

Examining The Normative Framework of Medical Dispute Resolution in Indonesia: Patient, Doctor, and Procedural Perspectives

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Abstract

Changes in the characteristics of society towards medical services as users of medical services are not supported by increased communication between doctors and patients, giving rise to dissatisfaction and conflict between both. This large gap between society and doctors has given rise to disputes against the medical profession, which has given rise to medical disputes. This research aims to analyze the medical dispute resolution system in Indonesia. The type of research used by researchers is normative legal research, namely legal research that attempts to find legal rules, principles, and doctrines to answer the legal issues being faced. The data sources used in this research are secondary data obtained through primary legal materials and secondary legal materials. The data obtained in this research will be analyzed using qualitative descriptive analysis methods. The conclusions in this research are: The ideal dispute resolution between doctors and patients can be seen from three sides, namely the patient side, the doctor side, and the procedure side. Before choosing which route will be used by the patient in resolving problems related to medical disputes, the patient is expected to review the advantages and disadvantages of each path.

Keywords: Medical Dispute, Adjudication, Non-Adjudication.

INTRODUCTION

Health is part of the results of human resource development as well. Various government efforts have been made to ensure access to health services for its citizens by providing facilities and infrastructure in the health sector. This is also accompanied by the availability of various legal instruments related to providing health services. The availability of this legal instrument aims to protect every citizen who consumes health services provided by doctors and hospitals.

The government has recognized the availability of instruments in this legal system to provide certainty and legal protection for every citizen who consumes the health services offered (as patients). So that the fulfillment of what is desired in the legal system can be formed to accommodate the fulfillment of society's sense of justice. The legal system as a whole has a pyramid structure, starting from the abstract (state ideology and the Constitution) to the concrete (laws and implementing regulations) (Sudharmanto et al., 2022).

The law enforcement process experiences various problems both in formal juridical terms and in implementing regulations in the field (Amaliyah et al., 2021). Recently, news that has criticized the medical community for wrong practices or what is known as "malpractice" or "medical disputes" has been appearing increasingly. On the one hand, for the medical community, it is a bad sign because it threatens the medical profession. Still, on the other hand, for the community itself, it is a good sign, namely increasing legal awareness of their rights as human beings whose position is equal to that of a doctor or dentist.

Changes in the characteristics of society regarding medical services as users of medical services are not supported by increased communication between doctors and patients, giving rise to dissatisfaction and conflict between both. Doctors to the public; in other words, there is a gap between expectations and the reality patients expect in services.

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This large gap between society and doctors is the birthplace of dispute demands for the medical profession, which gives rise to medical disputes if an action for violations of the medical code of ethics can take the form of action either in the form of guidance/supervision or administrative action directly MKEK (Medical Ethics Honorary Council) or through Minister of Health, however, if the doctor's actions violate medical professional standards or medical professional standards that have been agreed upon by the collegium, then it can be escalated to a violation of administrative law so that it can take the form of a disciplinary violation carried out by the MKDKI (Indonesian Medical Disciplinary Honorary Council), but if it is a mistake/ If this violation of discipline results in harm or death to the patient, it can be categorized as negligence or error according to legal provisions in the civil and criminal fields.

The duties of the Disciplinary Examining Council are almost similar to the responsibilities of law enforcement officials, such as the police; the Disciplinary Examining Council will receive all incoming complaints, examine them, and then develop procedures for handling cases against doctors and dentists who are complained about. After that, the Disciplinary Examination Council will decide whether the doctor or dentist is guilty, then impose sanctions on the doctor.

Furthermore, it is reviewed from the legal substance of the procedures for resolving medical disputes through MKDKI by Law no. 17 of 2023 concerning Medical Practice regulates the function of the MKDKI, namely that the Assembly, as referred to in the paragraph determines whether there are violations of professional discipline committed by Medical Personnel and Health Personnel by receiving complaints, examining and deciding cases of breaches of discipline of doctors and dentists that are submitted. In terms of complaints, it is stated that those who can complain to MKDKI are patients or their families who have been harmed by the actions of doctors and dentists in carrying out medical practices.

If the National Police receives a report or complaint regarding an alleged criminal act of medical malpractice and medical negligence from a patient/community, non-governmental organization, or hospital supervisory body. The investigator must provide a letter of receipt of the report or complaint to the person concerned. Carrying out investigations/investigators by searching for and collecting evidence. If supporting evidence is found, the National Police as an investigator will investigate the reported criminal case of medical malpractice and medical negligence.

Judging from the legal substance, whether the allegation that a professional doctor has made a mistake is true or not must be proven. This allegation will be proven through a trial in a public court. Proof through this trial process is aimed at providing legal certainty in society, especially for parties directly involved in the incident. Namely the victim or his family or doctor suspected of being the perpetrator of a criminal act of medical malpractice or medical negligence.

Public trust in doctors is decreasing; nowadays, even lawsuits filed by the public are becoming increasingly common. To overcome this problem, various legal efforts have been carried out to provide comprehensive protection to the community as service recipients doctors and service providers. The legal instruments governing the conduct of medical practice, including the resolution of medical disputes, must be regulated. This is done to provide legal certainty to recipients of health services and doctors (Sinaga, 2021). Based on the description above, the problem formulation that is the main topic of discussion in this research is how the medical dispute resolution system is in Indonesia.

RESEARCH METHODS

Research Type

This type of research is normative legal research, namely legal research that attempts to find legal rules, principles and doctrines to answer the legal issues faced (Irwansyah, 2020). The approach used in this research is the Legislative Approach, namely an approach that intends to examine all statutory regulations related to the problem that is the object of this research, as well as a conceptual approach, namely an approach that wants to test and analyze the concepts related to the object study.

Data Source

The data source that will be used in this research is secondary data. Secondary data is data obtained through:

Primary Legal Materials

Binding legal materials such as the 1945 Constitution, laws, literature, legal journals, official documents, and so on.

