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Measuring the Boundaries of Criminal Liability for Obscene Acts in Medical Treatments (Case Study of Decision Number 114/Pid.Sus/2021/PN.Idi)

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ABSTRACT

Objectives of the study: This study examined the boundaries of criminal liability for the obscene act of doctors in providing medical treatments to patients beyond their authority. In addition, this study further investigated the panel of judge *ratio decidendi* towards the case.
Methodology: This study employed a doctrinal method with a statutory approach, a conceptual approach, and a qualitative analysis.
Results: The defendant's actions in Decision Number 114/Pid.Sus/2021/PN.Idi is categorized as malpractice or obscene acts, in which determining parameters are related to acts of violation of medical ethics, medical discipline and/or violations of criminal law. The assessment of the boundaries of criminal liability of doctors in the process of proving a case in court requires information from examination sessions by the MKEK and/or MKDI institutions. The role of MKEK and/or MKDI is urgent; however, their authorities are dissimilar, and the results of their examinations do not bind the criminal court decision.
Applications of this study: This study evaluated the liability of doctors in both criminal and ethical liability. In addition, this study serves as an evaluation tool for judges'

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logical approach.
Novelty/ Originality of this study: This study examined the criminal and ethical liability of doctors in a case study.
Keywords: *Malpractice, Standard Operating Procedure, Competency Standard*

ABSTRAK

Tujuan*: Penelitian ini mengkaji batas-batas pertanggungjawaban pidana atas perbuatan cabul dokter dalam memberikan perawatan medis kepada pasien di luar kewenangannya. Selain itu, penelitian ini menyelidiki lebih lanjut tentang pertimbangan majelis hakim (rasio decidendi) terhadap kasus tersebut.*
Metodologi*: Penelitian ini menggunakan metode doktrinal dengan pendekatan statute (perundang-undangan), pendekatan konseptual, dan analisis kualitatif.*
Temuan*: Tindakan tergugat dalam Putusan Nomor 114/Pid.Sus/2021/PN.Idi dikategorikan sebagai malpraktik atau perbuatan cabul, dimana parameternya mengacu pada tindak pelanggaran etika kedokteran, disiplin kedokteran, dan/atau pelanggaran hukum pidana. Penilaian batas-batas pertanggungjawaban pidana dokter dalam proses pembuktian suatu perkara di pengadilan memerlukan keterangan dari sesi pemeriksaan yang dilakukan oleh lembaga MKEK dan/atau MKDI. Peran MKEK dan/atau MKDI sangat penting, namun kewenangan dua lembaga tersebut berbeda, dan hasil pemeriksaan dua lembaga ini tidak mengikat pada putusan MK.*
Kegunaan*: Penelitian ini mengevaluasi tanggung jawab dokter dalam pertanggungjawaban pidana dan etika. Selain itu, penelitian ini berfungsi sebagai alat evaluasi untuk pendekatan logis para hakim.*
Kebaruan/Orisinalitas*: Penelitian ini mengkaji tanggung jawab pidana dan etika para dokter dalam sebuah studi kasus.*
Kata kunci: *Malpraktik, Standar Operasional Prosedur, Standar Kompetensi*

INTRODUCTION

The role of doctors is crucial in improving public health and the quality of hospital treatments (Kayus Koyowuan Lewloba, 2008: 181). Doctors are authorized to perform medical treatments, as well as physical and psychological examinations of patients (Edo Rezaldy E, Neni Sri Imaniyati, & Faiz Mufidi, 2020). Treatments are based on competence and compliance

with medical standards and standard operating procedures (Astutik, 2017:269-270). Negligence in conducting medical examinations that deviate from procedures or intentionally perform an active or passive action, which results in harm to the patient, is categorized as malpractice (Selly Ismi Qomariyah, Y.A Triana Ohoiwutun, & Sapti Prihatmini, 2018: 499). Doctors who commit malpractice can be held accountable according to law, while patients have the right to sue doctors based on Article 66 Paragraph 1 Law Number 29/2004 on Medical Practice (hereinafter referred to as UUPK).

