

## **CRIMINAL LIABILITY OF DOCTORS WHO HAVE OBTAINED MEDICAL APPROVAL TO CARRY OUT MEDICAL ACTION**

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### **Abstract**

*The medical world also does not rule out the possibility of criminal acts. Criminal acts in the medical world must also meet the elements of criminal responsibility (capability to take responsibility, culpability, and grounds for exculpation) to warrant punishment. In the medical world, doctors are the primary focus or subjects who are likely to commit or are suspected of committing medical crimes, particularly those that occur after a doctor obtains medical consent from a patient.*

**Keywords :***Criminal act and Criminal Liability*

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### **INTRODUCTION**

The medical world embodies the effort to ensure the health of every human being who grows and develops in this world. To maintain balance within the medical world, there are rights and obligations that must be fulfilled by each subject and object within the medical world. One such obligation concerns medical consent. Medical consent, as is known, is an act in which a doctor not only provides medical information to a patient but also seeks the patient's consent to any medical procedure the doctor will perform on the patient. The issue of medical consent is fundamentally deeply intertwined with civil law issues because consent to medical procedures is part of or a manifestation of the *inspanningverbintenis* or contract of effort.

Although medical consent is a civil matter, it does not necessarily lack criminal implications. A doctor, even after obtaining medical consent, can still be subject to criminal penalties as stipulated in Article 359 and Article 360 of the Criminal Code, as follows:

1. Article 359 of the Criminal Code reads:

"Anyone who, due to his mistake (negligence), causes the death of another person shall be punished by a maximum imprisonment of five years or a maximum imprisonment of one year."

2. Article 360 of the Criminal Code reads:

"(1) Anyone who, due to his mistake (negligence), causes another person to suffer serious injury shall be subject to a maximum prison sentence of five years or a maximum imprisonment of one year.

(2) Anyone who, due to his mistake (negligence), causes another person to be injured in such a way that the person becomes temporarily ill or is temporarily unable to carry out his position or work, is threatened with a maximum prison sentence of nine months or a maximum imprisonment of six months or a maximum fine of four thousand five hundred rupiah."

Referring to the two articles above, a doctor can be categorized as committing a criminal act in the form of negligence if he/she has obtained medical consent from the patient in carrying out medical procedures.

The problem formulation that will be discussed is as follows: What is the criminal liability of doctors who have obtained medical approval to perform medical procedures? The purpose of this research is to determine the criminal liability of doctors who have obtained medical approval to perform medical procedures.

## METHOD

Normative research refers to legal norms contained in statutory regulations and legal norms that exist in society with a descriptive research nature which will reveal legislation related to legal theories that are the object of research.

Data collection was conducted through library research using secondary data. Secondary data consists of primary legal materials, secondary legal materials, and tertiary legal materials. Next, qualitative data analysis will be conducted. This activity is expected to facilitate the analysis of the issues discussed, their interpretation, and their drawing of conclusions.

## RESULTS AND DISCUSSION

### **Criminal Liability of Doctors Who Have Obtained Medical Approval to Perform Medical Procedures**

The medical profession is basically closely associated with a despicable act in the medical world, namely malpractice. Malpractice literally means a mistake in carrying out a profession that arises from a doctor's obligations. In short, medical malpractice essentially contains the following elements:

1. Doctors or medical personnel do not have sufficient mastery of medical knowledge and skills that are generally accepted among the medical profession;
2. Doctors and medical personnel provide substandard medical services;
3. Doctors and medical personnel commit gross negligence or carelessness, which may include:
  - a. Not doing something that should be done, or
  - b. Doing something that should not be done.
4. Carrying out medical actions that are against the law.

Thus, in malpractice committed by doctors, there are 4 (four) prominent elements, namely:

1. The doctor has made a mistake in carrying out his profession
2. The doctor's actions were carried out due to negligence or carelessness.
3. The error was caused by the doctor not using the knowledge and skill level that should have been carried out based on professional standards.
4. There is a fatal consequence, namely the patient dies or the patient suffers serious injuries.

