

JURNAL CITA HUKUM

Indonesian Law Journal



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A Patient's Legal Protection As a Victim of Sexual Harassment on Medical Services in Indonesia*

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Abstract.

A medical service's effort, the real profession is living call for dedicating self on humanity based on 3 (three) standard which must be obedient, including job's standard, service's standard, and standard operational procedure (SOP). These three standards are wishes become characteristic of medical workers and other profession to do a special medical action. The special can be seen by the correction given by law which a permission to do medical step for human body. Furthermore, it is proper while attending profession's duty to respect and always respect of patient's right based on glorious value, mind and glory. Yet, in practice many abusement are often found in order to taking care of quality of profession and to straighten up the quality of staff, such as: an abusement received by patient on their recovery time after surgery, due to losing an awareness of patient after given by medical procedure, likes any sexual harassment by medical force environment, so that's why it is necessary to have an effort of a legal protection to the patient as a victim on a criminal law of sexual harassment.

Keywords: Legal protection, Sexual Harassment, Medical Service

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Perlindungan Hukum Terhadap Pasien Sebagai Korban Pelecehan Seksual Dalam Pelayanan Kesehatan di Indonesia

Abstrak.

Dalam upaya pemberian pelayanan kesehatan, hakikat profesi merupakan panggilan hidup yang mengabdikan diri pada kemanusiaan yang didasarkan pada 3 (tiga) standard yang harus dipenuhi, meliputi Standard Profesi, Standard Pelayanan, dan Standard Operational Procedure (SOP). Ketiga standar inilah yang diharapkan menjadi ciri khusus dari tenaga kesehatan dan profesi lainnya untuk melakukan suatu tindakan medis tertentu yang mempunyai karakteristik yang khas. Kekhasannya terlihat dari adanya suatu pembenaran yang diberikan oleh hukum yakni diperkenankannya melakukan tindakan medis tertentu terhadap tubuh manusia. Selain itu, sudah selayaknya dalam melaksanakan tugas profesi harus menghormati selalu menghormati hak-hak pasien yang didasari nilai-nilai luhur, keluhuran budi dan kemuliaan demi kepentingan pasien. Namun, dalam prakteknya justru sering terjadi berbagai penyalahgunaan dalam upaya memelihara mutu profesi serta menertibkan mutu para anggotanya, seperti; penyimpangan yang diterima oleh pasien dalam masa pemulihan pasca dilakukannya tindakan medis, dikarenakan hilangnya kesadaran pasien setelah dilakukan tindakan medis, seperti terjadinya pelecehan seksual yang dilakukan kalangan profesi kesehatan, sehingga diperlukan suatu upaya perlindungan hukum terhadap pasien sebagai korban dalam tindak pidana pelecehan seksual

Kata Kunci: *Perlindungan Hukum, Pelecehan Seksual, Pelayanan Kesehatan*

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Introduction

A Universal declaration of Human Rights accepted and announced by General Assembly of United Nation 217A (III) on December 10, 1948 was become a historical stake of human rights development in the world and the purpose is to dignities human and humanity, focus on variety of human rights principle. The Human Rights principle consist of:³ Universality, inalienability, individuality, interdependency, equality, non-discrimination, participation and inclusion, accountability and rule of law.

The eight basic principles indirectly begin from human existence which is Right for Life and sustaining life as a pioneer and as right inherent in human being, basically and absolutely needed by human to develop themselves based on skill, dream and prestige. Furthermore, a human right can be known as a basic right attached to the human self naturally, universally, and eternally as a gift from god, including right to live, family right, developing self-right, justice right, independency right, communicating right, security right, and prosperity right that can be ignored or taken by anyone, one of them is medical right.⁴

A medical right can't be separated with the meaning of health itself. Health's meaning based on World Health Organization (WHO) is: "a state of complete physical, mental and social well being and not merely the absence of disease or infirmity," and based on Constitution of Republic Indonesia 1945 as a staatfundamental norm has regulated clearly about the principle line from Indonesian right,⁵ and as a basic source written on Republic of Indonesia, creating big line of legal on country organization. Indonesian Constitution 1945 has been amendment 4 times.⁶ On the original Indonesian constitution script before being amendment is not written "health" term.