Secondary Legal Materials

Secondary legal materials consist of textbooks written by influential legal experts, legal journals, opinions of scholars, legal cases, jurisprudence, and the results of recent symposiums related to the research topic.

Technique Data Analysis

The data obtained in this research will be analyzed using the qualitative descriptive analysis method, namely a method for examining the status of a group of people, an object, a condition, a system of thought, or a class of events in the present to create a description, picture or painting. Systematically, factually, and accurately regarding the facts, properties, and relationships between the investigated phenomena (Nazir, 2014).

DISCUSSION

Medical Dispute Resolution System in Indonesia

Globally, the medical profession, namely doctors and dentists, is a profession that is full of risks; the biggest risk of this profession is legal action; even if it is guilty then the profession must bear the consequences of that mistake. The ethics of the medical profession, which was previously able to maintain the image of doctors and dentists in carrying out their profession, is weakening, so that the government and the House of Representatives have made many laws and regulations that bind doctors and dentists.

The meaning of system in the description of the concept of a medical dispute resolution system here refers to the existence of devices that are regularly interrelated, which form a totality of understanding from the perspective of theory, principles, and legal provisions, more concretely, the meaning of system is seen from the aspects of structure, substance and culture. Law as stated by Lawrence M. Friedman.

The legal system has its characteristics due to differences in behavioral patterns and culture in each country. However, every legal system has a consistent or steady nature. In a system, including law as a system, there is no need for conflict, overlap between legal sub-sub systems, and if there is conflict or overlap between legal sub-sub systems, and if there is conflict or overlap between legal sub-sub systems. Therefore, the conflict will be addressed, and a good legal system will provide the means for a solution.

So the legal system must contain regulations that are not ad hoc and must be general. This provision does not apply retroactively, allowing a regulation to be used in the future. Legal requirements, apart from being systematic and easy to understand, must also contain no contradictions and not exceed demands that can be done. In a legal system, there should not be a habit of changing regulations, which will lose orientation, and there should always be a match between statutory regulations and daily habits.

These three elements of the operation of law have inseparable interactions, each aspect depending on and impacting the other elements. The ideality of forming legal substance is influenced by the working of the legal structure and legal, and cultural patterns in implementing legal substance norms that are certain, just, and useful. The interaction between legal structure and substance can create an ideal legal culture in society. Conversely, the central role of legal culture can create legal structures related to the formation and enforcement of legal substance. So, these three elements are like a circular line that is endless and continuously connected. If an unhealthy legal structure is formed, it will create a legal substance that is not ideal, whereas a good legal substance will only be enforceable in its realization if the legal structure is good. The implication is that the realized legal culture will follow the patterns of the other two components when working in the legal system.

In general, the law in terms of medical services functions to protect the interests of patients as users of medical services; therefore if there is a violation of the law, the law must be enforced. In terms of law enforcement, three elements considered: legal: legal efficiency, and justice (Mertokusumo & Pitlo, 1993). In the case of resolving medical disputes where positive law has explicit regulations, it is necessary to find a law in the judicial system that will guide the resolution of legal violations.

According to Pornomo (2003), the essence of justice in a civilized society must be carried out proportionally by officers who are wise. If so it is necessary to develop an expansion of professional specialization to develop judicial duties that handle the application of medical law of a special nature with multi-purpose legal substance in order to adjudicate qualifications for violations of medical law.

Settlement of Medical Dispute Cases via Adjudication

The medical dispute resolution system for alleged criminal acts of medical malpractice or medical negligence follows the criminal justice system (SPP), which is provided for and/or regulated by the KUHAP and other provisions outside the KUHAP. In other words, the Criminal Justice System (SPP) is the procedural provisions that will be carried out and implemented by law enforcement organs (apparatus) if a criminal offense is suspected.

The legal structure factor in the dispute resolution system procedure through adjudication is that the legal structure can be likened to a machine in handling medical malpractice or medical disputes. The legal structure factor here is all law enforcement officials, namely officials related to criminal law enforcement, namely, the police, prosecutors, and judges, including lawyers, through their institutions, which are one unit and are bound up in the criminal justice system, are expected to be able to work together in realizing justice and truth and to be able to form an integrated criminal justice system which in its movements will always experience interfaces (interaction, interconnection and interdependence.) with the environment so that efforts can be made to protect patients who feel disadvantaged by a medical procedure.

Investigators, public prosecutors, and judges in criminal law are the police investigator as the main investigator, the prosecutor as the public prosecutor, and the judge as the judge of public justice, meaning that the relationship pattern is separate and is only connected by an internal process between the three in the pre-adjudication and adjudication phases of the process of handling allegations. Medical malpractice and/or medical negligence.

One of the components in the legal structure referred to above is the police, which carry out investigative functions in the SPP concept. Article 1 number 1 of Law, Number 2 of 2000 concerning the State Police of the Republic of Indonesia states, "Police are all matters relating to the functions and institutions of the police are in accordance with statutory regulations." Then Article 1 number 2 of Law Number 2 of 2002 also states, "Members of the State Police of the Republic of Indonesia are civil servants in the State Police of the Republic of Indonesia."

Concretely, as stipulated in Law No. 2 of 2002 concerning the Police of the Republic of Indonesia, the police are created to realize internal security, which includes maintaining security and public order, order and upholding the law, providing protection, protection, and service to the community, as well as supporting public peace by upholding it. Human rights.

The authority of the National Police in conducting investigations/investigations into criminal acts of medical malpractice and medical negligence is based on Law Number 2 of 2002 concerning the National Police, Article 14 paragraph 1 letter g, Article 7 paragraph (1) of the Criminal Procedure Code and the Health Law.

In carrying out its main duties, the National Police is tasked with carrying out investigations and investigations of all criminal acts by the criminal procedural law and other statutory regulations. At this level, the duty and authority of the National Police as law enforcers is to investigate/investigate cases of medical malpractice and medical negligence based on reports or complaints made by the public, non-governmental organizations, or reports from the Hospital Supervisory Board.

