

A Juridical Study Of Immaterial Compensation Lawsuit Decision 283/Pdt.G/2017/PN.JKT.PST

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Abstract.

This research aims to analyze Decision 283/Pdt.G/2017/PN.JKT.PST regarding the immaterial compensation lawsuit. The case's position was a patient named Siti Chomsatun, who sought treatment at Kramat 128 Hospital, Jakarta, where medical malpractice occurred, causing harm to the patient. Furthermore, the patient filed an immaterial compensation lawsuit against Kramat 128 Hospital Jakarta. This research was normative legal research with statutory, case, and conceptual approaches. The legal materials used consisted of primary and secondary legal materials. Primary legal materials were in the form of statutory regulations, and secondary legal materials were in the form of scientific works and documents. In the research results, Siti Chomsatun, as the plaintiff, filed a lawsuit for immaterial compensation against Kramat 128 Hospital Jakarta in Rp—300,000,000 due to physical suffering. The Court's decision on the plaintiff's lawsuit was not granted in full because the plaintiff could not prove the losses suffered. Meanwhile, no regulations strictly regulated the legal basis for immaterial losses.

Keywords: *Lawsuit, compensation and immaterial.*

I. INTRODUCTION

According to Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia (the 1945 Constitution), "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to be protected by a good and healthy life and has the right to receive health services". Article 28 H (1) of the 1945 Constitution states that everyone has the right to receive health services. It is a form of state responsibility to its citizens. Good, high-quality, and safe health services are part of human rights. Health services are a fundamental right that the Government must provide fairly and equally to all citizens. The health services intended are those carried out by health workers in accordance with their expertise and competence in their field in a professional manner. In health services, information is a patient's human right because, based on that information, the patient can decide on a medical procedure that will be carried out on him¹. According to Lavey and Loomba, health services are any efforts carried out individually or jointly within an organization to improve and maintain health aimed at individuals, groups, or communities². Efforts to improve health through health services are essential to ensure that the level of health becomes better and increases. In addition, the actions of health workers may result in legal violations in the form of medical malpractice, which can harm the patients and/or their families. Violations of law can be in the form of Civil, Criminal, and Administrative Laws.

Violations of Civil Law result in compensation sanctions, which can be material and/or immaterial losses. In terms of civil law violations, it can involve health workers or the hospital where the health worker works. Thus, the responsibility can engage health workers and hospitals. For instance, a case of Siti Chomsatun, a patient who was a victim of malpractice at Kramat 128 Hospital, Jakarta. Brief chronology: In April 2009, Siti Chomsatun became a patient at Kramat 128 Hospital, Jakarta, due to swelling of the thyroid gland (*goiter*). On April 13, 2009, Siti Chomsatun underwent Thyroidectomy (thyroid removal) at Kramat 128 Hospital by Dr. Taslim Mansur SP.B (Onk). After the operation, Siti Chomsatun underwent an outpatient period under the management of Kramat 128 Hospital. One of the doctors who handled the

outpatient period was the Late. Dr. Rusmaryono, Sp.THT. Based on the medical procedures committed by Kramat 128 Hospital Jakarta, medical malpractice occurred, which caused harm to the patient. The losses experienced by patients are in the form of material and immaterial losses. Therefore, it became a challenge for the author to analyze: Why was the patient's immaterial compensation lawsuit based on Decision 283/Pdt.G/2017/PN.JKT.PST not granted?

II. METHODS

This research was normative legal research. Normative legal research (*doctrinal research*) is research based on legal materials (*library-based*) that focuses on reading and studying primary and secondary legal materials; hence, legal research can produce new arguments, theories, or concepts with insights into solving existing problems³. The approaches used consisted of *statutory*, *case*, and *conceptual approaches*. The primary legal material was in the form of statutory regulations related to the issues discussed, including The 1945 Constitution of the Republic of Indonesia, the Code of Civil Law, Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice; Law of the Republic of Indonesia Number 36 of 2009 concerning Health; Law of the Republic of Indonesia Number 44 of 2009 concerning Hospitals; Law of the Republic of Indonesia Number 36 of 2014 concerning Health Workers; Law of the Republic of Indonesia Number 17 of 2023 concerning Health. Secondary legal materials included books, official documents, journals, scientific works, and articles related to the issues discussed. Legal materials collected through the literature study were analyzed using qualitative analysis.

