

# Legal Protection of Patients as Victims of Sexual Harassment in Indonesian The Health Service

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**Abstract.** A doctor in his professional practice will always come into contact with humans who expect help, and in carrying out his professional duties, he must respect and always respect the rights of patients based on noble values, masculinity and glory for the benefit of the patient. The right here is the freedom given by the community over power, freedom and status, while the obligation of health workers to provide services to the community, prevent abuse and maintain the quality of their profession and discipline the quality of its members. In practice, there are often various violations in an effort to maintain the quality of the profession and the quality discipline of its members, such as: deviations received by patients in the recovery period after treatment, due to the patient's loss of consciousness after treatment. , such as the occurrence of sexual harassment by professional health professionals, so that legal protection is required for patients as victims of sexual harassment crimes. This condition is certainly not in line with or contrary to the objectives of criminal law and health services, namely: providing protection against crimes against the body and human life, extending life, reducing suffering, and accompanying the patient to the end of his life. All of this must be done as an effort to humanize the patient as a whole person and humanity itself.

**Keywords:** Legal Protection, Sexual Harassment, Health Services.

## 1 Introduction

The Universal Declaration of Human Rights adopted and announced by the UN General Assembly 217 A (III) on 10 December 1948 constitutes a milestone in the development of international human rights to humanize and humanize humanity, focusing on the basic human rights principles. Basic Principles of Human Rights, covering :<sup>1</sup>

1. Human rights are universal. Everyone around the world is tied to human rights. Universality refers to certain shared moral and ethical values in all regions of the world, and the Government and community groups must recognize and uphold it. However, the universality of rights does not mean that these rights can not change or must be experienced in the same way by everyone. The universality of human rights is embedded in the words of Article 1 of the Universal Declaration: "All human beings are born free and equal in dignity and rights.

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<sup>1</sup> Herizal E. Arifin, *Summary of Articles of the Universal Declaration of Human Rights and Principles of Human Rights*, accessed on <http://herizal-effendi-arifin.blogspot.co.id>, pada tanggal 10 September 2017, 2011

2. Human rights can not be taken away (inalienability). This means that the right of each person can not be revoked, submitted or transferred.
3. Human rights can not be separated (indivisibility). This refers to the equal importance of each human right, whether civil, political, economic, social or cultural. All human rights have equal status, and can not be placed in a hierarchical arrangement. The right of a person can not be denied because others decide that the right is less important or not the main one. This principle of indivisibility was reinforced by the Vienna Declaration, 1993.
4. Human rights are interdependent (*interdependency*). This refers to the complementary framework of the law of human rights. The fulfillment of one right often depends, in whole or in part, on the fulfillment of another right. For example, the fulfillment of the right to health may depend on the fulfillment of the right to development, on education or information. Equally, losing one right will also lead to the exclusion of other rights.
5. The principle of equality refers to the view that all human beings are blessed with the same human rights without distinction. Equality does not mean treating people equally, but rather taking the steps necessary to further promote social justice for all.
6. The principle without discrimination (non-discrimination) is a unity with the concept of equality. The non-discriminatory principle includes the view that people can not be treated differently on the basis of additional and unauthorized criteria. Discrimination on the basis of race, color, ethnicity, gender, age, language, disability, sexual orientation, religion, political or other opinion, societal or geographic origin, ownership, birth or other status established by international human rights standards, violates human rights.
7. Participation and Inclusion Principles: Everyone and everyone has the right to participate in and access information relating to decision-making processes that affect their lives and whereabouts. The rights-based approach requires high participation from communities, civil society, minorities, women, youth, indigenous peoples and other groups.
8. Principles of accountability and rule of law. States and stakeholders should be able to answer about human rights performance. In this case, they must comply with the norms and legal standards expressed in international human rights instruments. If they fail to comply with it, the victim's rights holders have the right to apply for appropriate reimbursement in the face of a competent court or other courts in accordance with the rules and procedures prescribed by law. Private, media, civil society and the international community play an important role in making the government accountable about its obligations to uphold human rights.

The seven basic principles are indirectly started the right that was born from the beginning of human existence that is the Right to Life and Maintain Life which became the embryo and is an inherent right of man, which is very basic and absolutely necessary for human beings to develop according to his talents, ideals and dignity. Furthermore, human rights can also be regarded as the basic rights inherent in human beings by nature, universal, and eternal as a gift of God Almighty, including the right to life, the right to marry, the right to self-development, the right to justice, the right to freedom, communications rights, security rights and welfare rights that should not be ignored or taken by anyone,<sup>2</sup> one of which is the right to health.

