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Causality Teaching Application on Criminal Actions Due to Death Case in Hospital Over Decision of Supreme Court Indonesia Republic No. 1110 K/Pid.Sus/2012

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Health services basically aim to carry out efforts to prevent and treat a disease, including medical services based on an individual relationship between a doctor and a patient. Doctors are parties who have expertise in the medical field who are considered to have the ability and expertise to perform medical actions. Meanwhile, patients are sick people who are common with their illness and entrust themselves to be treated and cured by doctors. Therefore, doctors are obliged to provide the best possible medical service for patients. But in medical services there are times when it doesn't work and the patient is pronounced dead. This phenomenon can lead to prosecution of the doctor or other health personnel for the death of the patient. This research was conducted to find out how the application of causality teaching in criminal acts that resulted in the death of patients due to medical action. In addition, this research also conducted to find out how the application of causality teaching to crimes that caused death in the Supreme Court Decision Number 1110 K / Pid.Sus / 2012. To examine this, the author uses a normative legal research method and uses a statutory approach by referring to the applicable legal rules. Based on the results of the research it was found that the public prosecutors, judges and legal advisors in seeing a case had different points of view. The public prosecutors saw the defendants' mistakes from all aspects by using the teaching of causality *conditio sine qua non*, while from the point of view of the legal advisor as a defence the teaching of causality objective generalization and the judge as a case breaker uses the teaching of causality *novus actus interveniens*.

Keywords: Teachings of Causality, Crime, Death.

1. INTRODUCTION

Health services basically aim to carry out prevention and treatment of a disease, including medical services based on the individual relationship between doctors and patients who need healing for their illness. Doctors are parties who have expertise in the medical field or are considered to have the ability and expertise to perform medical actions [1]. While the patient is a sick person who is ignorant of the disease. They are suffering from and entrusts them self to be treated and cured by a doctor. Therefore, doctors are obliged to provide the best medical services for patients. But in medical services there are times when it doesn't work and the patient is declared dead. The result of the death of the patient can lead to a prosecution against the doctor or other health workers for the death of the patient. As is known, several cases of -

patient deaths caused in the patient's family claiming to the court, quoted from several media as follows; Patient, a resident of Pante Ceuremen Village, West Aceh, died after receiving an injection after undergoing surgery at the Cut Nyak Dhien Regional General Hospital in Meulaboh [2]. The youngest son of the Djuharman Family, Arief was declared dead before the operation due to inhaling N₂O (Nitrogen dioxide) gas and oxygen (O₂) for anesthesia [3]. There are several types of death, according to the medical world. There are three phases of death, starting from clinical death, brain death, to the final phase of biological death where the body becomes rigid and the decay process begins [4]. There is a long and partly still not understood process, leading to the final phase where people are actually considered biologically dead. Clinical Death and NDE The first phase is called clinical death is characterized by the cessation of breathing and heart rate.

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In this phase, the impulses from the brain fade and the five senses no longer react. If the person is fitted with a medical device, it will be seen on the monitor that the curve is flat and no longer ticks. In this phase, a near-death experience (NDE) often occurs [5]. In Indonesia, NDE is also known as apparent death. Several medical cases prove that there are people who have been declared clinically dead for a few minutes, can come back to life after undergoing a clinical reanimation process [6]. For example with cardiac massage, artificial respiration, use of a defibrillator and other medical measures. Some then live a healthy life but some suffer from health effects.

Brain Death The second phase of death is called Brain Death. At this stage all brain functions stop. Patients are usually still "alive" because of the help of medical devices, such as breathing devices, pacemakers and others. The third phase of the biological death phase is marked by the death of billions of body cells. Since there is no cell regeneration, the signs of death are obvious. The skin of the body shows patches of death and the body becomes stiff. The process of decay also begins and progresses quickly. At this stage there is no doubt due living things are dead. After the patient is declared dead, there are times when the patient's family is not satisfied with the patient's death and suspects that there was a mistake from the medical team so that there are often medical problems or lawsuits [7].