III. RESULTS AND DISCUSSION

Siti Chomsatun was a victim of malpractice committed by Kramat 128 Hospital in February 2010. As a result of the malpractice, Siti Chomsatun then filed a lawsuit for unlawful acts (Article 1365 of the Civil Code) against the Main Director of Kramat 128 Hospital Jakarta, dr. Tantiyo Setyowati, M. Kes. and dr. Fredy Merle Komalig, M.K.M. Siti Chomsatun was represented by her lawyers: Alghiffari Aqsa, S.H., Nelson Nikodemus Simamora, S.H., Alldo Fellix Januardy, S.H., Husni Mubarak, S.H., Charlie M. Albajili, S.H., Yunita, S.H., LL.M., Matthew Michelle L., S.H., Sulaiman Khosyi Suharto, S.H. and Shaleh Al Ghiffari, S.H. from the Jakarta Legal Aid Institute (LBH), located at Jalan Diponegoro No. 74 Menteng, Central Jakarta based on Special Power of Attorney No. 587/SKK.PDT/ADV-PMU/IV/2017 dated April 27, 2017. This case began in April 2009. Siti Chomsatun was a patient at Kramat 128 Hospital in Jakarta experiencing swelling of the thyroid gland (*goiter*). On April 13, 2009, Siti Chomsatun underwent Thyroidectomy (Thyroid Removal) at Kramat 128 Hospital Jakarta with dr. Taslim Mansur Sp. B (Onk), one of the specialist doctors at Kramat 128 Hospital, Jakarta; he was also the doctor in charge of operations. After the operation process, Siti Chomsatun underwent an outpatient period under the care of Kramat 128 Hospital Jakarta, where one of the doctors who treated Siti Chomsatun during the outpatient period was Late. Dr. Rusmaryono, Sp. THT. Based on the examination and medical procedures committed by Kramat 128 Hospital Jakarta, there was an unlawful act in the form of medical malpractice, which caused material and immaterial losses to Siti Chomsatun.

Unlawful acts are regulated in Article 1365 of the Civil Code (KUHP): The basic principle mentions that every person who commits an act that violates the law and causes harm to other people must be responsible for their actions. The elements of unlawful acts are the act's existence, error, causality, and loss. Losses can be in the form of material and/or immaterial losses. Malpractice occurs as a result of medical actions carried out by doctors. Malpractice is any wrong attitude or lack of skill to an unreasonable degree⁴. Malpractice that occurs is medical malpractice, namely a medical action carried out in a bad or wrong way and does not comply with applicable norms⁵. Definition of Medical Malpractice, according to H. Syahrul Machmud: *Medical malpractice* is a medical action carried out by a doctor on a patient that is poor

or bad quality because it is committed below the required standards. M. Yusuf Hanafiah: Medical malpractice is the negligence of a doctor to use the level of skill and knowledge commonly used in treating patients or injured people in the same environment. Soerjono Soekanto: *Medical malpractice* is any action that causes liability⁶. Material losses can be valued in money as losses, costs, and profits/interest that should have been earned (Article 1243 in conjunction with Article 1246 of the Civil Code (Civil Code)). Meanwhile, immaterial losses in the form of moral losses are losses that initially cannot be said to have a monetary value. However, they may later be described in a certain amount of money, including by the Court's decision⁷. Immaterial losses are losses that cannot be assessed in money but are described in the form of a certain amount of money, which are subjective for the plaintiff, taking into account the status of the plaintiff and defendant and the social conditions of the community.

Due to an unlawful act (Article 1365 of the Civil Code) in the form of medical malpractice at Kramat 128 Jakarta Hospital, which harms Siti Chomsatun as a patient, she filed a lawsuit for immaterial compensation through her lawyer in the South Jakarta District Court. The defendants who are held legally responsible are:

1. Main Director of Kramat 128 Hospital, address at Jl. Kramat Raya No. 128 Jakarta, hereinafter referred to as Defendant I.
2. Tantiyo Setiyowati, dr. M.H., Kes., residential address unknown, works as a doctor at Kramat 128 Hospital, located at Jl. Kramat Raya No. 128 Jakarta, hereinafter referred to as Defendant II.
3. Fredy Merle Komalig, dr. M.K.M., residence address unknown, works as a doctor at Kramat 128 Hospital at Jl. Kramat Raya No. 128 Jakarta, hereinafter referred to as Defendant III.

According to Hans Kelsen, in his theory of legal responsibility, a person is legally responsible for a particular act or bears legal responsibility; it implies that he is responsible for a sanction in terms of conflicting act⁸.

Furthermore, according to Hans Kelsen's theory of legal responsibility, legal responsibility includes:

1. *Individual responsibility*: an individual is responsible for their violations.
2. *Collective liability*: an individual is responsible for an offense committed by another person.
3. *Liability based on fault*: an individual is responsible for an offense committed intentionally and cause harm.
4. *Absolute liability*: an individual is responsible for violations committed because they were unintentional and unexpected⁹.