Furthermore, in this pre-adjudication process, the function of a research prosecutor is carried out, which in the literature is called the screening prosecutor, who examines the results of the investigation sent through the investigator, namely the Investigation Report (BAP), then the prosecutor will study and give an opinion about the BAP.

A prosecutor is a functional official authorized by law to act as a public prosecutor and implement court decisions that have obtained permanent legal force and other authorities based on law. Prosecutors are not only required to master general positive law (*lex generalis*) but also specific law (*lex specialis*), such as in alleged criminal cases of medical malpractice and medical negligence (Pramudya & Widiatmoko, 2010).

The duties and authority of the prosecutor in criminal justice are based on Law Number 8 of 1981 concerning the Criminal Procedure Code and Law Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia.

In carrying out their duties and authority, prosecutors must realize legal certainty, legal order, justice, and truth based on law, heed religious norms, politeness, and decency, and are obliged to explore the human values, law, and justice in society. Prosecutors must also be able to be fully involved in the development process, including creating conditions and infrastructure that support and secure the implementation of development to create a just and prosperous society based on Pancasila, and are obliged to participate in maintaining and upholding the authority of the government and state and protecting the interests of the people through law enforcement.

According to the author, the relationship between investigators and prosecutors in practice sometimes does not work effectively because it is not harmonious, which gives rise to different perceptions of each and the potential for blaming each other, as in Santoso's (2000) research, for example prosecutors often give unclear instructions, prosecutors give instructions but to change the BAP question but after it has been changed, they instead ask for it to be corrected again in another direction, while investigators (police) often do not carry out instructions from the prosecutor correctly, so they have to go back and forth many times, wasting time.

According to Djamin (1999), the task of the National Police is very difficult because it is not only tasked with repressive duties but also preventive and pre-emptive (community guidance). The National Police is now even responsible for internal security. In this connection, technical or professional capabilities typical of the police are required. Typical technical or professional capabilities of the police include the fields of police intelligence, shabara, detectives, traffic, mobile brigades, police animals, water police, air police, police health, development of independent security and social security apparatus, and technical development and coordination with PPNS. The scope of the investigation includes investigators who need technical skills in handling the crime scene (crime scene proceedings), observation skills, surveillance, and, if necessary "under cover" interrogation, and others for evidence to make clear the criminal act that occurred and to find the suspect.

Furthermore, the legal structure in the process of resolving alleged criminal acts of medical malpractice and medical negligence referred to above is a judge who is an official appointed by the state to exercise judicial power. Judicial power is an independent power to administer justice to uphold law and justice (independence of the judiciary).

Referring to the thoughts of Montesquieu, who is also a (French) judge, the principle of independence of the judiciary has become one of the most important characteristics of every democratic legal state because no country can be called a democratic state without the practice of independent judicial power. Then, quoting Mukti Arto, Jimli Assiddiqie said that the court institution is very important because the court is the guardian of the constitution, a free court is an element of a democratic state, The court is the root of the rule of law (Assiddiqie, 2007). Furthermore, according to Adji (1980), an independent judiciary is an "indispensable" requirement in a country under the "Rule of Law," although this does not mean that judges can act arbitrarily.

Judges in the criminal justice system are always the focal point because judges always take part in "controlling" in assessing what is done by the agencies in the system that handled previous cases according to their respective authorities, namely the police and the prosecutor's office. (Soedarto, 1986). In the pre-adjudication phase, the judge supervises the investigation in the form of a position as magistrate or justice of the peace, where the judge

will assess whether there is a probable cause for the alleged criminal act and whether there is reasonableness in carrying out the detention by the investigator.

In Law Number 48 of 2009 concerning Judicial Power, which regulates the position of judges, how judges are deemed to be able to provide justice for "people seeking justice" with the duties and obligations carried out as a judge (Saleh, 2014). Furthermore, in the explanation of Law No. 48 of 2009, independent judicial power means that judicial power is free from all interference from extra-judicial powers, except in cases as stated in the 1945 Constitution.

According to the author, freedom is not absolute because the judge's job is to uphold law and justice based on Pancasila. Concretely, the judge's freedom cannot be interfered with in the circumstances and by anyone. Still, this freedom is substantially limited by the basic law of the state and justice itself because judges in providing justice must be based on Pancasila, the basic law of the state in the 1945 Constitution.

However, in terms of the freedom of judges, it has been limited by the basic state law "justice based on Pancasila," namely justice that grows, lives, and develops in Indonesian society itself, as there are many questions about how judges find justice that grows, lives and develops in society, whether it is popular. The mass media reflects the sense of justice in the entire society so that the feeling of justice that lives in society can truly be reflected in the concrete decisions made by the judge.

As in the case that occurred in October 2013 in the media, there was news of a doctor's protest against a colleague who was found guilty by the Supreme Court of causing the death of a woman named Julia Fransiska Makatey, April 2010, strike action and accompanied by demonstrations carried out by doctors throughout Indonesia in starting with the decision of the cassation judge led by supreme judge Artdijo Alkostar by sentencing three doctors, namely doctor Dewa Ayu Sasiary Prawani, along with Hendry Simanjuntak and Henri Siagian who worked at the Prof. Kandou Hospital, Manado, with a sentence of 10 months in prison on September 18, 2012, which resulted in thousands of doctors throughout Indonesia carrying out strikes and demonstrations, which contained one of the legal considerations of the Supreme Court, the three doctors committed "medical malpractice" in treating patient Julia Fransiska Maketey who was about to give birth on April 10, 2010, who ultimately died. World.