In addition, there are also frequently occurrences of omissions, which are a form of error that is not intentional but is also not something that happens by chance [8]. So in this omission, there is no malicious intent from the perpetrator. Negligence and errors in carrying out medical actions cause patient dissatisfaction with doctors in carrying out treatment efforts according to the medical profession. These omissions and mistakes cause harm to the patient. Basically, every event, whether natural or social, cannot be separated from the chain of causes and effects that binds it. Both events start from the previous event which gives rise to the next event. Every event must have a reason, it can't just happen, it can also cause another event. In addition to the above, one event can also occur as a result of one event or several other events. This cause and effect event is called causality [8, 9]. Causality in criminal law is related to a big question, namely who can be placed as a "cause" for the results of a crime. The answer of that question is a close relationship with whether there is a causal relationship between the actions of an offender and the proceeds of a crime, or whether the proceeds of the crime are sufficient to hold the perpetrator accountable [10]. The teaching of causality in the science of criminal law is used to determine which actions from a series of actions are seen as the cause of the emergence of prohibited consequences. Jan Rummelink, argued that the focus of attention of criminal law jurist is what meaning can be attached to the notion of causality so that they can

answer the question of who can be held accountable. Causality is used as a "filter" in building a person's criminal liability. As a filter, causality will filter out any factual actions committed by the perpetrators, after the factual actions are caught, the legal actions will then be sought. By finding the legal action, a person will be held accountable [11]. Based on this background, the author is interested in knowing the extent to which the teaching of causality is applied to a form of negligence in several series of events that lead to death.

2. METHODOLOGY

According to Soerjono Soekanto, research is a scientific activity related to analysis and construction which is carried out methodologically, systematically, and consistently. Research according to its purpose can be defined as an attempt to find, develop, and test the truth of knowledge.

A. Nature and Type of Research

The nature of this research is descriptive analysis, descriptive analysis means from this research is expected to obtain a detailed and systematic description of the problems to be studied. The analysis is intended based on the description, the facts obtained will be analyzed carefully to answer the problem. The type of research used is normative legal research (juridical normative), namely legal research that uses secondary data starting with an analysis of legal issues that come from both literature and legislation [12].

B. Source of Data/Legal Material

Sources of legal materials used in this study are secondary data through the study of documents, to obtain data taken from library materials, as follows:

- a) Primary Legal Materials, Primary Legal Materials are legal materials consisting of norms or rules (the Preamble of the 1945 Constitution), basic regulations (the body of the 1945 Constitution and TAP MPR), laws and regulations, jurisprudence or court decisions, and international agreements (tract).
- b) Secondary Legal Materials, are legal materials that can provide explanations for primary legal materials, which can be in the form of draft laws, research results, works from legal circles, and so on. In writing this thesis as secondary legal material, the author uses laws, legal science books, scientific journals, scientific articles, print and electronic media publications.
- c) Tertiary Legal Materials, namely materials that provide instructions and explanations of primary legal materials and secondary legal materials. The materials used in this research are legal dictionaries, newspapers, encyclopedias, papers related to the object of research (see Table I).

Table I. Type of Data

Problem	Data Type	Legal Material	Material Source
1. How is the teaching of causality tied to a crime that results in death?	Primary Legal Material	Legislation, jurisprudence or court decisions	Criminal Code (KUHP)
2. How to apply the teaching of causality to criminal acts that cause death in the Supreme Court Decision No. 1110 K/Pid.Sus/2012	Secondary Legal Material	Draft laws, research results, works from the legal community	Laws, legal science books, scientific journals, scientific articles, and media publications
	Tertiary Law Material	Explanation of primary legal materials and secondary legal materials	Legal dictionaries, newspapers, encyclopedias, papers related to the object of research

C. Data collection and analysis

The data collection technique is carried out using library research, namely collecting data from the search results of library materials or secondary data which includes primary legal materials, secondary legal materials and tertiary legal materials. To obtain this data, a document/library study research tool or library research will be used, namely by collecting all laws and regulations, legal documents and books related to the formulation of the research problem [13].