The patient lawsuit against doctors, whether in criminal or civil proceedings on allegations of medical malpractice, is intricate, considering that in performing their professional duties, doctors' ethics are regulated in the Indonesian Medical Code of Ethics (hereinafter abbreviated as KODEKI). The enforcement of KODEKI as a doctor's ethics is conducted by the Honorary Council of Medical Ethics (hereinafter referred to as MKEK), while the disciplinary standards for enforcement of Indonesian medical treatments are conducted by the Honorary Council of Indonesian Medical Disciplines (hereinafter referred to as MKDKI) (Kastania Lintang & Bahrun Azmi Hasnati, 2021). If there is a suspicion of a legal violation, law enforcement officials generally do not immediately initiate legal proceedings without undergoing the MKEK and/or MKDKI examinations and trials (Asep Sukohar & Novita Carolia, 2016: 363). However, not all cases of alleged medical malpractice involve MKEK and/or MKDKI in law enforcement practices, especially criminal law. The presence of MKEK and/or MKDKI focused on enforcing medical ethics. Therefore, it differs from law enforcement, although in some cases, the role of MKEK and/or MKDKI is urgent in proving legal cases, as evidenced by the High Court of Surabaya Decision No. 302/PID/2021/PT.SBY, District Court of Makassar Decision Number 1441/Pid.Sus/2019/PN Mks was ultimately decided by the Supreme Court in Decision No. 233 K/Pid.Sus/2021.

This study assesses and provides arguments regarding the presence and urgency of the role of MKEK and/or MKDKI in criminal law enforcement practices, which have direct and indirect implications in the process of proving obscenity committed by doctors against their patients. This study refers to the decision of the Idi District Court dated November 3, 2021, *in casu* Decision Number 114/Pid.Sus/2021/PN.Idi. The verdict “discharged all lawsuits from all lawsuits” in Decision Number 114/Pid.Sus/2021/PN.Idi open opportunity to examine the nature of obscene acts as specified in Article 294 paragraph 2 of the second Criminal Code related practice of medical treatment regarding specialist surgeons.

Decision Number 114/Pid.Sus/2021/PN.Idi examined the defendant, dr. H bin A (hereinafter referred to as the defendant), a surgeon at the Abdul Aziz Syah Peureulak Regional General Hospital (hereinafter referred to as the AAS Hospital) in East Aceh Regency, in a case of sexual abuse against two adult female witnesses/ victims who were sisters. Witness/victim I was unmarried and was 21 years old, while witness/victim II was married and was 26 years old.

Witness/victim I returned to the AAS Hospital on June 2, 2020, for an examination of the right breast due to the presence of a lump following a previous surgery for a left breast tumor in March 2020. The defendant underwent an examination using an ultrasound device; however, the ultrasound device did not function properly. According to Decision Number 114/Pid.Sus/2021/PN.Idi., the defendant moistened his hands with gel, removed her leggings and underwear, and bent the leg of witness/victim I, then the defendant put his right finger into the vagina of witness/victim I, and the defendant's left hand touched the right breast of witness/victim I. Furthermore, the defendant pulled his finger from the vagina of witness/victim I, then kissed the forehead of witness/victim I.

According to Decision Number 114/Pid.Sus/2021/PN.Idi., on June 3, the defendant also conducted a vaginal examination on witness/victim II, who was waiting for witness/victim I surgery. The examination was conducted since witness/victim II did not have children. The defendant inserted more than one finger of his right hand into the vagina of witness/victim II, and the defendant's finger was inserted in depth, causing witness/victim II to experience piercing pain in the right side of the abdomen. The defendant then took his finger out of the vagina of witness/victim II and inserted his finger into the vagina of witness/victim II for up to 10 seconds, then took his finger out and repeatedly inserted his finger into the vagina of witness/victim II.