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<sup>2</sup> Dwi Yanto, *Child Rights Protection in Indonesia, Development, Implementation and Recommendation*, <https://nunutngombe.wordpress.com>, 2010.

The right to health can not be separated from the definition of health itself. The World Health Organization (WHO) Health Definition is: “*a state of complete physical, mental and social well being and not merely the absence of disease or infirmity*” (Health is a prosperous state of body, soul, and social that enables everyone to live productively socially and economically), and in the 1945 Constitution (hereinafter briefly the 1945 Constitution) as the basic law (staatfundamental norm) clearly set about the main lines of Indonesian law,<sup>3</sup> and is the basic source of written State of the Republic of Indonesia contains the basis and outline of law in the implementation of the state. The 1945 Constitution has experienced 4 amendments.<sup>4</sup> In the original text of the 1945 Constitution (before the amendment process) was not written the word "health".

After the amendment process comes the word "health" which has a more detailed description can be seen in the 1945 Constitution Article 28 H Paragraph (1), Article 28 H Paragraph (3), Article 34 Paragraph (1), Article 34 Paragraph (2) , and Article 34 Paragraph (3). Article 28H Paragraph (1) states that: Every person has the right to live a physical and spiritual prosperity, to live, and to obtain a good and healthy living environment and be entitled to health care. Article 28H Paragraph (3) states that: Everyone is entitled to social security which enables his complete development as a dignified human being. Article 34 Paragraph (1) states that: The poor and the abandoned children are kept by the state. Article 34 Paragraph (2) states that: The State develops a social security system for all peoples and empowers the weak and incapable in accordance with human dignity, and Article 34 Paragraph (3) states that: The State is responsible for the provision of health-care facilities and decent public services facilities.

Provision of health service facilities and appropriate public service facilities in the effort of providing health services, the essence of the profession is a life call devoting to humanity based on 3 (three) required standards, including Profession, Service, and Standard Operational Procedure ( SOOP). Profession Standard is basically distinguished grammatically on standards and professions. Standard is a value or reference that determines the level of practice to staff or conditions in patient or system that has been established to be accepted to certain authority, while the profession is defined as a work that requires the body of science as a basis for systematic development of theory to face many new challenges, requires long enough education and training, have a code of ethics with a primary focus on service, and has the following professions characteristics :<sup>5</sup>

1. Supported by body of knowledge in accordance with the field, clear scientific work area and its application.
2. Professions are gained through planned, continuous and gradual education and training.
3. Professional work is governed by a professional code of ethics and legally recognized through legislation.
4. The rules and regulations governing the life and professional life (education and training standards, service standards and codes of conduct) and supervision of the implementation of these rules are carried out by the professionals themselves.

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<sup>3</sup> Trina Handayani, *Functionalization of Criminal Law against Trafficking in Human Body Organs*, Bandung, Mandar Maju, 2012, p. 1

<sup>4</sup> Yustina Sri Hartini, *Pharmaceutical Practice Reviews Regulations About Pharmacists Occupations*, Yogyakarta, Sanata Dharma, 2010, p. 1

<sup>5</sup> Winsley, *Model Development of Professional Standards Comparison Between America and Europe*, in <http://juniohendy.blogspot.com>, accessed on March 9, 2018.

Article 50 of Law Number 29 of 2004 on Medical Practice states that: Professional standard is a minimum knowledge, skill and professional attitude that must be mastered by an individual to be able to conduct his professional activities on society independently made by professional organizations. Veronica Komalawati provides the limits in question with the professional standard is a guide that should be used as a guide in carrying out the profession well. With regard to medical services, the guideline used is the standard of medical service that is mainly focused on the process of medical action. Professional standards in this standard form of medical service should also be used by hospitals, as fixed procedures within the professional standard are made in accordance with each area of specialization, facilities and available resources.<sup>6</sup>

In Indonesia there is no standard setting of the general medical and basic profession as adopted in the Netherlands. The existing arrangement in the form of medical service standard as regulated in Decree of Minister of Health RI No. 595 / Menkes / SK / VII / 1993 on Health Service Standards in every health service facility that provides medical services in accordance with the needs and applicable service standards, as a follow up in order to anticipate Article 32, Law Number 23 Year 1992 on Health governing the Implementation of Medication and Treatment.<sup>7</sup> Furthermore, Service standards refer to the concepts and rules that have been enacted in the legislation. Any health institution or institution authorized for health services shall comply with any such designated reference. Health services are the right of every person guaranteed in the 1945 Constitution of the State of the Republic of Indonesia which must be realized with the effort to improve the highest degree of public health.

