

THE ESTABLISHMENT OF MEDICAL COURTS IN RESOLVING MEDICAL DISPUTES

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Abstract

This research is motivated by the condition that currently there are more and more cases of medical disputes being reported, especially direct reports to the police, all of that is because there is no standard regulation on medical disputes and settlement in court. So according to researchers, it is necessary to immediately form a medical court for the sake of legal certainty. This study aims to discuss the essence of the establishment of a medical court in resolving medical disputes, how to resolve medical disputes in positive law in Indonesia and the model of a medical court in resolving medical disputes that can provide legal certainty, justice and benefits. This research is a type of legal research, normative or doctrinal research by using Legislative, Case, Conceptual, and Comparative Approaches which analyzed in a normative prescriptive manner by systematically inventorying, classifying and identifying the legal materials that have been obtained. The results of this study indicate that philosophically, medical dispute resolution is an effort to restore the relationship between the disputing parties to its original state. By restoring the relationship, they can establish relationships, both social and legal relationships, with each other. The resolution of medical disputes is regulated through various laws, ranging from the Civil Code to the Health Omnibus Law, which aims to create a sense of security and legal certainty, especially in high-risk medical procedures. The Medical Court which is within the scope of the general court, of course, with the composition of judges who will resolve disputes are judges who have competence in medical science and also legal science. The suggestions that the author can give from this research are: expect the Government and the House of Representatives (DPR) to immediately draft a special law regulating the establishment of the Medical Court. This law must include a legal basis, institutional structure, working mechanism, and the appointment of competent judges and experts in the medical and legal fields.

Keywords: Medical Court, Medical Dispute.

INTRODUCTION

The right to life is absolute rights of every person and are included in the category of non-derogable rights, namely rights that cannot be reduced, such as in Article 9 of the Republic of Indonesia Law Number 39 of 1999 concerning Human Rights, paragraph (1) "everyone has the right to live, maintain life and improve their standard of living", paragraph (2) reads "everyone has the right to live peacefully, safely, happily, in physical and spiritual prosperity." Then in Article 17 "everyone, without discrimination, has the right to obtain justice by filing applications, complaints and lawsuits, both in criminal, civil and administrative cases and be tried through a free and impartial trial process, in accordance with procedural laws that guarantee objective examination by honest and fair judges to obtain a fair and correct decision".

From the description above, it is clear that in the health sector (issues of health, life and living) it is a human right where the government is responsible for protecting and enforcing it.

To enforce and provide protection in the health sector, the government through the legislative body, creates and forms laws and regulations. Laws and regulations that can create legal ideals

as mentioned above, which can later protect medical personnel and the community as recipients of health services if there is a medical dispute in the implementation of achieving welfare in the health sector.

The enactment of Law Number 17 of 2023, the Omnibus Law on Health, is a new era of health law renewal that is expected to accommodate health law, but still raises health law problems in the world of health. The legislation is an Omnibus Law that combines several laws that have previously been in effect and is the basis for policy making in guiding and providing legal certainty, justice and benefits for medical personnel in Indonesia.

Well-being in the field of health, both physical and mental, is one of the welfares referred to in the ideals of the Indonesian nation. To realize the legal ideals related to the field of health that are just and certain of law, it is necessary to strengthen the National Health System (SKN) through policy making by the legislative and judicial bodies so that legal certainty in the field of health can be placed as the main one in strengthening the resilience of the National Health System.

The SKN is prepared by taking into account the approach to revitalizing primary health care services, which includes fair and equitable coverage of services, providing quality health services that support the interests and hopes of the people, public health policies to improve and protect public health, leadership, and professionalism in health development.

Although there has been an increase in the health status of the community, there are quite serious obstacles for legal policy makers in the health sector to be able to realize legal certainty, so that various powers and efforts are needed both in policy-making steps at the formulation stage and in the implementation and process of enforcing legal certainty, justice and benefits that are desired to be achieved in the field of health law.

Moreover, the achievement of National Health Development experienced a massive "disruption" with the start of the Corona Virus Disease 2019 (COVID-19) pandemic in 2020 which occurred on a global scale. The COVID-19 pandemic which had a wide impact on the entire social order, created an additional burden in efforts to improve the quality of public health, thus forcing the world, including Indonesia, to make adjustments to these conditions. (In the explanation of Law No. 17 of 2023, General section).

The pandemic incident has brought awareness to the importance of strengthening the National Health System, so that a comprehensive transformation needs to be carried out as an improvement effort aimed at improving the health of the Indonesian people and increasing the competitiveness of the Indonesian nation.

