The International Journal of Social Sciences World
TIJOSSW is Available Online at:
https://www.growingscholar.org/journal/index.php/TIJOSSW
Vol. 3 No. 2, December 2021, pages: 169~174
DOI: https://doi.org/10.5281/zenodo.5219884
ISSN **2690-5167**
Growingscholar Publisher

Criminal Responsibility of Dental and Oral Therapists in Performing Dental and Oral Health Services

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Article history: Received July 04, 2021; Accepted: August 10, 2021; Displayed Online: August 19, 2021; Published: December 30, 2021

Keywords

Criminal Liability;

Indonesian Law;

Dental and Oral Therapist;

Authority;

Abstract

In Indonesia, the authority of a dental and oral therapist is regulated in Indonesian Article 12 of the Regulation of the Minister of Health Number 20 of 2016 concerning Permits and Implementation of the Practice of Dental and Oral Therapists. In addition to this authority. The dental and oral therapist may perform an act of written delegating authority from the dentist. If the dental and oral therapist delegates authority in writing on the grounds of helping each other because of the large number of patients, can they be charged with criminal liability? On that basis, the researchers focused on the problem, namely what is the form of criminal responsibility for dental and oral therapists in providing dental and oral health services? The purpose of this study was to determine the criminal responsibility of dental and oral therapists in performing dental and oral health services. The research method used in this study is a normative research method and the problem approach used is the approach to applicable laws and regulations which focuses on primary legal materials that regulate criminal law, namely criminal malpractice. The results of the study found that dental and oral therapists who carried out unwritten acts of delegation of authority from dentists as long as they did not have a negative impact on patients and did not meet the elements of criminal malpractice cannot be charged with criminal responsibility, on the contrary, dental and oral therapists who provide dental health services and mouth that meets the elements of criminal malpractice can be charged with criminal liability.

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1. Introduction

The implementation of health services is of course supported by health resources which can be in the form of all forms of funds, personnel, health supplies, pharmaceutical preparations, and medical devices as well as health service facilities and technology used for the implementation of health efforts. Health workers are the most important health resource. Because with these health workers all other health resources such as health service facilities, health supplies as well as technology and technology products can be managed synergistically in order to achieve the expected health development goals. One of the health workers who provide health services, especially dental and oral health services, is a dental and oral therapist.

Dental and oral therapists in the Law on Health Workers are health workers who are included in the group of medical technicians. Dental and oral therapists in carrying out their duties require professional authority. The legal provisions governing the implementation of dental and oral therapists in dental health services are regulated in several laws and regulations. The provisions of the legislation in question include: Regulation of the Minister of Health Number 1796 of 2011 concerning Registration of Health Workers and Regulation of the Minister of Health Number 20 of 2016 concerning Permits and Implementation of the Practice of Dental and Oral Therapists (Cf. Freckelton, 2005; Gofur et al., 2021).

Dental and oral therapists in providing health services must have a permit from the Government. Based on the Regulation of the Minister of Health Number 20 of 2016 concerning Permits and Implementation of Dental and Oral Therapist Practices in Chapter II concerning Licensing, it is explained that dental and oral therapists can carry out work must have STRTGM (Registration Certificate for Dental and Oral Therapists) in carrying out their work. After receiving STRTGM, the dental and oral therapist is given SIPTGM (Letter of Permit for Dental and Oral Therapist Practice). By having STRTGM and SIPTGM, dental and oral therapists have met the juridical requirements so that they can carry out their duties in professional dental and oral health services in accordance with their authority.

Dental and oral therapists in carrying out their professional practice have the authority to provide dental and oral health services in accordance with Article 12 of the Regulation of the Minister of Health Number 20 of 2016 which includes: efforts to improve dental and oral health, efforts to prevent dental diseases, management of dental and oral health services, basic health services in cases of limited dental health, and dental assisting (Adjie, 2021). Dental and oral therapists in providing dental and oral health services are expected to be in accordance with the authority that has been stated in the legislation, but it is possible that problems will occur later if the dental and oral therapist takes actions that are not their authority, in this case the dental and oral therapist exercises authority, dentist (Nash et al., 2008). There are actions that require dental and oral therapists to exercise the authority of dentists on the grounds of mutual assistance with dentists, the absence of dentists and because of the large number of patients in the hospital.

