



CRIMINAL ACTS OF CORRUPTION (BRIBE) BY PRIVATE HOSPITAL AGAINST A MIDWIFE IN REWARD FOR SERVICES FOR PATIENT REFERRAL

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Abstract

The term bribe in corruption cases is a bribe or money given to another party to facilitate certain goals. People in Indonesia refer to bribes as facilitation payments. Cases of bribery have been going on for a long time in Indonesia. Bribes are usually given to officials in the government bureaucracy who have important roles, law enforcers, as well as customs and tax officials. Ironically, cases of bribery are still considered common in Indonesia.

The results of a survey at the "MM" Hospital in November 2022 showed that midwives get a caesarean patient referral fee with BPJS of Rp. II in the amount of Rp. 600,000, - ; Class I Rp.700.000,-; VIP class Rp.800.000,-. Whereas there was an incident at the hospital where the patient could not pay off the payment, the patient was advised to be referred to the hospital by the midwife, and it was known that the midwife received a fee from the hospital.

From the interview, there was a criminal act of bribery between the midwife and the hospital, which is referred to as bribery according to RI Law Number 11 of 1980 concerning the crime of bribery, article 1 which reads "Whoever receives or gets something from someone with the intention of persuading that person to do something or not. doing something in their duties, contrary to their authority or obligation which concerns the public interest, shall be punished for giving bribes with imprisonment for a maximum of 5 (five) years and a maximum fine of Rp. 15,000,000.- (fifteen million rupiahs).

Legal responsibility for midwives and doctors, namely in the form of administrative sanctions based on Minister of Health Regulation No.58 of 2016 concerning sponsorship for health workers in the form of verbal warnings, revocation of licenses and also criminal sanctions based on the Corruption Crime Act, namely fines and imprisonment

Keywords: *Bribery, midwife referral*

Introduction

Corruption has become a crime that is considered to damage the foundations of social and state life. State losses caused by criminal acts of corruption are already in the dangerous category. Corruption in Indonesia is a recurrent and emergency



national problem that Indonesia has faced from time to time over a relatively long period of time so that the special corruption court is expected to be able to help resolve a number of past corruption crimes in order to restore lost assets.¹

The causes of someone committing corruption are (1) Weak religious, moral and ethical education, (2) no harsh sanctions against perpetrators of corruption, (3) the absence of a transparent government system (good governance), (4) economic factors, (5) management that is not good and there is no effective and efficient supervision and, (6) Modernization which causes a shift in the values of life that develop in society²

Based on the explanation above, the point of the problem is regarding services by medical staff, an obstetrician in East Java conveyed a position case as follows, "in this case there is a scenario between the midwife and the hospital, whereupon the hospital gives a fee to the midwife who had referred the patient to the hospital. Then direct the patient to give birth by caesarean section³

Radar Lampung Selatan carried similar news with an undisclosed source because it brought up quite specific numbers. "They were promised a fee if they brought referral patients. The nominal value is IDR 300 thousand-IDR 400 thousand," said a Radar Lamsel source. The fee of three hundred thousand rupiah is for the category of normal delivery, while for delivery by caesarean section the fee goes up to four hundred thousand rupiah.⁴

Based on the Transparency International report described earlier, this case takes advantage of the large flow of funds and the complexity of the organizational

¹ Adami Chazawi, *Corruption Criminal Law in Indonesia*, (Depok: Rajawali Pers, 2017), p. 62

² Shamsuddin, A. *Special crime*. (Jakarta: Sinar Graphic, 2016), p.11.

³ Febrian Tito Zakaria Muchtar, "UNAIR Hospital Doctor: Referral Gratification Between There and Not", news.unair.ac.id, 21/11/2022

⁴ Radar Lamsel, "There is a Fee behind the Midwife Referral", radarlamsel.com, 2020,17/11/2022



structure in the health sector. In the case of childbirth, the large flow of funds can be seen from how much it costs to give birth both normally and by caesarean section⁵

The results of a survey at the "MM" Hospital in Tuban district in November 2022 showed that midwives get a caesarean patient referral fee with BPJS of Rp. II in the amount of Rp. 600,000, - ; Class I Rp.700.000,-; VIP class Rp.800.000,-. Whereas there was an incident at the hospital where the patient could not pay off the payment, the patient was advised to be referred to the hospital by the midwife, and it was known that the midwife received a fee from the hospital.