The defendant was charged with committing the crime of obscenity as stipulated in Article 294 paragraph 2 of the Criminal Code. In Decision Number 114/Pid.Sus/2021/PN.Idi, the public prosecutor alternatively charges according to Article 294 paragraph 2 of the Criminal Code or Article 46 UUPK. However, the focus of the study is limited to highlighting the charges and lawsuits based on Article 294 paragraph 2 of the Criminal Code concerning the crime of obscenity committed in a hospital. It does not focus on alternative charges of Article 46, paragraph 2 of UUPK. The defendant's actions are interesting to study from a criminal law perspective because the judge's decision is not supported by evidence of whether or not there was a violation of medical ethics and/or discipline. This phenomenon is considered interesting as ethical violations are not identical to violations of the law, and violations of the law are not identical to violations of medical ethics (Ganesha Putra Purba, 2021). The parameters for determining ethical, disciplinary, and legal violations have different consequences and domains, and Decision Number 114/Pid.Sus/2021/PN.Idi reflects the unique portrait of law enforcement in the medical profession.

The author has not discovered similar articles or writings to the article 'Measuring the Boundaries of Criminal Liability for Obscene Acts in Medical Treatment Practices'. The author discovered that Hasrul Buamona's study focused on doctors' criminal liability in medical errors (Hasrul Buamona, 2014). Cassation Decision No. 365 K/Pid/2012 describes the suitability of doctors' criminal liability in medical errors; Firdalia Emyta Nurdiana Isliko et al. focused on criminal liability for medical personnel who commit malpractice under UUPK (Firdalia Emyta Nurdiana Isliko, Gde Made SwardhanaI, & Made Walesa Putra, 2018); Josua Gideon Kawenas emphasized on the criminal law enforcement for doctors and other medical professionals in the

field of healthcare crimes, including the application of the provisions of the act with intentionality and negligence specified in the Criminal Code, UUPK, and the Health Law (Josua Gideon Kawenas, 2019). Regarding the studies above, this study differs from previous scientific writings.

Doctors' criminal liability is 'almost' identical to medical malpractice (Muh Endriyo Susila, 2021). However, cases of obscenity committed by doctors in medical treatments against their patients have not been discovered in journal articles, books, or other scientific papers. Therefore, this study will initially describe the parameters for determining actions that contain obscenity by doctors against patients regarding ethics, medical discipline, and criminal law. Based on the parameters of the medical treatment, the description is followed with an assessment of the boundaries of criminal liability that can be undertaken by a doctor in performing their professional duties.

RESEARCH METHOD

This study employed a doctrinal research method related to the application of positive law norms or rulings concerning obscene acts committed by a medical professional, specifically a doctor, while exploring coherent elements of liability (Terry Hutchinson & Nigel Duncan, 2012). The statutory approach and conceptual were employed as the basis for analyzing the focus of the problem related to the case study of Decision Number 114/Pid.Sus/2021/PN.Idi. The statutory approach examined laws and regulations related to established legal issues, while the Conceptual approach studied the views and doctrines that develop in the science of law (Peter Mahmud Marzuki, 2016: 177-178). This study utilized a literature review as a data collection tool that was qualitatively analyzed.

RESULTS &DISCUSSION

Parameters for Determining Obscene Acts of Doctors against Patients regarding Medical Ethics, Medical Discipline, and Criminal Acts

In the Indonesian Criminal Code, obscenity is categorized as an act violating decency. As a noble profession *(officium nobile),* the medical profession is privileged professionally to examine a patient's body, both externally and internally, with informed consent (Helena Primadianti Sulistyaningrum, 2021: 170). The 'touches' committed by a doctor are based on professional purposes or needs related to medical treatments (Ricky, 2020: 3). Purposes of medical treatments are justifications that can be evaluated from ethical, moral, and legal aspects. It can be considered that as long as there is no justification for 'touching' the patient's body, the doctor's actions can be categorized as malpractice (Diana Haiti, 2017; Julius Roland Lajar, Anak Agung SagungLaksmi Dewi, & I Made Minggu Widyantara, 2020; Ninik Mariyanti, 1998: 37).

