



Doctor's Responsibility For Actions of Delaying And Termination of Life Support of Terminal Patients During The Covid-19 Pandemi

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Abstract

Introduction: Medical action is a doctor's action toward a patient which includes preventive, diagnostic, curative, or rehabilitative measures. The medical action certainly brings legal consequences, so a doctor is legally responsible for the medical actions he takes, including the act of delaying and terminating life support.

Purposes of the Research: This study aims to examine and analyze the responsibility of doctors for the act of delaying and terminating life support for terminal patients during the COVID-19 pandemic, as well as the obstacles and solutions.

Methods of the Research: This research approach is normative juridical with secondary data as the main data obtained through literature study and will be analyzed qualitatively.

Results of the Research: This study found that doctors who are negligent and guilty when performing acts of delaying and discontinuing life support can be prosecuted for criminal, civil, administrative and professional ethical responsibility. The enactment of a ministerial-level regulation that regulates this action provides legal protection for doctors, where there is a change in the way of making decisions on medical actions so that the doctor's legal responsibility turns into a collective or corporate responsibility. However, the implementation of the regulation still has various shortcomings, so legal protection for doctors is not optimal.

1. INTRODUCTION

Indonesia is a state of the law meaning that all government apparatus and institutions that exist when carrying out any action must be based on law and can be legally accounted for, this arrangement is contained in the 1945 Constitution of the Republic of Indonesia Article 1 Paragraph (3).¹ Every citizen must obey and respect, and uphold the rule of law, equality before the law and law enforcement by legal norms.²

¹ Hari Sutra Disemadi and Tomi Suhendra Pardede, "Problematika Pemberian Sanksi Terhadap Penolakan Vaksinasi Covid-19: Suatu Kajian Perspektif HAM," *Jurnal Supremasi* 11, no. 2 (August 31, 2021): 107-19, <https://doi.org/10.35457/supremasi.v11i2.1442>.

² Abdul Salam Siku, *Perlindungan HAM Saksi Dan Korban Dalam Peradilan Pidana* (Jakarta: Rabani Press, 2012).

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Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia is the basis for implementing health services. Health services must be held fairly because for citizens it is a human right and part of the welfare elements that must be realized. Therefore, the state is obliged to provide health services fairly to achieve prosperity.

Advances in medical science and technology create new problems in the field of ethics and law. Treatment with advanced facilities and technology can now give hope to patients suffering from critical illnesses through intensive therapy, or treatment in the ICU and equivalent. Treatment with advanced technology can increase the patient's chances of survival, even in a very weak state.

It should be understood that such intensive care and therapy are high cost and high technology, so they are provided in limited quantities and their use must be considered wisely.³ The limited resources in the ICU have given rise to the option that if the treatment and medical care provided are useless (medical futility), the patient can be postponed and terminated for life support. This action is not merely to lead the patient to death, but rather to reduce the effects of excessive but useless (overtreatment) treatment or action. Every drug has side effects, so every treatment if used excessively will result in burdensome and potentially dangerous for the patient.⁴

This also applies even though the treatment is in the form of a life support device or drug. The patient's safety from the administration of useless therapy is a major consideration in deciding to terminate and postpone life support. Prolonged care for patients who are already in a state of medical futility can also result in other patients not having their rights fulfilled because the right to life and the right to obtain health services are non-derogable rights in ordinary circumstances, but the context can be different in different situations. critical illness. Health is a basic right of every person, but one's right is limited by the rights of others. Every patient has the same right to be able to survive in a critical condition with the help of life support,⁵ The act of delaying and discontinuing life support is necessary to protect the interests of the patient and to ensure the fulfilment of the rights of other patients to intensive therapy. The act of delaying and discontinuing life support is one of the medical-legal problems that often arise in the field of intensive therapy.

