

Legal certainty of gross negligence as an element of criminal liability for medical professionals: Problems and implications

Made Wirya Darma
wiryadarma@undiknas.ac.id
Universitas Pendidikan Nasional, Denpasar, Indonesia

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Abstract

The legal certainty regarding the requirement of gross negligence as one of the elements of criminalization for medical personnel has become a debated issue due to the absence of clear boundaries in the laws and regulations, resulting in difficulties for judges in determining the criteria for gross negligence and potentially leading to legal uncertainty and injustice. This research aims to analyze the legal certainty regarding the requirement of gross negligence as one of the elements of criminalization for medical personnel in the applicable laws and regulations in Indonesia, as well as to examine the implications of this legal uncertainty on law enforcement and public trust in the medical profession. This research utilizes a normative legal research method with a statutory and conceptual approach, and collects data through library research on relevant primary, secondary, and tertiary legal materials. The analysis is carried out using content analysis techniques and legal interpretation. The research results reveal that the legal certainty regarding the requirement of gross negligence as one of the elements of criminalization for medical personnel is still unclear in the applicable laws and regulations in Indonesia. The lack of a clear definition and criteria regarding gross negligence in the Criminal Code and the Health Law leads to legal uncertainty and difficulties for judges in determining whether a case can be categorized as gross negligence, which has the potential to cause disparities in court decisions. This condition has significant implications for fair and consistent law enforcement, public trust in the medical profession, and the evidentiary process, which becomes more difficult. Therefore, efforts are needed to clarify the legal certainty regarding the requirement of gross negligence to ensure justice and legal certainty for all parties.

I. Introduction

In the Indonesian criminal justice system, there are several laws and regulations governing the criminal liability of medical professionals in the performance of their duties. One important element that must be met to impose criminal penalties on medical professionals is the presence of gross negligence (*culpa lata*) on the part of the medical professional.(Rokhi & Wahyuningsih, 2023) However, the criteria for gross negligence often become a matter of debate and cause problems in their application in the field.

Article 359 of the Indonesian Penal Code (KUHP) regulates the crime of negligence resulting in the death of a person. This article does not specifically explain the definition of gross negligence. This opens up opportunities for different interpretations in judicial practice and potentially creates legal uncertainty. Besides the Penal Code, there is also Law Number 36 of 2009 on Health, which regulates the rights and obligations of medical personnel. Article 58, paragraph (1) of this law states that everyone has the right to claim compensation against a person, health worker, and/or health provider who causes harm due to errors or negligence in the health services received. However, once again, there is no further explanation regarding the criteria for gross negligence that can lead to criminal liability.

In practice, judges often face difficulties in determining whether a case can be categorized as gross negligence. This is due to the lack of clear boundaries in the legislation. As a result, court decisions can become inconsistent and potentially lead to injustice for the parties involved.(Markuat & Suandi, 2017) Another issue that arises is related to the burden of proof in cases of gross negligence by medical personnel. In criminal law, the principle of reverse burden of proof (*omkering van bewijslast*) is not allowed. This means that the burden of proof lies with the prosecutor, not the defendant.(Hatta et al., 2020) However, in cases of gross negligence by medical personnel, there are often difficulties in gathering sufficient evidence to prove the existence of such gross negligence.

The legal uncertainty regarding the requirements for gross negligence as one of the elements of criminal prosecution for medical personnel can also impact public trust in the medical profession. Medical personnel who work diligently and in accordance with professional standards may feel threatened by the potential for criminal charges with unclear criteria.(Eko Pujiyono, 2023) Thus, it is necessary to conduct an in-depth study to address the legal certainty issues related to the requirement of gross negligence as one of the elements of criminal liability for medical personnel. This study is important to provide legal certainty, ensure justice, and protect the interests of all parties involved, including medical personnel, patients, and their families.

Therefore, the author is interested in conducting a research titled "Legal Certainty of the Requirement of Gross Negligence as an Element of Criminal Liability for Medical Personnel: Issues and Implications." The problem formulation in this research includes:

1. How is legal certainty regarding the requirement of gross negligence as one of the

elements of criminal prosecution for medical personnel addressed in the current laws and regulations in Indonesia?

