

## **Criminal Law Accountability In Giving Certificate Of Disease Issued By Doctor To Patient**

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**Abstract :** This study aims to identify the responsibility of doctors in the form of criminal responsibility and civil liability, to know the limits of the authority of a doctor in issuing a certificate of illness and to give warning to the doctor and the patient not to abuse the sick letter.

This research was conducted using normative research method by taking data from various sources that are primary law material, secondary law language and tertiary law material and take case examples from interview result and online media. The results of this study then collected and arranged systematically then interpret the legal material obtained and poured in the form of sentences are arranged in detail and systematic.

The results of this study discusses the definition of sickness certificates, criminal liability and ethics from doctors who make ill-intentioned letters, the procedure of giving a certificate of pain to patients, the reason the patient requested a doctor's certificate that is for the benefit of work, education, legal process to the interests of aviation, as well as the example cases of abuse of the patient's sickness certificate.

**Keywords :** Responsibility, Criminal Law, Pain Certificate, Doctor, Patient

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### **I. INTRODUCTION**

The development of science increasingly rapidly accompanied by technological advances in the field of health major in the field of medicine. Various studies were conducted to pursue advances in medicine. A professional doctor must continue to study the development of science in the field of medicine to improve science and professionalism in the field of health.

A doctor in performing health services must meet the 5 elements of professional standards<sup>1</sup>, namely; accuracy and precision; medical standards; average ability; purpose of action; proportional action. The limit itself is very important to judge the deviation or not.

The medical world that used to be unattainable in the community's perspective. With the development of public awareness of the protection of the law make the world of health not only as a civic relationship, even developed into a criminal matter.

One of the jobs that get a physician to touch legally is when a doctor has to make a certificate of the patient he or she has examined. In the certificate it can state whether the patient is healthy enough to be on the things that are required or unhealthy for these things.

Recently, a doctor's certificate, primarily a certificate of sickness, is questioned in some cases to be filed or is being brought to justice because often the doctor's testimony written in the doctor's certificate and the fact seen by the naked man differently raises the suspicion that the doctor had made an improper statement, which then led to the idea of forming an "independent doctors team" and even some "independent doctors' teams" for one case.

Almost every day most doctors issue a certificate to the patient about his or her health condition. Various kinds of certificates issued by the doctor one of them sickness certificate.

In the code of medical ethics contained in the Indonesian Medical Code of Ethics (*KODEKI*).<sup>2</sup> In Article 7 of *KODEKI*, a physician only gives a certificate and opinion that has been verified by himself. so a doctor issuing a certificate must be based on article 7.

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<sup>1</sup> Hargianti Dini Suwandi, Aspek Hukum Penyelenggaraan Praktik Kedokteran: Suatu Tinjauan Berdasarkan Undang-Undang Nomor 9 Tahun 2004 Tentang Praktik Kedokteran, *Jurnal Manajemen Pelayanan Kesehatan*, Vol. 09 No. 2, June 2006.

In giving a doctor's certificate, a doctor should pay more attention to the aspects of precision and carefulness in conducting examinations to patients to reduce the exaggeration in issuing the certificate.

Doctors who issue sickness certificates must have a variety of reasons, one of which is to meet the patient's request. Patient requests are based on a wide range of personal and institutional interests such as the institution where the patient works and the educational institution from which the patient is studying.

Doctors' certificates are sometimes requested by the patient deliberately to prove the health condition of the patient. One reason is quite interesting from taking a medical certificate that is for the benefit of leave / permission in working in an agency or company. This doctor's certificate is required by some patients to apply for the leave accompanied by written evidence of the patient's health condition in the aforementioned sickness certificate.

As the name implies, the sick certificate contains a physician's written statement of his patient's illness. Viewed from the health law, the provision of a certificate of pain is carried out by a doctor in carrying out his profession.

With a variety of interests related to taking a certificate of pain sometimes patients make special requests to doctors to increase the rest time contained in the health certificate so that the patient's work time becomes less.

Theoretically a doctor in issuing a certificate has the right independently. This independent right means that a physician is free in issuing a certificate under the Indonesian Medical Code of Ethics (KODEKI) that the physician must first provide information that has been verified or validity by the physician himself.

In addition, writing a certificate of illness is an authority given only to the doctor and not given to other health workers such as nurses and pharmacists. The authority of doctors in issuing sickness certificates is also included in Article 35 Paragraph 1 of Law Number 29 Year 2004 concerning Medical Practice. In addition, this doctor's certificate implicitly becomes the patient's right in health service as stated in Article 52 of Law Number 29 Year 2004 concerning Medical Practice that the patient is entitled to seek opinions from the doctor and the opinions in question can be opinions orally or in writing (certificate).