After amendment process finished, then appear "health" term which can be seen in detail on Constitution of the Republic Indonesia 1945 article 28 H paragraph (1) and (3), article 34 paragraph (1), (2) and (3). On article 28 H paragraph (1) stated that: each person reserves the right of prosperous life born

³ Herizal E. Arifin, *Ringkasan Pasal-Pasal Deklarasi Universal HAM dan Prinsip-Prinsip HAM*, diakses pada <http://herizal-effendi-arifin.blogspot.co.id>, pada tanggal 10 September 2017, 2011.

⁴ Dwi Yanto, *Perlindungan Hak Asasi Manusia Anak di Indonesia, Perkembangan, Implementasi, dan Rekomendasi*, <https://nunutngombe.wordpress.com>, 2010, diakses 7 Januari 2018

⁵ Trina Handayani, *Fungsionalisasi Hukum Pidana Terhadap Perbuatan Perdagangan Organ Tubuh Manusia*, (Bandung: Mandar Maju, 2012), p.1.

⁶ Yustina Sri Hartini, *Praktik Kefarmasian Ulasan Peraturan Tentang Bidang Pekerjaan Apoteker*, (Yogyakarta: Sanata Dharma, 2010), p.1.

and inner, reside in, and have a good and clean environment, and reserve medical services. An article 28 H paragraph (3) said that everyone has a right on social security to have an ability of developing themselves become a value man. Article 34 paragraph (1) told that "The poor and desolated children are taken care by the state." On article 34 paragraph (2) gives information that "Country expanding social security system for public and empowering weak and inability people as a humanity value", and the last as written on article 34 paragraph (3): "State have a responsibility to provide a proper medical service and a local service facility."

The proper facilities of medical services and public service is an effort to provide medical services, the meaning of profession is a living call for dedicating self on humanity based on 3 (three) standards which must be obedient, including profession standard, service's standard, and standard operational procedure (SOP). Profession Standard can be difference grammatically into standard and profession. Standard means a value or a reference decide level of practice to a staff or a condition of patients or a system set which can be accepted to the certain authority.⁷ While Profession means as a job which need a science to become a basic of development theory systematically used to faces new challenges, is necessary a long education and training, and having an ethic code using services as a main focus.

On the article 50 the Law number 29 in the year 2004 about Medical Practice stated that: "a standard profession is a limitation skill by an individual to do his professional activities to the people independently which made by profession organization." Veronica Komalawati gives a limitation to the standard of profession means, "a guidance which used as a key on executing a good profession." Relating to medical services, a tool that used is medical services standard mainly focuses on medically activities process. The profession standard on medical services standard form might be used as a reference by the hospital, because the fixed procedure on the profession standard has made based on each specialization field, facilities and the available resources.⁸

The local and basic medical profession standard has not arranged in Indonesia as the Dutch adopted. The exist regulation is only a medical standard services formed in Indonesian Ministerial decree of health Number 595/Menkes/SK/VII/1993 about Medical services standard in every medical

⁷ Schroeder, *Analisis Deskriptif Manajemen Persediaan*, dalam <http://www.k@ta.petra.ac.id>, diakses pada tanggal 9 Maret 2018.

⁸ Veronica Komalawati, *Peranan Informed Consent Dalam Transaksi Terapeutik*, (Bandung: PT. Citra Aditya Bakti, 2002), p.177.

services facility giving a medical service based on requirement and valid services standard, as a flow-up in order to anticipate article 32, on the law number 23 of the year 1992 about health regulating the implementation of treatment and care.⁹ Furthermore, the services standard referring to the concept and regulation which used on regulation. Every agency or medical institution which have an authorization of medical services must be obey all of the references that have been appointed. Every person has been guaranteed by the state to get a medical service on Indonesian Constitution 1945 which must be happen by a highly degree of society health.