In the development of modernization, society is also increasingly critical and increasingly advanced in the field of science, especially the science of legal norms. So that if there is a medical dispute due to medical personnel not having the competence and standards of modern "technology" medicine, it is easy to make post-medical problems into medical disputes. So, according to researchers, legal certainty must be given to both parties which will later become a bridge in addition to justice through medical courts.

Due to the patient's death that is difficult for the patient's family to accept, the Standard Operating Procedure (SOP) that is not properly implemented in the service process causes medical disputes to be inevitable. Patient dissatisfaction will certainly demand legal certainty and justice for health workers if there is an unexpected medical risk/surgical risk. Although procedurally, most people do not know where they should report such negligence.

More and more cases of medical disputes are reported, especially direct reports to the police, all because there is no standard regulation on medical disputes and settlement in court. The decision of the medical council is not in favor of the patient, and the court decision is not legally certain. Of the many cases that can be resolved outside the court through mediation/deliberation, those seeking justice and legal certainty will still take the case to court (in this case the General Court).

Based on the laws in force in Indonesia, the current reality (positive law) is that criminal cases cannot be resolved outside the court (non-litigation), although it is possible to resolve criminal cases outside the court. Although in general dispute resolution outside the court only exists in civil disputes, in practice criminal cases are often resolved outside the court. Settlement through various discretions of law enforcement officers or through the deliberation/peace mechanism of the "forgiving" institution in the community.

Reasons such as the bureaucracy of reporting medical disputes are difficult, without a clear flow, repressive actions by the police against health workers, settlements from medical councils that some people consider to be biased towards health workers and dispute resolution through non-litigation systems in the form of mediation or restorative justice that do not produce results, so that according to researchers, legal certainty regarding these medical disputes must be resolved by establishing a health court or a medical court that is "urgent" in the form of updating criminal procedure law or a special medical court process or an ad hoc court in the field of health law.

Government policy in the field of Health law, by looking at the current resolution of medical disputes (before the Health Omnibus Law and after) requires the immediate establishment of a medical court or ad hoc general court, so that the resolution of medical disputes can provide legal certainty, justice and benefits. According to researchers, the increasing number of medical dispute cases requires the immediate establishment of a medical court for legal certainty. It is "urgent" to establish a medical court because based on the latest data from the MKDKI, throughout 2022 alone there has been a significant increase in the number (by the chairman of the MKDKI Ali Baziad) of reports of dissatisfaction with the professionalism of doctors, recorded at 59 cases, previously there were only 27 to 30 complaints each year. (KKI, 2022)

RESEARCH METHODS

The type of research used by the compiler is normative research or doctrinal research. Normative legal research is legal research that places law as a building of a norm system. The norm system in question is about the principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings). (Mukti Fajar, 2013)

In this type of legal research, law is often conceptualized as what is written in legislation (Law in book) or law is conceptualized as rules or norms that are benchmarks for human behavior that are considered appropriate.

In this case, the author conducted a study of primary data sources, namely data obtained by studying laws and regulations, and also secondary data, namely data obtained by searching and collecting data in print media, electronic media, literature books, and in addition, opinions or other notes related to the research object, using the statute approach, Case Approach, Conceptual Approach, and Comparative Approach.

The legal materials that have been collected will be analyzed thoroughly normative. These legal materials are analyzed normatively prescriptive by systematically inventorying, classifying and identifying the legal materials that have been obtained. All of these legal materials will be examined using a normative method approach such as the interpretation method and the legal construction or reasoning method (redeneerwijzen).

DISCUSSION

1. The Nature of the Establishment of a Medical Court in the Settlement of Medical Disputes

The history of the pioneers of modern nursing began with the emergence of the famous term "angel with a lamp who helps in the pitch darkness" which in nursing science is called designation "The Lady with the Lamp". According to the author, it is the beginning of the essence or philosophy of truth of a medical service in the world. Both services in the fields of nursing, midwifery and medicine.

"The Lady with the Lamp" was first coined because of the experience of a famous nun who was born on May 12, 1820 in Florence, Tuscany. Florence Nightingale (May 12, 1820 - August 13, 1910) was a pioneer of modern nursing, writer and statistician. Florence Nightingale has contributed and fearlessly collected war victims in the Crimean War, on the Crimean peninsula, Russia. Reviving the concept of hospital hygiene and nursing tips. He emphasized careful attention to patient needs and the preparation of detailed reports using statistics as arguments for change towards a better direction in the field of nursing in front of the British government. (Wikipedia, 2024)

Philosophically, medical dispute resolution is an effort to restore the relationship between the disputing parties to its original state. By restoring the relationship, they can establish relationships, both social and legal relationships, with each other.

