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Legal responsibility form against doctors for violations of the code of ethics between colleagues

Florindo Gomes ^{1*}, RA Tuty Kuswardhani ²

¹ Master of Medical Law Study Program, Faculty of Law, Udayana University, Bali, Indonesia

² Master of Medical Law Study Program, Udayana University, Bali, Indonesia

* Corresponding Author: **Florindo Gomes**

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Abstract

The aim of this scientific work is to determine and analyze the form of legal responsibility in the Decree on the Code of Ethics of the Indonesian Doctors Association for violations of the code of ethics among colleagues and the implications of the Decree on the Code of Ethics of the Indonesian Doctors Association which does not regulate sanctions. This scientific work uses the following research methods: normative legal research type; statute approach, conceptual approach, and analytical approach. This scientific work discusses forms of responsibility for violations of the code of ethics between colleagues. In the Decree on the Code of Ethics of the Indonesian Doctors Association, there is no regulation regarding descriptive sanctions/charges but only regulates prohibitions. 2. The implications arising from not regulating sanctions in the Indonesian Doctors Association Code of Ethics Decree are that there is no legal certainty, justice, and expediency in imposing sanctions by the MKDI for ethical violations between colleagues; there is no deterrent effect on treatment that is contrary to the code of ethics; and there is no motivation to change into a good individual.

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Introduction

The definition of the word ethics, as stated by K. Berten, the word "ethics" comes from ancient Greek, namely ethos (singular form) or ta etha (plural form). Ethos means residence, pasture, enclosure, habits or customs, morals, character, feelings, attitudes, and thinking. Meanwhile, the word ta etha means custom ^[1]. However, ethics is generally understood as the science of what we usually do. In the general Indonesian dictionary, it is the science of moral principles. Another understanding regarding ethics from Prof. DR. FRANZ Magniz Suseno. In the opinion of Prof. DR. FRANZ Magniz Suseno, ethics is a science that seeks orientation (a science that gives direction and foundation to human actions) ^[2]. If humans have a clear orientation, they will not live in any way or follow various parties, but they will be able to determine their destiny. Thus, ethics can help humans to be responsible for their lives ^[3].

The medical code of ethics regarding defamation between colleagues as written in articles 18 and 19 of the Indonesian Doctors Association's Grand Decree Number 111/PB/A.4/02/2013 concerning the Implementation of the Indonesian Doctors Association's Code of Ethics (hereinafter referred to as the Association's Code of Ethics Decree Indonesian Doctors) as follows: Article 18 regulates "Every doctor treats their colleagues as they would like to be treated." Furthermore, Article 19 regulates: "Every doctor may not take over a patient from a colleague, except with the consent of both or based on ethical procedures." Referring to the explanation in article 18 of the Code of Ethics of the Indonesian Doctors Association, namely:

¹ Alvonsus, Sutarno. 2008. *Etiket, Kiat Serasi Berelasi*, Yogyakarta: Kanisius, p.39.

² Hanafiah, Jusuf M. and Amir, Amir. 1999. *Etika Kedokteran dan Hukum Kesehatan*. Jakarta: EGC, p.48.

³ Ibid., p.51.

Fellow doctors as colleagues actually want to be treated equally by their colleagues (golden rule). The context of equality in this case is equality of relations between colleagues, where no one is suspected of deviant behavior. The next meaning is for every doctor to refrain from causing difficulties, confusion, disappointment/anger to their colleagues so that a strong professional organization can be created with a noble tradition of professional service as a role model. Example: Avoid non-collegial actions: Very non-collegial actions, namely when a doctor mocks his/her colleagues and gossips with patients or other people about his actions, which are considered inappropriate.