Normatively doctors have the freedom to issue a certificate of the doctor but the doctor still must be accountable for the truth or validity of the contents of the certificate based on the knowledge possessed by a doctor. If a doctor does not pay attention to the information written in the certificate of illness then the doctor has the potential to commit a criminal offense or ethicolegal.

## **II. FORMULATION OF THE PROBLEM**

Based on the above introduction, the following problems can be formulated:

1. What is the procedure of giving a health certificate by the doctor to the patient?
2. To what extent is the physician's responsibility in giving a patient sickness certificate?

### **RESEARCH PURPOSES**

1. To find and understand the criminal and ethical responsibilities of the physician giving the patient a false illness certificate.
2. To find out how the limitations of a doctor's authority in giving false statements.
3. To alert doctors and patients to be careful in issuing doctor's certificate.

### **BENEFITS OF RESEARCH**

1. Provide valuable contribution to science, a useful research concept in relation to the implementation of medical practice that directly relates to the provision of a doctor's certificate to the patient and the criminal liability of a physician when giving an incorrect certificate to the patient.
2. As one source of information for doctors, dentists and patients in the implementation of medical practice in providing health care services to be careful in issuing a certificate of health.
3. Contribution of thought to the government and law enforcers in carrying out duties as supervisors, supervisors, law enforcers and regulators in the effort of organizing medical practice.
4. As a material comparison / reference for students if intending to examine the doctor's certificate and legal consequences.

## **III. METHOD OF THE RESEARCH**

This research uses legal research method of normative law. This research uses literature research and legal materials. This legal substance comes from laws and regulations, medical code of ethics, books and scientific articles relating to criminal liability of criminal letters of false doctor certificates.

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<sup>2</sup> M. Jusuf Hanafiah and Amri Amir, *Etika Kedokteran & Hukum Kesehatan Edisi 4*, (Jakarta: PT EGC, 2008), Page 14-15.

#### IV. DISCUSSION

##### UNDERSTANDING OF ILLNESS CERTIFICATE

Every doctor in running his profession is not uncommon to make various types of medical certificates for the interest of certain parties or patients. This often brings its own problems, because it can involve a wider legal issue. Some medical certificates issued by doctors for various purposes. According to the *Indonesian Doctors Association (IDI)* in terms of importance, the medical certificate can be distinguished on:

1. Medical Certificate For Judicial Interests

Medical remarks like this are concerned with *Visum et Rivertum*. The duty of the physician to make this *Visum et Rivertum* has been regulated in article 133 of the *Criminal Procedure Code (KUHP)*. *Visum et Rivertum* will serve as evidence in front of the court. *Visum et Rivertum* is a written report made by a physician using his or her best scientific knowledge based on oaths on what is seen and found on human evidence or objects of the human body for the benefit of the judiciary.

2. Medical Certificate for Non-Judicial Interest

Such medical certificates include sickness certificates, healthy statements and death statements. Disease certificates are generally given to patients who need them. The use of patient sickness letters is used in a variety of interests that are generally left to third parties such as schools, work places and even to postpone court hearings.

According to Dirwan Suryo Soularto, a certificate of illness is a letter given by a doctor professionally about the condition of patients who need rest conditions and can be proven truth<sup>3</sup> whereas according to the authors illness letter is a letter of information issued by a doctor containing patient identity in the form of name, age, work and address of the patient as well as the patient's health condition and rest period.

In terms of health law, the provision of a certificate of pain is performed by a doctor in order to run his profession. Here is actually a *terapeutik* transactions that can mean that the certificate was written based on the results of observation and inspection itself.

In this construction doctors agree to try to treat patients by using the best knowledge. But doctors can not guarantee the success of the business. So this transaction is based on a business agreement (*Ispanningverbintennis*) not a result-based agreement (*resultaatverbintennis*).

According to Indar, the certificate of illness is divided into two kinds, namely: a certificate of illness (which contains a subjective element) and a certificate of disease (which contains objective elements). On the certificate of disease that the size is the presence or absence of anatomical abnormalities or body functions. So if the requested is a certificate of illness, then the doctor can not promise to have confirmed whether there is pain, especially in patients who pretend to be sick (simulation).<sup>4</sup>

Budi Sampurno added that the certificate of illness must be made in relation to the specific illness situation and is intended for the healing of the disease.<sup>5</sup>

In general, the certificate of illness is followed by a statement that the patient should rest or not perform activities for a certain period of time. This absenteeism is usually the cause of third party problems such as the agency where work or trial. The underlying thing to determine whether or not disturbed the health of the patient, which is associated with whether or not someone is given a break and stop his activities with the pain. This feeling of pain can be a subjective thing because it is not uncommon for a disease to be painless. Conversely, one can complain of pain, although clinically no anatomical or physiological abnormalities are found.