"Theorie van de beslechting van geschillen", settlement is a process, action, way of finishing, bringing to an end, settling or deciding, arranging, reconciling (a dispute or quarrel), or arranging something so that it becomes good. (Salim & Nurbani, 2016)

The nature and essence of health law, law in general is imperative and optional (Sudikno Mertokusumo, 2000; 32). Imperative legal rules if the legal rules are a priori must be obeyed, are binding and coercive. The legal rules are optional if the legal rules are not a priori binding,

their nature is only complementary. (Salim & Nurbani, 2016)

Imperative law because it is coercive, then generally always accompanied by sanctions. The sanctions can be in the form of imprisonment, fines and administrative penalties.

On that basis, overall legal provisions related to health law are imperative and also optional. The provisions of sanctions from health law are reflected in the provisions of Law No. 36 of 2009 concerning Health starting from Article 190 to Article 201.

With the provisions of sanctions in these Articles (Articles 190-201 of Law No. 36 of 2009), the provisions of health law are essentially intended to provide legal protection to patients and other related parties. To achieve this goal, health law ultimately has a dual nature, namely public and private at the same time. (Salim & Nurbani, 2016)

According to researchers, there are so many legal systems in the health sector with sanctions, both sanctions from the Indonesian Medical Discipline Honorary Council (MKDKI) / Medical Ethics Honorary Council (MKEK) and administrative sanctions, civil sanctions and criminal sanctions, with the amount of rupiah that must be spent by health workers who are considered to have committed malpractice, and criminal sanctions that are very disproportionate to what was done in an effort to improve the patient's illness, it is felt that legal certainty, justice and benefits are needed for all parties in order to resolve the medical dispute. And researchers have strong reasons that a resolution with legal certainty, justice and benefits must be resolved in cases with the risk of death by establishing a medical court.

The existence of a health legal order and the last is the Health Omnibus Law which is expected to reduce the vacuum of norms and the ambiguity of norms in resolving the dispute, it turns out that it is still unable to provide legal certainty. Even the term "discrimination" adds to the list of terms for health workers who originally intended to try to resolve/cure the patient's illness who initially had these medical risks.

2. Medical Dispute Resolution Under Positive Law In Indonesia

In order to provide legal certainty and protection to improve, direct and provide a basis for health development, a dynamic health legal instrument is needed. The legal instrument should be able to reach increasingly complex developments, which will occur in the future. For this reason, it is necessary to improve and integrate valid legal instruments.

Based on the above considerations, various laws and regulations in the health sector were issued, which in essence aim to: (Asyhadie Z, 2018)

- a. The principles and objectives that form the basis and provide direction for health development implemented through health efforts to improve health, willingness and ability to live healthily for people so that an optimal level of public health is achieved without differentiating between social statuses;
- b. The rights and obligations of every person to obtain an optimal level of health and the obligation to participate in maintaining and improving health levels;

- c. The government's duties and responsibilities are basically to regulate, foster and supervise the implementation of health efforts and to mobilize community participation;
- d. Health efforts are implemented in a comprehensive, integrated and sustainable manner through the approaches of improving health, preventing disease and restoring health;
- e. Health resources as supporting implementation must continue to carry out their social functions and responsibilities with the understanding that health service facilities must continue to pay attention to the less fortunate groups in society and not merely seek profit;
- f. Criminal provisions to protect providers and recipients of health services in the event of violations of health laws.

Medical dispute resolution in Indonesia is regulated through various legal regulations that provide guidelines for handling conflicts between medical personnel, patients, or other related parties. The various regulations that govern the resolution of medical disputes are as follows:

- a. Civil Code
- b. Criminal Code
- c. Law Number 29 of 2004 Concerning Medical Practice
- d. Law Number 36 of 2009 concerning Health
- e. Republic of Indonesia Law Number 44 of 2009 Concerning Hospitals
- f. Law Number 36 of 2014 Concerning Health Workers
- g. Law Number 38 of 2014 Concerning Nursing
- h. Law Number 4 of 2019 Concerning Midwifery
- i. Law Number 1 of 2023 concerning the Criminal Code
- j. Omnibus Law on Health / Law Number 17 of 2023 concerning Health

According to researchers, legal certainty is crucial, because complete health services will not be achieved if order in health service facilities is not created, the service will certainly be disorderly and irregular. Back to the sense of comfort and security in receiving treatment, especially when undergoing surgery or surgery.

