

Problems of Resolving Medical Crimes in Health Practice in Indonesia

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Abstract

This study examines the problems of resolving medical crimes in health practices in Indonesia, considering the complexity of the legal relationship between health workers, patients, and health institutions. In the context of health services, there is the potential for medical violations involving criminal aspects, such as negligence or malpractice. Handling these cases often causes polemics, both in terms of regulations, professional ethics, and legal implementation. This study aims to analyze the obstacles faced in resolving medical crimes, identify existing legal loopholes, and provide strategic recommendations to improve the resolution mechanism. The methodology used is a normative legal approach supported by empirical data through case studies and in-depth interviews with health practitioners, legal experts, and law enforcers. The results of the study indicate that there is a mismatch between applicable regulations and the need for legal protection for health workers and patients. In addition, the lack of understanding of the law by health workers and the repressive approach to law enforcement worsen the situation. Therefore, policy reform is needed that involves aligning regulations, strengthening the legal capacity of health workers, and dispute resolution mechanisms that are oriented towards mediation and restorative justice.

Keywords: Medical Crime, Malpractice, Health Law, Dispute Resolution, Restorative Justice.

INTRODUCTION

Health services are one of the basic needs of society that must be carried out professionally and in accordance with applicable standards. In practice, health workers are required to provide the best service to protect and improve the health of the community. However, it is not uncommon for allegations of violations of the law in the form of medical crimes, such as negligence or medical actions without informed consent that are considered to violate patient rights. This raises complex legal problems, considering that health workers are faced with a dilemma between professional obligations and the legal consequences that may arise from their actions.¹

Settlement of medical crimes is often a matter of debate, both in terms of legal substance, procedure, and implementation. The legal system in Indonesia has not fully provided adequate protection for all parties involved. In some cases, health workers feel that criminalization of them is excessive, while on the other hand, patients often feel that they are not getting the justice they deserve. This phenomenon shows that there are gaps in the regulation and mechanisms for resolving medical disputes in Indonesia.²

The absence of a specific mechanism that regulates the resolution of medical crimes is one of the main factors causing this polemic. Several relevant laws, such as Law Number 29 of 2004 concerning Medical Practice and Law Number 36 of 2009 concerning Health, are still unable to

¹Law Number 29 of 2004 concerning Medical Practice.

²Law Number 36 of 2009 concerning Health.

answer all aspects of the legal problems that occur. In addition, the law enforcement approach that tends to be repressive towards health workers is also a challenge that needs to be considered.³

In the context of health, medical crimes are becoming an increasingly relevant issue in Indonesia, along with the increasing public demand for quality and safe health services. Medical crimes usually include various forms of negligence, malpractice, or ethical violations committed by health workers, which can have fatal consequences for patients. In Indonesia, resolving these cases often faces various challenges, both in terms of law and practice in the field.

One of the main problems in resolving medical crimes is the unclear regulations governing the definition and mechanism of law enforcement. Law No. 36 of 2014 concerning Health Workers and Law No. 29 of 2004 concerning Medical Practice provide a legal framework, but are often not detailed enough in explaining the criminal aspects of medical actions carried out by health workers. This causes ambiguity that can be detrimental to both patients and health workers themselves.

In addition, the judicial process in medical crime cases is often slow and lacks transparency. Health workers involved in such cases often experience social stigma, which can have negative impacts on their careers and psychology. In many cases, the public's lack of understanding of the rights and obligations of health workers also worsens the situation, thus reinforcing negative perceptions of the medical profession.⁴

This study aims to analyze the problems of resolving medical crimes in health practices in Indonesia, identify existing legal loopholes, and provide strategic recommendations to improve the mechanism for resolving medical disputes. With a normative legal approach and empirical data support, this study is expected to contribute to the development of health law in Indonesia.⁵

METHOD

This study uses a sociological legal approach method. Which is an approach to legal reality in society. The steps are interviews and empirical analysis, so that the design and steps of this research technique will follow the pattern of social science research, this starts from the formulation of the problem which begins with the determination of respondents and sources, and collecting data, making an analysis design and ending with a conclusion.