Based on the theory of legal responsibility according to Hans Kelsen, as mentioned above, patient Siti Chomsatun, through her lawyer, sued based on unlawful acts (Article 1365 of the Civil Code) against Tantiyo Setiyowati, dr., M.H., Kes. and Fredy Merle Komalig, dr., M.K.M. as a doctor who provided health services to patients, Siti Chomsatun and the Main Director of Kramat 128 Hospital Jakarta were also sued referring to Article 46 of Law Number 44 of 2009 concerning Hospitals (Hospital Law): Hospitals are legally responsible for all losses caused by negligence committed by Health Workers in Hospitals, including Article 193 of Law Number 17 of 2023 concerning Health (2023 Health Law): Hospitals are legally responsible for all losses incurred due to negligence committed by Hospital Health Human Resources. The occurrence of an error is the basis for the emergence of legal responsibility for the perpetrator (Article 1365 of the Civil Code). However, there are times when the law still requires someone to compensate for losses, even if there is no element of wrongdoing in the behavior that causes harm to other people, as regulated in Article 1367 of the Civil Code¹⁰. It is implied as joint liability; hence, in a lawsuit, apart from suing the doctor, she also sued the Director of Kramat 128 Hospital. As a result, if one party has fulfilled its obligations, the other party is free from legal responsibility. In addition, based on the provisions of Article

46 of the Hospital Law, including Article 193 of the 2023 Health Law, Article 1367 of the Civil Code, third parties can be held legally responsible for actions committed by others.

'Others' are those who are under his supervision or responsibility. It emphasizes that the person who has a supervisory function, in this case, Kramat 128 Hospital Jakarta, is responsible for the legal consequences of health workers who work at Kramat 128 Hospital Jakarta. Before the case was filed, Siti Chomsatun's lawsuit as Plaintiff went to Court based on an unlawful act (Article 1365 of the Civil Code), Kramat 128 Jakarta Hospital first filed a complaint with the Indonesian Medical Discipline Honorary Council (MKDKI) on August 10, 2010. To MKDKI, Siti Chomsatun complained about two health workers at Kramat 128 Hospital, namely dr. Tantiyo Setiyowati and dr. Fredy Melke Komalig. After 23 months of case examination, on June 26, 2012, the MKDKI issued a decision regarding Siti Chomsatun's complaint No. 43/P/MKDKI/VIII/2010. Based on decision No. 43/P/MKDKI/VIII/2010 MKDKI, dr. Tantiyo Setiyowati., M.H., Kes and dr. Fredy Melke Komalig., M.K.M. was declared to have violated medical discipline for "not carrying out adequate medical action/care in certain situations which could harm the patient". It refers to Article 3 paragraph (2) letter *f* of the Indonesian Medical Council Regulation Perkonsil 4 of 2011 concerning the Professional Discipline of Doctors and Dentists with the following action details: (a) dr. Tantiyo Setiyowati M.H., Kes. gave *corticosteroids* to patients with shortness of breath caused by vocal cord paralysis. In *a quo* MKDKI decision, it is known that *corticosteroids* are not commonly given to patients with shortness of breath caused by vocal cord paralysis, where Siti Chomsatun should be handled to carry out strict observation measures.

(b) Fredy Melke Komalig., M.K.M. had prescribed an antihypertensive drug (*capritopril*) on prescription paper that was not his own. Hence, in regard to the MKDKI decision, the plaintiff, before filing a lawsuit through the Court, first took mediation based on the provisions of Article 29 of Law Number 36 of 2009 concerning Health (Health Law): If a health worker was suspected of committing negligence in carrying out his profession, the negligence must be resolved first through mediation, *yuncto* Article 310 of Law Number 17 of 2023 concerning Health (2023 Health Law): If a Medical Personnel or Health Personnel was suspected of making an error in committing their profession which caused harm to the Patient, the dispute arising as a result of the error is resolved first through an alternative dispute resolution outside the court. An alternative to resolving disputes outside the court, according to Article 310 of the 2023 Health Law when linked to Article 29 of the Health Law, is mediation. Mediation is a way of resolving disputes through a negotiation process to obtain agreement between the Parties with the assistance of a Mediator (Article 1 paragraph (1) Supreme Court Regulation or Perma Number 1 of 2016 concerning Mediation Procedures in Court) (Perma No. 1 of 2016). A mediator is a Judge or other party with a Mediator Certificate as a neutral party who assists the Parties in negotiating various possible dispute resolutions without resorting to deciding or forcing a settlement (Article 1 paragraph (2) Perma No. 1 of 2016). Due to a failed agreement during the mediation between the Plaintiff and the Defendant, the Plaintiff finally filed a lawsuit for unlawful acts against Kramat 128 Hospital Jakarta at the Central Jakarta District Court in the form of compensation for immaterial losses amounting to Rp. 300,000,000 (Three Hundred Million Rupiah).