2. What are the implications of legal uncertainty regarding the requirement of gross negligence as one of the elements of criminal prosecution for medical personnel on law enforcement and public trust in the medical profession?

II. Research Method

The research method used in this study is the normative legal research method. This method was chosen because the study will examine issues from the perspective of the positive law applicable in Indonesia. The approaches that will be used in this research are the statutory approach and the conceptual approach. The statutory approach is necessary to analyze the provisions in the legislation related to the criteria of gross negligence as an element of criminal liability for medical personnel. Meanwhile, the conceptual approach is needed to study the concepts and legal doctrines relevant to the issues being investigated.

The sources of legal materials that will be used in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include relevant legislation, such as the Indonesian Penal Code (KUHP), Law No. 36 of 2009 on Health, and other relevant regulations. Secondary legal materials include books, legal journals, scientific articles, and previous research findings that discuss related issues. Tertiary legal materials include legal dictionaries and legal encyclopedias that can help clarify the legal concepts used in the research. The data collection technique that will be used is library research, which involves collecting and examining legal materials relevant to the issues being studied. The researcher will inventory, classify, and systematize these legal materials for further analysis.(J. Moleong, 2017)

After the data is collected, the analysis will be conducted using content analysis and legal interpretation techniques. Content analysis is used to examine the content of legislation and other legal materials related to the research problem. Meanwhile, legal interpretation is necessary to interpret the legal provisions governing the conditions of gross negligence as an element of criminal liability for medical professionals. Through the normative legal research method with a statutory and conceptual approach, relevant legal sources, and appropriate data collection and analysis techniques, this research is expected to yield comprehensive findings and analysis regarding legal certainty related to the condition of gross negligence as an element of criminal liability for medical professionals, as well as the issues and implications in legal practice in Indonesia.

III. Results and Discussion

The legal certainty regarding the requirement of gross negligence as one of the elements of criminal liability for medical professionals is an issue that is often debated. This is due to the complexity in determining the boundaries of gross negligence in medical practice, considering each case has different characteristics and contexts. This lack of certainty can

cause doubt and fear among medical professionals in carrying out their professional duties, which in turn can impact the quality of healthcare services. On the other hand, excessively strict legal certainty can also be seen as an obstacle to the development of medical science and practice, which is continuously evolving.(Rahmawati et al., 2022) Therefore, efforts are needed to seek a balance between legal certainty and flexibility in applying the element of gross negligence, taking into account factors such as medical practice standards, patient conditions, available resources, and others.

Legal Certainty Regarding the Requirement of Gross Negligence as One of the Elements of Punishment for Medical Personnel in the Applicable Legislation in Indonesia

In the current legislation in Indonesia, the requirement of gross negligence (*culpa lata*) as one of the elements for penalizing medical personnel is still not clearly and thoroughly regulated. This creates legal uncertainty in its application in the field.(Butar-Butar & Yusuf, 2024)

The Indonesian Criminal Code (KUHP) as the primary source of criminal law in Indonesia does not provide a definition or further explanation regarding the criteria of gross negligence. Article 359 of the Criminal Code regulates criminal acts due to negligence resulting in someone's death, but does not specifically mention what constitutes gross negligence.(Ana & Ginting, 2015) Article 359 of the Criminal Code reads:

"Whoever, due to their fault (negligence), causes the death of another person, shall be punished with imprisonment for a maximum of five years or detention for a maximum of one year".

From the wording of the article, it can be seen that the Indonesian Criminal Code (KUHP) does not provide clear limitations on what constitutes negligence (*kealpaan*) that can be subject to criminal sanctions. There is no further explanation regarding the criteria that distinguish gross negligence from ordinary negligence (*culpa levis*). (Sriwidodo, 2019) Apart from the Criminal Code (KUHP), there is also Law Number 36 of 2009 concerning Health which regulates the rights and obligations of medical personnel. In Article 58 paragraph (1) of the law, it is mentioned that:

"Everyone has the right to claim compensation against someone, health personnel, and/or health service providers who cause losses due to errors or negligence in the health services they receive".