In Indonesia, standard of services for medic field actually has been set fundamentally by the practices which can not violate every requirement and made service excellent or optimal service as a priority. Every medical institution or agency have a responsibility for all of duties they hold started from health centers to the hospital. The hospital is a medical services institution for people by its character which affected by the development of medical science. Technology advances and social economy of society life must escalate the proper and affordable services by people to reach a highly health degree, and everyone has their role to maximize public health services. They must be responsible to local government who has been arranged the regulation of the law for the public health services.¹⁰

The public medical services have a strategic role on boosting the medical degree of society. Hospital are required to give a good service based on standard and can be reached by people must be appropriate to Standard Operational Procedure (SOP). The SOP based on regulation of Indonesian Minister of Health Number 512/Menkes/PER/IV/2007 concerning on license of practice and the implementation of medical practice chapter 1 article 1 paragraph 10 talked that: SOP is an instruction device or steps formed to complete a job process routine, SOP gives the best and right steps based on consensus together to finish any activities and the function of services which made by health services facilities according to standard of profession, and the SOP applying refer to any policy and procedure must be available which

⁹ Hermien Hadiati Koeswadji, *Hukum Kedokteran: Studi tentang Hubungan Hukum dalam Mana Dokter sebagai Salah Satu Pihak*, (Bandung: Citra Aditya Bakti, 1998), p.151.

¹⁰ *Standar Pelayanan Kesehatan*, dalam <http://gofaztrack.com/blog/standar-pelayanan-kesehatan/> diakses pada tanggal 8 Maret 2018.

reflecting the management of medical record units and becoming a reference to the medical record staff.¹¹

These three standards are hope become a specific character from medical force and the other profession to do special medical activities which have a special characterize, the special can be seen from the legality by the law, which permitted to do special medical activities to the human body to keep and increase medical degree, by doing their duty is always relating by the human who needs help, and always to respect the patient's right which based on a glorious value, mind and glory. The right means a freedom giving by society to an authority, freedom, and status, while the obligation of medical force is giving a public service, preventing an abuse and taking care of profession quality and controlling staff's quality.

Yet, in practice is commonly happen any abasement in order to taking care of quality of profession and to straighten up the quality of staff, such as: an abusement received by patient on their recovery time after medical measure, due to loosing an awariness of patient after given by medical procedure, likes any sexual harassment by medical force environment, is a nurse then needs an effort on legal protection for the patients as a victim of criminal sexual harassment. Setiono said that a legal protection is an action or an effort to protect a society for any arbitrary action by the sovereign who does not accordance with legal rule, to realize a local tranquility and discipline so that people can enjoy their dignity as a human.¹²

Philipus M. Hadjod stated that "a legal protection for people is made by government action preventively and repressively.¹³ Preventively means government have to act carefully in taking and making decision due to a prevention action, while repressively imply that government must be assertive in forming and making decision for the offence that have been occurred. The violence which happened and assumed has disfigure medical profession through the sexual harassment cases made by medical forces to the patient.¹⁴

¹¹ Wijono, *Standar Operasional Prosedur Di Bagian Rekam Medis*, dalam <http://aepnurulhidayat.wordpress.com>, diakses pada tanggal 9 Maret 2018.

¹² Setiono, *Rule of Law (Supremasi Hukum)*, (Surakarta, Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret, 2004), h.3. Also see: Nur Rohim Yunus, *Restorasi Budaya Hukum Masyarakat Indonesia*, Bogor: Jurisprudence Press, 2012, p.66.

¹³ Philipus, M. Hadjon, 1987, *Perlindungan Hukum Bagi Rakyat Indonesia*, (Surabaya: Bina Ilmu, 1987), p.30.

¹⁴ Rio Audhitama Sihombing Lagi, *Pelecehan Seksual Terjadi di RS Surabaya*, <http://news.liputan6.com/read/3240497/lagi-pelecehan-seksual-terjadi-di-rs-surabaya>, pada tanggal 8 Maret 2018.