Malpractice is a criminal act arising from an error, which consists of two elements: intent and negligence. Therefore, a doctor's malpractice can be committed based on intent or negligence.

Furthermore, if we refer to the medical actions of doctors who have received medical approval, then their actions can basically be categorized as negligence and therefore are categorized as violating Article 359 of the Criminal Code and Article 360 of the Criminal Code.

1. Article 359 of the Criminal Code reads:

"Any person who, due to his mistake (negligence), causes the death of another person shall be punished by a maximum imprisonment of five years or a maximum imprisonment of one year."

The term "whoever" indicates the subject of the crime. This means that the subject of a crime is not limited to individuals or corporations but also includes the profession or occupation associated with the subject of the crime. Referring to the provisions of the above article, a doctor can be convicted of violating this article if several elements are met, as follows:

a. Ability to be responsible

A person can be held criminally responsible if he is capable of being responsible, where the benchmark is using several criteria, as follows:

1) His mental state:

a) Not disturbed by persistent or temporary illness;

- b) No defects in growth (diabolical, idiotic, imbecile, etc.), and
- c) Not disturbed by shock, hypnotism, overflowing anger, subconscious influence/reflex bewenging, melindur/slaapwandel, delirium due to fever/koorts, nyidam and so on. In other words, he is conscious.

2) His spiritual abilities:

- a) Can realize the essence of his actions;
- b) Can determine his wishes regarding the action, whether it will be carried out or not; And
- c) Can know the reprehensibility of the action.

Whoever or in this case "doctor" on Article 359 of the Criminal Code above can be said to be able to be held responsible by referring to the elements above. This means that the doctor is in a mental state that is not disturbed by any disease, either continuously or temporarily. The doctor must be healthy, not have a disability in his development or not be an idiot. Based on his mental capacity, the doctor is truly aware of the nature of his actions causing another person's death, the doctor is able to determine his will regarding his actions, whether to carry them out or not to carry them out, and the doctor is aware and knows that the consequences of his actions will be reprehensible.

**Responsibility:** If the doctor's mental state is compromised, the doctor cannot be held responsible, as explained previously. Therefore, if this happens or the doctor's mental state is disturbed, the doctor must be exempt from criminal liability.

The ability to be responsible is based on the state and ability of the "soul" (geestelijke vermogens) and not on the state and ability to think (verstandelijke vermogens) of a person, although the official term used in Article 44 of the Criminal Code is verstandelijke vermogens, but the meaning of the ability to be responsible is still based on the condition of the soul, not the mind. So verstandelijke vermogens must also be interpreted from the perspective of the ability of the soul and the ability of the mind.

b. Error

The error contained in Article 359 of the Criminal Code is in the form of negligence or omission as defined by the phrase "negligence." Negligence (culpa) relates to ability, skill, or profession, where the essential elements of negligence are a lack of vigilance and intention (mens rea) on the part of the perpetrator.

Regarding the elements of error, it has been explained in the previous sub-chapter A that the elements of error consist of intent (dolus/opzet) and negligence/negligence (culpa). Error is a general requirement for someone to be punished for their actions. Negligence is a lack of vigilance from the perpetrator where he can still anticipate the consequences that will occur from his actions, but he does not prevent them or does not stop his intention to do something. Against a negligent/overlooked person can be held criminally responsible for him because his actions are also unlawful. The essence of intent is the fulfillment of the elements of lack of vigilance and intent (mens rea) from the perpetrator.

Negligence (culpa) occurs when the doctor (perpetrator) has a lack of thought, lack of knowledge, and lack of wisdom so that when viewed from the perspective of conscious negligence, there is gross negligence and there is light negligence. Conscious negligence, the perpetrator can or is able to imagine or predict the consequences of his actions but when carrying out his actions, it still causes fatal consequences to others even though there have been preventive measures from the perpetrator. Unconscious negligence when the perpetrator cannot or is not able to realize or does not predict the occurrence of a consequence.