The concept of discontinuing and postponing life support has been the subject of discussion in international medical ethics and law since its declaration in 1983 at the 35th Congress of the World Medical Association in Venice.⁶ The Venetian Declaration stipulates that doctors may suspend part or all of treatment or life support in patients with terminal illnesses with the consent of the patient or his immediate family if the patient is unable to express his or her wishes.

³ Astrid Pratidina Susilo and Ervin Dyah Ayu Masita Dewi, "Dilema Etik Di Rumah Sakit Saat Keterbatasan Sumber Daya Dalam Pandemi COVID-19," *KELUWIH: Jurnal Sosial Dan Humaniora* 2, no. 2 (October 26, 2021): 96-100, <https://doi.org/10.24123/soshum.v2i2.4647>.

⁴ Riska Wulantiani, "Aspek Hukum Prosedur Penghentian Terapi Bantuan Hidup Pada Pasien Terminal State Dihubungkan Dengan Kewajiban Melindungi Hidup Makhluk Insani" (Thesis, Fakultas Hukum Universitas Islam Bandung (UNISBA), 2015), <http://repository.unisba.ac.id:8080/xmlui/handle/123456789/4719>.

⁵ Kathleen Liddell et al., "Who Gets the Ventilator? Important Legal Rights in a Pandemic," *Journal of Medical Ethics* 46, no. 7 (July 2020): 421-26, <https://doi.org/10.1136/medethics-2020-106332>.

⁶ "WMA - The World Medical Association-WMA Declaration of Venice on End of Life Medical Care," accessed October 18, 2022, <https://www.wma.net/policies-post/wma-declaration-of-venice/>.

Delaying and discontinuing life support is not the same as euthanasia, because philosophically what is done is to respect the patient's decision to stop or delay therapy and follow the natural course of the disease without making decisions to hasten death and end life.⁷ Termination or delay of therapy is also a reflection of the fulfilment of the human right not to get medical treatment except with the patient's consent. The postponement and termination of life support are specifically regulated as a medical action through the Regulation of the Minister of Health, Approval of medical action, the Regulation of the Minister of Health concerning Guidelines for the Implementation of Anesthesiology and Intensive Therapy Services in Hospitals and more specifically the procedure is regulated in the Regulation of the Minister of Health of the Republic of Indonesia Number 37 of 2014 concerning Determination of Death and Utilization of Donor Organs. The rule of law classifies the termination and postponement of life support as a medical act, and all medical actions within the scope of therapeutic transactions must be under the legal responsibility of the doctor.⁸ The problem that was later encountered was that the general public, doctors, and health facilities did not understand the nature and method of stopping and delaying life support, making them vulnerable to legal disputes.

The act of discontinuing and delaying life support, which is not done intentionally and unilaterally by the doctor, exposes the doctor to ethical dilemmas and the possibility of overtreatment of the patient, but if action is taken to stop and delay life support, the logical consequence in some medical conditions is that death will come more quickly. This kind of risk brings potential demands for doctors for criminal, civil, or professional legal liability when deciding to postpone or take action to postpone and stop life support, especially during the current COVID-19 pandemic. Based on this, when carrying out their profession, health workers must realize that in addition to being responsible in the medical field related to patient recovery (professional responsibility).⁹

An example of a case of postponement and cessation of life support that occurred during covid 19 in 2021 is the story of a professor of pulmonology who was affected by COVID-19 and refused to be given a ventilator because the professor judged based on the results of his medical examination that he could not be cured, and that the ventilator could be more beneficial for the patient. other patients who have a greater chance of survival.¹⁰

Another case example occurred in Aceh in 2018, where a kidney failure patient who was in a coma was sent home by the hospital doctor who treated him, causing complaints from his family.¹¹ Previously in 2015, a Sriwijaya University polytechnic lecturer who suffered from a malignant tumour was sent home after his condition declined and fell into a terminal condition, the patient died at home and there was a conflict between his family

⁷ Taufik Suryadi, "ASPEK BIOETIKA-MEDIKOLEGAL PENUNDAAN DAN PENGHENTIAN TERAPI BANTUAN HIDUP PADA PERAWATAN KRITIS," *Jurnal Kedokteran Syiah Kuala* 17, no. 1 (April 1, 2017): 60-64.