Therefore, the panel of judges who examine and decide cases must also reflect the diversity of feelings of justice in a pluralistic society. Still, a different opinion from Omas Ihromi says that all laws are related to certain time frames, so the law cannot change according to the place and time where the law is. There is (Publishing Institute for the Faculty of Economics, University of Indonesia, 1984). Thus, Selo Soemardjan indicated that because not all norms that live in society can be formulated into written law, the norms and values of life that are not written can nevertheless grow and develop following the changes that occur in society itself, such as pluralism and the spirit of the nation's existence, can be used by judges in adjudicating cases as living law (Publishing Institute, Faculty of Economics, University of Indonesia, 1984).

Judging from the legal substance, whether the allegation that a professional doctor has made a mistake is true or not must be proven. This allegation will be proven through a trial in a public court. Proof through this trial process is aimed at providing legal certainty in society, especially for parties directly involved in the incident. Namely the victim or his family or the doctor suspected of being the perpetrator of a criminal act of medical malpractice or medical negligence.

Proving a doctor's mistake regarding an alleged criminal act of medical malpractice or medical negligence, which is formulated as a criminal act, is carried out so that the doctor concerned can be held criminally responsible if he is proven to have committed the error.

The rules of criminal procedural law have comprehensively regulated the evidentiary process at trial (Putri et al., 2021). The method of proving error in criminal procedural or formal criminal law remains through institutions or law enforcement bodies that have the authority to examine, try, and decide a criminal case as a criminal justice system. Cases of suspected criminal acts of medical malpractice or medical negligence that have been brought under the law will be examined as general (ordinary) criminal cases, with mechanisms and procedures that refer to Law Number 8 of 1981 concerning the Criminal Procedure Code.

Evidence is one of the most important parts of the criminal justice process (Agung et al., 2023). Criminal cases that have gone through the initial examination stage/process by police investigators and public prosecutors, and the case files have met the requirements for examination at the next stage, the prosecutor's office will transfer the case to the district court. The process mentioned above also applies to the criminal process of medical malpractice or medical negligence, which can be brought up and investigated in formal law as a criminal case. Therefore, the process of proving a doctor's guilt to demand criminal responsibility for criminal acts of medical malpractice or medical negligence allegedly committed while carrying out his profession is the same as the process of proving other defendants who commit general crimes.

Although the process of proving guilt to demand criminal responsibility is the same for all criminal cases examined in court, some things are slightly different. The difference in question is between cases of criminal medical malpractice or medical negligence and other criminal acts, namely the difficulty of finding data regarding criminal instances of medical malpractice or medical negligence compared to other criminal acts.

According to the author, the difficulty of proof is because the terms used in the formulation of norms or articles of criminal provisions, which are the basis for charges of criminal acts of medical malpractice or medical negligence, do not use the words or terms medical malpractice or medical negligence directly as the name of the offense or type of criminal act. As a result, the criminal act in question appears to be a type of offense or criminal act that has not been regulated in criminal laws and regulations, so it is not easy to carry out and process legally, not to mention the evidence of expert testimony which is the crown in proving medical malpractice criminal cases. Or medical negligence, it isn't easy to provide information that seems closed, defending his colleagues because the corps' strength is too strong.

The process of examining and proving a criminal case of medical malpractice or medical negligence by a doctor in a general court is the same as proving in other general cases. The legal basis for reporting suspected criminal acts of medical malpractice or medical negligence is that medical personnel or health workers suspected of committing unlawful acts in implementing health services that may be subject to criminal sanctions must first request a recommendation from the panel. Furthermore, the Hospital is legally responsible for all losses incurred due to negligence alleged by the Hospital's Health Human Resources.

Overall, the criminal law concept specified in the Criminal Procedure Code consists of two phases, namely the pre-trial and adjudication phases (R. Soepomo, 1970). In the pre-adjudication phase, this phase is known in HIR, namely the initial examination or the Criminal Procedure Code investigation and investigation. Those who have the authority to do so are investigators, including the National Police and PPNS (Civil Servant Investigators), in coordination with the National Police and research prosecutors. When carrying out inquiries and investigations, law enforcement officers (Police and PPNS) can carry out coercive measures, namely a series of actions for The purpose of the investigation, which consists of arrest, detention, confiscation, search, and examination of documents. The result (product) of the investigation is the availability of a report on the assessment of evidence (BAP), which is a compilation of minutes of information from the investigator's actions on evidence.

According to the author, the principle of presumption of innocence an official statement that evidence of a criminal act and the defendant's guilt is legally within the judge's authority. Therefore, the process of proving the "evidence and belief of the investigator that the facts and guilt of the suspect have been found," as outlined in the BAP (Investigation Minutes), still needs to be held in an open trial.

According to the author, regarding cases of suspected criminal acts of medical malpractice or medical negligence, even though the prosecutor's office has accepted the BAP, this does not necessarily mean that a case must be transferred to court by the principles of legality (technical) and opportunity (policy) adopted in prosecution. This means that technically, there is a provision that the public prosecutor has the authority to "stop prosecuting" a case because there is insufficient evidence; it turns out not to be a criminal act, and it is closed by law. As a matter of policy, the Attorney General has the authority to set aside cases in the public interest.

Next is the adjudication phase, also called the judge's examination in court. An examination in court by a judge is in the presence of the public prosecutor and the defendant, a defendant during the examination with or without being accompanied by an advocate.

In all examinations in court, the judge actively leads the trial by the provisions of the judge's active system in criminal procedural law. This activity includes leading the prosecution, arranging questions for witnesses, experts and defendants, and deciding the substance of the case after listening to and examining all the evidence. , the prosecutor submits a demand (requisitor) to which the defendant and his advocate can respond with a defense (pledge) after the examination is complete, the judge will hand down a decision or a verdict. The judge decides a case based on at least two valid pieces of evidence.

Furthermore, the legal culture factor is in the legal approach and perspective; culture is a form of implementation of the criminal justice system's role that will be empowered. In contrast, legal culture is a mechanism that takes place both among the community and law enforcement officers who drive the criminal justice system.