Avoid defamation: A doctor must avoid defaming colleagues because it means defaming one's good name, like "Cut off your nose to spite your face." The explanation in Article 18 above shows that doctors should treat their colleagues. This code of ethics is a benchmark for doctors as professionals in a health organization in determining correct and incorrect human behavior apart from being based on reason and values. Certain religions/customs or ideologies. Discussing human behavior cannot be separated from moral values because moral norms are essentially ethics that highlight "character" and tendencies (dispositions) tied to understanding moral values. Moral norms are the science of correct and incorrect human behavior, aside from being based on reason and religious values/customs or certain ideologies ^[4]. Facing current developments, we have now put forward the idea of the need for moral norms to be adopted to serve as legal norms in law, for example:

In this case, article 24B of the 1945 Constitution jo. Law Number 22 of 2004 concerning the Judicial Commission can be used as a concrete example that moral norms can be adopted as legal norms. Therefore, violations of these norms can result in strict sanctions, although not in criminal law, because these violations are violations of the judge's code of ethical behavior. For example, a judge commits a disgraceful act, which, from a legal perspective, does not yet qualify as a criminal act but is still threatened with sanctions, namely sanctions for ethical violations.

Decree on the Code of Ethics of the Indonesian Doctors Association, which regulates the moral norms of treating colleagues as one would like to be treated without committing acts that violate moral values. If there is a violation of the Decree on the Code of Ethics of the Indonesian Doctors Association, especially in articles 18 and 19, then for this action, it is appropriate to receive sanctions as a form of accountability towards colleagues. However, the Decree on the Code of Ethics of the Indonesian Doctors Association does not yet include any actions or sanctions that regulate violations of the code of ethics as a form of responsibility. This journal's scientific work uses normative legal research methods because there is no answer to empty norms in the Decree on the Code of Ethics of the Indonesian Doctors Association using the principle of "ius curia novit". With this principle, the judge is considered to know the law, so the

judge cannot reject a case because there are no rules or the rules are unclear. This is in accordance with Article 16 paragraph (1) of Law Number 4 of 2004 concerning Judicial Power, namely, "The court must not refuse to examine, try and decide on a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it." However, judges are obliged to explore the legal values that exist in society. This is the rechtsvinding step. This is in accordance with Article 28 paragraph (1) of Law Number 4 of 2004 concerning Judicial Power, namely, "Judges are obliged to explore, follow and understand the legal values and sense of justice that exist in society." In an effort to fill the legal vacuum, the basic guideline is the "legal ratio" of positive law, and the research questions are: 1) What is the Legal Liability Form in the Decree on the Code of Ethics of the Indonesian Doctors Association for violating the code of ethics between colleagues?, 2) What are the implications of the Indonesian Doctors Association Code of Ethics Decree that does not regulate sanctions?

2. Discussion

2.1. Legal Responsibility Form in the Indonesian Doctors Association Code of Ethics Decree for Violations of the Code of Ethics between Colleagues

There is no regulation regarding the form of responsibility for violations of the code of ethics between colleagues in the Decree on the Code of Ethics of the Indonesian Doctors Association, but only regulates prohibitions as regulated in the article below: Article 18 states, "Every doctor treats his colleagues as he would like to be treated." Article 19 regulates: "Every doctor may not take over a patient from a colleague, except with the consent of both or based on ethical procedures."

The explanation in Article 18 of the Indonesian Doctors Association Code of Ethics is as follows:

Fellow doctors as colleagues actually want to be treated equally by their colleagues (golden rule). The context of equality in this case is equality of relations between colleagues, where no one is suspected of deviant behavior. The next meaning is for every doctor to refrain from causing difficulties, confusion, disappointment/anger to his colleagues so that a strong professional organization can be created with a noble tradition of serving the profession as a role model. Example: Avoid non-collegial actions: Very non-collegial actions, namely if a doctor mocks colleagues and gossips with patients or other people about actions that are considered inappropriate. Avoid defamation: A doctor must avoid defaming colleagues because it means defaming one's good name, which is like "slapping water on a tray and splashing one's face."