For that a doctor in issuing a certificate of illness must make a diagnosis. Diagnosis is the identification of disease properties or conditions of the other.<sup>6</sup> Then a doctor who will make the diagnosis must pass the stages of diagnosis. The following stages of diagnosis<sup>7</sup>:

- Anamnesis

Anamnesis is an interview activity between patient / family of patient and doctor or other health personnel authorized to obtain information about the patient's complaints and illness.

- Physical examination

Physical examination is the collection of data by examining the physical condition of the patient.

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<sup>3</sup> Dirwan Suryo Sudarto and Ayu Azhimsari, *Persepsi dan sikap dokter dalam pemberian surat keterangan cuti sakit di RS PKU Muhammadiyah Yogyakarta*, *Mutiara Medika Special Edition*, Vol. 8 No. 2, 2008, Page 129.

<sup>4</sup> Indar, *Etikolegal dalam Pelayanan Kesehatan*, (Jogjakarta: Pustaka Pelajar, 2017), Page 352.

<sup>5</sup> *Adendum 1 Kode Etik Kedokteran Indonesia and Pedoman Kode Etik Kedokteran Indonesia*, (Jakarta: Majelis Kehormatan Kedokteran Indonesia (MKEK), 2004).

<sup>6</sup> Dian Mauli, *Tanggung jawab dokter terhadap kesalahan diagnosis*, *Jurnal Cepalo Vol. 1 No. 1*, 2017, Page 41.

<sup>7</sup> *Ibid.* Page 45.

- Supporting investigation  
Investigations performed to determine the diagnosis of the patient's illness. This investigation is generally performed if the diagnostic checking steps above have not been able to definitively diagnose a disease suffered by the patient so that investigation is needed for a definitive diagnosis of the disease.
- Diagnosis  
The diagnosis is the determination of certain types of diseases based on careful analysis of history and examination. Another source says the diagnosis is the identification of disease properties or conditions or distinguish one disease or condition from another.  
In general, patients as the first party to use a letter of illness in a way not wise. To that end, the authors divide the category of patients requesting a sick letter into three categories:
  1. Patients who are really sick and need a sick note.
  2. Patients who are mildly ill indicated not to hinder their activities, but want a certificate of pain because they feel unable to indulge in activity.
  3. Patients who are not sick at all, pretending to be sick for wanting a certificate of illness.

#### **DOCTOR'S RESPONSIBILITY IN GIVING LETTERS OF PAIN CRIMINAL RESPONSIBILITY FALSE ILLNESS CERTIFICATE**

Counterfeiting is set out in Chapter XII on "Falsifying the Letters" of Article 263 - Article 276 of the *Criminal Code (KUHP)*. In the chapter there are various provisions on counterfeiting done in various conditions and ways.

Regarding the doctor who falsified the illness certificate, it can be imposed with Article 267 of the Criminal Code (1), (2) and (3):

1. A physician who deliberately gives false statements about the presence or absence of illness, weakness or disability, is threatened with a maximum imprisonment of four years.
2. If the information is given with the intention of inserting a person into a mental hospital or to detain it therein, a maximum imprisonment of eight years and six months shall be imposed.
3. Threatened with the same criminal, whoever deliberately uses the fake letter as if the content is in accordance with the truth.

To explain what and how the meaning of letter fraud, Adam Chaznawi gives the following explanation<sup>8</sup>:

- a. Although Article 267 Paragraph (1, 2) of the Criminal Code only applies to qualified individuals as doctors, non-physician persons can still be involved as advocates (*uitlokker*), perpetrators (*medenplegen*), and auxiliaries (*medeplichtigen*).
- b. Providing the certificate contained in article 267 paragraph (1) of the Criminal Code means making a statement and submitting the certificate to others.
- c. Based on Article 267 Paragraph (1) of the Criminal Code, the contents of the statement shall relate to three matters covering six alternatives, namely the existence of the disease, the absence of disease, the existence of weaknesses, the lack of weakness, the defect, and the absence of defects.