Based on the background that has been described, the formulation of the problem in this study is what is the form of criminal responsibility for dental and oral therapists in providing dental and oral health services? The purpose of this study was to determine the criminal responsibility of dental and oral therapists in performing dental and oral health services.

2. Materials and Method

The research method used in this study is a normative research method (Cf. Babüroglu & Ravn, 1992), while the problem approach used is the applicable legislation approach (Cf. Goldswain,

2008) and a conceptual approach by analyzing the problems to be discussed through legal concepts taken from journals, books and other literatures.
Sources of legal research used in this study include:

1. Primary sources of law such as: the 1945 Constitution of the Republic of Indonesia, Law Number 36 of 2009 concerning Health, Law Number 36 of 2014 concerning Health Workers, Regulation of the Minister of Health Number 1796 of 2011 concerning Registration of Health Workers, Regulation Minister of Health Number 2052 of 2011 concerning Licenses for Practice and Implementation of Medical Practices, Regulation of the Minister of Health Number 20 of 2016 concerning Permits and Implementation of Dental and Oral Therapist Practices, and the Criminal Code.
2. Secondary legal sources that provide explanations for primary laws such as research results, laws or legal expert opinions.

3. Research Result and Discussion

Health services must be supported by health workers who are competent in their fields in order to improve the quality of service to patients (Haver et al., 2015). One of the health services, namely dental and oral health services, must be supported by dentists and dental and oral therapists who have their respective competencies and authorities. The authority of a dental and oral therapist based on the Minister of Health Regulation Number 20 of 2016 concerning Permits and Implementation of Dental and Oral Therapist Practices includes: efforts to improve dental and oral health, efforts to prevent dental diseases, management of dental and oral health services, basic health services in dental health cases limited authority, and dental assisting. In addition to these powers, dental and oral therapists can carry out the task of delegating authority from dentists in writing and based on government assignments as needed. Concerning License and Implementation of the Practice of Dental and Oral Therapist letter a includes: filling teeth in more than two fields, root canal treatment, and giving prescriptions and medicines.

Research related to this research has been previously reviewed by Sukini et al (2021) who reviewed the legal protection of dental and oral therapists for oral delegation by dentists. It was explained that in carrying out the action there were some that were appropriate and some that were not in accordance with the Regulation of the Minister of Health Number 20 of 2016. Some of the inappropriate ones at the Subang District Health Center included a dentist but the dental and oral therapist performed more than one root extraction and fillings. More than two fields are not written from the dentist on the grounds of helping each other because of the large number of patients. In this case, it can be said that the dental and oral therapist has provided dental and oral health services beyond their authority. Based on this, the researcher wants to examine the criminal responsibility of dental and oral therapists in providing dental and oral health services.

Delegation of authority of a dentist to a dental and oral therapist or referred to as a delegation of authority is a written delegation of authority given by a dentist to a dental and oral therapist. The delegated task is carried out with the provision that the delegated action is included in the ability and skill of the dental and oral therapist and the implementation of the delegated action remains under the supervision of the dentist. Based on the related journal, it was explained that dentists gave abundant tasks unwritten but collaborated with dental and oral therapists on the grounds of helping each other because of the large number of patients. .

Responsibility or what is known as the concept of liability in terms of legal philosophy, Roscoe Pound states that the word "liability" for the situation whereby one may exact legaly and other is legally subject to the excaxtion (Pound, 2006). Criminal liability is defined by Pound as the

obligation to pay the retribution that the perpetrator will receive from someone who have been harmed. According to him, the accountability carried out is not only related to legal issues but also concerns the issue of moral values or decency that exists in a society.

The criminal liability of a dental and oral therapist is an individual responsibility for errors or omissions that cause harm and or suffering to clients or patients in relation to dental and oral health service actions. Criminal liability related to the implementation of dental and oral health service actions, in this case taking actions outside the authority, namely carrying out the abundant duties of the dentist in an unwritten manner, it must be seen whether the actions of the dental and oral therapist meet the elements of medical malpractice that can be subject to criminal penalties. Criminal liability related to criminal malpractice is contained in the Criminal Code, namely Article 359 and Article 360 regarding negligence that causes serious injury and death. In addition, it is also regulated in Article 84 of the Health Manpower Act regarding criminal provisions for health workers who commit gross negligence.