This shows that the Decree on the Code of Ethics of the Indonesian Doctors Association does not reflect the need for moral norms to be adopted as legal norms in law; for example, in this case, article 24B of the 1945 Constitution jo. Law Number 22 of 2004 concerning the Judicial Commission can be used as a concrete example that moral norms can be adopted as legal norms. Therefore, violations of these norms

⁴ Abdulkadir Muhammad, 2004, *Etika Profesi Hukum*, Citra Aditya Bakti, Bandung, p.30.

can result in strict sanctions, even though not in criminal law, because these violations are violations of the judge's code of ethical behavior. For example, a judge commits a disgraceful act, which, from a legal perspective, does not yet qualify as a criminal act but is still threatened with sanctions for ethical violations. If the Decree on the Code of Ethics of the Indonesian Doctors Association does not apply the idea of the need for moral norms to be adopted to be used as legal norms in law, it will create legal uncertainty in the application of sanctions against doctors who commit disgraceful acts against their colleagues if seen from a legal perspective it is not yet true. Up to the qualifications of criminal acts, however, they are still threatened with sanctions regulated in the code of ethics, whereas in the Decree on the Code of Ethics of the Indonesian Doctors Association, there is no article regarding the imposition of sanctions, so this will give rise to injustice. In essence, for violations of ethics, the sanctions are in the form of discipline/prosecution as stated in the ethical theory regarding the difference between ethics and law, linked to the ethical theory mentioned above that the Decree on the Code of Ethics of the Indonesian Doctors Association should contain regulations regarding sanctions in the form of discipline/prosecution as in accordance with ethics as a discipline. Science is related to the critical study of good or bad customs, values, and norms of human behavior.

The concept of the difference between ethics and law is as follows:

- a. Ethics applies to the professional environment. The law applies to the public
- b. Ethics are prepared based on the agreement of members of the profession. Laws are drafted by government bodies
- c. Ethics is not all written down. The law is stated in detail in the law book and gazette/minutes
- d. Sanctions for ethical violations are in the form of discipline/prosecution.

Sanctions for violations of the law are in the form of prosecution

- e. Resolution of ethical violations is not always accompanied by physical evidence. Legal violations are resolved through physical evidence ^[5].

In essence, the application of sanctions for ethical violations, when linked to sanctions theory, has the following functions: According to Suharsimi Arikunto's opinion regarding punishment as follows:

1. Leisure Theory

This theory states that giving punishment to a subject who commits a wrong action will weaken the stimulus-reaction relationship between the wrong action and the punishment.

2. Deterrence Theory

This theory states that if the subject receives punishment, he will not repeat the action that caused the original punishment.

3. Motivational Systems Theory

This theory states that if an individual receives punishment, there will be a change in the motivation system within the individual

Discussing the form of accountability in the Decree on the Code of Ethics of the Indonesian Doctors Association for Violations of the Code of Ethics between Colleagues requires sanctions as a form of legal certainty, justice, and legal benefits felt by the doctor who is harmed by these actions, so to provide legal certainty, it would be good to have a concept about Colleagues' ethical violations and sanctions are regulated in regulations (regeling) not only regulated in decisions (beschikking) because regulations are laws that are in abstracto or general norms which are generally binding (generally applicable) and their task is to regulate matters of a general nature (general). Using a legal comparison method with other professions which regulates codes of ethics such as respect for colleagues, including regulations for actions and sanctions for the profession in question, namely the Advocate profession. The Advocate profession is essentially the same as the medical profession which provides services to the community. The code of ethics for the Advocate profession is regulated in regulations (regeling), namely Law Number 18 of 2003 concerning Advocates (hereinafter referred to as the Advocate Law). Referring to the Law on Advocates there are regulations regarding actions or sanctions against advocates who violate the code of ethics as regulated in article 7 of the Advocate Law which regulates:

(1) The types of actions imposed on Advocates can be in the form of

- a. verbal warning;
- b. written warning;
- c. temporary dismissal from the profession for 3 (three) to 12 (twelve) months;
- d. Permanent dismissal from the profession.

(2) Provisions regarding the types and levels of actions that can be subject to action as intended in paragraph (1) are further regulated by a Decree of the Honorary Council of the Advocates' Organization.