⁸ Yunanto Yunanto, "PERTANGGUNG JAWABAN DOKTER DALAM TRANSAKSI TERAPEUTIK," *LAW REFORM* 7, no. 1 (October 3, 2011): 109, <https://doi.org/10.14710/lr.v7i1.12502>.

⁹ Suryadi, "ASPEK BIOETIKA-MEDIKOLEGAL PENUNDAAN DAN PENGHENTIAN TERAPI BANTUAN HIDUP PADA PERAWATAN KRITIS."

¹⁰ Dr. Erta Priadi Wirawijaya Sp.JP, "UJIAN AKHIR SEORANG... - Dr. Erta Priadi Wirawijaya Sp.JP," Media, Facebook, accessed October 18, 2022, <https://www.facebook.com/100044135274280/posts/ujian-akhir-seorang-profesorprofesor-merupakan-jabatan-akademik-tertinggi-pada-s/361381218676384/>.

¹¹ Kompas Cyber Media, "Dalam Kondisi Tak Sadarkan Diri, Seorang Pasien Dipaksa Pulang," *KOMPAS.com*, February 21, 2018, <https://regional.kompas.com/read/2018/02/22/06363801/dalam-kondisi-tak-sadarkan-diri-seorang-pasien-dipaksa-pulang>.

and the hospital that treated him.¹² Of course, many other cases may not be highlighted by the media about the postponement and discontinuation of life support, but that does not mean that they do not exist or are rare. The act of stopping and delaying life support must be carried out by the correct steps and procedures because mistakes in implementing the steps to stop and delay life support can result in the doctor being legally prosecuted.¹³ Therefore, the function of law in the perspective of medical action is not only to provide legal certainty but also to provide justice and protection.¹⁴ Regarding the health profession in handling Covid-19, it means that the law protects the rights of health workers due to the Covid-19 pandemic.¹⁵ This is in line with the regulation of Article 27 paragraph 1 of Law No. 36 of 2009 concerning Health. Therefore, when taking action to stop and postpone life support, doctors have the right to get legal protection. Based on this, it is necessary to study further the regulation of the implementation of the termination and postponement of life support by current regulations as well as the responsibility of doctors for the action of stopping and delaying life support for COVID-19 terminal patients.

2. METHOD

The approach method used in this research is normative juridical, because research on the postponement and termination of life support will examine secondary data through library research, so it is also called library law research. Where the approach method specifically uses a statutory approach. So this research will examine a lot of laws and regulations related to the responsibility of a doctor for giving cessation and delaying life support to terminal patients during the covid 19 pandemic. Data collection techniques are carried out by observing doctor-patient relationships and legal documentation and will continue to do so. Classified and analyzed as well as linking them or relating them to one another using applicable regulations and laws. The qualitative analysis method is used to answer the problems encountered in this research. The laws and regulations used in this research are Health, Medical Practice Act, and PerMenKes.

3. RESULTS AND DISCUSSION

3.1 Legal Arrangements for Termination and Suspension of Life Support

Humans as social beings have a fundamental right, namely the right to live. This right to life has the consequence that every human being must always uphold the value of the glory of human life. Therefore, no one is allowed to take or take away someone's right to life at will. The state also protects a patient's right to life. Article 45 of Law No. 29 of 2004 concerning Medical Practice stipulates that patient consent is required for any medical or dental action. One of the patient's rights is the right to make their own choices, including

¹² Yohanes Iswahyudi, "Dosen Pasien RSMH Dipaksa Pulang - Tribunsumsel.Com," TRIBUNSUMSEL, accessed October 18, 2022, <https://sumsel.tribunnews.com/amp/2015/09/14/dosen-pasien-rsmh-dipaksa-pulang>.