Malpractice in principle has two elements, namely the existence of errors and negligence of health workers in carrying out a medical profession that identifies adverse effects. Criminal malpractice occurs when a patient is seriously injured, dies or is disabled. Elements of malpractice from aspects of criminal law according to Azwar & Dokter (2002) include the existence of obligations related to damage, denial of obligations, the existence of a causal relationship between actions that deny obligations and damage, psychological denial is a substantial causal factor (proximate cause), and damage.

Based on the definition of malpractice and the provisions of the legislation governing the negligence of health workers, dental and oral therapists if they take actions outside their authority in this case carrying out the abundant duties of a dentist in an unwritten manner, then criminal liability for errors and or omissions is not can be handed down to the dental and oral therapist. This is because until now the implementation of dental and oral health actions carried out by dental and oral therapists outside their authority has not caused any adverse effects or losses to patients, carried out with proper reasons and mutual assistance with dentists because of the large number of patients based on the needs of the community and as long as it is carried out in accordance with standard operating procedures

Therefore, based on these considerations, dental and oral therapists are not charged with criminal responsibility because they do not meet the elements of malpractice from the aspect of criminal law. Criminal liability is charged to the dental and oral therapist if it is found that the dental and oral therapist has acted outside of his/her authority and the action is not in accordance with the applicable standard procedure which causes the patient to be seriously injured, disabled and died in accordance with the provisions of Article 359 and Article 360 of the Law.

Criminal responsibility is not borne by dental and oral therapists who carry out unwritten duties of a dentist because they do not meet the elements of criminal malpractice, it does not mean that dental and oral therapists continue to carry out these actions. In this case the author gives advice to dental and oral therapists to carry out the abundant duties of dentists in writing so that they are in accordance with the provisions of the legislation, namely Article 18 of the Regulation of the Minister of Health Number 20 of 2016 concerning Permits and Implementation of the Practice of Dental and Oral Therapists and Article 23 paragraph (1) Ministerial Regulation Number 2052 of 2011 concerning Practice License and Implementation of Medical Practice (Cf. Gofur et al., 2021).

4. Conclusion

Dental and oral health services must be supported by dentists and oral therapists who have their respective competencies and authorities (Cf. Gallagher et al., 2013). Based on the Regulation of the

Minister of Health Number 20 of 2016 concerning Permits and Implementation of Dental and Oral Therapist Practices, it is explained that the authority of dental and oral therapists includes: efforts to improve dental and oral health, efforts to prevent dental diseases, management of dental and oral health services, basic health services in health cases. limited teeth, and dental assisting. In addition to this authority, dental and oral therapists can carry out the task of delegating authority from dentists in writing and based on government assignments as needed. Delegation of authority mandated by dentists as referred to in Article 18 of the Regulation of the Minister of Health Number 20 of 2016 concerning Permits and Operations.

The practice of the Dental and Oral Therapist letter a includes: dental fillings in more than two areas, root canal treatment, and prescribing and medication. Criminal liability related to the implementation of dental and oral health service actions, in this case taking actions outside the authority, namely carrying out the abundant duties of the dentist in an unwritten manner, it must be seen whether the actions of the dental and oral therapist meet the elements of medical malpractice that can be subject to criminal penalties. Criminal liability related to criminal malpractice is contained in the Criminal Code, namely Article 359 and Article 360 regarding negligence that causes serious injury and death. In addition, it is also regulated in Article 84 of the Health Manpower Act regarding criminal provisions for health workers who commit gross negligence.

If a dental and oral therapist acts outside his/her authority, in this case carrying out the abundant duties of a dentist in an unwritten manner, then criminal liability for errors and or omissions committed cannot be imposed on the dental and oral therapist. This is because until now the implementation of dental and oral health actions carried out by dental and oral therapists outside their authority has not caused any adverse effects or losses for patients, carried out with proper reasons and mutual assistance with dentists because of the large number of patients based on the needs of the community and as long as it is carried out in accordance with standard operating procedures, based on these considerations, the dental and oral therapist is not charged with criminal responsibility because it does not meet the malpractice elements of the criminal law aspect.

Acknowledgements

The author expresses her gratitude and appreciation to the publisher and reviewers who have reviewed and suggested the valuable suggestions, as well as have received the paper to be published.

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