The violations of medical ethics or medical discipline are not always identical to violations of the law. Violation of medical ethics and medical discipline is considered negligence. Negligence occurs in cases of malfeasance, misfeasance, and nonfeasance (Asep Sukohar & Novita Carolia, 2016: 366). Consequently, a comprehensive assessment of a doctor

requires peer evaluation. The absence of the MKEK and/or MKDKI in the court process in Decision Number 114/Pid.Sus/2021/PN.Idi is crucial in law enforcement regarding allegations of malpractice. The role of MKDKI exclusively focuses on the assessment of how valid a medical assessment, medical treatments, and the overall professional judgment of a doctor is (Sapta Aprilianto, 2015: 528). Meanwhile, MKEK upholds doctors' ethical guidelines and integrity (Julius Pelafu, 2015). Comprehension of the domain of ethics or medical discipline is best determined by medical professionals, and Decision Number 114/Pid.Sus/2021/PN.Idi illustrates the urgency of the role of MKEK and/or MKDKI in resolving malpractice cases in Indonesia.

In the case of Decision Number 114/Pid.Sus/2021/PN.Idi, the defendant examined witness/victim I, who had a tumor on the right breast through a vaginal touch due to the ultrasound device malfunction, despite being contrary to the patient's needs. Article 50(b) and Article 51 (a) UUPK, Article 58 paragraph 1 letter (a) Law Number 36 of 2014 on Health Workers, and Article 21 PP No. 32 of 1996 on Health Workers state that doctors, in performing medical treatments, have the right and obligation to provide medical treatments to patients in accordance with the patient's medical needs. In addition, doctors, regarding medical treatments, must comply with procedural and professional standards (Sapta Aprilianto, 2015: 533). Standard procedure is a series of instructions employed to perform the activities of an organization or public service provider that has been written and standardized; meanwhile, professional standards are a prerequisite for doctors performing their professional duties (Astutik, 2017: 255). According to the Official Explanation of Article 50 UUPK, Professional standards act as the minimum ability (knowledge, skill, and professional attitude) an individual must master to perform professional activities for society, independently formulated by professional organizations.

Article 51 UUPK is the basis for professional standards. In addition, it acts as a medical practice guideline consisting of skills, knowledge, and professional attitude. In professional standards, there are two foundations of authority: material authority based on the expertise of a doctor, which is possessed by the doctor, meaning that the doctor is allowed to perform medical treatments if it is under his competence; meanwhile, formal authority refers to the authority according to statutory provisions, meaning that doctor is allowed to perform medical treatments if having a registration certificate and practice permit, and doctors must perform medical treatments according to their competence (Sapta Aprilianto, 2015: 533).

The defendant's act of “providing medical treatments” to witness/victim II could not be justified, considering it was unregistered. The defendant, as a surgeon, is not competent in providing medical treatments to patients with fertility needs since it is the competency of an obstetrician or gynecologist, especially stated by Article 27 UUPK, Article 29 paragraph 3 UUPK, and Article 69 paragraph 4 of the Health Law. The defendant’s act against patients is beyond his competence, which can be categorized as violating material authority—violating the competence of a surgeon (Sapta Aprilianto, 2015a).

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In his testimony, the defendant stated that the examination of witness/victim II was conducted voluntarily and without registration as the defendant was already acquainted with witness/victim II. The examination of witness/victim II violated procedural and professional standards. The defendant performed a medical examination beyond competence and violated administrative procedures before the patient was examined. In Decision Number 114/Pid.Sus/2021/PN.Idi., it is considered that it was the first time the defendant met witness/victim II, even though the defendant voluntarily examined for free and intended to provide medication to witness/victim II.

Regarding the chronology of the defendant's actions in Decision Number 114/Pid.Sus/2021/PN.Idi, the medical treatment to witness/victim I and witness/victim II was obviously conducted contrary to the patient's medical needs. This case violates in terms of UUPK, UU no. 36 of 2009 concerning Health (hereinafter referred to as the Health Law), professional standards, and procedural standards. Therefore, the defendant's actions violate the law, ethics, and discipline of medical practice. Therefore, the involvement of MKEK and/or MKDKI is *a conditio sine qua non* in strengthening judges' arguments or *ratio decidendi* in resolving the case.