The data collection tool used to collect data used in normative legal research is carried out by literature study of legal materials, both primary legal materials, secondary legal materials, as well as tertiary legal materials and or non-legal materials. The search for these legal materials can be done by reading, viewing, listening, and now many of these legal materials are searched through the internet. Data analysis is an activity in research in the form of conducting studies or having on the results of data processing which is assisted by theories that have been obtained previously. In simple terms, this data analysis is referred to as a review activity, which can mean opposing, criticizing, supporting, adding or commenting and then analyzing the data in this study using qualitative methods [14]. Research using qualitative methods departs from assumptions about reality or complex social phenomena.

3. RESULTS AND DISCUSSION

A. Crime Against Life (Murder)

The intentional killing of another person's life by the current Criminal Code (KUHP) has been referred to as a murder. The crime of murder or a crime against life (*misdrifven tegen het leven*) is an attack on the life of another person. To eliminate another person's life, an actor must do something or a series of actions that result in the death of another person [15]. Crimes against life committed intentionally are referred to or qualified as homicides are consisting as follows:

B. Ordinary murder

Crimes against life committed intentionally (murder) in the main form, are contained in Article 338 of the Criminal Code whose formulation is:

"Anyone who intentionally takes the life of another person is punished for murder with a maximum imprisonment of 15 years".

The elements of murder are:

- a. Whoever: there are certain people who do it
- b. Deliberately: in criminal law there are 3 types of intentional forms (*dolus*), namely:
 - 1) Deliberately as an intent
 - 2) Deliberately aware of certainty
 - 3) Deliberately aware of the possibility of taking another person's life.

C. Murder followed, accompanied or preceded by another crime

The murder in question is as formulated in Article 339 of the Criminal Code, stipulating:

"A murder that is followed, accompanied or preceded by a criminal act committed with the intention of preparing or facilitating its implementation, or to prevent themselves or other participants from being punished in the event of being caught red-handed, or to ensure possession of the object obtained illegally, shall be punished with life imprisonment or a maximum of 20 years imprisonment."

If the formulation is detailed, it consists of the following elements:

- a. All elements of murder (objective and subjective) Article 338 of the Criminal Code.
- b. Which (1) is followed, (2) is accompanied by or (3) is preceded by another crime.
- c. The murder was carried out with the intention of:
 - i. To prepare for another crime
 - ii. To facilitate the implementation of other criminal acts
 - iii. In the case of being caught red-handed it is intended:
 - 1) To prevent (1) oneself or (2) other participants from being punished, or
 - 2) To ensure control of the object obtained unlawfully (from the other crime).

D. Premeditated Murder (Moord)

Premeditated murder or abbreviated premeditated murder is murder with the most severe criminal threat from all forms of crimes against human life, regulated in Article 340 whose formulation is:

"Whoever deliberately and with a premeditated plan to kill another person, is sentenced for premeditated murder with a death penalty or imprisonment for life or for a certain period of time, a maximum of 20 years".

The above formulation consists of the following elements:

- i. Objective Elements:
 - 1) the act of taking one's life
 - 2) the object is someone else's life
- ii. Subjective Elements:
 - 1) intentionally
 - 2) and by planning in advance.

E. At or Shortly After Birth Murder by Mother of Her Baby

There are 2 (two) types of murder committed by a mother against her baby at the time of birth, which in legal practice is often referred to as infanticide, namely:

- a. Unplanned infanticide (ordinary infanticide, Article 341 of the Criminal Code) Ordinary killing of a mother against her baby as contained in Article 341 of the Criminal Code, is formulated as follows: "a mother who for fear of being caught gives birth to a baby when the baby is born or not a long time later, intentionally taking the life of his child, he is sentenced to kill his own baby with a maximum imprisonment of 7 year.