A Sexual harassment that befell a woman patient who initials W, in the hospital located in Surabaya, on Saturday, January 27, 2018, which is conducted by a nurse, and then a victim posted inappropriate video of acts against her to media social account. The nurse's action was done when the victim still affected by an anesthetic after surgery. An Indonesian National Nursing Association (PPNI) of East Java as an organization of nursing still need an information, "ZA" whose alleged as a performer of sexual harassment, before imposed with a sanction. On imposing sanction there are some steps, is a builder ethics as doing a coordination to the medical government of taking off a job license for a while or doing that based on valid legal procedure. Considering this case are attached attentively by a law government, while Surabaya's metropolis police (KAPOLRESTABES) represented by chief of criminal unit (KASATRESKRIM) has secure "ZA" in the hotel located on South Surabaya, and now officially become suspected and under the investigation intensively on suspicion of sexual harassment of a hospital patient in a weak condition due to an anesthetic after surgery.

In the other side "WR" wife of a nurse worked on a hospital in Surabaya, "ZA" has report a victim, "W, and the husband's victim to the police. "W" is a patient who has feel harassed bin the hospital by "Z". While victim's husband has been recording the incident. The video becomes viral and "ZA" being suspected, the study of Indonesian National Nursing Association (PPNI), the secretary of PPNI of East Java Misutarno gives infoemation that "ZA" does not break the nursing code of ethic. The lawyer Sukendar, said that his client doesn't accept any sexual accusation to the victim's husband, and report them as an allegation of defamation for the videos which viral on media social.¹⁵

At that time the officer has not issued a police report due to an incomplete by a procuracy from "ZA", the next day, the lawyer was coming back into the police and giving a procuracy, so that a report issued on number 213/II/2018/Bareskrim by an accusation of The Regulation of Information and Electronic Transaction (Shorten by UU ITE) on article 27 and 28, "WR" was assumed that the video which goes viral on social media gives the disadvantageous for her husband. "WR" stated before her husband becomes suspected, "ZA" has been intimidated to acknowledge his fault, even though "ZA" was only pick up the medical tool on the chest of patient and does not

¹⁵ Ambaranie Nadia Kemala Movanita, *Istri Perawat Nasional Hospital Surabaya Laporkan Pasien Korban Pelecehan ke Bareskrim Polri*, <https://nasional.kompas.com/read/2018/02/11/09230551/istri-perawat-national-hospital-surabaya-laporkan-pasien-korban-pelecehan-seksual>, di akses pada tanggal 8 Maret 2018.

harass her, the truth is there are any pressure and intimidation comes from the officer, "ZA" was being offered by a minimalization of punishment only if he makes a confession. When he does not confess as the video shown," ZA" threatened gets a big punishment and will be charged by article 290 KUHP concerning of Sexual Harassment to unrealized patient. The case was processing by the police when "ZA" apologize to the victim in a Hospital located in Surabaya. However, an Ethic Council of Indonesian National Nursing Association in East Java stated that what "ZA" has done is according to the nursing operational standard when handling a patient after surgery.¹⁶ According to the statement above a writer being interested to reviewing in this paper by the title: *A Patients' Legal Protection as A Victim of Sexual Harassment On Medical Services In Indonesia*.

An Effort of Legal Protection to The Victim as a Sexual Harassment on Medical Services in Indonesia

On the article 1 Number 10 of the Law Number 29 in the year 2014 concerning on Medical Practice gives a statement that: A patient is every people made a medical consultation, and asked to get any medical services needed directly or indirectly to the doctor or a dentist. The article 32 on fourth paragraph of the Law Number 44 in year 2009 about Hospitality stated about patient's rights, are: a). To be given the information of the discipline and rules of patients; b). To get the information about right and obligation of patients; c). To obtain a human, justice, and honest services without any discrimination; d). To accept a proper medical service corresponding on profession standard and standard operational procedure; e). To gain an effective and efficient services, so the patient would not loss physically or materially; f). To submit a complaint of the quality of services got; g). To choose a doctor and class of services as they wish and the discipline which happen in the hospital; h). To ask a consultation about the disease suffered him to the other doctor who has a practice license inside or outside the hospital; i). To reserve a privacy and the disease suffered him including all medical dataset secretly; j). To accept an information including a diagnosis and a medical process, the purposes of medical process, an alternative process, risk and complication which probably happen, the prognosis of action taken and the estimation of medical cost; k). To give an