RESULTS AND DISCUSSION

3.1. Problems in health practices in Indonesia

Law in Indonesia is starting to lose its prestige and public trust. In fact, its current condition is "paralyzed" and has reached its lowest point, said Sunaryati Hartono.⁶ The law is unable to be a comprehensive solution in overcoming social problems. The conventional criminal justice system that has been in effect so far (positive law), especially those related to medical crimes, has failed to solve the problem because it is only oriented towards punishing the perpetrator, while the rights of the victim are ignored, the community does not get any benefits, what happens is that it adds to the burden on the state.

Punishing the perpetrator in a medical crime case means that the doctor has proven not to have solved the problem, either for the perpetrator, the victim, the community, or the state. For the perpetrator and the victim, the punishment, whether physically, psychologically, socially, or economically, does not bring any benefits, except merely emotional revenge, so that empirically the punishment is completely ineffective. The victim and/or the victim's family in a criminal case, for example, during the process of handling the problem, from the examination to the implementation of the sentence (imprisonment),

³Mardani, Health Law in Indonesia: A Review of Malpractice Cases, Jakarta: Kencana, 2020, p. 45.

⁴Widyastuti, Rina. (2019). "Public Perception of the Rights and Obligations of Health Workers," Journal of Health Ethics, 4(2), 120-134.

⁵Satjipto Rahardjo, Progressive Law: A Synthesis of Indonesian Law, Yogyakarta: Genta Press, 2010, p. 12.



which can take years, seems as if it is not part of the ongoing legal event. The victim and/or the victim's family, even if occasionally called, examined, or heard from, is only to complete the examiner's belief, which sometimes actually deepens the psychological wounds of the victim and/or the victim's family because they have to reveal the heartbreaking incident over and over again. Moreover, if it turns out that the case is a case of sexual harassment or rape, then it is not impossible that the victim and/or the victim's family will suffer even more and be traumatized. After the judge's gavel is dropped and the perpetrator is sentenced to prison, again the victim and/or the victim's family also do not get any benefits, except that (some feel) their revenge has been avenged. Apart from that, there are no benefits whatsoever obtained by the victim and/or the victim's family, either morally or materially.

For the community, if the person punished is a doctor because he is considered to have committed a medical crime, then rather than getting benefits, they will actually be harmed because the quality and quantity of medical services in that area will decrease.ⁱⁱThis means that punishing the perpetrator, especially a doctor whose expert services are very much needed for the sake of humanity, provides absolutely no practical benefit to society.

Conditions that show a disparity between expectations and legal reality require strategic steps to restore the function and purpose of law for society. For this reason, a reorientation of legal policies and objectives is needed, which have so far been more oriented towards efforts to realize justice and certainty, directed at the benefits of law, from deterrence and blasphemy to efforts for rehabilitation, reintegration, and social empowerment. That is what the author calls a restorative justice policy or more popularly known as a restorative justice policy.ⁱⁱⁱ

The restorative justice policy is a response and criticism of the implementation of the criminal justice system (general) with the imprisonment system which has been proven to be ineffective in resolving legal problems. In Marian Leibmann's view,^{iv}The concept of resolving criminal cases with a restorative justice approach is more: (1) prioritizing support and healing for victims, both physically and psychologically; (2) encouraging perpetrators to be responsible for their actions to the victim; (3) prioritizing dialogue or deliberation between victims and perpetrators to reach an agreement that is mutually beneficial for the parties, so that the dispute resolution process brings benefits, especially for the victim and the perpetrator; (4) properly and proportionally placing the losses suffered by the victim arising from the legal event; (5) making perpetrators aware and preventing the emergence or recurrence of new crimes of the same type; and (6) involving the community in the integration process between victims and perpetrators after the incident, which generally results in disharmony, even mutual resentment, including disharmony of values in society.