¹³ Oloan Eduard Tampubolon, "Perspektif hukum dan keadilan bermartabat dalam penanganan akhir kehidupan pasien di intensive care unit (ICU) di Indonesia" (doctoral, Universitas Pelita Harapan, 2020), <http://repository.uph.edu/28627/>.

¹⁴ Sutarno, *Hukum Kesehatan : Eutanasia, keadilan dan hukum positif di Indonesia* (Setara Press, 2014), [//perpustakaan.mahkamahagung.go.id%2Fslims%2Fpusat%2Findex.php%3Fp%3Dshow_detail%26id%3D1423](http://perpustakaan.mahkamahagung.go.id%2Fslims%2Fpusat%2Findex.php%3Fp%3Dshow_detail%26id%3D1423).

¹⁵ Theresia Louize Pesulima and Yosia Hetharie, "Perlindungan Hukum Terhadap Keselamatan Kerja Bagi Tenaga Kesehatan Akibat Pandemi Covid-19," *SASI* 26, no. 2 (June 4, 2020): 280, <https://doi.org/10.47268/sasi.v26i2.307>.

the choice to refuse or agree to treatment. The decision to stop or delay treatment in the form of life support therapy can be asked by the patient himself if he is still able to make decisions and express his wishes. In this case, if the patient refuses to continue treatment with life support therapy, then the doctor has no legal right to refuse the patient's request. Based on the article, a patient who is in a terminal condition has the right to make his own choice to stop or even postpone life support for himself even though this is what the family does.

Postponement and termination of life support assistance have been regulated as a medical action in Indonesia as regulated in the Regulation of the Minister of Health of the Republic of Indonesia Number 290/Menkes/Per/III/2008 concerning approval of medical action that medical action is a preventive, diagnostic, curative, or rehabilitative medical action. performed by a doctor or dentist, this medical action requires the consent of the patient after the patient has received adequate information from the doctor. However, there is often a transfer of consent from the patient to his closest family because the patient cannot make his own decision because he is in an unconscious condition or in an emergency condition that threatens life and prevents the patient's disability.

Likewise, if there is a special situation in the form of withdrawing/withholding life support for a patient, while the patient is not aware and does not leave a will/message related to treatment in the ICU or treatment with a condition with minimal hope of recovery, then the right to make decisions rests with the patient's closest family to determine the continuation of the patient's treatment, it is regulated in article 16 of the Minister of Health No. 290 of 2008 concerning the approval of medical action.

Regulation of the Minister of Health of the Republic of Indonesia Number 37 of 2014 concerning the determination of death and utilization of donor organs regulates the regulation of delays and termination of life support more specifically. Where withdrawal life support therapy is defined as the cessation of part or all of the life support therapy that has been given to the patient. Withholding life support therapy was then defined as delaying giving new or continued life support therapy without discontinuing ongoing life support therapy. Termination and postponement of life support in the ICU are certainly not done on all occasions. Patients whose disease is incurable or in a terminal state and whose medical treatment is futile may apply for a postponement and discontinuation of life support. In the Minister of Health Regulation, it is explained that the decision to stop or delay life support therapy can be requested by the patient himself if he is still able to make decisions and express his wishes. In addition, the team of doctors after consulting with the medical committee and the hospital ethics and law committee can decide on the action.

For the action plan for discontinuing or delaying life support therapy, the health worker must be informed and obtained approval from the patient's family or the patient's representative. If the patient's family decides to continue treatment, then the medical team and hospital must continue treatment. The patient's family can take the initiative to ask the doctor to carry out and request an assessment of the patient's condition to discontinue or postpone life support therapy. Requests from the patient's family can only be made if:

- a) A patient who is incompetent but has willed his message through a specific message stating that life support therapy should be discontinued or postponed if it is in a futile condition, or a message containing a statement of the delegation of decisions to a certain person.
- b) Although the incompetent patient has not given a will, the patient's family believes that based on his beliefs and values the patient will make such a decision.

