

Criminal Responsibility for Malpractical Actions in The Perspective of The Book of Criminal Law and Health Personnel.

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Abstract

Equity in the health sector is very integral to the existence of national equity in development in the health sector, in which equity activities can improve people's lives through optimal health insurance as mandated in the preamble to the 1945 Constitution of the Republic of Indonesia which hereinafter referred to as the 1945 Constitution, which has stated that every Indonesian has the right to a decent life both physically and mentally and has a right to be able to receive maximum health services. Thus, this study aims to analyze the act of health malpractice crimes which are often said to be an activity in the form of medical actions in which there have been actions that have been committed by one of the medical staff including from medicine or by a person or group of people who under his supervision, for acts towards his patients, whether in the presence of a diagnosis, whether therapeutic, or where there is a management of the disease, where the act has been carried out in a way that violates the law, violates the existence of decency, violates the existence of decency, as well as has violated the existence of the principles of professional attitude. This study concludes that whether it was done intentionally, or with carelessness, which has led to wrong actions that cause pain, injury, death, disability, damage to the soul or body, or in this case the other losses experienced by patients while carrying out their treatment, which causes health workers to be responsible both in civil law and also in criminal law.

Keywords

Malpractice, Regulation, Legislation.

Health development is a very integral part of national development which aims to be able to realize the degree of life of the community through optimal health insurance as mandated

in a the preamble to the Constitution of the Republic of Indonesia Year 1945 which states that everyone has the right to get a prosperous life outwardly and mentally and has the right to obtain optimal health services.² Health development is directed to be able to increase awareness, a will, and the ability to live a healthy life for the people of Indonesia so that citizens can realize a degree of health in society that can be upheld As high as possible, it can realize a building from the existence of health basically also which concerns the realization of good health in terms of physical, mental, social, cultural, and in terms of the economy of the community. The inclusion of health in the provisions in Article 28 of the 1945 Constitution (1945 Constitution) means that an Indonesian citizen has rights in the form of human rights in the fulfillment of health in Indonesia. And the fulfillment of that right is one element of the existence of welfare that must be realized in accordance with an ideal of the Indonesian nation that is synchronized in the form of Pancasila and the Constitution of the Republic of Indonesia Year 1945. Which can be interpreted that everyone can have equal rights in obtaining access to health care services and the quality of health care services that are safe and of high quality and affordable regardless of one's degree Both for people who are classified as missionaries and people who are classified as rich.³

These human rights from the 1945 Constitution came down to be implemented more specifically through Health Law Number 36 of 2009 concerning Health which states in Article 1 Paragraph one which defines health as a healthy state, both physical health, mental health, spiritual health , and social health It can be possible that everyone can have health to be able to live a healthy and productive life to support social activities and support economic activities. In addition, there is a guarantee regarding health services for the Indonesian people which has also been regulated in the 1945 Constitution in Article 28H paragraph one which states that everyone has the right to be able to live a

prosperous life both outwardly and well The mind by living gets a decent and healthy living environment so as to get optimal health.⁴ In accordance with the provisions in Article 4 of the Health Law which states that everyone can or has the right to health. Where the health in article four has been detailed in a provision in the original P5 paragraph one and paragraph 2, which has stated that everyone has the same right to obtain the existence of access to resources in the field of health and that everyone has a right to obtain a basic health service that is of high quality, safe and also affordable price for access to health.⁵ The existence of guarantees as this right must be adjusted or followed by the existence of health development directed to be able to increase awareness, will, and the ability to live a healthy life for all or every People with which it aims to be able to raise the highest degrees of public health and for human well-being. The existence of health development with the provision of optimal health services must also be based on several provisions such as:

1. Humanity.
2. Empowerment and independence.
3. Adil and evenly distributed.
4. Virtues and usefulness.

Meanwhile, in terms of health development, it will be implemented through several improvements as follows:

1. Health research and development.
2. Health financing.
3. Sumber human health power.
4. Pharmaceutical, medical devices and food preparations.
5. Health management, information and regulation.
6. Community empowerment.

With the development of science from science and science from technology, it has been stated in order to be able to make efforts to encourage the optimization of health so that it needs to be supported by the existence of health resources, including With the encouragement of health workers, both in terms of quality and in terms of quantity accompanied by equitable

² Mikho Ardinata. "State Responsibility Terhadap Health insurance in a human rights perspective." *Human Rights Journal* 11, No. 2, 2020, p.321.

