CRIMINAL LAW POLICY IN HEALTH CARE

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Abstract
Legislation in the health sector must always follow and fulfill the community needs. After that, it must be able to answer the problems of the community in the health sector, so that people feel at ease as citizens. It is the duty of the government so that people can enjoy health care at affordable costs. In addition, hospitals must always maintain their professionals. The problem this paper about how is criminal law policy in health care and the methods is Normative legal research is research conducted by examining library materials. This research on normative literature includes research on legal principles, research on legal systematic, research on the levels of vertical and horizontal synchronization, comparison of law and legal history. The result is obtained are in addition to criminal law, namely Law Number 1 Year 1946 on the Criminal Code, there are also several criminal policy that regulate criminal law protection in health care or medical. The laws and regulations are Law Number 36 Year 2009 on Health, Law Number 44 Year 2009 on Hospitals, Law Number 29 Year 2004 on Medical Practice and many other laws and regulations related to criminal policy in the health sector. Since ancient Greece, legal science has touched almost all aspects of human life, except the medical field. Health workers who existed at that time regulated their own work methods with professional codes of ethics and oaths that were deeply rooted in tradition and had a strong influence on society.

Keywords: Criminal Law, Policy, Health Care

INTRODUCTION

Health care in hospital institutions have progressed and improved quality, but it is still inseparable from the public spotlight. Even though, there are many laws and regulations that regulate health care and criminal law in medical field. In the Criminal Code regulated about several criminal law in the medical field. Then, to follow the development of the community, so special legislation in the health field was established, such as Law Number 36 Year 2009 on Health, Law Number 44 Year 2009 on Hospitals, Law Number 29 Year 2004 on Medical Practice.

In Law Number 36 Year 2009 on Health in Article 2 it is stated that health development is carried out based on humanity, balance, benefits, protection, respect for rights and obligations, justice, gender and non-discrimination and religious norms. While, according to Anonim (2015) in Article 3 mentioned that health development aims to increase awareness, willingness and ability to live healthy for everyone in order to realize the highest degree of public health, as an investment for the development of productive human resources socially and economically.

Legislation in the health sector must always follow and fulfill the community needs. After that, it must be able to answer the problems of the community in the health sector, so that people feel at ease as citizens. It is the duty of the government so that people can enjoy health care at affordable costs. In addition, hospitals must always maintain their professionals.

In providing its services, professionals are responsible to its selves and to the community. Responsible to oneself, it means that it
works because of moral, intellectual and professional integrity as part of its life. In providing services, a professional always maintains the noble ideals of the profession in accordance with the demands of its conscience, not because of mere hobbies. Responsible to the community, means the willingness to provide the best service possible without distinguishing between paid services and free services and produce quality services, which have a positive impact on society. The services provided are not merely motivated to seek profit, but also dedication to fellow human beings. Responsible also dares to bear all the risks that arise from the service. Abdulka\d, (2017) said that negligence in carry out the profession has a harmful effect or may harm oneself, others and sin to God.

Quality of service can only be known if assessments have been made, both on the level of perfection, nature, form, characteristics of health care and compliance with service standards. Everyone has criteria for quality and has different assessment methods. According to P. R., (2010) health care providers cannot know whether patients who give positive or negative opinions can represent the entire population served.

Even though, the government has renewed legislation in the health sector in order to follow the community needs, but there are still obstacles in its implementation. This can be seen from the many patient complaints about hospitals.

On May 2013, the patient's family complained that there were doctors who were not ethical because they conveyed the patient's illness to the patient excessively even though the patient's condition was not that bad. The patient was named Jibe who entered the Lontara III ward on Tuesday, May 7, 2013 and was sentenced to suffer from advanced stage liver cancer but the patient's condition was not too bad.

Then, doctors are also not responsive to dealing with Jibe patients because patients have not received maximum care, because on Thursday the red date, so that all doctors are also on holiday and on Saturdays and Sundays doctors also do not enter. So patients are only given painkillers. Regarding the problem of the uncomfortable servant, the family of the patient named Muli had complained to the hospital management and through the customer service to be followed up further (Masniati, 2015).

The Minister of Health, Dr. Nafsiah Mboi said that, there are still hospitals that requested advances to emergency room patients (ER) before being handled by medical personnel. In fact, patients ER need fast handle. The reason is the average illness is severe. Like heart attacks, victims of traffic accidents and workplace accidents. According to Nafsiah, hospitals that request advance payments are considered to violate Law Number 44 Year 2009 on Hospitals (Anonymous, 2014).