(3) Before an Advocate is subjected to the action as intended in paragraph (1), the person concerned is given the opportunity to defend themselves.

2.2. Implications of the Indonesian Doctors Association Code of Ethics Decree does not regulate sanctions

The regulation of sanctions in the Decree on the Code of Ethics of the Indonesian Doctors Association reflects Normative Ethics, which is Ethics that determines various ideal attitudes and behaviors that humans should have or what humans should carry out and what actions are valuable in this life ^[6]. Therefore, Normative Ethics are norms that can guide people to act well and avoid bad things in accordance with agreed rules or norms that apply in society. When sanctions are not stated in the Decree on the Code of Ethics of the Indonesian Doctors Association ^[7]. The implications that arise from not regulating sanctions in the Indonesian Doctors Association Code of Ethics Decree are:

⁵ Achadiat, c. M. 2007. *Dinamika Etika dan Hukum Kedokteran dalam Tantangan Zaman*, Jakarta: EGC Medical Book Publishers, p.26.

⁶ CST Kansil and Christine ST Kansil, 2006. *Pokok-pokok Etika Profesi Hukum*, PT. Pradnya Paramita, Jakarta, p.40

⁷ EY Kanter, 2001, *Etika Profesi Hukum: Sebuah Pendekatan Sosio Religius*, Stora Grafika, Jakarta, p.49

1. There is no legal certainty, justice and expediency in imposing sanctions by the MKDI for ethical violations between colleagues. In essence, the regulation of sanctions in the form of discipline/prosecution in the Decree on the Code of Ethics of the Indonesian Doctors Association is to be reflected in the theory of legal objectives presented by Gustav Radbruch, giving his view that There are three objectives of the law, namely expediency, certainty, and justice.

2. There is no deterrent effect for changes that conflict with the code of ethics because the Decree on the Code of Ethics of the Indonesian Doctors Association does not regulate disciplinary sanctions/prosecution. There is no motivation to change into a good individual because the doctor knows that the Indonesian Doctors Association Code of Ethics Decree does not regulate disciplinary sanctions/or prosecution. Therefore, this may trigger doctors not being motivated to change into better individuals per the Decree of the Code of Ethics of the Indonesian Doctors Association. Leading in the theories regarding sanctions for the punishment of violations according to Good and Grophy, a psychologist as quoted by Suharsimi Arikunto regarding punishment as follows:

1. Leisure theory

This theory states that giving punishment to a subject who commits a wrong action will weaken the stimulus-reaction relationship between the wrong action and the punishment.

2. Deterrence theory

This theory states that if the subject receives punishment, he will not repeat the action that caused the original punishment.

3. Motivational systems theory

This theory states that if an individual receives punishment, there will be a change in the motivation system within the individual ^[8].

Based on the implications above, when linked to the theories regarding punitive sanctions, it shows that the Decree on the Code of Ethics of the Indonesian Doctors Association, because it does not regulate disciplinary sanctions/prosecution, reflects a conflict with the theories regarding punitive sanctions for violations according to Good and Grophy, a psychology expert as stated in quoted by Suharsimi Arikunto ^[9].

3. Conclusion

3.1. Conclusion

1. Forms of responsibility for violations of the code of ethics between colleagues in the Decree on the Code of Ethics of the Indonesian Doctors Association do not contain provisions regarding civil sanctions/prosecution but only regulate prohibitions.
2. The implications that arise from not regulating sanctions in the Indonesian Doctors Association Code of Ethics Decree are that there is no legal certainty, justice, and expediency in imposing sanctions by the MKDI for ethical violations between colleagues; there is no deterrent effect on treatment that conflicts with the code of ethics; and there is no motivation to change into a good individual.

3.2. Suggestions

1. Review the Indonesian Doctors Association Code of Ethics Decree containing disciplinary sanctions/prosecution provisions.
2. Examining the moral norms in the Decree on the Code of Ethics of the Doctors Association adopted as a legal norm in a statutory regulation.

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⁸ Suharsimi Arikunto, *Loc. Cit.*

⁹ *Ibid.*