Based on the description above, this case of giving compensation for midwife referrals needs to be examined and the results written down in the form of research entitled: Criminal Acts of Corruption (Bribery) by Private Hospitals Against Midwives in Rewards for Service Referrals to Patients at MM Hospital

Sub Title

A. Application of the Bribery Concept in Legislation in Providing Rewards for Services Referrals of Midwives

Referral patients from midwives are patients with indications of Sectio Caesaria originating from Ante Natal Carre (ANC) examinations/prenatal patient care at midwives who then become referral patients at the hospital. The problem is whether the referral patient from the midwife for Sectio Caesaria is as follows:

1. It is in accordance with the applicable standards of midwifery services or midwifery care, whether it is true that the patient must have Sectio Caesaria or not.
2. The diagnosis is made based on an examination from a midwife who is approved by an obstetrician specialist only by telephone.
3. Is there cooperation between midwives and obstetricians in increasing the number of patients for personal gain?

It's no longer a secret that so far, midwives have contributed a lot in determining whether a patient has a cesarean section or not, because midwives

⁵ Julianda Rosyadi. Bribery in Giving Fees for Referral Midwives. Thesis of the Faculty of Law, Airlangga University, 2020



have the most communication and direct contact with patients, especially since midwives carry out prenatal checks in their own practice.

In the interviews that the researchers conducted with the midwives, almost all of them said that doctors generally check the patient's womb before surgery, namely by performing an ultrasound directly on the patient, by bringing an ultrasound device to the midwife's house.

Based on interviews with ob-gyn specialists, they also said that they always check the patient's condition before surgery by routinely carrying out ultrasound examinations, but there are some who say that they also sometimes only call their midwives.

So according to data available at the MM hospital, there is a tendency for midwives to refer patients more for cesarean sections than for midwives to help their patients give birth normally. But there are also many midwives

Based on the above, the researcher will discuss the legal aspects. From the interview, an act of gratification occurred according to Article 12B paragraph (1) of Law Number 31 of 1999 concerning eradication of criminal acts of corruption as well as Law No. 20 of 2001 concerning criminal acts of corruption that: what is meant by gratuity in this paragraph is giving in a broad sense, which includes the provision of money, goods, rebates, commissions, interest-free loans, travel tickets, tourist accommodation facilities, free medical treatment and other facilities.

From the interview, there was a criminal act of bribery between the midwife and the hospital, which is referred to as bribery according to RI Law Number 11 of 1980 concerning the crime of bribery, article 1 which reads "Whoever receives or gets something from someone with the intention of persuading that person to do something or not. doing something in their duties, contrary to their authority or obligation which concerns the public interest, shall be punished for giving bribes with imprisonment for a maximum of 5 (five) years and a maximum fine of Rp. 15,000,000.- (fifteen million rupiahs). What is meant by the criminal act of bribery in this law is the criminal act of bribery outside the provisions of the



existing laws and regulations. While the sanctions for these actions according to article 2

In addition to violating the bribery and gratuity laws, if viewed from a legal aspect, SC indications originate from midwives, midwives themselves may be subject to criminal sanctions:

Midwives can be subject to criminal sanctions based on Article 5 of the Criminal Code, because midwives participate in committing crimes, namely referring patients who actually do not have an indication for SC surgery, as well as if midwives and obstetricians work together so that patients undergo SC operations without indications:

Article 55 (1) is punished as the maker (dader) of a criminal act 1st Those who do it, those who order it to do it and participate in doing it Second, those who give or promise something by abusing power or dignity, by violence, threats, or deception, or by providing opportunities, means or information, deliberately encouraging other people to take action. Article 55 (2) Against an advocate, only actions that are intentionally recommended are taken into account, along with their causes and consequences.