Article 359 of the Criminal Code, a doctor can be proven legally and convincingly guilty of committing the crime of "negligence or due to his negligence causing the loss of another person's life", if it can be clearly and clearly proven in the doctor's trial that his actions did not intentionally take the life of another person, truly unconsciously. Criminal liability for doctors is contained in Article 359 of the Criminal Code. This is not based on intent, but rather on a genuine lack of awareness of the intent of his actions. This means that the consent to medical

treatment explicitly states that the procedure will not result in the patient's death, but the actual outcome is different: the patient dies. Based on this, the doctor can be found negligent, resulting in the death of a person or patient.

c. There is no reason to eliminate the criminal penalty

The absence of grounds for expungement of criminal penalties as contained in Article 359 of the Criminal Code, including the absence of grounds for forgiveness, is because a doctor whose negligence has caused the loss of another person's life is said to have committed a crime. the ability to be responsible, to form a will intentionally or negligently, without having the mistake erased or without a reason to forgive, are included in the definition of mistake (schuld).

2. Article 360 of the Criminal Code reads:

- "(1) Anyone who, due to his mistake (negligence), causes another person to suffer serious injury shall be subject to a maximum prison sentence of five years or a maximum imprisonment of one year.
- (2) Anyone who, due to his mistake (negligence), causes another person to be injured in such a way that the person becomes temporarily ill or is temporarily unable to carry out his position or work, is threatened with a maximum prison sentence of nine months or a maximum imprisonment of six months or a maximum fine of four thousand five hundred rupiah."

The meaning of the word "whosoever" in this discussion is the same as above, namely a doctor as the subject of a criminal act. Referring to the provisions of the article above or Article 360 paragraph (1) of the Criminal Code, a doctor can be punished for violating this article if he fulfills several elements, as follows:

a. Ability to be responsible

A person can be held criminally responsible if he is capable of being responsible, where the benchmark is using several criteria, as follows:

1) His mental state:

- a) Not disturbed by persistent or temporary illness;
- b) No defects in growth (diabolical, idiotic, imbecile, etc.), and
- c) Not disturbed by shock, hypnotism, overflowing anger, subconscious influence/reflex bewenging, melindur/slaapwandel, delirium due to fever/koorts, nyidam and so on. In other words, he is conscious.

2) His spiritual abilities:

- a) Can realize the essence of his actions;
- b) Can determine his wishes regarding the action, whether it will be carried out or not; And
- c) Can know the reprehensibility of the action.

Whoever or in this case "doctor" on Article 360 paragraph (1) of the Criminal Code above can be said to be able to be responsible by referring to the elements above. This means that the doctor's mental state is not disturbed by any disease either continuously or temporarily. The doctor must be healthy, not have a disability in his growth or not be an idiot. Based on his mental capacity, the doctor is truly aware of the nature of his actions causing other people to suffer serious injuries, the doctor is able to determine his will for his actions, to carry them out or not to carry them out, and the doctor is aware and knows that the consequences of the actions he has carried out will be reprehensible. The ability to be responsible, if the opposite occurs in the doctor's mental state, then the doctor cannot be held responsible as explained previously. Thus, if this happens or the doctor's mental state is disturbed, then the doctor must be released from criminal responsibility.

b. Error

The error contained in Article 360 paragraph (1) of the Criminal Code is in the form of negligence or carelessness in accordance with the phrase "negligence". Negligence (culpa) is

related to ability or skill or profession where the important element in negligence is the lack of vigilance and intention (mens rea) of the perpetrator himself.