In Indonesia, health service standards are in fact set fundamentally with practices that should not violate any such provisions that prioritize service excellence or optimal service, every health agency is responsible for all obligations they hold from the level of puskesmas to hospitals, hospitals are institutions of health services for the community with its own characteristics influenced by the development of health science, technological progress, and socio-economic life of the community who must still be able to improve service quality and affordable by the community to realize the highest health decre and each plays a role in maximizing public health services. They are responsible to the local government that has regulated the law on public health services.<sup>8</sup>

Public health services have very strategic role in accelerating the improvement of public health status. Hospitals are required to provide quality services in accordance with established standards and can be covered by all levels of society must be in accordance with Standard Operational Procedure (SOP). SOP based on Regulation of the Minister of Health of the Republic of Indonesia Number 512 / Menkes / PER / IV / 2007 About Practice License and Implementation of Medical Practice Chapter I Article 1 clause 10 states that: SOP is a set of standardized instructions / steps to complete a work process specific routines where SOPs provide the right and best way of action based on mutual consensus to carry out various activities and service functions created by health care facilities based on professional standards, and application of this SOP refers to various policies and procedures that should be

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<sup>6</sup> Veronica Komalawati, *Role of Informed Consent In Therapeutic Transactions*, Bandung, PT. Citra Aditya Bakti, 2002, Hp 177 .

<sup>7</sup> Hermien Hadiati Koeswadji, *Medical Law: The Study of Legal Relationships In Which Doctors As. One of the party* , Bandung, Citra Aditya Bakti, 1998, p. 151

<sup>8</sup> *Health Service Standards*, in <http://gofaztrack.com/blog/standar-pelayanan-kesehatan/> accessed on March 8, 2018

available that reflect management of medical record unit and become reference for medical record staff on duty.<sup>9</sup>

These three standards are expected to be special feature of health workers and other professions to perform a particular medical action that has characteristic, where its peculiarity is seen from the existence of justification given by law that allowed to perform certain medical actions on the human body in an effort to maintain and in improving health, and in practicing the profession will always be in touch with the human being who is hoping for help, and it is appropriate to perform the duties of the profession must always respect the rights of patients based on noble values, virtue and glory in the interest of the patient. The right here is the freedom that society gives to power, freedom and status, while the obligation of health workers to provide services to the community, prevent abuse and maintain the quality of the profession and discipline the quality of its members.

In practice, it often happens variety of abuse in effort to maintain the quality of the profession and discipline the quality of its members, such as: irregularities received by patients in the recovery period after medical treatment, due to loss of awareness of patients after medical treatment, such as the occurrence of sexual harassment committed by health profession, which is nurse so that a legal protection effort is needed for the patient as a victim in criminal act of sexual harassment. Setiono states that the protection of the law is an act or attempt to protect the public from arbitrary acts by a ruler who is inconsistent with the rule of law, to realize public order and serenity so as to enable humans to enjoy their dignity as human beings.<sup>10</sup>

Philipus M. Hadjon states that: the protection of law for people in the form of government actions that are preventive and repressive. Preventive means the government is more cautious in decision-making and taking because it is still in the form of preventive measures, while repressive means the government should be more assertive in making and taking decisions for violations that have occurred.<sup>11</sup> Violations that have occurred and are deemed to have tarnished the health profession of sexual harassment cases committed among health professionals to patients.

The case of sexual harassment that struck a female patient with initials W, at a hospital in Surabaya, on Saturday, January 27, 2018, conducted by a nurse, and then the victim uploaded a video of indecent acts against her through social media account. The action of a nurse was done when the victim was still affected by the drug after undergoing surgery. The Indonesian National Nurses Association or East Java PPNI as a nursing profession organization still needs "ZA" information that alleged perpetrators of harassment, before it will impose sanctions. In imposing sanctions there are several stages, whether the ethical guidance such as coordinating with the Department of Health for the temporary revocation of work permit or done under the applicable legal procedures, given the case has been getting from the beginning of attention from the law enforcement officers, where the Police Resort Surabaya through the head of the Criminal Investigation Unit has secured "ZA" at a hotel in south Surabaya, and is now officially suspected of undergoing intensive examination of alleged sexual harassment of hospital patients who were then weakened by the effects of drugs after operation.<sup>12</sup>

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<sup>9</sup> Wijono, *Standard Operating Procedures In Medical Record Section*, in <http://aepnurulhidayat.wordpress.com>, accessed on March 9, 2018.