According to Howard Zehr, restorative justice is a compass, not a map.^vThis means that restorative justice is a dynamic (not static) guideline or guidance to obtain a complete solution to the legal problems being faced by the parties adjusted to the conditions of each party in the case without reducing the rights of each to "bargain" to find a mutually beneficial meeting point (win-win solution). According to one of the advocates of the concept of restorative justice, John Braithwaite, restorative justice is a new direction between justice and welfare models or between retribution and rehabilitation.^{vi}That is, restorative justice is a model for resolving legal problems that is oriented towards efforts to realize the values of justice as well as welfare or benefits or between elements of sanctions and elements that are intended to improve conditions (especially economic). This means that the aspect of justice can be achieved by prioritizing benefits. So, the focus of attention is on the value of legal benefits for society which is in line with the concept of Islam and Bentham's theory of benefits.^{vii}

In other words, the restorative justice policy is a renewal of the conventional criminal justice process (which is ineffective) towards a resolution that is in accordance with the wishes of the parties, which is in line with the spirit, soul, and ideology of the Indonesian nation to make law a comprehensive solution through deliberation with a family spirit. That is what PadmoWahjono calls a state of law based on Pancasila and the 1945 Constitution.^{viii}The same thing was also expressed by Oemar Seno Aji and Romli Atmasasmita that the concept of a state based on law with the characteristics of a family-based deliberation approach is a Pancasila State of Law.^{ix}

3.2. Medical Crimes in Health Practice in Indonesia

Basically, the relationship between a doctor and a patient is an inspanning verbentenis contract, in addition to giving birth to the rights and obligations of the parties, in this relationship also forms the legal responsibility of each party. For a doctor, the performance of doing or not doing something in casu not doing wrong or mistaken in medical treatment is a legal obligation that must be fulfilled. A wrong/mistaken treatment in providing medical treatment to a patient constitutes a violation of the agreement (default) and/or an unlawful act (onrechtmatige daad). These violations will become medical malpractice if they cause physical harm, health or life of the patient. Specifically, the location of the nature of the unlawful act in medical malpractice is not always the same depending on the position of each, especially on the conditions that cause medical malpractice. The condition factors can be different in each case of alleged medical malpractice while the causative factor of malpractice is the emergence of consequences that are detrimental to the health and life of the patient.

The conditions that support the occurrence of unlawful acts of medical malpractice are as follows:^x

- a. violation of medical professional standards;
- b. violation of standard operating procedures;
- c. violation of informed consent;
- d. violation of the doctor's obligations;
- e. violation of professional medical principles or reasonable practices in the medical field;
- f. violation of ethics and public decency;
- g. medical practices that are not in accordance with the patient's medical needs; and violation of patient rights.

Ethics comes from the Greek word ethos, which means "good, proper". These are the norms, values or behavioral patterns of certain professional groups in providing services to the community.¹⁷⁰ K. Bertens, Etika, Gramedia, Jakarta, as quoted by Syahrul Machmud, 2008, Law Enforcement and Legal Protection for Doctors Suspected of Performing Medical Ethics or ethic comes from the Greek word "ethikes" which means moral, and "ethos" which means nature, character or behavior in a group of humans or individual humans. Therefore, ethics is a branch of philosophy in which humans try to evaluate and decide through certain means moral actions or general theories about behavior.^{xi}

The term ethics originally came from the Latin term which is a combination of the terms mores and ethos. These two words are a combination of a series of concepts of mores of a community and ethos of the people, which can be interpreted as human politeness and human morals. This concept developed especially among the professional community, the values that are mores and ethos are then formulated and codified as a code of ethics. Among the health profession community, this code of ethics is known as the medical code of ethics. Ethics are different from law^{xii} because the ethics of obedience and awareness to implement it arise from within humans personally from every human heart and no heavy sanctions are required. As for the law formed by the apparatus that forms the Law, obedience to the law can be forced from outside by law enforcement officers.