Most people unable understand that there are actually many other factors outside the power of medical personnel that can influence the results of medical efforts, such as disease stage, physical condition, endurance, drug quality and patient compliance to obey doctor's advice. These factors can cause medical efforts (even the best) to be meaningless. Therefore it is not wrong if it is then said that the results of a medical effort are full of uncertainty and cannot be calculated mathematically (Sutrisno, 2009).

According to Maryam et al (2013) the results of the study show that the still weak legal protection for patients is
in journal of the legal science journal on Legal Protection for Patients Receiving Childbirth Relief Services, which shows that legal protection for recipients of childbirth assistance services has not been maximally realized because the implementation of laws and regulations governing medical records, informed consent and the use of Standard Operational Procedure and their guidance and supervision have not been fully implemented properly.

The condition is related to the incomprehension of legislation that regulates the rights of patients recipients of childbirth assistance services through the implementation of medical records, informed consent and the use of Standard Operational Procedure for childbirth assistance by medical personnel and paramedics for childbirth assistance and those responsible for guidance and supervision of the implementation of medical records, informed consent and use of Standard Operational Procedure for childbirth assistance in this case the Health Office, Hospital Medical Committee and professional organization (IDI and IBI) district.

Then, often found irregularities that occur in provide health care. It also provides an answer that there is still weak legal protection in health care. So, the writer find the question how is implementation the current criminal law policy in the field of healthy care in society? Therefore, this research is aimed at know and analysis the current criminal law policy in the field of health care.

METHODS

This research is located in the Library of the Law Faculty. As for the type of research used in this study is normative juridical research which is more directed to the study of literature.

Data collection as material for research is through library study techniques, namely document studies carried out by finding library materials in the form of reading material.

Normative legal research is research conducted by examining library materials. This research on normative literature includes research on legal principles, research on legal systematic, research on the levels of vertical and horizontal synchronization, comparison of law and legal history. (Soekanto, 2014).

The data findings will be analyzed descriptively and presented qualitatively. Descriptive analysis means research that aims to describe a situation with facts related to criminal law policy in the field of health care, theories and opinions of legal experts about the actions of hospitals that do not provide health care to patients.

RESULT AND DISCUSSION

Research on criminal law policy in health care is to analyze the laws and regulations on health care. The results obtained are in addition to criminal law, namely Law Number 1 Year 1946 on the Criminal Code, there are also several criminal policy that regulate criminal law protection in health care or medical. The laws and regulations are Law Number 36 Year 2009 on Health, Law Number 44 Year 2009 on Hospitals, Law Number 29 Year 2004 on Medical Practice and many other laws and regulations related to criminal policy in the health sector. Since ancient Greece, legal science has touched almost all aspects of human life, except the medical field. Health workers who existed at that time regulated their own
work methods with professional codes of ethics and oaths that were deeply rooted in tradition and had a strong influence on society.

In the beginning the society considered disease as a mystery. Understanding that develops is always associated with supernatural forces. Medication can only be done by pastors or religious leaders who are known in the society is shamans. The laws that they give threat a severe punishment, for example a hand cut sentence for someone who does a doctor's work use a method that deviates from a previously written book, so that people are reluctant to enter this profession.

In the opening of the Constitution 1945 is clearly stated the ideals of the Indonesian nation which at the same time constituted the national goals of the Indonesian nation. The national aim is to protect the entire Indonesian nation and the whole of Indonesia's bloodshed and advance public welfare, educate the nation's life and participate in carrying out world order based on the independence of eternal peace and social justice.

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In order to achieve these national goals, a sustainable development effort is held which is a series of development that is thoroughly directed and integrated, including health development. Health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian people as referred to in Pancasila and the Opening of the Constitution 1945 of the Republic of Indonesia.

To realize development in the health sector, the government has always made improvements to the quality of health care. In line with the development of civilization in the world, namely in the 20th century, there have been enormous social changes, advances in medicine have become very rapid, so that it needs to be limited and controlled by legal instruments to control the medical profession.

Criminal provisions on health care are not only regulated in general legislation, but have been specifically regulated. Health law can be found in various laws and regulations about human health or other laws and regulations that contain articles or provisions on human health.

There are several criminal law policies that regulate the protection of criminal law in health care or medical. Before the issuance of the special regulation used the Criminal Code. Then, to give special attention to the community in health care, the Health Law is issued. Provisions on health law which are currently popular as material for discussion on health law are Law Number 36 Year 2009 on Health as a change from Law Number 23 Year 1992 on Health. Other special laws and regulations related to health care are Law Number 29 Year 2004 on Medical Practices, Law Number 44 Year 2009 on Hospitals and other regulations.

In this study the writer will discuss criminal law policy or criminal law politics in health care. The issuance of the latest Health Law, namely Law Number 36 Year 2009 on Health which is a change from Law Number 23 Year 1992 on Health. Before the existence of the Health Law, the law is only applicable, namely the Criminal Code.

