Service HR section whose main tasks are: a. Planning for Human Resources in the Health Service; b. Issued a Practice Permit (SIP) for health workers in North Lampung Regency; c. Submitting Health Workers who will take part in education or health training and compile planning documents for the needs of Health HR, told the judge that in the area of residence of the defendant Jrn and victim Als still lacked health workers.

The shortage of health workers such as nurses in North Lampung is very alarming as well as showing poor health services, because the local government as a state institution is not present to provide access to appropriate health that is the basic right of the community. The number of nurses in North Lampung currently based on statistical data in 2018 is 348 people, while the population of North Lampung Regency is 612,100 people. Based on the decision of the Coordinating Minister for People's Welfare Number 54 of 2013 concerning the Health Workforce Development Plan for 2011-2025, the target ratio for nurses in 2019 is 180 per 100,000 populations.

The level of shortage of nursing staff in North Lampung by 32% or a number of 754 people has not been calculated with the poverty level of North Lampung Regency which occupies the position of the 4 poorest districts in Lampung Province. This situation is increasingly ironic and burdening the community. The testimony of the witness Alv to the defendant Jrn, the victim Als did not want to go to the hospital or see a doctor because Als did not have money to pay for the doctor or hospital services. Likewise, the message of health workers at the BumiAgung Community Health Center to seek treatment at Ryakudu District Hospital was answered lightly by the victim with the words "later after finishing the medicine given." In fact, the rel situation was that the victim Als did not have money to pay for medical treatment at RSUD.

The sad fact was explained by a witness who was relieved (*a de charge*) namely ErhamAgus, a health officer in the AbungTimur Health Center, that Als ever came to the AbungTimur Health Center on 18 December 2019 at 10:00 WIB. Puskesmas health workers who had clear duties on December 18 2019 at 10:00 WIB examined the victim and cleaned his wound using NHCL, given betadine, and covered it with a bandage. Even though the officer knew the diagnosis of his right leg was swollen reddish and the condition of the heat was 38° C and the pressure was 100/70. The victim was not given a tetanus

injection on the grounds that it had been 4 days, then was only given betadin and took medicine, and advised Als to be referred to the General Hospital. Puskesmas as a government institution together with its health workers in front of the public in fact do not have a sense of crisis towards patients, unable to distinguish which should be assisted and helped according to SOP quickly, precisely and correctly, no attention, no help, even sacrifice, everything goes procedural and in an atmosphere of no money. Then the choice of patients and witnesses of victim Als was to go to his neighbor, the defendant Jrn, who was expected to be able to help the suffering.

B. Criminal Acts and Responsibilities

The actions of the defendant Jrn and patient Als in the perspective of critical criminal law cannot be separated from the fragile picture of the social situation from the dialectics of law and human rights in various aspects of life in regional government relations and public participation. The limitations of health workers, economic and social poverty have stretched the human ties that should be the core of order in resolving the complexities in finding the best solution to various community problems and in local government as well. Nurse Jrn as a defendant and patient Als as a victim is basically a legal definition of the powerlessness of the government health service that does not provide access to health through a friendly and responsible health center for nurses and patients. According to the authors, nurses Jrn and patient Als are both victims of government indifference and community groups who are indifferent to human shortages and suffering.

The defendant's actions towards the patient, or the patient's behavior towards the nurse can be seen and understood when patient Als come to Jrn's house. In terms of competence, responsibility, and professionalism as well as SOP, it can be noticed and seen from the way the defendant or nurse Jrn performed health service actions, as Jrn did to victim Als who came for treatment because his leg was pierced by nails, by taking and carrying 1 (one) green basin containing warm water and 1 (one) stenlis container containing tools such as small scissors, large scissors, and small knives, then the defendant returned to his house and came out carrying gauze, alcohol bottles, the injection was still wrapped, gloves, and a few small bottles filled with liquid for injection. Then the defendant injected a needle containing liquid medicine into the sole of the victim's right foot once. After that, the defendant Jrn performed the surgery using a small stenlis knife, then injected an injection filled with medicine liquid from a small bottle into the sole of the victim's right foot. Then using a small pair of scissors, the defendant opened the hole he had cut open to make it wider, then the boil was squeezed and pressed until it produced a lot of blood and pus from the boil on the right sole of the victim Als. After that, the defendant told Arn, Als' younger sibling, to clean the blood and pus that flowed on the sole of the victim Als' feet by using gauze which was given warm water by washing and watering it

slowly. Then the defendant ordered to clean the feet and soles of the victim Als by using gauze and alcohol. After cleaning, the defendant told Arn to tie the sole of the victim's foot using gauze. The defendant entered his house and took a white alcohol bottle, gauze, and 2 (two) packs of drugs containing 4 kinds of drugs, namely: 1 (one) board of drug with red color tablet NOVAGESIC 500 brand containing 10 items, 1 (one) board drug silver tablet wrap brand MEFANEMIC ACID contents 10 Grains, 1 (one) board drug silver tablet wrap brand ANTASIDA DOEN contents 10 Grains, 1 (one) drug board tablet yellow wrap brand ALLERGEN contents 10 Grains, then the defendant explained that alcohol in a white bottle used to clean the wound using gauze and the drugs given by the defendant were taken 3 (three) times a day after meals, except promag. Then the victim Als asked about the medical expenses and the defendant answered "one hundred and ten thousand rupiahs." Then the victim Als gave IDR 50,000 (fifty thousand rupiah) and said that the rest of the payment would be delivered immediately. After that, Als with the younger sibling, Arn, returned home.

IV. CONCLUSIONS.

Based on the discussion above, the following conclusions can be drawn :

1. That the legal protection of the wealth of the Foundation from its management that will transfer its assets to a company affiliated with the Foundation has been regulated in Article 5 and Article 38 paragraph (1) of the Foundation Law, namely the board may not enter into agreements with organizations affiliated with the Foundation, the Trustees , Management and / or Trustee of the Foundation, or someone who works for the Foundation, unless the said agreement is beneficial for the achievement of the Foundation's aims and objectives.
2. Interpretation of Article 38 paragraph (2) of the Law on Foundations which is beneficial for the achievement of the aims and objectives of the Foundation must meet the requirements that is not detrimental to the Foundation that can be seen from the condition of the foundation at the time the affiliated agreement was held, especially the financial condition of the foundation at the time.

If the financial condition of the foundation at that time was in an "unhealthy" condition or lack of funds which if there were no funds at the time could cause the foundation to become bankrupt, the act of selling its assets by making agreements with organizations affiliated with the foundation could be justified in accordance with Article 38 paragraph (2) of the Foundation Law, but if the foundation's financial condition is in a "healthy" condition, the act of selling / transferring the assets of the foundation with an organization affiliated with the foundation cannot be justified in accordance with the purpose of Article 38 paragraph (2) Foundation Law.

V. SUGGESTION

1. The foundation's management must understand and carry out both its duties and obligations in accordance with applicable laws and the Foundation's Statutes and Bylaws, so as not to harm the foundation as a legal entity that has very noble objectives because the foundation is a non profit oriented legal entity, which engaged in Social, Religious and Humanitarian.
2. Whereas Article 38 paragraph (2) of the Foundation Law regarding "useful for the achievement of the aims and objectives of the Foundation" must be interpreted clearly in its explanation, namely by one of the conditions is not detrimental to the Foundation which can be seen from the foundation's financial condition so that it is not misinterpreted by the management the foundation for his personal benefit.

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