The code of medical ethics created as a guideline for the medical profession is a guideline for ethical behavior that binds doctors and dentists in carrying out their profession related to patients, as well as relationships with fellow colleagues and at the same time to themselves. The profession comes from the profession formulated as the wrong profession reflects a group of men pursuing learned art a common calling in the spirit of a public service, nothing less a public service because it may incidentally be a means of livelihood".^{xiii} In medical practice there are very broad ethical and legal aspects, which often overlap on a particular issue, and even ethical aspects often cannot be separated from their legal aspects. This is because many ethical norms have been raised to legal norms or vice versa legal norms that contain ethical values.

As for what is meant by medical ethics, it has two sides where one side is interrelated and influences each other, namely job ethics or medical ethics, which concerns issues related to the attitudes of doctors towards their colleagues, the attitudes of doctors towards their assistants and the

attitudes of doctors towards the community. As for the ethics of care or ethics of the medical care, namely medical ethics in everyday life regarding the attitudes and actions of a doctor towards patients who are his responsibility. Medical ethics among those who carry out the medical profession have a very important function and role to ensure the continuity of the profession. Ethical values always want to position themselves by giving color and consideration to the attitudes and behavior of doctors in socializing and providing guidelines on what is considered good, bad, right, or wrong.

Violations of the provisions of the Code of Medical Ethics are some that are ethical violations alone, but there are also ethical violations and violations of the law which are known as ethical violations. Furthermore, the forms of violations of medical ethics are as follows:

1. Pure ethical violation:

- a. Taking unreasonable remuneration or taking service fees from the families of fellow doctors and dentists;
- b. Taking over a patient without the consent of a colleague (violating Article 16 of the Code);
- c. Praising oneself in front of patients (violating Article 4 letter a of the Code); (4) Doctors ignoring their own health (violating Article 17 of the Code)

2. Regarding ethical legal violations, including:

- a. Substandard doctor service;
- b. Issuing a false certificate (violating Article 7 of the Code and Article 267 of the Criminal Code);
- c. Revealing the secrets of a doctor's position or work (violating Article 13 of the Code of Criminal Procedure and Article 322 of the Criminal Code);
- d. Never attended education and training in the development of science and technology;
- e. Induced abortion;
- f. Sexual harassment
- g. Not wanting to provide emergency assistance to a person who is suffering (violating Article 14 of the Code and Article 304 of the Criminal Code).

Ethicolegal conflicts among health workers, including doctors in hospitals, which in turn will trigger relevant medical disputes because in the present and in the future, the community's need for health services will continue to grow along with the progress of society which is marked by the increasing level of education and welfare of the community. Several ethical violation practices occur but are legally difficult to prove because there are no adequate written legal regulations, for example:^{xiv}

- a. Excessive use of sophisticated medical equipment in hospitals to repay bank credit;
- b. Improper treatment for poor patients or patient refusal for various reasons;
- c. Extension of the length of stay of VIP patients to increase hospital income, including expanding medical indications/treatments by frightening/fooling patients;
- d. Implementation of medical futility (medical futility) for incurable diseases;
- e. Subtle diversion or coercion to move an incapacitated patient from a hospital in an unstable condition to another hospital (patient dumping);
- f. Patient leadership is incapable;
- g. Making it difficult or not accepting "terminal patients" in order to prevent the impression of a bad name for patient care (reducing the death rate) of the hospital;
- h. Detaining patients even though the diagnosis is not clear (not referring to higher facilities just for the sake of doctor/hospital income);
- i. Not implementing the doctrine of informed consent sincerely;
- j. Not implementing the provisions of medical records legally;
- k. Dichotomy or splitting (sending patients or performing medical procedures in exchange for commission from other facilities/sponsors)
- l. Using substitutesassistants or protecting other health workers who are not authorized/authorized, who are old/disabled, who are sick/addicted or who behave badly;