Discontinuation and delay of life support therapy can only be carried out on therapeutic measures or extraordinary treatments, including ICU care, Cardiac and Pulmonary Resuscitation, Mechanical ventilation; Vasoactive drugs, Parenteral nutrition, Artificial organs, Transplants, Blood transfusions, Dysrhythmia control, Tracheal intubation, Invasive monitoring; administration of antibiotics, and other actions specified in the medical service standards. While the usual nature of care (general care) should not be stopped or delayed, which includes the administration of oxygen, enteral nutrition and crystalloid fluids. The postponement or termination of life support also does not relieve the doctor from his obligation to continue to provide treatment that relieves the patient's suffering at the end of life, especially for drugs needed to reduce pain and another discomfort that accompanies the disease. Actions Delay and termination of life support are mostly carried out in the ICU, therefore competence, knowledge and procedures for discontinuing and delaying life support are needed for those who work in the intensive therapy field.

The worsening of the patient's condition and ending with death, of course, the diagnosis of death must use clinical/conventional criteria or the criteria for a diagnosis of brainstem death. The criteria for the diagnosis of clinical/conventional death are regulated in Article 7 of the Minister of Health Number 37 of 2014, namely that it has been proven that the function of the cardiovascular system and respiratory systems has stopped permanently. The team of doctors consists of 3 (three) competent doctors who can determine that a patient has a brain stem death. The diagnosis of stem death can only be done in the intensive care unit (Intensive Care Unit) and the examination must be by the procedures and requirements to determine the diagnosis of brain stem death. Furthermore, after someone is determined to be brain stem dead,

The concept of discontinuing and delaying life support is not merely to lead the patient to death, but rather to respect the patient's right to refuse treatment and reduce the side effects of excessive but useless treatment or action (overtreatment). Overtreatment for patients who are already in a state of medical futility, apart from being able to burden patients with unnecessary risks such as spending large but futile costs that burden the health financing system, can also result in the non-fulfilment of the rights of other patients. Use of limited medical resources, e.g. ICU rooms, ventilators, broad-ranging antibiotics, and other life support drugs for purposes that are almost impossible to achieve,

Based on the discussion of several rules and regulations regarding the delay and termination of life assistance/support, it can be seen that the law factor is a factor that quite a lot affects the effectiveness of the law itself. Legislative factors, namely factors that are influenced by written regulations that are generally accepted and made by legitimate authorities. In this case, the regulation regarding the act of delaying and terminating life support in Indonesia is specifically regulated in a ministerial-level regulation. According to Law Number 12 of 2011 concerning the Establishment of Legislation as amended by Law (UU) Number 15 of 2019, ministerial-level regulations are not directly included in Indonesia's hierarchy of laws and regulations. The validity of a ministerial-level regulation is only limited to the extent that it is ordered by a higher Legislation or is formed based on authority. If it is observed that Law No. 24 of 2009 concerning medical practice does not specifically order a ministerial-level regulation to postpone and terminate life support. The absence of a regulation higher than the ministerial level regulation that explicitly states the act of delaying and discontinuing life support can lead to uncertainty in its implementation and accountability. If it is observed that Law No. 24 of 2009 concerning medical practice

does not specifically order a ministerial-level regulation to postpone and terminate life support. The absence of a regulation higher than the ministerial level regulation that explicitly states the act of delaying and discontinuing life support can lead to uncertainty in its implementation and accountability. In fact, it is observed that Law No. 24 of 2009 concerning medical practice does not specifically order a ministerial-level regulation to postpone and terminate life support. The absence of a regulation higher than the ministerial level regulation that explicitly states the act of delaying and discontinuing life support can lead to uncertainty in its implementation and accountability.

Although Law Number 36 of 2014 concerning Health Workers Article 77 has guaranteed protection by stating that disputes arising from the alleged negligence of health workers must be resolved first through dispute resolution outside the court. Similarly, Law No. 29 of 2004 concerning Medical Practice Article 66 states that a complaint regarding a loss due to medical practice is submitted to the Indonesian Medical Disciplinary Honorary Council which does not eliminate the right of anyone to report an alleged criminal act to the competent authorities and/or claim a loss. Civil proceedings to the court, this article does not further stipulate the method and basis of accountability for the doctor's actions so this also creates uncertainty in its application.