<sup>10</sup> Setiono, *Rule of Law (The Supremacy of Law)*, Surakarta, Master of Law Science Graduate Program Sebelas Maret University, 2004, p. 3.

<sup>11</sup> Philipus, M. Hadjon, 1987, *Legal Protection for Indonesian People*, Surabaya, Bina Ilmu, 1987, p. 30.

<sup>12</sup> Rio Audhitama Sihombing Lagi, *Sexual Harassment Occurred at Surabaya Hospital*

On the other hand the "WR" wife of a nurse working in a hospital in Surabaya, "ZA" reported the victim, "W", and the victim's husband to the Criminal Investigation Police. "W" is a patient who feels abused by "ZA" in the hospital. While the victim's husband recorded the incident when "ZA" was accused of harassment. The video was viral and resulted in the determination of "ZA" as a suspect, and from the study of the Indonesian National Nurse Association (PPNI), the East Java PPNI Secretary Misutarno stated that "ZA" did not violate the nursing ethics code. Sukendar's lawyer, said that his client did not accept the allegations of abuse to her husband, and reported the victim and the victim's husband for alleged defamation of viral videos on social media.<sup>13</sup>

At that time the officer had not issued a letter of police report because it has not been completed by the power of attorney from "ZA" and the next day, the attorney returned to Bareskrim Police and submitted the power of attorney, so issued Police Report No. 213 / II / 2018 / Bareskrim on Information Electronic Transactions (hereinafter brief with the ITE Act) Articles 27 and 28, and "WR" or the nurse's wife (suspect) assume the videos spread on social media has harmed her husband. According to "WR" before her husband was accused of being suspect, "ZA" was intimidated to acknowledge her actions, whereas "ZA" only removes medical equipment on the patient's chest and does not harass, and there is pressure and intimidation from the police, and "ZA" was persuaded to get a light sentence if confessed. If not acknowledging in accordance with the video, "ZA" shall be liable to punishment and shall be subject to Article 290 of the Criminal Code of Sexual Harassment to an unconscious person. The case was processed by police after "ZA" apologized to the female patient at a hospital in Surabaya claiming to have been sexually harassed in the recovery room following the operation. However, the Ethics Assembly of the Indonesian National Nurses Association of East Java called what the "ZA" was in accordance with the standard operating procedures of nurses when handling patients after undergoing surgery.<sup>14</sup>

Based on the description above, the authors are interested in taking the title in this paper as follows: **Legal Protection Of Patients As Victims Of Sexual Harassment In Indonesian The Health Service.**

## 2 Formulation Of Problem

Any scientific writing will certainly always be accompanied by the formulation of a clear problem, as well as with this scientific writing. Based on the background that the author has described in the previous section, then the formulation of the problems in this writing is as follows:

1. How is the legal protection of patient as victim of sexual harassment in Indonesian health service ?
2. How is criminal liability for the occurrence of sexual harassment in Indonesian health services?

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<http://news.liputan6.com/read/3240497/lagi-pelecehan-seksual-terjadi-di-rs-surabaya,> on March 8, 2018

<sup>13</sup> Ambaranie Nadia Kemala Movanita, *Nurses Wife National Hospital Surabaya Report Patient Victim of Harassment to Criminal Investigation Police*,

<https://nasional.kompas.com/read/2018/02/11/09230551/istri-perawat-national-hospital-surabaya-laporkan-pasien-korban-pelecehan-seksual>, accessed on March 8, 2018

<sup>14</sup> *Ibid.*

### 3 Discussion

#### 3.1 Legal Protection Efforts on Patients as Victims of sexual Harassment in Indonesian Health Services

Article 1 Number 10 of Law No. 29 of 2004 on Medical Practice states that: Patient is any person who conducts healthcare consultations to obtain necessary health services either directly or indirectly to a doctor or dentist. Article 32 Part Four Law no. 44 of 2009 on the Hospital states about the rights of patients, as follows:

- a. Obtaining information on the rules and regulations applicable in the Hospital;
- b. Obtaining information about the rights and obligations of the patient;
- c. Obtaining services that are humane, fair, honest, and without discrimination;
- d. Obtaining quality healthcare services in accordance with professional standards and standards of operational procedures;
- e. Obtaining effective and efficient services, avoiding patients from physical and material harm ;
- f. Filing a complaint on the quality of service obtained;
- g. Choosing a doctor and class of care according to his wishes and regulations in hospital;
- h. Requesting consultation about the illness he/she has suffered from other doctors who have a Practice License (SIP) both inside and outside the Hospital;
- i. Obtaining privacy and confidentiality of illnesses including medical data;
- j. Obtaining information covering the diagnosis and procedure of medical action, the purpose of medical action, alternative actions, risks and possible complications, and the prognosis of the action taken and the estimated cost of treatment ;
- k. Approving or rejecting the action that the health worker will take on the illness;
- l. Accompanied by his/her family in critical condition ;
- m. Conducting worship according to his/her religion or beliefs as long as it does not disturb other patients ;
- n. Obtaining security and safety during hospitalization;
- o. Submitting suggestions, improvements over the treatment of the Hospital;
- p. Refusing the ministry of spiritual guidance that is inconsistent with the religion and beliefs he/she embraces;
- q. Sue and / or prosecute the Hospital if the Hospital is suspected of providing services that are not in accordance with the standards, both civil or criminal; and
- r. Complaining Hospital services that are not in accordance with service standards through print and electronic media in accordance with the provisions of legislation.

Article 31 Part Three Act no. 44 Year 2009 on Hospital states about Patient Obligation, as follows:

1. Each patient has an obligation to the Hospital for the services he/she receives.
2. Further provisions regarding the patient's obligations are regulated by Ministerial Regulation.

Based on the above description, it is clear that the rights and obligations of the patient can be regarded as a benchmark to measure the health service has been run in accordance with existing standards in health services, and if there are various irregularities, then based on Article 32 letter q and r Part Four Act no. 44 of 2009 concerning Hospitals, that the patient is entitled to sue and / or prosecute the Hospital, if the Hospital is suspected of providing services that are not in accordance with the standards of civil or criminal, and complain about

Hospital services that are not in accordance with the standards of service through print media and electronics in accordance with the provisions of legislation, so that in the case of the object of this article where patient who became victims of sexual harassment has made a statement in several print media, electronic media, and social media as well as conducted by health workers, namely nurses.

Article 1 Sub-Article 2 of Law no. 38 of 2014 on Nursing Practice states that a nurse is a person who has passed higher education of Nursing, both inside and outside the country recognized by the Government in accordance with the provisions of the Laws and Regulations. Article 1 paragraph 1 of Decree of the Minister of Health No. 1239 / MENKes / SK / XI / 2001 concerning Registration and Practice of Nurses, states that the Nurse is a person who has passed the nursing education both inside and outside the country in accordance with the provisions of applicable legislation.

Article 2 of Law no. 38 of 2014 on Nursing states that the provision of nursing services should be done with the basis of humanity, scientific value, ethics and professionalism, benefits, equity, protection, and health and safety of clients. Article 3 of Law no. 38 Year 2014 on Nursing states that the purpose of the provision of nursing services is to improve the quality of Nurses, improve the quality of Nursing Services, provide protection and legal certainty to the Nurse and Client, and improve the public health degree, and carried out responsibly, accountable, qualified, and affordable by nurses with high competence, authority, ethics and morals, and this is necessary to provide legal protection and certainty to nurses and communities.

Protection and legal certainty to the public are addressed to patients as victims of sexual harassment. The Criminal Code is not familiar with the term sexual harassment. The Criminal Code only recognizes the term obscene acts, which is regulated in Articles 289 up to Article 296 of the Criminal Code. Obscenity can be described as an act that violates the sense of decency, any deed if it has been considered violating decency / morality, can be included as lewd act. Meanwhile, the term sexual harassment refers to sexual harringment, which is defined as unwelcome attention, or legally defined as the imposition of unwanted sexual demands or creation of sexually offensive environments. (The imposition of unwanted sexual demands or the creation of a sexually offensive environment).

Thus, an essential element of sexual harassment is the unwillingness or rejection of any kind of sexual concern, and if it is not desired by the recipient of the act it can be categorized as sexual harassment, so that sexual harassment may be charged with an abusive article (Article 289 to Article 296 of the Criminal Code). In the event that there is sufficient evidence, the Public Prosecutor shall file the charge against the perpetrator of the sexual harassment before the court.