- m. Not disclosing medical errors to colleagues;
- n. Practicing a medical controversy such as abortion which is associated with pro-choice and pro-life beliefs related to the problem of menstrual regulation, life saving, emergency, medical indications, patient autonomy (husband's permission, etc.);
- o. Practicing the ethical dilemmas of medical technology advances such as test tube babies, single parent mothers, sperm banks, womb rental, cloning, euthanasia, eugenics, organ transplants, etc.;
- p. Press competition for land or medical authority
- q. (between specialists), hospital shares or business units with or without using professional organizations;
- r. Strengthening medical secrecy on the grounds of professional freedom/autonomy, making it difficult for other colleagues to enter the work unit, making fun of colleagues, employing juniors without any sense of conscience;
- s. All other forms of corruption, collusion and nepotism (especially by simplifying any procedures/breaking through the rules, avoiding the law, in the name of the glory of the profession);
- t. Charging high rates under the pretext of professionalism and being too time-oriented as a business;

Actions that can be a trigger for a conflict in medical ethics include:^{xv}

1. The conflict between values interpreted by patients versus professional values held by medical practitioners, especially among doctors in ethical relativism;
2. The conflict between truth telling and medical error, especially for doctors who receive referrals;
3. The conflict between the methodological differences of conventional and alternative medicine;
4. Conflict between patient and doctor perceptions;
5. Specific conflicts between truth versus loyalty; individual versus community; short-term versus long-term; and justice versus mercy.
6. Conflict of authority between general practitioners plus specialist doctors and specialist doctors with subspecialist doctors;
7. The conflict of minimal standards versus optimal standards.

In the practice of implementing the Code of Medical Ethics, differences of opinion may arise, namely in interpreting the provisions of medical ethics that are very general in nature, for example in the provisions of Article 2 of the CODE of Medical Ethics which states that a doctor must always carry out his profession according to the highest standards. How to measure it and what is meant by the highest standards? The difficulty in measuring this is in addition to the absence of standard medical service standards and also the absence of a general/national monitoring and supervision system for the quality of medical services. Therefore, it must be in accordance with the moral values of society that can change so that the guidelines/benchmarks must be revised periodically.

In compiling professional standards that can be used as guidelines for measuring it is not easy because it must be universally applicable to every actor who faces the same problem, difficulties even though facing the same health problem but medical actions are carried out differently because they face different bodies, different examination methods and equipment. To check whether a doctor has violated his obligation to care for and treat patients, the following provisions need to be considered.^{xvi}

- 1) the doctor is present when treating the patient, or if he cannot be present will appoint a replacement for whom he is responsible for his abilities;
- 2) the doctor has done everything possible to establish the correct diagnosis, all of these existing methods are adjusted to the professional standards applicable to the level of knowledge and conditions in that place;
- 3) know when he should consult a doctor who is more expert in his field;

- 4) provide treatment and other assistance appropriately in accordance with the diagnosis established;
- 5) carefully monitor the effects of the assistance provided and immediately take appropriate action if side effects or complications occur;
- 6) make the necessary efforts to avoid injury or accidents resulting from the assistance provided.

The provisions of the articles in the Code of Medical Ethics (Kodeki) are also stated in Law Number 29 of 2004 concerning Medical Practice and the Criminal Code (KUH Pidana), so that it applies as a positive law that has legal sanctions and has coercive power. Ethical violations do not result in formal sanctions for doctors who violate them, where the sanctions given depend on the severity of the ethical violation. The sanctions given are educational in nature (administrative sanctions) and are preventive efforts for the same violation, which can be in the form of: verbal or written warnings or demands, salary or rank delays, salary or rank reductions to a lower level, temporary revocation of the doctor's practice license, and in cases of ethical-legal violations, punishments are given according to applicable personnel regulations and processed in court.^{xvii}

CONCLUSION

The Indonesian Ulema Council (MUI) of North Sumatra plays a very important role in ensuring the protection of Muslim consumers through halal fatwas. This responsibility includes not only religious moral aspects, but also legal responsibilities regulated by national regulations, such as Law No. 33 of 2014 concerning Halal Product Assurance and Law No. 8 of 1999 concerning Consumer Protection. However, the MUI of North Sumatra still faces various challenges, especially in terms of supervision of products that have been halal certified and education to the public. To strengthen the guarantee of halal products, it is necessary to increase the capacity of supervision, cooperation with related parties, and wider socialization to producers and consumers.