The authority of MKEK and MKDKI in every legal examination related to alleged malpractice, particularly in the context of criminal law, is inseparable from examining criminal cases to find material truth (Masyelina Boyoh, 2015: 115). The defendant's act of "vaginal examination" against witness/victim I and checking the forehead of witness/victim II was clearly outside his competence as a surgeon. Furthermore, the act of kissing witness/victim I was definitely inappropriate. In addition, the procedure for examining witness/victim II without the patient admission registration process at AAS Hospital is a violation of administrative procedures which is also related to violations of the rights and obligations of doctors and patients (Richard Nuha, 2016).

Referring to Decision Number 114/Pid.Sus/2021/PN.Idi, the violations committed by the defendant can be described in detail as follows:

- Administrative violation: in this case, the defendant violated hospital administration procedure, including examining witness/victim II without registration as part of an administrative requirement for hospital treatments, and the defendant examined witness/victim I and witness/victim II without any nurse assistance. Inspection against witness/victim II without undergoing the registration procedure correlates with the absence of medical records in medical treatments and violates Article 46 paragraph 1 UUPK;
- Violation of competence: the defendant conducted an examination unfit with his competence as a surgeon by examining the witness/victim II which should be the competency of an obstetrician *(obgyn),* and a digital vaginal examination of the witness/victim I, and the witness/victim II is not part of his competence as a surgeon;

- Violations in medical treatments: in this case, the defendant took action beyond witness/victim I's complaint due to her breast lumps; however, the defendant did a digital vaginal examination of witness/victim I and II.

Referring to the Decision Number 114/Pid.Sus/2021/PN.Idi, the defendant had violated several provisions in performing the duties of a surgeon. However, the 'vague' boundaries among violations of ethics, medical discipline, and law violations should be under each institution's jurisdiction. In this case, violations of ethics are under the authority of MKEK; violations of medical discipline fall under the authority of MKDKI; and law violations fall under the authority of law enforcement officials. Regarding Decision Number 114/Pid.Sus/2021/PN.Idi, the decision to discharge all lawsuits is not completely erroneous as it refers to the judge's belief principle, which results in valid evidence in court (*negatief wettelijk bewijstheorie),* as regulated in Criminal Procedure Code (Wika Hawasara, Ramlani Lina Sinaulan, & Tofik Yanuar Candra, 2022: 587). Proof of criminal cases in a formal juridical, based on Article 183 of the Criminal Procedure Code, requires a judge to impose a crime according to a minimum of two valid pieces of evidence, and the judge believes the defendant is guilty of committing a crime (Fachrul Rozi, 2018: 21). However, the current practice of the evidentiary process in criminal justice does not run as it should be. Furthermore, the author has another perspective in assessing the essence of the decision, especially from the aspect of criminal responsibility, as described in the next section.

Assessment of the Boundaries of Doctors' Criminal Liability in Professional Duties

Decision Number 114/Pid.Sus/2021/PN.Idi still fails to meet the expectation in examining alleged malpractice from the criminal law perspective. The defendant's actions have caused harm to victims as patients in medical treatments. Article 50 of the PK Law determines that standard operating procedures are instructions or steps to complete a specific routine of work process that must be implemented in every medical treatment. Standard operating procedures encompass appropriate steps according to a consensus to implement various activities and functions of medical treatments following professional standards (Sapta Aprilianto, 2015: 533). Standard operational procedures have been developed for each field, and breast examination procedures at AAS Hospital have been arranged systematically.

Examining breast tumors in patients is a doctor's competence, and the diagnosis of breast tumors or breast abnormalities can be initially established through *anamnesis* (Sylvani Gani, 2019: 10). During the examination, the doctor will ask for informed consent to the examination of the patient's, including by touching patient's body. If the patient agrees, the doctor proceeds with the physical examination, provided that the examination is conducted in the area of the body part that the patient allows (Dionisius Felenditi, 2009). For example, in a breast tumor, an examination is conducted in the breast area (Sylvani Gani, 2019: 12).