B. Corruption Criminal Legal Liability (Bribery) for the Actions of Private Hospitals That Provide Rewards for Services Referring Midwives

Criminal liability in foreign languages is referred to as "toereken-baarheid", "criminal responsibility", "criminal liability", this criminal responsibility is intended to determine whether a person can be held accountable for his crime or not for the actions committed . Thus, a person gets a sentence depending on two things, namely.⁶

- a. There must be an act that is against the law, or in other words, there must be an element against the law so there must be an objective element
- b. Against the perpetrator there is an element of error in the form of intentional and or negligence, so that the unlawful act can be accounted for to him so

⁶ S.R. Sianturi, Principles of Indonesian Criminal Law and Their Application, Cet.IV, (Jakarta: Alumni Ahaem-Pateheam, 2019), p. 245.



there is a subjective element. The occurrence of criminal liability because there has been an act/action committed by someone.

Based on interviews with several patients such as the data above, it is clear that there are still obstetricians at the MM hospital who do not directly check the condition of their patients before a cesarean section is carried out, and this includes not giving direct informed consent to the patient or the patient's family, maybe this is it doesn't only happen at the MM hospital, but at other hospitals it's also possible that the same thing can happen and this is no longer a public secret.

As for the hospital that provides a midwife referral fee, it also violates the bribery law No. 11 of 1980. Whoever gives or promises something to someone with the intention of persuading that person to do something or not do something in their duties, which is contrary to their authority or obligations relating to public interest, shall be punished for giving bribes with imprisonment for a maximum of 5 (five) years and a maximum fine of Rp. 15,000,000.- (fifteen million rupiahs).

The duty of midwives and doctors to be responsible to the community means the willingness to provide the best possible service according to their profession, without distinguishing between paid services and free services and to produce quality services that have a positive impact on society. Negligence in carrying out the profession has a harmful impact or maybe oneself, others and sins against God⁷

Law violations committed by midwives and doctors as health workers in the Regulation of the Minister of Health No. 58 of 2016 concerning Sponsorship for Health Workers are still in the form of administrative sanctions. In addition to this, what can be done by a patient if a doctor suffers a loss, can file a criminal charge whereby medical action that should be brought under the realm of criminal law is limited to medical action that contains intention (*dolus/opzet*) for consequences that are threatened with a crime or medical action involving real/serious negligence. In terms of knowing the criminal sanctions that can be

⁷ Nurhaidah, *Loc.Cit*



given to doctors who cooperate, such as in the case of gratuities between doctors and pharmaceutical companies based on Article 66 paragraph (3) of Law No. 29 of 2004 concerning Medical Practice states that "Complaints as referred to in paragraph (1) and paragraph (2) removes the right of every person to report suspected criminal acts to the authorities or to sue for civil damages to court".

Forms of collaborative activities between midwives and obstetricians causing harm to patients in relation to drug administration can also be included in gratification activities which are stated in Regulation of the Minister of Health No. 58 of 2014 concerning Control of Gratification within the Ministry of Health. Which regulates the prohibition of acceptance or gratuity.⁸

From this explanation, the criminal act of bribery between midwives, ob-gyn doctors and hospitals is an act of bribery given to midwives. As for the hospital, which provides a midwife referral fee, it also violates the bribery law No. 11 of 1980. Whoever gives or promises something to someone with intent to persuade that person to do something or not to do something in his duties, which is contrary to his authority or obligations that concern the public interest, shall be punished for giving a bribe with imprisonment for a maximum of 5 (five) years and a fine of up to Rp.15,000. 000,- (fifteen million rupiah).

Legal responsibility for midwives and doctors, namely in the form of administrative sanctions based on Minister of Health Regulation No.58 of 2016 concerning sponsorship for health workers in the form of verbal warnings, revocation of licenses and also criminal sanctions based on the Corruption Crime Act, namely fines and imprisonment

Conclusion

1. The bribery article can be applied in the case of giving compensation for a midwife's referral which is included in Article 0 of Law No. 11 of 1980 concerning the crime of bribery.