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ⁱSee Bustanul Arifin's Scientific Oration in front of the Academic Community of Hasanuddin University, Makasar, on January 5, 1994, as quoted by Achmad Ali in his book Menguak Tabir Hukum, Publisher Ghalia Indonesia, Jakarta, 2008, Page: 2

ⁱⁱSee in M. Ali Firdaus, Doctors in the Shadow of Medical Malpractice, Widya Paramarta Publisher, Bandung, 2017, Page: 9, related to the bankruptcy case of the Rappahannock Hospital (2004) in the State of Virginia, United States, because the doctor and hospital were found guilty and had to pay billions of US dollars to the plaintiff and pay for lawyers. As a result, around 1.5 million residents of Kilmarnock did not receive the obstetric services normally provided by the hospital. Furthermore, the hospital was eventually abandoned by its patients until it could no longer pay its thousands of employees and finally went bankrupt. Compare this with the medical service incidents on several islands in Eastern Indonesia, for example in several districts in Papua Province, where the ratio of doctors is very low, so that there are some areas where residents have never known a doctor in their lives. Therefore, imprisoning a doctor is very detrimental to society.

ⁱⁱⁱSee Achmad Ali, Op. Cit., Page: 67, that the purpose of law according to Gustav Radbruch is to realize justice, certainty, and legal benefits. Also see the Utility Theory of Jeremy Bentham and the Hadith of the Prophet Muhammad SAW. which emphasizes that the best human being is one who is useful to the greatest number of other people.

^{iv}Marian Leibmann, RestorativeJustice: HowIt Works, Jessica Kingsley Publisher, 2007

^vHoward Zehr, The LittleBookofRestorativeJustice, GoodBooks, Intercourse, PA 17534, Pages:8 – 12.

^{vi}John Braithwaite, Restorative Justice and Responsive Regulation, Oxford University Press, New York, 2002, in Rena Yulia, Victimology of Legal Protection for Crime Victims, 2010, Graha Ilmu, Yogyakarta, Page: 161.

^{vii}Jeremy Bentham, An Introduction to the Principles of Morals and Legislation, BatocheBooks, Kitchener, 2000

^{viii}PadmoWahjono, Development of Indonesian Law, Publisher Ind-hill Co., Jakarta, 1989, Pages: 153

^{ix}Romli Atmasasmita, Integrative Legal Theory (Reconstruction of Development Legal Theory and Progressive Legal Theory), Genta Publishing, Yogyakarta, 2012, Pages: 101 – 102.

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^{xi}Hermien Hadiati Koeswadji, 1998, Medical Law (Study of the Legal Relationship between Patients and Doctors) Bandung, page 124, John Healy, 1999, Medical Negligence: Common Law Perspectives, London; Sweet and Maxwell, Page: 39.

^{xii}Bahder Johan Nasution, 2005, Health Law: Doctors' Responsibilities, Rineka Cipta, Jakarta, Page: 9.

^{xiii}Hermin Hadiati Koeswadji, Ibid Page: 100

^{xiv}Achmad Biben, 2004, The Role of MKEK in Medical Legal Ethical Conflicts in Hospitals, Journal of Business Law, Volume 23, Number 2, Page: 31.

^{xv}Biben, Ibid, Page: 37.

^{xvi}Kartono Muhamad, 1983, Handling of Violations of Medical Ethics, Paper on Medical Law Symposium; BPHN – Ministry of Justice of the Republic of Indonesia, Jakarta. Page: 7.

^{xvii}Yusuf Hanafiah, 1999, Medical Ethics and Health Law, EGC Medical Books, Page: 13.