In efforts to apply the criminal justice system to alleged criminal acts of medical malpractice and medical negligence, it is influenced by several factors, namely the paradoxical factor of society's culture, which positions when doctors experience legal problems, the stakeholders of the medical profession (the medical profession is positioned as the most correct), state officials (law enforcement officials) who handle allegations of criminal acts of medical malpractice and medical negligence in the community find it very difficult to prove allegations. Criminal acts, society tends to be helpless against medical crimes.

The cultural factor of society, which is often considered, is that doctors are seen as human beings of choice or as half-gods, half-humans most needed for survival.

There is still a strong opinion in society that one profession that is above the law is a doctor.

The victim prefers to remain silent because he does not understand the mechanism of the complaint system for alleged criminal acts of medical malpractice and medical negligence.

The cultural paradox of society that the author means is the values built by society that are deeply rooted and become a benchmark for problems that occur in the community's living environment and are agreed upon by the society where they live. The cultural paradox of society in assessing the handling of alleged criminal acts of medical malpractice and medical negligence assumes that the capacity of human resources in law enforcement officers makes it difficult to prove the existence of suspected criminal acts of medical malpractice and medical negligence because proof is very difficult because of the public's unfamiliarity with the world of health, especially actions. Medical assistance and the support of expert testimony in the evidentiary process tend to protect colleagues, so this paradox becomes more and more widespread, and in the end, society justifies it and becomes a culture that finds it difficult to accept the system of resolving medical disputes using the criminal justice system which is regulated in the constitutional system.

Furthermore, the cultural factor of society and the strong crocodile paradox of culture, which considers doctors to be demigods, and the strong medical philosophy which is rooted in society that no doctor has the intention of killing a patient so that the criminal law enforcement system for alleged criminal acts of medical malpractice and medical negligence does not work. By what the legislators envisioned. Therefore, understanding the criminal justice system in law enforcement requires support from all parties, including law enforcement officials, the government, elements of society, including doctors, victims, and the victims' families.

Legal culture is also a determining factor and needs to be scrutinized based on legal principles to enforce the law for the sake of justice, especially for doctors. Legal culture is values considered good in accordance with applicable regulations so that society can legally distinguish whether an action is good or bad, according to the provisions and rules that have been determined.

Sinamo (2019) explains the cultural paradox in positioning doctors, stating that being a doctor today is very risky for legal action because the paradigm of health services has shifted from a social direction to commercialization; health service activities have become dependent on business activities so that many doctors

are very rich, often ethical violations arise due to unclear working relationships between doctors and hospitals (work contracts/providing details of clinical authority).

According to the author, actions in cultural, and medical services in good medical care are very dependent on human relationships, not on compliance with medical service standards and respecting patient rights. Doctors must comply with their moral obligations to respect life and prioritize patient safety by acting conscientiously and cautiously during the entire health service relationship process. The efforts made by doctors are oriented towards patient needs rather than the standard of facilities they have. Accuracy and caution are the main human traits and should remain inherent in humans throughout their lives because they are human. Whoever obeys the law will act prudently (prudent agent qui legis temperate).

Settlement of Medical Dispute Cases in Indonesia using Non-Adjudication.

The legal structure factor of the medical dispute resolution system through non-adjudication is the existence of the Indonesian Medical Discipline Honorary Council (MKDKI) located in the capital city and province. MKDKI membership is 11 (eleven) people, consisting of 3 (three) people. Doctors, 3 (three) dentists, hospital associates, 1 (one) doctor, 1 (one) dentist, and law graduates, 3 (three) people. In examining a complaint regarding an alleged violation of medical discipline, the Indonesian Medical Discipline Honorary Council (MKDKI) forms a Disciplinary Examination Council (MPD) consisting of at least 3 (three) people and a maximum of 5 people. To be appointed as a member of the Indonesian Medical Discipline Honorary Council, the requirements must be met: a law degree, having practiced in the legal field for at least 10 (10) years, and knowing the field of health law. This aims to provide neutrality in carrying out the duties and authority of the MKDKI in handling medical disputes.

The duties, authority, and limits of authority as regulated in the applicable laws and regulations are receiving, examining, and deciding on professional disciplinary complaints as well as preparing guidelines and procedures for handling professional violations, not accepting complaints regarding ethical issues and legal issues (civil or criminal) and The MKDKI decision is not evidence in the legal field and does not carry out mediation or reconciliation or negotiation between the complainant, defendant, patient or their attorney.

However, the birth of Law No. 17 of 2023 concerning Health strengthens the position of the MKDKI and sharpens the MKDKI as a medical court. Recently the MKDKI has been referred to as a medical justice institution by doctors because Article 308 clearly states that if health workers carry out health services, they are suspected of violating laws that can be subject to criminal sanctions, a prior recommendation must be requested from the MKDKI.

Each session is declared quorum and valid if attended by at least 3 out of 5 MPD people without replacement who are absent or with replacement from the same element and at least 2 out of 3 MPD people without replacement who are absent or with replacement from the same element, each The trial decision was taken through a deliberation mechanism. During the deliberation session, each MPD member provides their respective written opinions as material for consideration which the MPD Chair will read. The decision is (based on at least 3 out of 5 valid pieces of evidence and the belief of the Disciplinary Examining Panel).

The authority possessed by the Disciplinary Examination Council in carrying out the duties assigned by the state in law enforcement, namely a. receive complaints about violations of doctor and dentist discipline, b. determine the type of complaint for breach of discipline or medical discipline or neither, c. examine complaints of disciplinary violations of doctors and dentists, d. decide whether there is a violation of doctor and dentist discipline, e. determine sanctions for breaches of doctor and dentist discipline, f. implement the decision of the Indonesian Medical Discipline Honorary Council, g. Prepare procedures for handling cases of disciplinary violations by doctors and dentists. h. fostering, coordinating, and supervising the implementation of the duties of the Provincial MKDKI.