¹⁶Ambaranie Nadia Kemala Movanita, *Istri Perawat Nasional Hospital Surabaya Laporkan Pasien Korban Pelecehan ke Bareskrim Polri*, <https://nasional.kompas.com/read/2018/02/11/09230551/istri-perawat-national-hospital-surabaya-laporkan-pasien-korban-pelecehan-seksual>, di akses pada tanggal 8 Maret 2018.

approval or refusal of the action would taken by medical forces of his disease: l). To be accompanied by his family when facing a critical time; m). To do a worship as the religion or trust embraced; n). To receive a security and safe during a treatment in hospital; o). To propose a suggestion, recommendation or, correction of the hospital services to him; p). To reject spiritual guidance which not accordance to his religion; q). To claim the hospital when alleged by giving inappropriate services do not suitable to a good standard legally or criminally; r). To suspire a medical service of hospital which do not accordance to standard of services through print and electronic media according to terms of the rules discipline.

On the article 31 third section of The Law Number 44 in the year 2009 concerning on Hospitality told that the obligation of patients, are:

1. Every patient has an obligation to the hospital of the services they got.
2. The next condition about the patient's obligation arranged in the regulation of Ministry.

According to the statements above, it can be seen clearly that the right and the obligation of patients can be known as a parameter to measure is a medical services has runs as a medical service standard or no, and if many abasement found, then according to the Article 32 letter q and r fourth section of Law number 44 in year 2009 concerning Hospitality, that a patient has a right to criticize or report a hospital, if they giving a services deviate the standard legally or criminally, and to complain about the services of hospital which inaccurate by the standard of services through print or electronic media according to the law, furthermore in this object of case of paper a patient who has become a victim of sexual harassment gives a statement on a print, electronic or social media which had done by medical force, is nurse.

On the article 1 number 2 of the Law Number 38 in year 2014 about Nursing practice stated, that "a nurse is a person graduated from nursing academy, local or abroad according to the condition of a valid regulation of the law."

Article 2 of Law Number 38 of The Year 2014 concerning nursing declared, that "The management nursing service must held on base humanity, scientific value, ethics and professionalism, benefits, justice, protection, health and safety of clients". Article 3 of Law Number 38 of The Year 2014 concerning nursing declared, that :

"The purpose of management nursing services is increasing nurse quality, increasing nursing services quality, giving protection and legal certainty to the

nurse and client, and increase the level of public health, and done with responsibility, accountable, have a standard, secure, and affordable by competent nurses, authority, ethics, and high morals, and it's all needed for give protection and legal certainty to the nurse and client"

The Protection and legal certainty to the public addressed to the patient as a victim of sexual harassment. The Criminal Code (KUHP) doesn't recognize sexual harassment term. The Criminal Code only recognizes lewd act, regulated in article 289 till 296 of The Criminal Code (KUHP). Lewd act can be explained as an act that violating the senses of morality, all action if considered violating of the senses morality, can be included as lewd act. Meanwhile, sexual harassment term refers to sexual harassment which is interpreted as imposition of unwelcome sexual demands or creation of sexually offensive environments.

Therefore, essential elements from sexual harassment is existence unwillingness or rejection on any kind of attention which is sexual concern, and if undesired by the recipient of the act then it can be categorized as sexual harassment, so that sexual harassment can be sanred with article of fornications (article 289 till 296 of The Criminal Code (KUHP)). In the event there is sufficient evidence, The Public Prosecutor will lodge his indictment against the perpetrators of sexual harassment in front of the court.