Law Number 13 Year 2006 concerning Protection of Witnesses and Victims Article 1 point (2) which reads: "Victim is someone who suffers physical, mental, and / or economic loss caused by a crime." Arif Gosita stated that victims are those who suffer bodily and spiritually as a result of the actions of others seeking self-fulfillment or others who are contrary to the human rights interests that suffer.<sup>15</sup>

According to Bambang Waluyo, the victim and the crime have a close relationship of causality, he argues that between victim and crime is like the saying "there is smoke there must be fire", the victim because of the crime as the cause of the victim's birth, he also believes in the birth of the victim is a form a person's losses, and the offender is a person who

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<sup>15</sup> Arif Gosita, *Problem of Victims of Crime: Collection of Authors*, Jakarta, CV.Akademika Pressindo, 1993, p.63



benefits from a person's loss,<sup>16</sup> and Von Hentig reveal 4 (four) victim roles that are considered to have a role in the occurrence of crime, ie:<sup>17</sup>

- 1) The victim wants a crime.
- 2) The victim makes the crime event to gain a greater profit from the loss.
- 3) The victim works with the perpetrator in a crime
- 4) The victim provokes the crime to happen.

The four victim roles over the occurrence of a crime in a health service, should have obtained legal protection for the effort to achieve a balance, so that legal protection efforts are required in the legislation, such as Law no. 36 Year 2009 on Health, and Law no. 44 Year 2009 on Hospital, Act no. 29 of 2004 on Medical Practice, and in Law no. 38 Year 2014 on Nursing.

The legal protection contained in Article 51 of Law Number 36 Year 2009 on Health, states that:

- 1) Every person shall have the right to claim compensation against a person, health worker and / or health provider who incur losses due to errors or omissions in the health services he receives.
- 2) The provisions concerning the procedure for filing a claim as referred to in paragraph (1) shall be regulated in accordance with the provisions of the regulation

Legal protection contained in Act No. 29 of 2004 on Medical Practice, encompasses the medical code of ethics and its professional standard as a form of responsibility and obligations of a physician in providing quality and appropriate health services for the patient. Efforts to protect victims are the compensation of immaterial and material losses. Replacement of immaterial losses focuses on losses which, in principle, can not be assessed by money, such as causing lifelong disability, and according to subjective criminal law (*ius puniendi*) the right of the victim to threaten a crime and require the convict to carry out the imposed penalty. Replace material losses focuses on losses which can be essentially assessed by money, and the nature of the compensation in the form of material compensation that is morally reimbursable in the form of rehabilitation and compensation (financial) against the victim, and this is in line with the provisions in Article 51 Law Number 36 Year 2009 About health.

Law No. 29 of 2004 on Medical Practice, if the incident carries a health institution such as a hospital, can also be applied Law Number 44 Year 2009 on Hospitals, Hospitals are considered as a sterile place of recording both voice and video based on Article 48 and Article 51 of Law Number 29 Year 2004 regarding Medical Practice as well as Article 40 of Law Number 36 Year 1999 concerning Telecommunication. and because the perpetrator of his crime in the case of sexual harassment is done by a nurse, so in this case the nurse can be said to be facing the law. If the nurse is proven to sexually harass the patient, then the nurse who in this case as the perpetrator of course will be threatened against ethical sanction and dismissal from Indonesian National Nurses Association (PPNI). The sanction of dismissal is the heaviest sanction as a member followed by the proposed revocation of permit to the local government of the licensor, and this case is already in the search of the Honorary Ethics Council of

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<sup>16</sup> Bambang Waluyo, *Victimology of Legal Protection Against Victims of Crime*, Jakarta, Sinar Grafika, 2011, p. 9.

<sup>17</sup> Rena Yulia, *Victimology of Legal Protection Against Victims of Crime*, Yogyakarta , Graha Ilmu, 2010, p. 8

Nursing (MKEK). MKEK also has ethical settlement guidelines including MKEK Central and Provincial parties will hold an ethical trial of the case.

Meanwhile, for violations of patient and nurse relationship SOPs, the consequences are entirely under the authority of the workplace instructions, and if the patient has been traumatized, the patient must be completely protected, both rehabilitation and legal counseling. Based on the above description, the legal protection effort is not only aimed at compensation only in the field of civil law, or in other words Criminal as still being placed as *Ultimum Remedium*, so it must experience a shift by applying the criminal as *Primum Remedium* in health service which emphasizes on the right to live and sustain life as part of *Pro Life*, and not as a *Pro Choice* (For Choice). This condition is intended as an effort to provide respect and protection against the evil of body and soul in achieving the purpose of what is the purpose of health services, such as: reduce suffering, prolong life, accompanying patients until the end of his/her life.