The duties of the Disciplinary Examining Council are almost similar to the responsibilities of law enforcement officials, such as the police; the Disciplinary Examining Council will receive all incoming complaints, then examine them, then develop procedures for handling cases against doctors and dentists who are complained

about. After that, the Disciplinary Examination Council will decide whether the doctor or dentist is guilty, and then impose sanctions on the doctor.

It's just that in the evidentiary stage process at the Indonesian Medical Honorary Council, doctors and dentists who are complained about by patients for violations or negligence will not be detained or temporarily suspended from carrying out medical practice until the case complained of is resolved, as is the case with the police. , the doctor can still work as usual, except if the hospital or doctor's place gives suspension to doctors and dentists who are being processed at the Indonesian Medical Discipline Honorary Council so that it will provide a sense of justice and security to patients who want to seek treatment and cure the disease.

Furthermore, it is reviewed from the legal substance of the procedures for resolving medical disputes through MKDKI by Law no. 17 of 2023 concerning Medical Practice regulates the function of the MKDKI, namely that the Assembly as referred to in the paragraph determines whether there are violations of professional discipline committed by Medical Personnel and Health Personnel by receiving complaints, examining and deciding cases of breaches of discipline of doctors and dentists that are submitted. In terms of complaints, it is stated that those who can complain to MKDKI are patients or their families who have been harmed by the actions of doctors and dentists in carrying out medical practices. In the case of a complaint, it must contain the complainant's identity, the name and address of the doctor's and dentist's practice, and the time the action was carried out.

In resolving medical disputes through MKDKI, there are no procedures to be resolved using mediation, reconciliation, or negotiation between doctors and dentists and patients and their proxies. The procedures for handling alleged medical disputes related to violations of doctor and dentist discipline are as follows:

Complaint Process

A complainant is any person or corporation (body) who is aware of (witnesses and has authority with evidence) of an alleged violation of discipline by a doctor or dentist in carrying out medical practice and whose interests have been harmed by the actions of the doctor or dentist in carrying out medical practice. The complainant's attorney can represent the complainant.

In terms of making a complaint, you must meet the requirements, namely the person or entity making the complaint, the doctor or dentist being complained about, and the incident being complained about must meet the following criteria: the event being complained about occurred after the promulgation of Law Number 29 of 2004 concerning Medical Practice on October 6, 2004. The incident complained of does not intend to resolve a compensation claim.

The terms and conditions in the complaint letter, the information or information in the complaint must contain 1) the identity of the complainant, 2) the identity of the patient, and 3) the name and address of the practice of the doctor or dentist being complained about, including: 4) the time the action was carried out; 5) reasons for the complaint (chronology of the events complained about); 6) names of witnesses and their involvement (if any).

Complaints are made in writing, and if you are unable to complain in writing, you can make a verbal complaint at the MKDKI office and have never been complained about and examined by the Provincial Health Service for the event being complained about, which occurred during the transition period before the formation of the MKDKI and after the promulgation of the Law. Number 29 of 2004 concerning Medical Practice on October 6, 2004.

For data supporting the complaint, the complainant or the complainant's attorney provides a. evidence owned; and b. a statement regarding the integrity of the complaint for complaints submitted by other than the Minister, Head of the Provincial/Regency/City Health Service, professional organizations, and KKI. As referred to above, Supporting data for complaints provided can be provided after the complaint is registered with MKDKI.

Complaints are submitted to the Chair of MKDKI to make it easier for complainants to submit complaints to the Chair of MKDKI; MKDKI provides the complaint format. If a complaint has been registered with the

MKDKI, the patient or his family is deemed to have given consent to the MKDKI to disclose the patient's medical secrets while enforcing the discipline of doctors and dentists.

Clarification

In carrying out clarification, the special officer can ask the complainant or the complainant's attorney to confirm the complete the missing complaint documents. For clarification purposes, the parties concerned must provide information, letters or documents related to the incident being complained about, and other necessary evidence.

Initial Examination

MKDKI leadership conducted an initial examination of complaints regarding alleged doctor and dentist discipline violations, which have been clarified. MKDKI leadership can decide not to accept complaints or reject complaints. If the MKDKI leadership cannot, in certain cases, decide as intended not to accept the complaint or reject the complaint, then it will be discussed and agreed at the MKDKI plenary meeting.

Complaints cannot be accepted as stated above: 1. The person or entity making the complaint does not meet the criteria for the complainant or the complainant's agent, 2. The information or information in the complaint needs to be completed, 3. The complainant or the complainant's agent or respondent cannot be known or traced after attempting 3 (three) times within a maximum period of 3 (three) months from when the complaint is received at MKDKI. The complaint is rejected as stated above, namely: a. the doctor and dentist complained about are not registered with KKI, b. the incident complained of occurred before October 6, 2004, c. the incident complained of occurred during the transition period before the formation of MKDKI and was examined by the Provincial Health Service, d. the event complained of is not related to medical practice or there is no professional relationship between doctor and patient, e. the incident carried out does not fall within the realm of medical or dental discipline violations, f. The incident complained of has been tried and decided by the MKDKI as a final decision with permanent force.

For complaints that have been decided to be rejected by the Chair of the MKDKI, the same and different complainant or complainant's attorney cannot file the same complaint again with the MKDKI.

Inspection

The Chair of MKDKI determines the formation of the Disciplinary Examination Council (MPD) at MKDKI. As stated above, MPD membership consists of at least 3 (three) MKDKI members and a maximum of 5 (five) MKDKI members. The composition of MPD membership is adjusted to the profession in question, with the following provisions: a. if the defendant is a doctor, most MPD members are doctors; b. if the defendant is a dentist, most MPD members are dentists. One of the MPD members at MKDKI comes from law graduates. If an MPD member cannot carry out their duties, the Chair of the MKDKI can appoint a replacement member.