Regarding the elements of error, it has been explained in the previous sub-chapter A that the elements of error consist of intent (dolus/opzet) and negligence/negligence (culpa). Error is a general requirement for someone to be punished for their actions. Negligence is a lack of vigilance from the perpetrator where he can still anticipate the consequences that will occur from his actions, but he does not prevent them or does not stop his intention to do something. Against a negligent/overlooked person can be held criminally responsible for him because his actions are also unlawful. The essence of intent is the fulfillment of the elements of lack of vigilance and intent (mens rea) from the perpetrator.

Article 360 paragraph (1) of the Criminal Code, a doctor can be proven legally and convincingly guilty of committing the crime of "negligence or due to his negligence causing another person to suffer serious injury", if it can be clearly and clearly proven in the doctor's trial that his actions did not intentionally cause the person/patient to suffer serious injury without being truly aware of it. The criminal liability of the doctor contained in Article 360 paragraph (1) of the Criminal Code is not based on the element of intent, but rather he was truly unaware of the intention of his actions. This means that in the agreement for medical treatment it is expressly stated that the medical action carried out will not cause serious injury to the patient but the reality is different, namely the patient suffered serious injury. Based on this, the doctor can be declared negligent so that the person or patient suffered serious injury.

c. There is no reason to eliminate the criminal penalty

The absence of a reason for the removal of the criminal penalty contained in Article 360 paragraph (1) of the Criminal Code includes the absence of a reason for forgiveness. This is because if a doctor is found to have caused another person to suffer serious injury due to his negligence, he is said to have the ability to be responsible, to form a will intentionally or negligently, without having the mistake erased or without a reason to forgive, are included in the definition of mistake (schuld).

Furthermore, doctors can be held criminally responsible in accordance with Article 360 paragraph (2) of the Criminal Code if the following elements are fulfilled:

a. Ability to be responsible

A person can be held criminally responsible if he is capable of being responsible, where the benchmark is using several criteria, as follows:

1) His mental state:

- a) Not disturbed by persistent or temporary illness;
- b) No defects in growth (diabolical, idiotic, imbecile, etc.), and
- c) Not disturbed by shock, hypnotism, overflowing anger, subconscious influence/reflex bewenging, melindur/slaapwandel, delirium due to fever/koorts, nyidam and so on. In other words, he is conscious.

2) His spiritual abilities:

- a) Can realize the essence of his actions;
- b) Can determine his wishes regarding the action, whether it will be carried out or not; And
- c) Can know the reprehensibility of the action.

Whoever or in this case "doctor" on Article 360 paragraph (2) of the Criminal Code above can be said to be able to be responsible by referring to the elements above. This means that the doctor's mental state is not disturbed by any disease either continuously or temporarily. The doctor must be healthy, not have a disability in his growth or not be an idiot. Based on his mental capacity, the doctor is truly aware of the nature of his actions causing the patient/other person to become temporarily ill or unable to carry out his position or work, the doctor is able to determine his will for his actions, to carry them out or not to carry them out, and the doctor is aware and knows that the consequences of the actions he has carried out will be reprehensible. The ability to be responsible, if the opposite occurs in the doctor's mental state, then the doctor

cannot be held responsible as explained previously. Thus, if this or the doctor's mental state is disturbed, then the doctor must be freed from criminal responsibility.

b. Error

The error contained in Article 360 paragraph (1) of the Criminal Code is in the form of negligence or carelessness in accordance with the phrase "negligence". Negligence (culpa) is related to ability or skill or profession where the important element in negligence is the lack of vigilance and intention (mens rea) of the perpetrator himself.

Regarding the elements of error, it has been explained in the previous sub-chapter A that the elements of error consist of intent (dolus/opzet) and negligence/negligence (culpa). Error is a general requirement for someone to be punished for their actions. Negligence is a lack of vigilance from the perpetrator where he can still anticipate the consequences that will occur from his actions, but he does not prevent them or does not stop his intention to do something. Against a negligent/overlooked person can be held criminally responsible for him because his actions are also unlawful. The essence of intent is the fulfillment of the elements of lack of vigilance and intent (mens rea) from the perpetrator.