An immaterial compensation lawsuit was possible based on Article 1365 of the Civil Code, where Article 1365 does not explain unlawful acts but explains their consequences, which cause harm. The Plaintiff, or Siti Chomsatun 's attorney, filed the lawsuit in April 2017 regarding case number 283/Pdt.G/2017/PN.Jkt.Pst. Then, the court decision came out in November 2018. It implied that the period when filing the lawsuit until the Central Jakarta District Court decision was more than one year. The claim for compensation submitted by Siti Chomsatun's attorney to the Defendants through the Central Jakarta District Court was in the form of immaterial losses amounting to Rp. 300,000,000 (Three Hundred Million Rupiah). An immaterial lawsuit was intended as a claim for compensation because the plaintiff experienced physical suffering. The plaintiff's reason sued for immaterial losses compensation was because the plaintiff experienced a traumatic situation that will never fade from her memory. Moreover, the plaintiff experienced shortness of breath and severe and prolonged physical suffering until he almost died. The plaintiff's condition was impacted due to the handling of health services committed by the defendants. The critical immaterial claims were the condition of the parties between the plaintiff and the defendant, the defendant's capabilities

and social conditions, and the ethics of the plaintiff and the defendant. The panel of judges did not fully grant the plaintiff's lawsuit. It was because the plaintiff's lawsuit was not accompanied by evidence that details the immaterial losses experienced.

This evidence must be included as mandated by Article 1866 of the Civil Code, including written evidence, witnesses, allegations, confessions, and oaths. According to the author, there was no clear legal basis for immaterial compensation claims for any component of loss that could be sued in the form of immaterial losses, especially the limits on the size of immaterial compensation claims, even though normatively, it was regulated in the Civil Code. For instance, in Article 1370 of the Civil Code: Murder, the family can file a lawsuit for immaterial compensation. Article 1371 of the Civil Code: Disability, the disabled victim can file a claim for immaterial compensation caused by the disability. Article 1372 of the Civil Code: Insult, the plaintiff can file an immaterial compensation lawsuit to restore honor and reputation. However, immaterial claims involving psychological matters have not been regulated yet. In demanding a lawsuit for immaterial compensation, the plaintiff did not include evidence as regulated in Article 1866 of the Civil Code but only filed a lawsuit for a certain amount of Rp. 300,000,000 (Three hundred million). In fact, according to Article 1865 of the Civil Code, anyone who argues, confirms her rights, or disputes the rights of others is obliged to prove it. According to the author, the judge rejected the Plaintiff's claim for immaterial compensation because the Plaintiff could not prove immaterial losses under the lawsuit filed by the Plaintiff against the Defendant. The immaterial lawsuits must be clear and detailed based on legal in the future, thus, they must first have regulations. To fill the legal void regarding immaterial losses, it is necessary to issue a Supreme Court Regulation that contains what immaterial losses can be filed as a legal basis, especially for judges when deciding on immaterial loss claims; hence, there is a legal basis guideline.

IV. CONCLUSION

An immaterial compensation lawsuit is the plaintiff's right to the defendant because an unlawful act was committed by the defendant and caused losses to the plaintiff. A claim for immaterial compensation is a loss that is comparable to material loss in the sense that it can be valued in money. The lawsuit filed by the plaintiff or Siti Chomsatun's attorney in case number 283/Pdt.G/2017/PN.Jkt.Pst was in the form of immaterial losses amounting to Rp. 300,000,000 (Three Hundred Million Rupiah). An immaterial lawsuit was filed as compensation because the plaintiff experienced physical suffering. Based on Court Decision number 283/Pdt.G/2017/PN.Jkt.Pst, the plaintiff's claim for immaterial losses was utterly rejected because the plaintiff could not prove what was meant by physical suffering that caused harm which must be accompanied by evidence as regulated in Article 1866 of the Civil Code. Immaterial compensation lawsuits were challenging to grant because no regulations regulated them clearly and in detail but only accommodated those regulated in the Civil Code. It is better to issue a Supreme Court Regulation as the legal basis for immaterial compensation claims to fill the legal void regarding the legal basis for immaterial compensation claims.