To carry out the duties of the disciplinary examination hearing, the MPD is assisted by special officers as hearing clerks. If the clerk cannot carry out his duties, the Chair of the MKDKI can appoint a replacement clerk. MPD is independent and, in carrying out its duties, is not influenced by anyone or any institution. MKDKI does not mediate, reconcile, and negotiate between doctors or dentists and complainants or their proxies.

The Disciplinary Examination Council (MPD) can decide whether the complaint cannot be accepted, is rejected, or is the examination terminated. Complaints cannot be accepted, and complaints are dismissed as referred to above by the provisions of this Perkonsil. As referred to above, the inspection is terminated if: a. the claimant is permanently ill based on a valid certificate; b. the defendant died; and c. at least 2 (two) pieces of evidence by the provisions in this Perkonsil are not met.

Complaints can be withdrawn or canceled by the complainant or the complainant's attorney before an investigation is carried out. The decision to rescind or rescind, as referred to above, is carried out in the context of enforcing the discipline of the doctor or dentist and not in the context of mediation, reconciliation, and negotiation between the doctor or dentist and the complainant or their proxy.

Investigation

The investigation was carried out on the orders of the MPD Chairman to collect information and evidence related to the reported incident. As referred to above,, the investigation is carried out through: a. field trip; b. correspondence; and c. other communication media.

Special officers carry out investigations and may be accompanied by medical supervisors. When conducting an investigation, special officers may request information and evidence relating to the incident being reported to: a. the complainant or the complainant's attorney; b. patient; c. the defendant or the defendant's companion; d. the head of the health service facility where the defendant carries out the medical practice complained of; and e. other related parties. As referred to above, the investigative activities are carried out behind closed doors. (4) The MPD determines the time for carrying out the investigation.

Examination Session

Disciplinary hearings are held behind closed doors. The disciplinary examination hearing is chaired/chaired by the Chair of the MPD. If the MPD Chair is absent, the disciplinary examination hearing is chaired/chaired by an MPD Member appointed by the MPD Chair. In certain and necessary cases, the Chair of the MPD, who handles alleged disciplinary violations of doctors or dentists who are complained about, can ask the patient related to the complaint to attend a disciplinary hearing.

Summons to attend disciplinary hearings for defendants, complainants, witnesses, and/or experts are made in writing. Defendants and witnesses or experts who are doctors or dentists registered with the KKI must attend disciplinary hearings unless for reasons acceptable to the MPD.

If the defendant and witnesses do not appear at the disciplinary hearing that has been scheduled and are legally summoned and do not respond to the summons without an acceptable reason, the Chair of the MPD may request the Head of the local Health Service or the head of the local relevant professional organization to bring in the defendant and witness. -the witness. Acceptable reasons, as intended in paragraphs (1) and paragraph (2), are caused by: a. physical and mental health problems based on a doctor's certificate with a SIP; b. natural disasters; c. transportation disruption due to serious traffic accidents; d. riot; and e. other reasons determined by the Disciplinary Examination Council session.

Suppose the defendant does not appear at 2 (two) disciplinary hearings without an acceptable reason as intended in paragraph (3) and has been summoned by the provisions of this Perkonsil. In that case, the defendant will be subject to disciplinary sanctions. Suppose a witness or expert who is a doctor or dentist who is registered with KKI is present at more than 2 (two) disciplinary hearings. In that case, the witness or expert is given an award that can be used as a credit transfer per the provisions regulated by the relevant collegium.

If a witness or expert who is a doctor or dentist who is registered with the KKI does not appear at 2 (two) disciplinary hearings without an acceptable reason as intended above and has been summoned by the provisions of this Perkonsil, the witness or expert may be subject to disciplinary sanctions.

If the defendant is not present without reason at 2 (two) summonses, the disciplinary hearing can be continued without the defendant's presence (in absentia hearing). A disciplinary examination hearing in which there are 5 (five) members of the Disciplinary Examination Council is considered valid if attended by at least 3 (three) members and a clerk. A disciplinary examination hearing in which there are 3 (three) members of the Disciplinary Examination Council is considered valid if attended by at least 2 (two) members and a clerk. In certain cases and necessary to speed up the implementation of the disciplinary examination hearing, the complainant and the respondent can be presented together at the examination hearing.

Proof

Evidence that can be presented at a disciplinary examination hearing is in the form of: a. letters and/or documents; b. testimony of witnesses; c. expert information; d. defendant's confession; and/or e. evidence.

Letters or documents are letters/documents related to the incident being complained about. Next is the witness statement, the witness must take an oath/promise before the disciplinary hearing. The people who cannot be

heard as witnesses are: a. a person who is not an adult, namely a person who is not yet an adult as regulated in the Civil Code, unless his statement is in accordance with other legal evidence; or b. people under guardianship (curatele).

The statements of witnesses can be considered as evidence, if the statements relate to things they personally experienced, saw or heard. Witness statements can be obtained in person or in writing (affidavit). If the witness cannot speak Indonesian, is mute or deaf, the Chairman of the Disciplinary Examination Council can appoint an interpreter who takes an oath in accordance with his religion and beliefs. In the event that the witness cannot attend the disciplinary examination hearing held by the MPD for reasons acceptable to the MPD, then the MPD can assign at least 1 (one) member of the Disciplinary Examination Council and 1 (one) clerk to listen to his testimony.

Furthermore, expert evidence is an opinion conveyed by a person who has special experience and knowledge in the field related to the event being complained about. Expert testimony is presented before a disciplinary hearing by taking an oath according to their religion and beliefs. Expert information, as referred to above, is provided by experts appointed by the MPD.

A defendant's confession is considered evidence if the defendant's confession is in the form of things he personally experienced and saw. The acknowledgment, as referred to above, must be made before a disciplinary hearing. For the purposes of a disciplinary examination, the complainant or the complainant's attorney, patient and respondent related to the complaint must submit the evidence they have.