If the formulation is detailed, it consists of the following elements:

- i. The objective element consists of:
 - 1) The act of a mother
 - 2) His actions took his life
 - 3) The object is the baby's life
 - 4) Time: When the baby is born and not long after the baby is born
 - 5) The motive is fear of being known to give birth.
- ii. The subjective element is intentional
The element of intent in infanticide must be aimed at all the elements behind it. That therefore, the will and what the mother knows must be addressed, namely:
 - 1) To realize the act of taking a life
 - 2) The baby's own life
 - 3) The time, namely: When the baby is being born and not long after the baby is born

F. Infant murder carried out with a prior plan (Article 342 of the Criminal Code).

The murder of a mother against her baby at or not long after birth with pre-planned regulated in Article 342 of the Criminal Code whose formulation is:

"A mother who, in order to carry out the decision she has made for fear of being found out that she is about to give birth to a baby, at the time the baby is born or shortly thereafter, deliberately takes the life of the baby,

is sentenced to murder her own baby with a plan to be threatened with a maximum imprisonment of 9 years."

The premeditated infanticide has the following elements:

- a) The objective elements consist of:
 - i. The perpetrator is a mother
 - ii. There is a decision of the will that has been taken before
 - iii. His actions took his life
 - iv. The object of the baby's own life
 - v. Time: When the baby is born or not long after the baby is born
 - vi. Motive For fear of being known to give birth to a baby
- b) The subjective element is intentionally

G. Murder at the request of the victim

Murder at the request of the victim is regulated in Article 334 of the Criminal Code whose formulation is as follows:

"Whoever takes the life of another person at the request of the person himself which is clearly stated in his heart, shall be punished with a maximum imprisonment of 12 years". The crimes defined above consist of the following elements:

- 1) The act of taking life
- 2) The object is someone else's life
- 3) At the request of the person himself
- 4) Which is clearly stated earnestly.

H. Suicide advice and assistance

This suggestion and help for suicide is included in Article 345 of the Criminal Code whose formulation is:

"Whoever intentionally encourages another person to commit suicide, helps him with his actions or provides him with the means to do so, shall be punished with a maximum imprisonment of 4 years if that person commits suicide."

If the formulation is detailed, it consists of the following elements:

- i. *The objective elements consist of:*
 - 1) The act of encouraging, helping, providing means.
 - 2) On people to commit suicide
 - 3) The person is suicidal.
- ii. *The subjective element: intentionally*
Based on the element of action, there are 3 forms of crime in Article 345 of the Criminal Code, namely:
 - 1) The first form, prohibits people who intentionally do an act of encouraging others to commit suicide.
 - 2) The second form, prohibits people who intentionally do an act to help others in committing suicide.
 - 3) The third form, prohibits people who intentionally

commit acts of providing facilities to people who are known to be about to commit suicide.

I. Abortion and murder of the womb

The crime of abortion and murder of the womb is regulated in 4 articles, namely:

a. Abortion and the killing of wombs by women who are pregnant themselves, are included in Article 346 of the Criminal Code.

"A woman who intentionally aborts or terminates her pregnancy or orders another person to do so, shall be punished with a maximum imprisonment of 4 years".

The elements of the above formulation are:

- i. Objective elements:
 - 1) The act of a mother
 - 2) Actions: Abort, turn off, Order other people to abort, and Order other people to turn off
 - 3) The object is the content itself
- ii. Subjective element: intentionally.

J. Abortion and abortion without the consent of the pregnant woman, are included in Article 347 of the Criminal Code.

"Whoever intentionally aborts or terminates the womb of a woman without her consent, shall be punished by a maximum imprisonment of 12 years".