The Law Number 13 of The Year 2006 concerning witness and victim protections article 1 point (2) which reads: "The Victim is someone who experience physical suffering, mentally, and/or economic losses caused by a crime". Arif Gosita said "The Victim mean are those who suffering physically and spiritual as effect of the actions of others who seek self-fulfillment or others who contradict with interests of human rights that suffer."¹⁷

According to Bambang Waluyo, "The Victim and crime has a tight relationship namely cause and effect, he opinionated between the victim and crime as the saying goes "there is smoke there must be fire," the victim is there because the crime as the cause of the victims birth", he also argues in the appears of the victim is a form of loss experienced by a person, and the perpetrators is the person who benefits from the loss of a person,¹⁸ and Von Hentig revealed 4 (four) role of victim which is considered to have a role in the

¹⁷ Arif Gosita, *Masalah Korban Kejahatan: Kumpulan Karangan*, (Jakarta: CV. Akademika Pressindo, 1993), p.63.

¹⁸ Bambang Waluyo, *Victimologi Perlindungan Hukum Terhadap Korban Kejahatan*, (Jakarta: Sinar Grafika, 2011), p.9.

crime, that is:¹⁹ 1). The victim wants a crime; 2). The victim making a crime event to gain benefits greater than his losses experienced; 3). The victim collaborates with the perpetrator in crime; dan 4). The victim provokes crime to happen.

The four victim roles over the crime in a health service, is supposed to get legal protection for the effort to reach the balance, so the effort of legal protection which are contained in legislation, such as law number 36 of the year 2009 concerning health, and laws number 44 of the year 2009 concerning the hospital, the laws number 29 of the year 2004 concerning medical practice, and in laws number 28 of the year 2014 concerning nursing.

A legal protection contained in the article 51 of the law number 36 of the year 2004 concerning medical practice, included a code of medical ethics and standard profession as a form of responsibility and the duties of a doctor in providing quality health services and feasible for the patients. The effort to protect the victim is compensation immaterial and material.

A legal protection on the law number 29 of the year 2004 concerning doctor's practice, covering medical ethic and standard as a responsibility form and all the obligations of a doctor on providing a proper and standard medical service to the patients. An effort in protecting of the victim is by giving compensation material and non-material. The immaterial compensation focuses on losing which cannot be assessed by money, for instance a lifetime disability, and based on subjectivity of criminal law (*ius puniendi*) is one of the victim's right to threaten a criminal offense and to oblige the convicted doing the punishment. While the material compensation focuses on losing of something assessed by money, the compensation doing by morality as a rehabilitation and financial compensation to the victim according to article 51 of the law number 36 in year 2009 concerning health.

On the law number 29 in year 2004 about medical practice, if the action was bringing a medical instance such as hospital, can also applying the law number 44 in year 2009 about hospitality. A hospital was rated as a sterile from any recording of sound or video based on article 48 and 51 of the law number 29 in year 2004 about medical practice and the article 40 of the law number 36 in year 1999 concerning a telecommunication. Due to an executant of this case was came by a nurse, so the nurse will have a dealing with law. If a nurse proven on doing a sexual harassment to the patient, he will get the ethic's punishment and

¹⁹ Rena Yulia, *Viktimologi Perlindungan Hukum Terhadap Korban Kejahatan*, (Yogyakarta: Graha Ilmu, 2010), p.8.

get the sack from the association of nursing in Indonesia. These punishments are the toughest sanction, and this case has been traced by honorary council of nursing ethics (MKEK). MKEK has an ethical settlement guideline, either a central MKEK or local MKEK will held an ethical session of this case.