The defendant's medical examination of witness/victim I, who complained of a lump in the breast or breast tumors, should not require a digital vaginal examination, which is similar to the examination of witness/victim II for fertility concerns. The vaginal examination performed

on witnesses/victims I and II was not in accordance with the patient's needs and the defendant's competency. The defendant's actions can be categorized as ethical violations (Endrio Firaldo Dandel, Veibe V. Sumilat, & Roy R. Lembong, 2021: 80), medical discipline violations (Heri Setiawan, Devka Octara P A G, & Nicolaas Sugiharta, 2018: 112) and criminal law violations (Meli Hertati Gultom, 2022: 207-210). The defendant's violation of medical discipline was based on Article 3 paragraph 2 of the Indonesian Medical Council Regulation Number 4 of 2011 concerning the Professional Discipline of Doctors and Dentists, which does not refer patients to doctors who have competence following the patient's illness, performing examinations that do not meet medical needs and failure to make medical records.

Regarding the therapeutic transaction relationship, the defendant's actions can be considered malpractice. The types of malpractice committed by the defendant are administrative and criminal malpractice. In this case, administrative malpractice was on an unrecorded medical record in medical treatments against witness/victim II. In contrast, criminal malpractice was caused by the defendant's carelessness, which does not correspond with their expertise as a surgeon. The defendant examined witness/victim II with a fertility concern which should have been an Obgyn competency. Defendant's action was also contrary to the witness/victim I need, who complained due to her breast lump, but the defendant conducted a vaginal examination by touching witnesses/victims I and II.

The defendant's actions can be categorized as medical malpractice because they fulfill the three elements of liability, which include negligent actions that can be used as a problem or culpability, incurred losses or damages, and causal relationship, and the fulfillment of the three elements of liability in medical malpractice (Triana Ohoiwutun, 2007: 64). In addition, a doctor can be considered to have committed malpractice if the doctor is negligent in performing his duties, and his negligence becomes a problem for the patient, causing harm to the patient (Julius Roland Lajar et al., 2020: 7). The patient's harm, in Decision Number 114/Pid.Sus/2021/PN.Idi can be proven by *Visum Et Repertum* Number 010/1366/2020, dated June 15, 2020, on the examination of witness/victim I, and *visum et repertum* Number 010/1390/2020, dated June 17, 2020 for the examination of witness/victim II. The conclusion of the two *visum et repertum* mentioned that the hymen was not intact due to a blunt object.

Referring to Decision Number 114/Pid.Sus/2021/PN.Idi, the defendant's act beyond his competence as a surgeon is not only included in the act of medical malpractice but has fulfilled the elements of Article 294 paragraph 2 of the Criminal Code. *Visum et repertum,* or a testimony made by a doctor regarding their observations on an object examined and treated as evidence in a criminal case (Soeparmono R, 2016: 16) which was made in this case was conducted 15 days after the vaginal examination committed by the defendant against witness/victim I and witness/victim II, indicating that the hymen of both witnesses was torn due to a blunt object. The panel of judges in this decision doubted the similarity of the *visum et repertum* examination results between witness/victim I and witness/victim II, in which the status of witness/victim I had never been married and witness/victim II had been married for eight years. However, the

results of the *visum et repertum* indicated identical results. Referring to Decision Number 114/Pid.Sus/2021/PN.Idi, the doctor who made the *visum et repertum* was not present to provide testimony at trial, which benefited the defendant.

In Decision Number 114/Pid.Sus/2021/PN.Idi, a forensic psychologist expert stated that witness/victim I and witness/victim II experienced prolonged trauma, depression, and high levels of anxiety, were easily nervous, tense, and difficult to concentrate, which is consequently in need of assistance. However, the panel of judges assessed witness/victim I and witness/victim II did not show signs of depression, trauma, or a high level of anxiety, based on the judge's assessment because the two victim/witnesses were able to answer questions effortlessly during the examination process at trial. Nevertheless, psychological assessment is conducted with various complex aspects and may result in long-term effects, including eating disorders, sexual problems, and anxiety (Lalit Batra, Khirod K. Mishra, Sunil Sharma, Neelanjana Paul, & Arun Marwale, 2022). Therefore, the ability of victims to answer questions effortlessly in court is irrelevant to their psychological state.