The elements of the formulation are:

- i. Objective elements:
 - 1) The act of aborting and disabling
 - 2) The object is the womb of a woman
 - 3) Without the woman's consent
- ii. Subjective element: intentionally

It is now known that there are similarities and differences between the provisions in Article 346 of the Criminal Code and the provisions of Article 347 of the Criminal Code. The similarities are (1) in both actions, namely abortion and death, (2) the object is the womb of a woman.

K. Abortion and abortion with the consent of the pregnant woman (Article 348 of the Criminal Code).

"Whoever intentionally aborts or kills a woman's womb with her consent, shall be punished with a maximum imprisonment of 5 years and 6 months".

The elements are:

- i. The objective element:
 - 1) Actions: abort and kill
 - 2) The object is the womb of a woman
 - 3) With his consent.
- ii. Subjective element: intentionally

The main difference between the crimes of Article 348 and Article 347 is that the act of aborting or killing the womb in Article 348 is carried out with the consent of the pregnant woman.

L. Abortion and abortion by a doctor, midwife or pharmacist.

Doctor, midwife or medicine interpreter is a personal quality attached to the legal subject (actor) of the crime as stated in Article 349 of the Criminal Code whose formulation is as follows:

"If a doctor, midwife or pharmacist assists in committing a crime under Article 346 or commits or assists in committing one of the crimes described in Articles 347 and 348, then the penalty specified in that article may be increased by one third and the right to carry out a search may be revoked. the crime was committed."

The actions of the doctor, midwife or drug interpreter can be in the form of (1) doing, and (2) helping to do it.

M. Crime Against Life Due to Negligence

Crimes against life committed due to negligence are crimes that are formulated in Article 359 of the Criminal Code which states:

"Whoever because of his mistake (negligence) causes another person to die, is sentenced to a maximum imprisonment of 1 year" The elements of the above formulation are:

- 1) There is an element of negligence (culpa)
- 2) The existence of certain actions
- 3) There is a result of the death of another person

In the end, Wirjono Prodjodikoro said that in this way a judge should not use his own character as a measure, but rather the nature of most people in society. However, practically there is of course an important role that is personal to the judge himself. So, basically what is used as a benchmark is a measure of prudence that exists in the community, but it does not rule out the possibility that judges also participate in determining this.

N. Crimes Against the Body (Malmage) Resulting in Death

In general, criminal acts against the body in the Criminal Code are called "persecution", regarding the meaning and meaning of the word persecution, there are many differences among legal experts in understanding it. Persecution is defined as an act done intentionally to cause pain (*pijn*) for wounds (*letsel*) on the body of another person. There are also those who understand that persecution is "intentionally causing pain or injury, that intention must be included in the letter of accusation"

while in the doctrine/science of criminal law persecution has the following elements.

- i. It was intentional
- ii. There is an action
- iii. There is a result of the (targeted) action, namely:
 - 1) body pain
 - 2) wounds on the body

Persecution that results in the death of a person is regulated in CHAPTER XX Book II, article 351 paragraph 3, article 353 paragraph 3, article 354 paragraph 2, and article 355 paragraph 2.

O. Ordinary Persecution

Article 351 of the Criminal Code

- i. *Persecution shall be punished by a maximum imprisonment of two years and eight months or a maximum fine of four thousand five hundred rupiahs.*
- ii. *If the act causes serious injury, the guilty person will be sentenced to a maximum imprisonment of five years.*
- iii. *If it results in death, the punishment shall be a maximum imprisonment of seven years.*
- iv. *Persecution is the same as intentionally damaging health*
- v. *Attempts to commit this crime are not criminal.*

P. Ordinary persecution has the following elements:

- i. It was intentional
- ii. There is an action
- iii. There is a result of the action (the intended one), pain in the body, and or injury to the body.
- iv. Consequences are the only goal

Q. Premeditated persecution

Article 353 of the Criminal Code

- i. *Persecution with premeditation shall be punished by a maximum imprisonment of four years.*
- ii. *If the act causes serious injuries, the guilty person shall be punished with a maximum imprisonment of seven years*
- iii. *If the act results in death, the guilty person shall be punished with a maximum imprisonment of nine years.*