On the other side, the SOP's offence of the relation between patient and nurse. MKEK said that all of the consequences are under the workplace instruction, and whenever a patient experienced trauma, then a patient must be given truly by the protection, either rehabilitation or legal assistance. According to the statements above, the legal protection's effort is not only addressed to the compensation in criminal law, or on the other word a criminal law is still placed as an *Ultimum Remedium*, so it must undergo the shift by applying punishment as a *Primum Remedium* on medical services which focuses on the right of life and on maintaining a life as a part of *Pro Life*, not a *Pro Choice*. The purpose of this condition is becoming as an effort to give a salutation and protection to the criminal body and soul to reach a medical services purpose, such as minimalizing hurt, extending life, and accompanying patients to the end of his life.

A Criminal Responsibility of Sexual Harassments Cases on Health Care in Indonesia.

Criminal responsibilities consist of culpability according to the equality of monodualistic stated that the culpability based on a value of justice must be aligned with legality based on decision. Although the concept was based that: the criminal responsibility is build upon fault, however in some cases it is undeniable to get a vicarious liability and strict liability. In cases of both error fact and concept error are becoming one of forgiving possibilities, so that the perpetrators will not be punished otherwise the errors came for himself.²⁰

Someone will be punished when their action against the law and cannot give any justification or resistances. According to responsible ability, that only a man who can be responsible and will ask for a responsibility of the action. The criminal law is taken by someone of fault action. A responsible ability is the mistake principle and need to be proved. Inability of proving causes an ability of responsible considered silently was exist. Unless the accused has a mental disorder. In this case, a judge will command a specific investigation to the

²⁰ Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan*, (Bandung: PT. Citra Aditya Bakti, 2001), p.23.

accused. If the result misdoubt judge, means a responsible ability is stopped and the accused cannot be punished.²¹

The problem of an ability of responsible was written on article 44 paragraph 1 KUHP stated that: For somebody who has a responsible inability of action caused by mental disorder in growth or disrupted due to disability, cannot be punished. A criminal responsibility on sexual harassment of the patient which done by a nurse might be categorized as a fornication criminal which has been regulated on KUHP article 289, stated that: For someone who has force by violence or threat to someone else to do an obscene, will be punish by an imprisonment at the longest for 9 years.

The term of an obscene is not explained specifically on KUHP. The Indonesian Dictionary give a meaning of an absences by "Dirty, dingy, inappropriate (violate a politeness, morality)." As the comment of Dutch's writer, an action which imposed on article 289 KUHP that an obscene action is general meaning including sex on article 285 as a specific meaning.²² An obscene punishment was explained on article 289-296 KUHP too. An article 290 of KUHP stated that: the executor will be punished with prison at the longest for 7 years: for those who has done a lewd act to someone in unconscious or helpless condition, under 15 ages to do or let by an obscene action, or having sex outside of marriage with someone else.

On the article 291 paragraph (1) KUHP if one of the criminals based on article 286, 287, 289, and 290 caused a serious injury, punished by an imprisonment at the longest 12 years, and on paragraph (2) if one of the criminals based on 285, 286, 287, 289, and 290 caused a death, punished by an imprisonment at the longest 15 years. On article 292 for an adult who has experienced an obscene action with same gender under the age, will be punish by an imprisonment about 15 years.

Article 293 paragraph (1) was declared that: For someone by giving or promising money or stuff, abusing thing in a relationship, or by a perversion voluntary a child to do an obscene action with him, will be punish by an imprisonment at the longest 5 years. Article 293 paragraph (2) the prosecution will do by a complaint from an object. On paragraph (3) The Grace period on article 74 for the complaint is about 9 months and 12 months each.

²¹ Moeljatno, *Asas-Asas Hukum Pidana*, (Jakarta: Bina Aksara, 1987), p.41.

²² Ismanto Dwi Yuwono, *Penerapan Hukum Dalam Kasus Kekerasan Seksual Terhadap Anak*, (Yogyakarta: Pustaka Yustisia, 2015), p.1.

Article 294 paragraph (1) For someone who has done an obscene action to his child, step child, adopted child, a child under his supervision, or to an immature child of maintenance, education or guard, will be punish with prison at the longest 7 years. Paragraph (2) will be punish by the same punishment if the officials doing an obscene to the ministerial causes of position, or to the person under his guard, caretaker, doctor, teacher, officer, supervisor, or servant in a prison, government workplace, school, orphanage, hospital, psychiatric hospital, any social agency, doing an obscene action to the person inside it.