3.2 Doctor's Accountability in Termination and Postponement of Life Support for Covid-19 Terminal Patients

Legal responsibility from establishing a medical futility diagnosis and making decisions on the act of delaying and discontinuing life support by doctors can also be a civil legal liability, criminal legal liability, and legal liability in the professional code of ethics. Civil legal liability usually begins with a difference of opinion between the doctor and the patient's closest family, or between the patient's own immediate family on the decision on the patient's treatment. This difference of opinion then led to dissatisfaction which developed into a medical dispute. Civil liability can be filed based on: an act against the law (article 1365 of the Civil Code) and caused by a broken promise/default. An unlawful act can occur if there is an act that causes a loss so that the person who caused the loss is required to compensate. Meanwhile, broken promises/defaults occur if there is a violation in the implementation of the agreement because it does not make achievements at all, the achievements are late or wrong as determined.

The relationship between the parties in a therapeutic transaction can be seen as a civil agreement between doctors and patients, giving rise to legal responsibilities for doctors. In civil terms, in the context of therapeutic transactions, doctors must give their best efforts for the patient's recovery so when the effectiveness of the efforts given is questioned, a situation called overtreatment occurs. Overtreatment can harm patients, related to the side effects of drugs and life support devices used.

However, it is not easy to explain the concept of overtreatment to patients and their families. When the patient is in a terminal condition or medically futile, usually the patient and or his family will still want maximum therapy even though there can be adverse side effects. Doctors who do not provide life support therapy in conditions where the patient needs it can be said to be in default, but if they continue to provide life support therapy, then adverse side effects arise, and the doctor is vulnerable to being asked for compensation for this. This is complicated by the rights of other patients to limited life support therapy facilities. The Decree of the Minister of Health Number 1778/Menkes/SK/XII/2010 concerning the Implementation of Intensive Care Unit Services determines that the

organizers of the ICU admission screening and the priority determinants of ICU admission are doctors. Other patients or their families who feel that their rights have been violated because they do not receive ICU care while the priority of these patients is higher than patients who are currently using the facility may sue the doctor for default.

Giving treatment without a clear direction can also cause the patient and the insurer to suffer losses. The family can sue the hospital and the doctor for the loss, and if the patient is financed by insurance or JKN, then the manager of the National Health Insurance or insurance can also sue the hospital where the doctor works, for default on the cooperation agreement for providing unnecessary, unnecessary action. standards, and has the potential to harm the patient.

The doctor's responsibility in stopping and delaying live rock can also be seen from the side of criminal responsibility, namely imposing penalties on the maker for actions that violate the prohibition or cause prohibited conditions.¹⁶ Criminal responsibility concerns the process of transferring the existing punishments for criminal acts to the maker, as Roeslan Saleh's opinion mentions "criminal responsibility", while Moeljatno says "responsibility in criminal law", other legal experts mention more as "criminal responsibility".¹⁷ which in Dutch is called *toerekenbaarheid*, in English criminal responsibility or criminal liability.

Criminal liability is a system built by criminal law to react to violations of an agreement to refuse a certain act.¹⁸ Criminal liability is based on an error, this error can be in the form of intentional (*opzet*) or negligent (*culpa*).¹⁹ However, the Criminal Code (KUHP) does not clearly state the criminal responsibility system adopted, although several articles in the Criminal Code (KUHP) often mention mistakes, either intentional or negligent, the notion of error, intentional and negligence is not further explained in the Criminal Code.