All actions that have medical risks, especially those that have a risk of death (related to operations involving vital organs, such as the heart, blood vessels, liver surgery and so on, must be able to guarantee certainty in the rules, methods, procedures that are in accordance with standard operating procedures so that legal certainty can be realized.

3. Medical Court Model in Medical Dispute Resolution That Can Provide Legal Certainty, Justice and Benefit

A Medical Court, like a general court, is an institution that carries out a judicial process with the aim of resolving problems or disputes between two parties that cannot be resolved through deliberation and consensus.

There are several reasons that are the basis for researchers to say that medical courts must be formed with the aim of trying suspects, defendants who experience or are disputed by health recipients who do not accept the results of "efforts" made by health workers/medical personnel/nurses/midwifery personnel in resolving these problems.

The existence of a settlement with mediation to obtain a "win-win solution" is sometimes difficult for the wider community to accept today, and the most difficult to accept is the existence of a conspiracy between medical personnel and those who try a medical dispute case if implemented by the MKDKI/MKEK.

Why is that, because the community considers the health workers to be the ones who have the problem, the health workers who resolve it, and it is made worse by the separation of the summons between the defendant and the plaintiff. In resolving medical disputes in the realm of Ethics and Discipline, the plaintiffs never meet the defendants. And the final result is considered "Final". All of these results can be brought to the "green table", namely the general court because the Medical Practice Law has provided this recommendation.

Discrimination against health workers in general courts has become a frightening specter for the leaders of the Indonesian Doctors Association (IDI) and the community who defend health workers, because in the trial process, of course there are more judges who do not have medical knowledge, let alone expert witnesses who are presented who do not have the same competence as the medical workers who are caught up in the law.

There are difficulties in obtaining evidence of what medical personnel have done because in many cases "medical confidentiality" limits investigators' ability to obtain this.

According to researchers, the differences in education levels and competency levels of health workers also make it difficult for judges to decide whether the doctor meets the elements of criminal punishment.

From this brief explanation and opinion, the researcher recommends the establishment of a special court in the health sector called the Medical Court, which is within the scope of the General Court, which of course with the composition of the judges who will resolve the dispute are judges who have medical knowledge and are in line with the competence of the defendant. And of course there are judges who also have legal knowledge.

The Medical Court, in principle, is able to produce a decision that has legal force, legal certainty, justice and provides benefits for all who have an interest in resolving medical disputes in Indonesia.

CONCLUSIONS AND SUGGESTIONS

1. Conclusions

- a. The establishment of a medical court is essentially a solution to overcome uncertainty and discrimination in resolving medical disputes. The medical court aims to protect the rights of patients and medical personnel equally by considering medical and legal standards.

However, its implementation requires regulatory support, expert resources, and integration with the existing legal system in Indonesia.

- b. Health development requires dynamic legal instruments to provide legal certainty and protection. Various health regulations aim to realize optimal public health, protect the rights and obligations of all parties, and regulate the duties and responsibilities of the government and the community. The resolution of medical disputes is regulated through various laws, ranging from the Civil Code to the Health Omnibus Law, which aims to create a sense of security and legal certainty, especially in high-risk medical procedures. According to researchers, legal certainty is very important to create orderly, regular health services that meet standard operating procedures.
- c. Medical Courts as special courts in the health sector are needed to handle medical disputes more fairly, transparently, and professionally. It is proposed that this court be staffed with judges with legal and medical backgrounds to ensure that the decisions taken meet the elements of legal certainty, justice, and benefits for all parties. The establishment of this court was driven by public distrust of the current medical dispute resolution mechanisms, both through mediation and ethical institutions such as MKDKI/MKEK, as well as by the difficulties of health workers in facing discrimination in general courts. Medical Courts are expected to be able to answer the challenges of the complexity of medical disputes, including aspects of evidence and differences in the competence of health workers.

2. Suggestions

We hope that in the future, the existence of the Medical Court can be a solution or alternative to fulfill the need for resolving medical disputes in order to realize justice and legal certainty between the parties. In addition, we hope that the Government and the House of Representatives (DPR) will immediately draft a special law regulating the establishment of the Medical Court. This law must include a legal basis, institutional structure, working mechanism, and the appointment of competent judges and experts in the medical and legal fields.

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