Although this law acknowledges the possibility of compensation for medical personnel who commit errors or negligence, it does not further clarify the distinction between minor errors or negligence and serious negligence that could incur criminal sanctions.(Sekeon, 2023) The ambiguity of the definition and criteria for gross negligence in this legislation raises issues in judicial practice. Judges often struggle to determine whether a case can be categorized as gross negligence or not. This has the potential to result in inconsistent court decisions and potentially lead to injustice for the parties involved.(Raspati, 2012)

In several court rulings, judges attempt to provide criteria for gross negligence in the context of the medical profession. However, these criteria are still largely casuistic and there

are no clearly established and comprehensive standards. For example, in Decision Number 238/Pid.B/2009/PN.Jkt.Sel, the judge stated that gross negligence can be indicated by low skills and knowledge, carelessness in handling patients, and disregard for operational procedures that should be followed.

Meanwhile, in Decision Number 1193 K/Pid/2014, the Supreme Court declared that gross negligence can be marked by awareness to do or not to do something, and carried out with an extremely careless and highly dangerous attitude. From these various examples of rulings, it can be seen that there is still no uniformity in criteria for determining gross negligence as an element of criminal liability for medical personnel. This creates legal uncertainty and has the potential to result in disparate rulings in similar cases.

The legal uncertainty regarding the criteria for gross negligence as an element of criminal liability for medical personnel can also affect public trust in the medical profession. Medical personnel who work with caution and in accordance with professional standards may feel threatened by the potential for unclear criminal liability criteria.(Flora, 2018) Therefore, efforts are needed to clarify the definition and criteria of gross negligence in the prevailing laws and regulations in Indonesia. This is important to ensure legal certainty, consistency in court decisions, and to protect the interests of all parties, including medical personnel as well as patients or their families.

One of the efforts that can be made is to revise the Penal Code (KUHP) and related laws, so that there are clear definitions and criteria regarding gross negligence as an element of prosecution for medical personnel. Additionally, it may also be considered to issue implementing regulations or guidelines that are more detailed to provide guidance for judges in deciding cases related to gross negligence of medical personnel.

The Implications of Legal Uncertainty Regarding the Requirement of Gross Negligence as One of the Elements of Criminalization for Medical Personnel on Law Enforcement and Public Trust in the Medical Profession

The legal uncertainty regarding the criteria for gross negligence as one of the elements of prosecution for medical professionals in Indonesian legislation has significant implications for law enforcement and public trust in the medical profession.

Firstly, this legal uncertainty can lead to disparities in court decisions in similar cases. Judges often struggle to determine whether a case can be categorized as gross negligence or not, due to the lack of clear definitions and criteria in the legislation. As a result, court decisions may become inconsistent and potentially unjust for the parties involved.(Sukma & Agustanti, 2023)

In Decision Number 238/Pid.B/2009/PN.Jkt.Sel, for instance, the judge stated that gross negligence is evidenced by low skills and knowledge, carelessness in handling patients, and failure to adhere to operational procedures that should be followed. Meanwhile, in

Decision Number 1193 K/Pid/2014, the Supreme Court declared that gross negligence is characterized by awareness to do or not do something, as well as being done with an extremely careless and very dangerous attitude. The differences in judges' interpretations in determining the criteria of gross negligence can lead to legal uncertainty and potentially disrupt fair and consistent law enforcement.(Ogunwale et al., 2023)Secondly, the legal uncertainty regarding the requirement of gross negligence as a criminal element for medical professionals can impact public trust in the medical profession. Medical professionals who work with caution and adhere to professional standards may feel threatened by the potential unclear criteria for criminal liability.(Poluan et al., 2021) The provided text delineates a critical concern within the realm of healthcare delivery, underscoring the potential ramifications of certain factors on the performance and morale of medical personnel. Let's delve into a comprehensive translation and analysis.

The passage elucidates that such circumstances could evoke apprehension among healthcare workers, thereby precipitating a decrement in their motivation to discharge their duties effectively. This decline in motivation may manifest as heightened defensiveness and a proclivity to eschew high-risk medical interventions, notwithstanding their imperative nature in preserving patient lives. Such a scenario undoubtedly engenders unfavorable outcomes for patients and compromises the overall quality of healthcare provision.