There are three insights contained in a doctor giving a certificate, which consists of:

- a. Such information is given in writing (in writing)
- b. Who makes the letter and is responsible for the letter is a doctor (not valid if the sign is not a doctor)
- c. The letter is used and submitted to someone who requests it

In practice it is so easy for a doctor to give a health certificate to a person even without going through internal examination or laboratory or other supporting checks. This falls into the category of making false statements when a person who made a health certificate suffers from an internal disease that will not be detected by simply doing an external examination.<sup>9</sup>

According to R. Soesilo It is further said that the threat of punishment is added, if the falsified letter is to be used to forge or arrest the person in the asylum. It is also punishable for a person to use a false letter from the physician as if he or she is not a fake, provided that the person knows of the falsity of the letter.<sup>10</sup>

So if it meets the elements set forth in the above article it can be punishable by a sentence of 4 (four) years and if the certificate is used to insert a person into a mental hospital it is exacerbated to be 8 (eight) years 6 (six) months.

It is different if the doctor's actions in giving the false illness certificate, the doctor can prove because forced and threatened that threatens his soul and compulsion suppress the mind of the doctor so that according

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<sup>8</sup> Adam Chazawi, *Kejahatan Terhadap Pemalsuan*, (Jakarta: Raja Grafindo, 2001), Page 117.

<sup>9</sup> Indar, *Op. Cit*, Page 352.

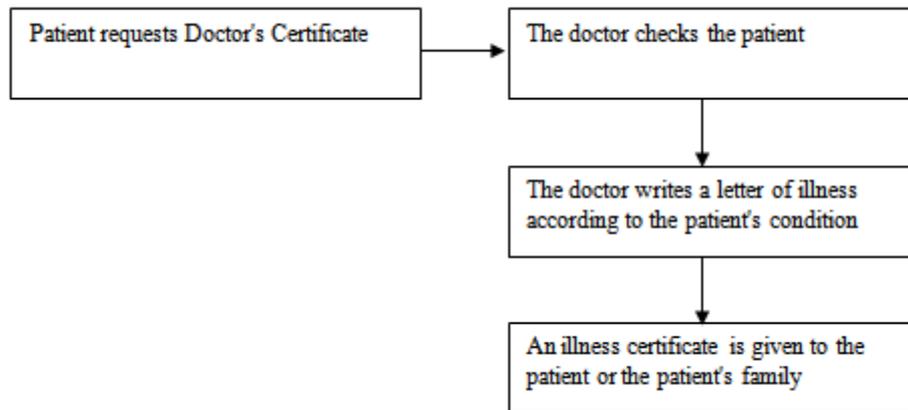
<sup>10</sup> R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*, (Bogor: Politeia, 1996), Page 198.

to the will of the patient who forced him, although the doctor knows that his actions are threatened punishment, in case the criminal acts of a doctor have existed but are not punished for reasons of forgiveness ie the reasons that eliminate the mistakes of the defendant because of overmatch (Article 48 of the Criminal Code).

#### **PROCEDURE FOR PATIENT'S DISCHARGE**

In general, Standard Operating Procedure (SOP) of a letter of illness issued by the Regional General Hospital (RSUD) Daya, the authors present a chart that contains the flow of making a certificate of pain simply as follows:

#### **Flow Chart of Procedure of Document Certificate To Patient**



From the chart above, it is concluded that the patient requesting the doctor to issue a certificate should consider the standard operational procedures (SOP) made by the puskesmas, clinic or hospital, especially in terms of writing the patient's health condition so that a doctor analyzes the health condition along with the rest which is required by the person who needs the certificate of illness.

### **V. RESULTS**

#### **CONCLUSION**

1. A certificate of illness is a certificate issued by a physician to an illness containing the patient's identity and a description of the ill health of the patient. A certificate of illness should be issued by a competent physician in the field.
2. A doctor in making a certificate of illness may be criminally and ethically responsible for the statements made. The certificate of illness has legal consequences for the physician making it and the patient using for his benefit
3. Sickness certificates are made on the patient's request based on the patient's interest. At the time of making a certificate of pain in the doctor, the patient sometimes feign sick to fool the doctor who examined it. Patients who pretended to be sick mostly abused the sickness certificate. Therefore to issue a certificate of illness a doctor must pay attention to the standard of medical profession.
4. Disease certificates made by physicians are used for the various interests of patients who request them for school or education, for the benefit of legal proceedings, work even for aviation. This interest should be presented by the patient to a doctor who writes a sick letter to be included in the certificate.

#### **SUGGESTIONS**

1. A certificate of illness must be made according to the standard of the medical profession in which each of the certificates should be able to professionally run the profession standard.
2. A doctor should be given a better legal understanding to prevent a doctor from misusing his authority in making a certificate of illness so as to prevent the doctor from falsifying statements contained in the certificate of illness he has made.
3. Doctors in making a certificate of illness must first ask the patient's interest in requesting a certificate of illness and preferably the interests should be written in a letter of illness.
4. A certificate of illness addressed to a particular institution should be investigated and verified by contacting the physician who issued the illness certificate.

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