### **3.2 Criminal liability for the occurrence of sexual harassment in Indonesian health services.**

Criminal accountability contains the principle of error (principle of culpability), which is based on the monodualistic equilibrium that the principle of error based on the value of justice must be aligned in pairs with the principle of legality based on the value of certainty. Although the principled concept that: criminal liability is based on errors, but in some cases does not rule out the possibility of vicarious liability and strict liability. The problem of error either error about its condition (error facti) or misguidance about its law in accordance with the concept is one of the reasons forgiving so that the perpetrator is not punished unless his error is to blame him.<sup>18</sup>

A person shall be held liable for such acts, if the act is unlawful and there is no justification or exclusion of any unlawful nature for the criminal acts committed. Viewed from the point of responsibility, only a responsible person can be held accountable for his/her actions. Crime if there is no mistake is the principle of criminal responsibility, therefore in the case of a person who committed the act as threatened, it depends on whether in doing this act he/she has errors. Responsibility is an element of error, then to prove the existence the error of the element must be proven again. Given that it is difficult to prove and takes a long time, the element of accountability is thought to be secretly always there because in general every normal person is in a soul and capable of being responsible, unless there are signs indicating that the defendant soul may not normal. In this case, the judge ordered a special examination of the circumstances of the defendant's soul even if not requested by the defendant. If the results still doubt the judge, it means that the responsible ability does not stop, so the error does not exist and the criminal can not be imposed based on the principle of not being punished if there is no mistake.<sup>19</sup>

The issue of responsible ability is contained in Article 44 Paragraph 1 of the Criminal Code which states that: Any person committing an act which is not accountable to him because his soul is flawed in growth or disrupted by disability, is not punished. Criminal liability in cases of sexual harassment of a patient by nurse can be categorized as a criminal act of abuse. In the Indonesian Criminal Code, it has stipulated that the crime in the form of obscenity is regulated in Article 289 of the Criminal Code. This chapter is set out in Book II of

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<sup>18</sup> Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan*, Bandung, PT. Citra Aditya Bakti, 2001, Hlm. 23

<sup>19</sup> Moeljatno, *Asas-Asas Hukum Pidana*, Jakarta, Bina Aksara, 1987, Hlm. 41

Chapter XIV on crimes against decency. Whereas Article 289 of the Criminal Code states that: Any person with violence or threat of force to force a person to commit or allow a lewd act, is punished for wrongdoing violating the decency with imprisonment for nine years.

The notion of "obscene" is not described in detail in the Criminal Code. Indonesian Dictionary contains the meaning of "Vile, dirty, indecent (violating decency, decency)". According to the comments of the Dutch authors, the act imposed in Article 289 of the Criminal Code of obscenity is a general notion which includes the intercourse of Article 285 as a special understanding.<sup>20</sup> The criminal act of abuse is also contained in Article 289-296 of the Criminal Code. Article 290 of the Criminal Code states that: It is threatened with imprisonment for a maximum of seven years: whoever commits a lewd act with a person, knowing that the person is unconscious or powerless, whoever commits a lewd act with a person who knows or should duly assume, fifteen years or if generally unclear, concerned is not the time to be married, whoever persuades a person he/she knows or should duly suspect that he/she is not yet fifteen years old or if the general is unclear in question or is not time to be married, to do or allow to do lewd acts, or intercourse outside marriage with others.

Article 291 Paragraph (1) of the Criminal Code If any of the crimes under article 286, 287, 289, and 290 result in serious injuries, a maximum imprisonment of twelve years shall be imposed, and (2) If any of the crimes under article 285, 286, 287, 289 and 290 resulted in the death penalty for a maximum of fifteen years. Article 292 An adult who performs lewd acts with another sex, knowingly or duly to be presumed immature, shall be subject to a maximum imprisonment of five years.

Article 293 Paragraph (1) states that: Whosoever gives or promises money or goods, abuses the carrier arising from the relationship of circumstances, or by misleading deliberately moves an immature person and his/heer good conduct to commit or lets a lewd act with him/her, not yet mature, known or should be presumed to be, threatened with a maximum imprisonment of five years. Article 293 paragraph (2) Prosecution shall only be made on the complaint of a person against whom the crime is committed. Article 293 paragraph (3) The time limit referred to in Article 74 for this complaint shall be nine months and twelve months respectively.

Article 294 Paragraph (1) Anyone committing lewd acts with his or her child, step-daughter, adopted child, child under immature supervision, or with an immature person whose stewardship, education or immature care shall be punishable by imprisonment of a maximum of seven year. Article 294 Paragraph (2) Threatened with the same criminal offense if an officer who commits an obscene acts with a person who is in office is his/herr subordinate, or with a person whose guardianship is entrusted or handed to him/her, the administrator, doctor, teacher, employee, supervisor or janitor in prison, state employment, educational place, orphanage, hospital, psychiatric institution or social institution, who commits lewd acts with the person put into it.