According to another research, the meaning of being planned in advance is that there is a period of time, however short, to consider and think calmly". The element of premeditated persecution is that it is planned in advance before the act is committed. Persecution can qualify as premeditated abuse if it meets the following conditions:

- i. Decision making to do a will is done in a calm inner atmosphere.
- ii. Since the intention/decision to act is made up to the execution of the deed, there is a sufficient grace period so that it can be used for thinking, including:
 - 1) What risks will be borne.
 - 2) How and with what tools and when is the right time to do it.
 - 3) How to remove traces.
- iii. In carrying out the actions that have been decided to be carried out with a calm mood.

R. Severe persecution

Article 354 of the Criminal Code

1. *Anyone who intentionally seriously injures another person, shall be punished for committing serious mistreatment with a maximum imprisonment of eight years*
2. *If the act results in death, the guilty person shall be punished with a maximum imprisonment of ten years.*

In article 354 paragraph 2 of the Criminal Code, it is also regulated if the severe persecution results in death.

S. Serious and premeditated persecution

Article 355 of the Criminal Code

1. *Serious maltreatment carried out with a prior plan, shall be punished with a maximum imprisonment of twelve years*
2. *If the act causes death, the guilty shall be punished by a maximum imprisonment of fifteen years.*

If we look at the explanation above regarding crimes in the form of premeditated persecution, and severe persecution, then this premeditated severe persecution is a combined form of severe persecution (article 354) and premeditated persecution (article 353), in other words, a severe persecution that occurred in premeditated persecution, these two forms of persecution must occur simultaneously/together. Because it must occur together, it must fulfill both elements of severe persecution and elements of planned persecution.

4. CONCLUSIONS

The teaching of causality in Indonesian criminal law does not explicitly refer to one of the existing teachings of causality, it is the legal experts who make a view on which doctrine of casualty is used as the basis for understanding Crimes against the loss of a person's life in the Criminal Code can be distinguished or grouped on 2 grounds, namely: crimes against life committed intentionally (*dolus misdriyven*) and crimes against life committed due to negligence (*culpose misdriyven*).

In these cases, both at the District Court, Cassation and City Review levels, that the judge's conviction is very important to determine the doctrine of causality to be applied. By referring to the legal facts, it can be seen that the witness testimony, the defendant's statement and the evidence found points of agreement. Therefore, the decision of the Supreme Court judge in such a way can be said to be suitable if it is associated with the theory of the Doctrine of Causality. This theory begins by interpreting the formulation of the offense in question. From the formulation of the offense which only contains the prohibited consequences, it is attempted to determine what behaviors were meant when making the prohibition. However, when viewed from the teaching of causality in criminal law, the Supreme Court Decision No. PK level. 210 PK/Pid-Sus/2014 is correct.

In Indonesian criminal law, it is necessary to have special study of the teachings of causality, because in Indonesian criminal law, especially the Criminal Code, it does not specifically and clearly regulate which causality teachings are adhered to and become a permanent standard, but it depends on the case that occurs. It is necessary to conduct a detailed study of the Criminal Code, in particular to the provisions governing the qualifications of criminal acts that result in the loss of life of people who require the teaching of causality. And assertiveness for every law enforcer, especially judges in Indonesia to have a firm belief in determining the doctrine of causality that will be used to resolve criminal cases so that justice as fair as possible can be achieved.

Whereas in many decisions, indictments or demands by law enforcement, starting from prosecutors and judges, they indirectly use the teaching of causality but do not mention certain teachings of causality or the scientists who developed the theory in which doctrine is one of the sources of law. So that the teaching of causality used by law enforcement is only based on logic without being supported, reinforced by the doctrine of criminal law that developed the teaching. So, it is hoped that law enforcers in making decisions can use theories and doctrines of causality that are widely developed by legal science, so that law enforcement decisions have strong documents in making a decision.

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