⁸ Ibid



2. The hospital, which provides a midwife referral fee, also violates the bribery law No. 11 of 1980

Bibliography

Adami Chazawi, *Corruption Criminal Law in Indonesia*, (Depok: Rajawali Pers, 2017), p. 62

Al-Adawy Shaykh Mustafa, *Jurisprudence of Morals*, (Jakarta: Qisthi Press, 2017), p.379

Chatrina Darul Rosikah and Dessy Marliani Listianingsih, *Anti-Corruption Education Anti-Corruption Theory and Practice Studies*, (East Jakarta: Sinar Graphic, 2016), p. 20

Chairul Huda, *From No Criminal Without Guilt Towards No Criminal Liability Without Guilt. A Critical Review of the Theory of Separation of Criminal Acts and Criminal Responsibility*; Jakarta: Kencana Prenada Media, 2017, page 125

David Yohannes, "Naughty Midwives Often Refer Pregnant Women to Certain Maternity Hospitals", *surabaya.tribunnews.com*, h. 1, visited 12 May 2020.

Elwi Danil, 2018, *Corruption, Concept, Crime, and Eradication*, Jakarta: Rajawali Press, page 2.

Febrian Tito Zakaria Muchtar, "UNAIR Hospital Doctor: Referral Gratification Between There and Not", *news.unair.ac.id*, 21 January 2020, h. 1, visited 12 February 2020

Gultom. *The Quality of Judges' Decisions Must Be Supported by the Community. Update Voice*. Jakarta, 2016, p.25

Indonesia Corruption Watch, 2014, *Study on the Application of Articles of Gratification Considered Bribery in Corruption Act*, Policy Paper, Pg 19

Joachim Friedrich, *Legal Philosophy: Historical Perspective*; Bandung: PT Nuansa and PT Nuansa Media, 2017, p.4

Julianda Rosyadi. *Bribery in Giving Fees for Referral Midwives*. Thesis of the Faculty of Law, Airlangga University, 2020

Hermojo (Translator), in Robert Klitgaard in, *Controlling Corruption, The Regent of the University of California, Third Edition, 2005, Eradicating Corruption*, Indonesian Torch Foundation, Jakarta: page 31



- Presidential Decree no.5.Disciplinary Council for Health Workers, Article 5, 1995
- Moeljatno, Building Criminal Law; Jakarta: Literacy Development, 2017
- Marlina, Penitential Law; Bandung: Refika Aditama, 2018, page 59
- Nurhaidah, Legal Aspects of Sectio Caesaria Savings Packages From Midwife Referrals at X Hospital. Thesis for Postgraduate Program at Soegijapranata Catholic University Semarang, 2009
- Rahman . Efforts to Overcome Corruption Crimes in Indonesia. No 9. Progressive Justice, Vol 2 , p. 113-124
- Radar Lamsel, “There is a Fee Behind the Midwife Referral”, radarlamsel.com, 2020, p1, visited 12 May 2020.
- Roni, Alvi, Madiasa, and Mahmud, Gratification by Pharmaceutical Companies Against Doctors in Medical Services at Hospitals, Published In Iuris Studia Journal of Legal Studies, Vol 3 Number 2, 2022, pp. 139-145
- Shamsuddin, A. Special crime. Jakarta: Sinar Graphic, 2016, p.11.
- Soerjono Soekanto, Introduction to Legal Research, Jakarta: University of Indonesia Press, 2017
- Soejono and Abdurrahman, Legal Research Methods, (Jakarta: Rineka Cipta, 2017), page 19
- Transparency International “...Large flows of money, expensive equipment, and complex organizational structures” Nieves Zuniga, ‘Anti-corruption in the Health Sector in Southeast Asia’, Transparency International, 2018, p-3
- U4 Anti-Corruption Resource Centre, Corruption In The Health Sector, 2008, U4 Issue, www.u4.no, p.5