This portrayal underscores the multifaceted nature of the challenges confronting healthcare systems worldwide, emphasizing the intricate interplay between individual psychological dynamics and the imperative of delivering optimal patient care. The implications of diminished motivation and heightened risk aversion among healthcare practitioners are profound, potentially impeding the timely and efficacious delivery of critical interventions necessary for patient survival.

Furthermore, this discourse underscores the significance of proactive measures aimed at mitigating the adverse effects of these phenomena. Initiatives encompassing targeted psychological support, comprehensive risk assessment protocols, and ongoing professional development endeavors are paramount in fostering resilience and ensuring that medical personnel are equipped to navigate complex clinical scenarios adeptly.

In essence, the elucidated concerns underscore the imperative of a holistic approach to healthcare delivery, one that prioritizes the well-being and professional efficacy of medical personnel alongside the imperative of optimizing patient outcomes. By addressing the underlying factors contributing to diminished motivation and risk aversion, healthcare systems can fortify their resilience and efficacy in the face of evolving challenges, thereby safeguarding the provision of high-quality care to all individuals in need.(Wihardja et al., 2021) In Law Number 36 of 2009 concerning Health, Article 58 paragraph (1) states that:

“Everyone has the right to claim compensation against someone, health personnel, and/or healthcare providers who cause losses due to errors or negligence in the healthcare services they receive”.

However, it is not further explained about the boundary between minor errors or negligence and serious negligence that can be subject to criminal sanctions. This can make medical personnel feel insecure in carrying out their profession and potentially reduce public trust in the medical profession.(Siregar, 2020)

Thirdly, this legal uncertainty can also complicate the process of proving cases involving serious medical negligence. In criminal law, the principle of reverse burden of proof (omkering van bewijslast) is not allowed. This means that the burden of proof lies with the prosecution, not the defendant.(Wiriadinata, 2016) However, in cases of serious negligence by medical personnel, there is often difficulty in gathering sufficient evidence to prove such serious negligence. Article 183 of the Criminal Procedure Code (KUHP) states that:

"A judge may not impose a penalty on someone unless with at least two valid items of evidence, they are convinced that a criminal act has indeed occurred and that the accused is guilty of committing it".

Without clear definitions and criteria regarding gross negligence, the process of proof becomes more difficult and can hinder law enforcement in cases involving medical professionals.(Ramadhani, 2022) Therefore, efforts are needed to clarify the definition and criteria of gross negligence in the prevailing laws and regulations in Indonesia. This is important to ensure legal certainty, consistency of court decisions, facilitate the process of evidence, and protect the interests of all parties, both medical personnel and patients or patients' families.(Nugroho & Samsuri, 2013)

One effort that can be made is by revising the Criminal Code (KUHP) and Law Number 36 of 2009 concerning Health, so that there are clear definitions and criteria regarding gross negligence as an element of punishment for medical personnel. In addition, it may also be considered to issue implementing regulations or guidelines that provide more detailed guidance for judges and law enforcement officials in deciding cases related to gross negligence of medical personnel.(Dunan & Mudjiyanto, 2022) With better legal certainty, it is hoped that law enforcement can be carried out more fairly and consistently, and public trust in the medical profession can be well maintained.

4. Conclusion

Legal certainty regarding the criteria for gross negligence as one of the elements of criminal liability for medical personnel in the prevailing laws and regulations in Indonesia is still unclear and detailed. Neither the Criminal Code (KUHP) nor Law Number 36 of 2009 concerning Health provides a clear definition and criteria regarding gross negligence that can be subject to criminal sanctions for medical personnel. This creates legal uncertainty in its implementation in the field, so judges often have difficulty determining whether a case can be categorized as gross negligence or not, potentially causing disparities in court decisions in similar cases.

The legal uncertainty regarding the criteria for gross negligence as one of the elements of criminal liability for medical personnel in Indonesian legislation has significant implications for law enforcement and public trust in the medical profession. First, it can cause disparities in court decisions in similar cases due to the lack of clear definitions and criteria, potentially disrupting fair and consistent law enforcement. Second, this uncertainty can impact public trust in the medical profession because medical personnel feel threatened by the potential unclear criteria for criminal prosecution, thus reducing motivation and making them more defensive in performing their duties. Third, the burden of proof becomes more difficult due to the lack of clear criteria for gross negligence, which can hinder law enforcement in cases involving medical personnel.

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