³ Retnaningsih, Hartini. "Principles Portability In the National Health Insurance Program." *Journal of Social Issues* 6, no. 2, 2018, p.154.

⁴ Isriawaty, Fheriyal Sri. "The responsibility of the state in fulfilling the right to public health based on the 1945 Constitution of the Republic of Indonesia." *Journal of Legal Studies Legal Opinion* 3, no. 2, 2015Pp.5.

⁵ Officer, Indra. *Health as a Human Right*. Bandung: PSKN FH UNPAD, 2019, p.138.

distribution of health services. Health resources include professional health human resources, including strategic health workers and non-professional health resources as well as support personnel who are involved and work and devote themselves to health efforts and management.⁶ The existence of this health development has required the management of human resources to apply skills in the world of health that must be competent and qualified to serve the community in general. Related to the management of human resources in the health sector, the government has regulated more clearly in Law Number 36 of 2014 concerning Health Workers whose provisions are explained in Article 1 Point 1 which has defined that Health worker is any person who has devoted a lifetime in the field of health and can have knowledge and / or skills through education in a field of health for certain types and requires the existence of authority to make efforts from the health sector to serve the people of Indonesia.⁷

Law No. 36 of 2014 against Health Workers has explained carefully the definitions in the world of health that are contained in the provisions of Article 1 Paragraph 1 where health workers can be grouped as follows⁸:

- a) Medical personnel can be interpreted as health workers which are more specific, than that the personnel who fall into the category of medical personnel are one or a group of general practitioners, specialists, dentists, and other types of doctors.
- b) Clinical psychologist can be interpreted as any person who has graduated from clinical psychology and has the right to be able to provide clinical psychology services to the people of Indonesia.
- c) Nursing personnel can be interpreted as part of a group of health workers which consists of vocational nurses and professional nurses.
- d) Midwifery personnel or often referred to as midwives.
- e) Pharmaceutical personnel where these personnel can consist of pharmacists and

technical personnel from the existence of pharmacy.

- f) Public health workers can be categorized as health epidemiologists, health promotion and behavioral science personnel, occupational health advisors, health administration and policy personnel, biostatic and population personnel, and reproductive and family health workers.
- g) Environmental health workers can consist of environmental sanitation personnel, health entomologists, and microbiologists from health.
- h) Nutritional energy can consist of nutritionists and dietitians.
- i) Medical technicians may include medical recorders and health information, cardiovascular technicians, blood service technicians, refractionist opticians or optometrists, dental technicians, anesthesiologists, dental and oral therapists, and audiologists.
- j) Biomedical engineering personnel may consist of radiographers, electro medics, medical laboratory technologists, medical physicists, radiotherapists, and prosthetic orthotics.
- k) Traditional health workers; Traditional is composed of traditional health workers, herbs, and health workers. traditional skills.
- l) Other health workers; as determined by the Minister.

The government through the existence of Ministerial Regulation Number 41 of 2016 has regulated the existence of raw materials from a competency for each of the health energy clusters above through an acceleration event to improve health energy education qualifications. The establishment of health energy competency standards aims to improve the quality and quality of synchronous health services using what is needed by the warg. Furthermore, encouraging enlightenment of residents to use safe, quality and affordable health service facilities. There is a paya upaya in increasing competence in the health sector against the background of the high risk factor in the medical or medical profession. Because the medical energy profession carries a high risk because of the form, nature and purpose of actions carried out by a person, medical energy can potentially

⁶ Ibid p.140.

⁷ Expertise Board of the House of Representatives of the Republic of Indonesia. "Academic Manuscript on Midwifery." Expertise Board of the House of Representatives of the Republic of Indonesia, 2016.

<https://berkas.dpr.go.id/pusatpuu/naskah-akademik/public-file/naskah-akademik-public-8.pdf>. Retrieved August 16, 2023.

⁸ Article 11 of Law No. 36 of 2014 concerning Health Workers.