Verdict

In order to provide protection to the public and/or to prevent the recurrence of the incident complained of, the MPD can provide an interim decision to the defendant. The provision of an interlocutory decision to the defendant, as referred to above, is carried out based on the results of investigations and examination of evidence as well as the physical and/or mental health condition of the defendant, which could endanger the patient and the public. The provision of an interim decision to the defendant, as referred to above, was carried out after it was discussed at the KKI plenary meeting. The interim decision, as referred to above, is in the form of an order for the defendant to temporarily stop practicing medicine until the examination process for the defendant is completed or until a decision is made regarding the defendant being declared innocent or the defendant being given disciplinary sanctions.

If the doctor's or dentist's disciplinary examination hearing has been completed or is deemed sufficient and the respondent has provided a final response or the respondent has not provided a final response by the time limit specified in this Perkonsil, the MPD must make a decision against the respondent. The MPD decision, as referred to above, can be in the form of: a. declared not to have committed any violation of doctor or dentist discipline; or b. giving disciplinary sanctions, in the form of: 1. written warning; 2. the obligation to undertake education or training, which can be carried out in the form of: a) formal education at an accredited medical or dental educational institution; or b) non-formal re-education carried out under the supervision of a certain doctor or dentist at an accredited medical or dental educational institution, health service facility and its network, or other designated health service facility, for at least 2 (two) months and a maximum of 1 (one) year; and/or 3. recommendation for revocation of STR or SIP which is: a) temporary for a maximum of 1 (one) year; b) permanent or forever; or c) limitation of certain medical care actions in an area of medical or dental science in the implementation of medical practice.

In the event that the defendant objects to the MPD Decision, the defendant can submit an objection to the Chair of the MKDKI by submitting new evidence that supports his objection within a maximum of 30 (thirty) days after the copy of the MPD Decision is received. If no objections are submitted as intended above, the Chair of the MKDKI shall determine the MPD Decision as an MKDKI Decision with permanent force and read out in open session.

The MPD's decision to find the defendant not guilty is the MKDKI's decision which was read out openly at the decision reading session. The results of the disciplinary examination hearing carried out by the MPD

regarding the objection are determined by the Chair of the MKDKI as the MKDKI Decision which is final and has permanent force and is read out openly at the decision reading session.

The forms of disciplinary violations are listed in the Decree of the Indonesian Medical Council regarding guidelines for enforcing medical discipline, namely:

Practicing medicine incompetently

Do not refer patients to doctors or dentists who have appropriate competence

Delegating work to certain health workers who do not have the competence to carry out the work, providing a temporary replacement Doctor or Dentist who does not have the appropriate competence and authority, or not providing notification regarding the replacement.

Carrying out medical practice in a condition where the level of physical or mental health is such that one is incompetent and can endanger patients.

In managing patients, they do what they should not do or do not do what they should do in accordance with their professional responsibilities without valid justification or forgiveness, which can endanger the patient.

Carrying out examinations and treatment that are not in accordance with the patient's needs, not providing honest, ethical and adequate explanations (adequate information) to patients or their families in carrying out medical practice.

Carrying out medical procedures without the consent of the patient or close family or guardian or guardian.

h. Deliberately not creating or storing medical records as regulated in statutory regulations or professional ethics.

Carrying out actions aimed at terminating a pregnancy that are not in accordance with the provisions as stipulated in statutory regulations and professional ethics.

Carrying out acts that could end the patient's life at the request of himself or his family.

Carrying out medical practice by applying knowledge or skills or technology that has not been accepted or is outside the proper procedures for medical practice.

Carrying out research in medical practice using humans as research subjects without obtaining ethical approval from a government-recognized institution.

Not carrying out emergency assistance on humanitarian grounds even though it does not endanger himself unless he is sure that there are other people on duty and capable of carrying it out.

Refusing or stopping treatment for patients without valid and appropriate reasons as regulated in statutory regulations or professional ethics.

Disclosing medical secrets as regulated in statutory regulations or professional ethics.

Making medical information that is not based on examination results that he knows are true and appropriate.

Participating in acts that include torture or execution of the death penalty.

Prescribing or administering narcotic drugs, psychotropic drugs and other addictive substances (NAPZA) which are not in accordance with statutory regulations and professional ethics.

Carrying out sexual harassment, acts of intimidation or acts of violence against patients in the practice.

Using an academic title or professional title that is not their right.

Receiving compensation as a result of referring or requesting an examination or providing medication/medical devices.

Advertising capabilities/services or superior capabilities/services, whether orally or in writing, which is untrue or misleading.

Dependence on narcotics, psychotropic substances, alcohol and other addictive substances.

Practicing using an invalid Registration Certificate (STR) or Practice Permit (SIP) and/or competency certificate.

Dishonesty in determining medical services.

Failure to provide information, documents, and other evidence required by MKDKI to investigate complaints of alleged disciplinary violations.

CONCLUSION

Based on the results of the research and discussions that have been discussed, the author draws the following conclusions: The most ideal dispute resolution between doctors and patients can be seen from three sides, namely the patient's side, the doctor's side, and the procedure side before choosing which route will be used by the patient. In resolving problems related to medical disputes, patients are expected to first review the advantages and disadvantages of each route. Patients or public prosecutors in criminal justice have difficulty proving that doctors have made mistakes because of their unfamiliarity with medical techniques. Meanwhile, if you look at it from the doctor's perspective, of course this route is better. Because the Disciplinary Examination Council at MKDKI, which examines alleged violations, comes from a medical and legal background, it is psychologically easier to argue. Decisions in the form of suspensions and temporary suspension of practice permits still provide opportunities for doctors to continue carrying out their profession without losing their good reputation because the disciplinary examination process is carried out behind closed doors. If you go through the General Court route, both the patient's side and the doctor's side are not the ideal choice, considering the relatively long examination process, relatively high case costs, and the difficulty of proving. Not to mention that the nature of case examinations, which are open to the public, will risk harming the good names of both parties.

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