Article 360 paragraph (2) of the Criminal Code, a doctor can be proven legally and convincingly guilty of committing the crime of "negligence or due to his negligence causing a patient/other person to become temporarily ill or unable to carry out his position or work", if it can be clearly and clearly proven in the doctor's trial that his actions did not intentionally cause the patient/other person to become temporarily ill or unable to carry out his position or work completely unconsciously. The criminal liability of a doctor as stated in Article 360 paragraph (2) of the Criminal Code is not based on the element of intent, but rather he was truly unaware of the intent of his actions. This means that in the agreement for medical treatment it is expressly stated that the medical action carried out will not cause the patient/other person to become temporarily ill or unable to carry out his position or work, but the reality is different, namely the patient becomes temporarily ill or unable to carry out his position or work. Based on this, the doctor can be declared negligent so that it causes the patient/other person to become temporarily ill or unable to carry out his position or work.

c. There is no reason to eliminate the criminal penalty

The absence of a reason for the removal of the criminal penalty contained in Article 360 paragraph (2) of the Criminal Code includes the absence of a reason for forgiveness. This is because if a doctor is found to have caused another person to become temporarily ill or unable to carry out his/her position or work, he/she is said to have the ability to be responsible, to form a will intentionally or negligently, without having the mistake erased or without a reason to forgive, are included in the definition of mistake (schuld).

The application of Article 359 and Article 360 of the Criminal Code to a doctor must also be juxtaposed with Article 361 of the Criminal Code. This is because these articles can be applied to doctors, and other professions are deemed to require caution in carrying out their work. If a doctor ignores (neglects) statutory regulations or work requirements, resulting in death or serious injury, they will face harsher penalties.

Medical consent that has been taken by a doctor from a patient, then it can be reasonably suspected that a doctor if he still makes a mistake, then the form of the mistake is negligence so that based on the description above it can be suspected of violating Article 359 of the Criminal Code and Article 360 of the Criminal Code where in viewing the criminal responsibility of the doctor must also be measured related to the elements of criminal responsibility as described in the previous paragraph. In addition to fulfilling the elements of criminal responsibility, to see the negligence of the doctor who has given approval for medical action or informed consent, as follows:

1. Carrying out the obligations stated in the informed consent which of course must also be carried out based on the standards of the medical profession or what is known as duty.

2. Determining whether there has been a deviation from professional medical standards (Dereliction of Duty) is based on case-by-case facts that must be considered by experts and expert witnesses. However, patients often confuse consequences with negligence. The mere occurrence of a negative consequence or a patient's condition not improving does not prove negligence. Negligence must be clearly proven. First, it must be proven that the doctor committed a breach of duty.
3. *Damage* This means that the loss suffered by the patient must be in the form of physical, financial, emotional or various other categories of loss.
4. *Direct causal relationship* means that there must be a causal link between the action taken and the loss suffered.

## CONCLUSION

The criminal liability of doctors who have obtained medical approval to carry out medical procedures is Article 359 of the Criminal Code, namely negligence that causes another person to die, Article 360 paragraph (1) of the Criminal Code, namely negligence that causes someone to suffer serious injuries and Article 360 paragraph (2) of the Criminal Code, namely causing someone to be temporarily ill where the elements of criminal responsibility from these articles are fulfilled, namely the doctor's ability to be responsible, the doctor's negligence and the reason for eliminating the criminal penalty in the form of the absence of a reason for forgiveness so that the doctor can be punished which must also meet several criteria, namely Duty (Obligation), Derelictions of That Duty (Deviation of Obligation), Damage (Loss), Direct Causal Relationship (Directly related). Where the application of Article 359 of the Criminal Code and Article 360 of the Criminal Code is in conjunction with Article 361 of the Criminal Code.

The government and the DPR should create legislation that specifically regulates medicine so that it is more focused and not solely based on the Criminal Code.

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