Criminal liability is a punishment imposed for committing an action that meets the elements of a criminal act. The elements of criminal acts are generally divided into objective elements (*actus reus*) and subjective elements (*men's rea*).²⁰ The objective element (*actus reus* can be assessed by:²¹ 1). The form of action (active, passive), or visible consequences, 2) The act must be against the law, formally or materially; 3) In carrying out the act there is no basis for justification. Meanwhile, the subjective element (*menswear*) according to Zainal

¹⁶ Aryo Fadlian, "PERTANGGUNGJAWABAN PIDANA DALAM SUATU KERANGKA TEORITIS," *Jurnal Hukum Positum* 5, no. 2 (2020): 10–19.

¹⁷ Sampur Dongan Simamora and Mega Fitri Hertini, "Hukum Pidana Dalam Bagan," *Pontianak: FH UNTAN Press Pontianak*, 2015.

¹⁸ Chairul Huda, *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan: Tinjauan Kritis Terhadap Teori Pemisahan Tindak Pidana Dan Pertanggungjawaban Pidana*, Ed. 1., cet. 1 (Rawamangun, Jakarta, Indonesia: Kencana, 2006).

¹⁹ Musa Darwin Pane, *Pengganti kerugian negara dalam tindak pidana korupsi : alternatif pengganti pidana penjara dan pidana mati dalam perspektif pemberantasan korupsi* (Bandung: Logoz Publishing, 2017), <https://opac.perpusnas.go.id/DetailOpac.aspx?id=1015190>.

²⁰ Sutan Remy Sjahdeini, *Pertanggungjawaban Pidana Korporasi | Perpustakaan Mahkamah Konstitusi*, Cet. 2 (Jakarta: Grafiti Pers, 2007), <https://simpus.mkri.id/opac/detail-opac?id=8018>.

²¹ Fitri Wahyuni, *DASAR DASAR HUKUM PIDANA DI INDONESIA* (Jakarta: Pustaka Data, 2017).

Abidin²² consists of 1) Responsible capacity (toerekeningsvatbaarheids); 2) Error in the broadest sense, consisting of *dolus* or *culpa*; 3) There is no basis for forgiveness.

In medical practice, the doctor's awareness of the possibilities as a result of making a medical action decision can be misinterpreted as *dolus eventualis* (mogelijk-bewustzijn) where the doctor is aware and deliberately aware of the possibility of taking action, including the possibility of worsening the disease to the loss of life.

The other side of medical action is that every medical action has a minimum standard. A medical action is said to be malpractice if it fulfils the aspects of duty, deletion of duty and damage.²³ Therefore, when making a choice to take medical action and carrying out medical actions that are not by these standards without a strong reason, the doctor can be held criminally responsible in the event of loss, harm or even death.

In the action of doctors in discontinuing and postponing live rock, the attitude of delaying the decision to postpone and cessation of life support on purpose can cause doctors to be said to have committed unlawful acts in the form of cheating on the national social security system. This fraud can bring administrative sanctions for both doctors and hospitals. In addition, doctors in making decisions to take action to postpone or terminate a doctor's life support are also vulnerable to accusations of euthanasia. Euthanasia is an attempt to hasten death or end life with the help of a doctor or health worker. Active euthanasia is a decision to hasten death and end life with an active act, The criminal law rules stipulate that active euthanasia is punishable by Article 344 of the Criminal Code and Article 359 of the Criminal Code, while passive euthanasia can be prosecuted under Article 304 of the Criminal Code. Article 344 of the Criminal Code, reads: "Anyone who eliminates another person's soul at the request of the person himself, which is clearly stated with sincerity, is threatened with a maximum imprisonment of 12 years", or can also be charged with Article 359 of the Criminal Code which reads "whoever because of his negligence causes the death of another person, shall be punished by a maximum imprisonment of five years or a maximum imprisonment of one year.". While passive euthanasia can be prosecuted under Article 304 of the Criminal Code which reads: "Anyone who intentionally places or leaves someone in a state of misery, whereas according to the law in force for him or because of his agreement he is obliged to provide life, care or maintenance to that person, is threatened with a maximum imprisonment of two years and eight months or a fine. Whether the doctor chooses not to take action to postpone or discontinue life support or does so, the doctor may be held criminally responsible for the loss, harm or even death suffered by the patient. Criminal responsibility for making decisions on medical actions is generally personal because doctors decide on a medical action based on the results of their examination. Thus the fulfillment of the criminal element formally and materially,