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on Health will be discussed as the latest health law.

In Law Number 36 Year 2009 on Health, criminal laws related to errors or omissions in the medical field in the form of criminal provisions are regulated in Article 190 paragraph (1) and paragraph (2) Article 191, 192, 193, 194, 195, 196, 197, 198, 199 paragraph (1) and paragraph (2), Article 200, and 201.

Article 190 paragraph (1) states that the leaders of health care facilities and / or health workers who practice or work in health care facilities intentionally do not provide first aid to patients who are in an emergency as referred to in Article 32 paragraph (2) or Article 85 paragraph (2) it shall be punished by imprisonment of a maximum of two years and a fine of a maximum of IDR 200,000,000.00 (two hundred million rupiah).

Article 190 paragraph (2) states that in the event that the action referred to in paragraph (1) results in a disability or death, the leader of the health care facility or health worker is punished with a maximum of ten years imprisonment and a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).

Article 191 states that everyone without a license conducts traditional health care practices used tools and technology as referred to in Article 60 paragraph (2) or Article 85 paragraph (2) it shall be punished by imprisonment of a maximum of one year and a fine of IDR 100,000,000.00 (one hundred million rupiah).

Article 192 states that everyone intentionally buys and sells organs or body tissues under any pretext as referred to in Article 64 paragraph (3) shall be sentenced to a maximum of ten years imprisonment and a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).

Article 193 states that everyone intentionally carry out plastic and reconstruction surgery for the purpose of change one's identity as referred to in Article 69 is threatened with imprisonment for a maximum of ten years and a fine of no more than IDR 1,000,000,000.00 (one billion rupiah).

Article 194 states that everyone intentionally commit an abortion is not in accordance with the provisions referred to in Article 75 paragraph (2) punishable by imprisonment of a maximum of ten years and a fine of a maximum of IDR 1,000,000,000.00 (one billion rupiah).

Article 195 states that everyone intentionally buy and sell blood under any pretext as referred to in Article 90 Paragraph (3) shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah).

Article 196 states that everyone intentionally produces or distributes pharmaceutical preparations or medical devices that do not meet the standards or requirements for security, efficacy or usefulness, and quality as referred to in Article 98 paragraph (2) and paragraph (3) it shall be punished with criminal maximum imprisonment of ten years and a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).

Article 197 states that everyone intentionally produces or distributes pharmaceutical preparations or medical devices that do not have distribution permits as referred to in Article 106 paragraph (1) it shall be punished with a maximum of fifteen years imprisonment and a maximum fine of IDR 1,500,000,000.00 (one billion five hundred million rupiah).
Article 198 states that everyone who is considered capable of taking responsibility for practicing pharmacy as referred to in Article 108, while they do not have the expertise and authority for that and it shall be punished with a fine of a maximum of IDR 100,000,000 (one hundred million rupiah).

Article 199 paragraph (1) states that everyone intentionally produces or imports cigarettes into the territory of the Unitary State of the Republic of Indonesia by not include health warnings in the form of images as referred to in Article 114 to be sentenced to a maximum of five years and a maximum of IDR 500,000,000.00 (five hundred million rupiahs). Hereinafter in paragraph (2) states that everyone intentionally violates the area without cigarettes as referred to in Article 115, it shall be fined a maximum of IDR 50,000,000.00 (fifty million rupiahs).

Article 200 states that everyone intentionally blocks the exclusive breastfeeding program as referred to in Article 128 paragraph (2) to be sentenced to a maximum of one year in prison and a maximum of IDR 100,000,000.00 (one hundred million rupiah).

Article 201 paragraph (1) mentions in terms of criminal law as referred to in Article 190 paragraph (1), Article 191, 192, 196, 197, 198, 199 , and Article 200. While in paragraph (2) states that in addition to criminal punishment as referred to in paragraph (1), corporations may be subject to additional criminal sanctions in the form of revocation of business licenses; or revocation of legal entity status.

CONCLUSION

From the results of the research and discussion it can be concluded that the criminal policy discussed is the latest Health Law of Law Number 36 Year 2009 on Health.

The formulation of criminal law and penalties in Law Number 36 Year 2009 has been formulated expressly because in the old health law, namely the Health Law Number 23 Year 1992, there are still many indirect legal protections. However, Law Number 36 Year 2009 still contains weaknesses.

Then, to maximize the implementation of criminal law in health care or commonly called medical crimes, it is necessary to immediately issue implementing regulations of Law Number 36 Year 2009 on Health.

REFERENCES


Criminal Law Policy in Health... (Enny Agustina)