An article 295 paragraph (1) threatened with a jail at the longest for 5 years for those who preped causing or helping his child, step child, adopted child, a child under his supervision, or to an immature child of maintenance, education or guard, will be punish with prison at the longest 4 years.to do an obscene, unless, of the point 1 was done by an immortal child.

On Paragraph (2) of article 295 stated if the executor does the obscene action as a search or custom, then the punishment will be added a third. Article 296 of KUHP stated that: for someone voluntary caused or facilitate an obscene by someone else, and using as a search or custom, threatened with a prison at the longest a year and four month or will be fined IDR 15.000. According to the statement above, the sexual harassment which done by a nurse for this case was violating a provision on article 294 paragraph (2) of KUHP. And the violence of a nurse was offenced a nurse swear, ethics code of nursing, and violating criminal law, and pressing the hospital part to always do an evaluation, correct a nurse's ethic, by Hospital Nursing Committee or Association of Indonesian Nursing (PPNI), either a fault of applying system, or unregulated system of the hospital environment.

Next, this case can be said as a hospital negligence by violating the law number 8 in year 1999 concerning Consumer protection, and the aspect which violated is one of the consumer rights of comfort, security, and safety in consuming goods and services, and for the executor of obscene to a person with helpless condition will charged by article 290 paragraph 1 of KUHP with a prison along 7 years.

As a profession, nursing's attitude in the hospital is regulated on the ethic code of nursing. On number 4 section nursing and practice was mentioned that a nurse may show a professional attitude and always high the profession's reputation up. A nurse is maintaining an upgrading the competences of nursing by study hard. A nurse may keep the high quality of medical services by applying an honest profession with a knowledge and skill of nursing as the

client needs. In case of making decision, a nurse may come into the accurate information and considering an ability and the qualification by a consultation, accepting a delegate and delegating to another doctor.

The criminal's responsibility in case of sexual harassment guided to a regulation and a valid legal norm of the law of the patient mentioned by a writer before, with a basic purpose to prevent a punishment by enforcing legal norm under the society aegis, solving a conflict, restoring an equality, coming up a peace, socializing the executor by organizing a coaching, so the executor will become a good man and releasing a guilty feeling of him. Last, the final destination of applying a regulation and legal norm is reaching an effort of making a patient as a whole human and the humanity itself.

Conclusion

The legal protection is not only directed to the compensation in the field of civil law or in other word, criminal still placed as an *ultimum remedium*, so it should be a shift by applying the criminal as a *Primum Remedium* in health services which emphasizes on

The right to live and maintains life as a part of *Pro Life*, not as a *ProChoice* (for choice). This condition is purposed as an effort to give a salutation and protection to the criminal body and soul to reach a medical services purpose, such as minimalizing hurt, extending life, and accompanying patients to the end of his life.

The Criminal Code (KUHP) is regulating various punishment according to the criminal action taken, in this case a negligence and a deliberation can be proceed based on a valid law, as an effort to actualize a criminal responsibility to prevent any criminal action by applying legal norm under the society aegis, solving a conflict, restoring an equality, coming up a peace, socializing the executor by organizing a coaching, so the executor will become a good man and releasing a guilty feeling of him. Last, the final destination of applying a regulation and legal norm is reaching an effort of making a patient as a whole human and the humanity itself.

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 - 6) Majalah, contoh: Susilaningtias, "Potret Hukum Adat pada Masa Kolonial", dalam *Forum Keadilan*, No. 17, 20 Agustus 2006.
 - 7) Makalah dalam seminar, contoh: Asshiddiqie, Jimly, "Kedudukan Mahkamah Konstitusi dalam Struktur Ketatanegaraan Indonesia", Makalah disampaikan dalam Kuliah Umum Fakultas Hukum Universitas Sebelas Maret, Surakarta, pada 2 Maret 2004.
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