Doctors as professionals can also be held legally responsible in a professional manner. At this time the practice of doctors is required to prioritize ethical principles, while ethical principles are the principle of autonomy, the principle of generosity, the principle of not hurting, the principle of justice, the principle of loyalty, and the principle of honesty.²⁴ The

²² H.A. Zainal Abidin Farid, *Hukum Pidana* (Jakarta, 1995), <https://opac.perpusnas.go.id/DetailOpac.aspx?id=259880>.

²³ Dimas Cahyo Widhiantoro, "ASPEK HUKUM MALPRAKTIK KEDOKTERAN DALAM PERUNDANG-UNDANGAN DI INDONESIA," *LEX PRIVATUM* 9, no. 9 (October 21, 2021), <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/36573>.

²⁴ Munir Fuady, *Sumpah Hippocrates (Aspek Hukum Malpraktek Dokter)* (Bandung: Citra Aditya Bakti, 2005), [//perpus.ditbtp.id/%2Fopac%2Findex.php%3Fp%3Dshow_detail%26id%3D6786](https://perpus.ditbtp.id/%2Fopac%2Findex.php%3Fp%3Dshow_detail%26id%3D6786).

principle of autonomy in general is based on the patient's right to make his own decisions regarding matters concerning himself personally, meaning that a patient has the right to make decisions and determine for himself about his health, life and in the extreme also about his death. This is contrary to the traditional culture of the Hippocratic era, where in general doctors can determine what is best for their patients. One of the characteristics of the relationship in health services is the trust between patients and health workers. Based on this, of course, health workers are required to tell the truth about the condition of their patients, and vice versa patients are also required to provide honest information related to the illness they are experiencing.

In carrying out their duties as professionals, doctors are bound by a professional code of ethics, namely special rules for the profession that contain professional ethical values. Professional ethics for professionals consists of several principles, namely responsibility, public interest, integrity, objectivity, professional competence and prudence, confidentiality, professional behaviour and technical standards.

The doctor's oath has stated that the doctor will respect every life from the moment of conception. Some medical personnel have not been able to distinguish the concepts of discontinuing or delaying life support and euthanasia, so there is a reluctance in assigning patients to medical futility conditions. However, the overtreatment that occurs due to the doctor's reluctance to determine the condition can lead to potential side effects of the drugs and life support devices used. This is not by article 3 of the Indonesian medical code of ethics which reads that in carrying out his medical work, a doctor must not be influenced by anything that results in the loss of professional freedom and independence, where the scope of the article in point d states that doctors are prohibited from carrying out diagnostic efforts.

Likewise, if the doctor takes the action of delaying and discontinuing life support incorrectly, it can be said that the doctor has performed euthanasia. In the view of professional ethics, euthanasia violates article 11 of the Indonesian medical code of ethics which states that every doctor must always remember his obligations to protect the life of human beings. The scope of this article includes that a doctor is prohibited from being involved or involving himself in abortion, euthanasia, or the death penalty for which morality cannot be accounted for.

4. CONCLUSION

This study concludes that the doctor's responsibility for stopping and delaying life support for terminal patients during the COVID-19 pandemic which consists of civil and criminal liability refers to general law, both the Civil Code and the Criminal Code even though there is a Regulation of the Minister of Health of the Republic of Indonesia Number 37 the Year 2014 concerning Determination of Death and Utilization of Donor Organs, and other Regulations of the Minister of Health regarding the approval and implementation of medical actions. The Regulation of the Minister of Health was formed based on the authority of the ministry of health, although Law No. 29 of 2004 concerning Medical Practice does not mandate the existence of a Minister of Health to stop and postpone life support specifically.

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