Decision of discharging all lawsuits of the defendant (*ontslag van rechtvervolging*) in Decision Number 114/Pid.Sus/2021/PN.Idi requires further scrutiny if it is based on the facts revealed at trial. In their considerations, judges are far from being objective in examining cases (Samuel Mulyadi Sianipar, July Esther, & Jinner Sidauruk, 2019: 55-64). The judge should focus on the chronology of events and the evidence submitted in the form of witness testimony, testimony from forensic psychologist experts presented at trial, *visum et repertum*, and the defendant's testimony. The defendant's actions clearly contained intention (*mens rea*) to commit the crime of obscenity through his profession as a doctor, both against witness/victim I and witness/victim II. The panel of judges is not in line with Article 8 Paragraph 2 of Law Number 48/2009 on Judicial Power[1], which states that in considering the severity of the sentence, the judge must consider the defendant's bad and good nature.

The defendant's malicious intent, or *mens rea*, could be identified from the defendant who intended to examine witness/victim II at the house of witness/ictim II's mother on the pretext that the husband of witness/victim II was present at the house of witness/victim II (Edo Bintang Joshua, 2021: 3932). In addition, the defendant was examined without undergoing the patient registration process at the AAS Hospital. The judge's objectivity should be scrutinized regarding the facts revealed at trial, where the judge has disregarded the testimony of forensic psychology experts and the defendant's actions committed beyond his competence. Moreover, the defendant's act of kissing the forehead of witness/victim I evidently demonstrates the defendant's malicious intent. The absence of MKEK and MKDKI as institutions with authority to assess the nature of the defendant's actions should have been able to be presented at trial and assisted the judge in deciding the case.

[1] Law Number 48 of 2009 concerning Judicial Powers Article 8 paragraph (2) states "in considering the severity of the crime, the judge must also pay attention to the good and bad characteristics of the defendant".

The ratio decindendi in Decision Number 114/Pid.Sus/2021/PN.Idi, which decided to discharge the defendant of all lawsuits, is erroneous. The defendant's malicious intent in abusing his profession as a surgeon against witness/victim I and witness/victim II resulted in harm toward the victim, who was a patient. The presence of four pieces of evidence presented at trial (witness testimony [both victim witnesses and fact witnesses], forensic psychology expert testimony, a letter of a *visum et repertum*, and the defendant's testimony) was unable to convince the judge in deciding the case that the defendant had been proven guilty of the crime of obscenity and criminal malpractice. Proving the Decision Number 114/Pid.Sus/2021/PN.Idi case is quite difficult since there are no fact witnesses who directly saw all the defendant's actions. However, the evidence in other cases presented by the public prosecutor was unable to convince the judge to examine and decide the case. Consequently, the judge's decision is acquittal from all lawsuits.

CONCLUSION

Decision Number 114/Pid.Sus/2021/PN.Idi. demonstrates the subtle distinction between medical treatments and obscenity regulated in criminal law and defective enforcement. Therefore, it creates parameters that intersect between the domain of medical ethics, medical discipline and/or violations of criminal law. Consequently, it is imperative to emphasize MKEK and MKDKI complicity in examining and assessing violations of medical ethics and medical discipline to support criminal law enforcement. Regarding an example in Decision Number 114/Pid.Sus/2021/PN.Idi., it would contribute to future decisions on medical malpractice cases.

The judge's decision appeared to lack objectivity, thoroughness, and comprehension of the case. In determining medical malpractice, the judge failed to consider the parameter of "three elements of liability" to determine medical malpractice and the presence of malicious intent. Meanwhile, the court evidence proved that the defendant deliberately caused harm to the patient; however, the judge's decision proved flawed.

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