REFERENCES

- [1] Arief Suryono. 2020, *Pengetahuan Dasar Hukum Asuransi*. Surakarta: UNS Press.
- [2] Bahder Johan Nasution. 2005. *Hukum Kesehatan, Pertanggungjawaban Dokter*. Jakarta: PT Rineka Cipta.
- [3] Chrisdiono M. Achadiat. 2007. *Dinamika Etika & Hukum Kedokteran, dalam Tantangan Zaman*. Jakarta: Buku Kedokteran EGC.
- [4] Gorys Keraf. 1989. *Komposisi*. Cetakan Ke Tuju. Ende Flores: Nusa Indah.
- [5] Hans Kelsen. 2006. Diterjemahkan oleh Raisul Mutaqien. *Teori Hukum Murni*. Bandung: Nuansa & Nusa Media.
- [6] Hans Kelsen. 2007. Diterjemahkan oleh Somardi. *General Theory of Law and State*, Teori Umum Hukum dan Negara, Dasar-Dasar Ilmu Hukum Normatif Sebagai Ilmu Hukum Deskriptif Empirik. Jakarta: BEE Media Indonesia.
- [7] H. Moch. Isnaeni. 2017. *Seberkas Diorama Hukum Kontrak*, Surabaya: PT Revka Petra Media.

- [8] H. Syahrul Machmud. 2012. *Penegakan Hukum Dan Perlindungan Hukum Bagi Dokter Yang Diduga Melakukan Medikal Malpraktek*. Bandung: Karya Putra Darwati.
- [9] J. Satrio. 1993. *Hukum Perikatan, Perikatan Yang Lahir Dari Undang-Undang, bagian pertama*. Bandung: PT. Citra Aditya Bakti.
- [10] J. Guwandi. 2007. *Hukum Medik (Medical Law)*. Jakarta: Fakultas Kedokteran Universitas Indonesia.
- [11] Petter Mahmud Marzuki. 2014. *Penelitian Hukum*. Edisi Revisi, Cetakan ke-16. Jakarta: Kencana Prenada Group.
- [12] R. Subekti dan Tjitrosudibjo. 1996. *Kitab Undang-Undang Hukum Perdata*. Jakarta: Pradnya Paramita.
- [13] Sri Siswati. 2015. *Etika Dan Hukum Kesehatan, Dalam Perspektif Undang-Undang Kesehatan*. Jakarta: PT Raja Grafindo Persada.
- [14] Widodo TresnoNovianto. 2013. *Alternatif Model Penyelesaian Sengketa Medik diluar Pengadilan Melalui Lembaga Penyelesaian Sengketa Medik dalam Pelayanan Kesehatan*. Surakarta: Sebelas Maret University Press.
- [15] Harahap, Arman ,2018, Macrozoobenthos diversity as bioindicator of water quality in the Bilah river, Rantauprapat, Medan. *J. Phys.:* Conf. Ser. 1116 052026.
- [16] Harahap, A. P. Hrp, N.K.A.R. Dewi, Macrozoobenthos diversity as anbioindicator of the water quality in the River Kualuh Labuhanbatu Utara, *International Journal of Scientific & Technology Research*, 9(4), 2020, pp. 179-183.
- [17] Harahap, A. et, all, Macrozoobenthos diversity as anbioindicator of the water quality in the Sungai Kualuh Labuhanbatu Utara, *AACL Bioflux*, 2022, Vol 15, Issue 6.
- [18] Afif Khalid. 2014. "Penafsiran Hukum Oleh Hakim Dalam Sistem Peradilan di Indonesia". *Al'Adl., Vol. IV, No. 11*.
- [19] Ampera. A. 2018. "Tanggung Jawab Rumah Sakit Dalam Pelaksanaan Pelayanan Kesehatan". *Al Islah: Jurnal Ilmiah Hukum., Vol. 20, No.2*.
- [20] Kachalia, Allen; Sands, Kenneth; Van Niel, Melinda; Dodson, Suzanne; Roche, Stephanie. 2018. "*Journal Effects Of A Communication-And- Resolution Program On Hospitals' Malpractice Claims And Costs*", *Vol. 37, Iss. 11 : 1836-36. Health Affairs; Chevy Chase*.
- [21] The 1945 Constitution of the Republic of Indonesia.
- [22] Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice.
- [23] Law of the Republic of Indonesia Number 36 of 2009 concerning Health.
- [24] Law of the Republic of Indonesia Number 44 of 2009 concerning Hospitals.
- [25] Law of the Republic of Indonesia Number 36 of 2014 concerning Health Workers.
- [26] Law of the Republic of Indonesia Number 17 of 2023 concerning Health.