Article 295 Paragraph (1) shall be threatened with a maximum imprisonment of five years in jail whose person intentionally causes or facilitates obscene acts by his or her child, stepson, adopted child or child under immature supervision, or by an immature person whose guardianship, the education or guard thereof shall be assigned to him/heer, or by his/her bachelor or his/her subordinate, to another person, with a maximum imprisonment of four years whoever intentionally connects or facilitates lewd acts, except those mentioned in point

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<sup>20</sup> Ismanto Dwi Yuwono, *Penerapan Hukum Dalam Kasus Kekerasan Seksual Terhadap Anak*, Yogyakarta, Pustaka Yustisia, 2015, Hlm. 1.

1 above, by the person he/she knows is immature or who should reasonably expect it to be with another person.

Article 295 Paragraph (2) If the perpetrator committed the crime as a search or habit, then the criminal may be added one third. Article 296 of the Indonesian Criminal Code states: Whoever deliberately causes or facilitates obscenity by others with others, and makes it a search or habit, is punishable by imprisonment of a maximum of one year and four months or a fine of fifteen thousand rupiah. Based on the above description, the criminal act of sexual harassment to the patient conducted by the nurse is considered to have violated the provisions in Article 294 paragraph (2) of the Criminal Code. Furthermore, the case of nurse abuse is a violation of the nurse's oath, the nurse's code of ethics as well as the violation of the criminal law, and urges the Hospital to continue to evaluate the nursing ethic, through the Nursing Committee of the Hospital and the Komisariat of the Indonesian National Nurses Association (PPNI) related errors in the implementation of the system, related to the presence or absence of systems that have not run properly, even if still not regulated a system related to problems in a particular hospital environment.

Furthermore, this case may also be said to be the negligence of the hospital as one of the violations against the Law No.8 Year 1999 on Consumer Protection, and the violated aspect of one of the consumer's right to comfort, safety and safety in consuming goods and or services, provided for in Article 4 Sub-Article a of the Consumer Protection Law. This is because a consumer is entitled to the comfort, safety and safety in consuming goods and / or services, and to the perpetrators of abuse against the defenseless person may be subject to Article 290 paragraph 1 of the Criminal Code with the threat of 7 years of confinement.

As a profession, the behavior of nurses in hospitals is also regulated in the Nursing Code of Conduct. In the nurse section 4 nurses and practice mentioned that the nurse must show professional behavior and always uphold the good name of the profession, Nurse maintain and increase the competition in the field of nursing through continuous learning, Nurses always maintain high quality nursing service along with professional honesty applying knowledge and skill of nursing in accordance with the needs of the client, Nurses in making decisions are based on accurate information and consider the ability and qualifications of a person when consulting, receiving delegates and giving delegates to others.

Criminal liability in cases of sexual harassment by remaining guided by the rules and legal norms laid down in various legislation that as author has described in the previous section on patients in health services, basically only aimed to prevent criminal acts by enforcing legal norms for the sake of protecting the community, resolving conflicts generated by criminal acts, restoring balance, bringing peace to the community, promoting the convicted person by conducting guidance so as to become a good person and free the guilty of the convicted person so that what is the ultimate goal in the application of rules and legal norms achieving an effort to humanize the patient as a whole person and humanity itself.

#### **4 Closing**

The legal protection effort is not only aimed at compensation in the field of civil law, or in other words Criminal as still being placed as *Ultimum Remedium*, so it must undergo a shift by applying the criminal as *Primum Remedium* in health service which focuses on the right to live and maintain life as part of *Pro Life*, and not as a *Pro Choice* (For Choice). This condition

is intended as an effort to provide respect and protection against the evil of body and soul in achieving the purpose of what is the purpose of health services, such as: reduce suffering, prolong life, accompanying patients until the end of his/her life.

The Criminal Code regulates the different penalties based on the criminal acts committed, in which case negligence and deliberate can be processed in accordance with applicable law, in an attempt to realize criminal responsibility which basically only aims to prevent the commission of criminal acts by enforcing legal norms for the sake of community protection, resolving conflicts caused by criminal acts, restoring balance, bringing a sense of peace in society, popularizing convicts by coaching so as to be good people and free guilty to the convicted, so what is the end purpose in the application of rules and legal norms can achieve efforts to humanize patients as a whole person and humanity itself.

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