cause harm to someone. But in practice, incidents of human error always occur in medical practices that cause patients to experience disability or even death. In global healthcare, the incidence of human error in medical practice is often considered to be malpractice. In general, people recognize malpractice to be an act of negligence or mistake committed by the professional energy that causes both material and immaterial losses to clients. The risk can occur caused by something that can be in previous predictions or the risk that occurs due to the wrong doctor's actions. It is wrong if the doctor does not do his job in accordance with the standards of the medical profession and medical procedures. If a doctor commits a wrong act, then the doctor can be categorized as committing malpractice, so that it can involve aspects of criminal law. Therefore, the rights of patients are very important to be protected, doctors should not arbitrarily take medical action if the doctor does not have special expertise in certain fields and must also be in accordance with SOP (Standard Operational).⁹ The Law does not explicitly mention the term / terminology of malpractice, there are several provisions of articles that lead to an explanation of malpractice, such as Article 267 of the Criminal Code concerning Forgery of Letters, Articles 345, 347, 348, 349 Kitab Undang-Law Hukum Pidana which is related to abortion efforts because there is an element of an attempt to abort without medical indication. Article 351 of the Criminal Code on Persecution as explained by the Minister of Justice that every act is done intentionally to give bodily suffering to others or deliberately to harm the health of others. There are also articles related to negligence that cause death or injury can be seen from the provisions of Article 359 of the Criminal Code. This article related to the handling of the criminal act of medical malpractice can be charged against death allegedly caused by the fault of a doctor. Article 359 of the Criminal Code can also provide legal protection for patients as a preventive effort to prevent and overcome the

occurrence of medical malpractice crimes, but solutions are also needed to avoid doctors from excessive fear with this article. Where the existence of a policy in the formulation of criminal law related to the handling of medical malpractice can be seen from the provisions in Article 29 Undang-Undang concerning Health relating to negligence, it is stated that in the event that health workers are suspected of negligence in carrying out their profession, negligence It must first be resolved through mediation.¹⁰

With regard to using patient protection, it can be seen based on the provisions of Article 56, Article 57, Article 58 of the Uof Health , as well as in Law Number 29 of 2004 related to malpractice terminology mentioned in Article 51 of the Undang-Undang related to Medical Practice regarding the obligations of doctors general and dentists, Article 75, Article 77 of the Undang-Undang in Medical Practice applies to persons who are not doctors who use deliberately using self-evidence in the form of a degree or other form. which gives the impression to citizens as if a doctor already has a SIP or STR (License to Practice or Certificate of Registration), Article 78, Article 79, Article 80 of the Undang-Undang concerning the Practice of Medicine in the case of the existence of the determination of Porigin 84 paragraphs (1) and (2) of Law No mor 36 of 2014 against Medical Personnel which can be said to be the same meaning as the term from malpractice, i.e. where any of the health problems can commit a gross negligence that has resulted in the receipt of services from Health Serious Injury can be punished with imprisonment for a maximum of three years, but the existence of a gross negligence as meant by causing death, every health worker is punished with a maximum imprisonment of five years.¹¹

According to a report from MKDKI around 2018 there were a total of 95 cases that had been processed starting from four cases in 2014, five cases in 2015, twenty cases in 2016, twenty cases in 2017 and 2018 as many as thirty-seven cases. Meanwhile, the case

⁹ Revelation Wiriadinata. "Doctors, patients and Malpractice." Pulpit of Law 26, no. 1, 2014Pp.46.

¹⁰ Fakhruddin Razy, dan Yandi Saputra. "Medical Malpractice in a Juridical Review of the Indonesian Legal System." Journal of Citizenship 6, no. 3, 2022, p.4658.

¹¹ Ibid, p. 4659.

verdicts that have been read in 2018 have reached 49 cases including four rulings for 2014 cases, five rulings for 2015 cases, twenty cases from the 2016 verdicts, and sixteen cases from the 2017 verdicts, and the three verdicts for the 2018 case. While there are 49 cases where there are delegates, including thirty-four cases for final judgment and fifteen cases for interlocutory judgment. The case has been reported to the MKDKI which is not a real case which has occurred in Indonesia, because there are several provisions of cases that have been directly reported to the court Civil or a trial which has been in the media, either electronics or has occurred in print media.¹² In carrying out health care practices, doctors have been required to work synchronously in using their expertise based on mechanisms and provisions, but if there is a business output it can be synchronized. In the presence of the use of technology has been necessary for the patient and will have an impact on the death or disability of the patient, which will result in a patient claim to the doctor. Where with this condition which ultimately results in demands in the form of subpoenas from patients to doctors or summons to an institution with providers of a health service. Because of where the patient is, they have thought that malpractice has occurred against him, as a result the patient or the patient's family complained and immediately reported to the police for the medical malpractice act and has filed a summons to the doctor that Sanya has suspected that there are doctors who have committed negligence such as malpractice.

Based on the explanation above, these things underlie and background the author to present several problems such as What are alternative legal solutions to malpractices committed by health workers? The benefit of this study is to be able to find out how legal responsibility for malpractice committed by health workers and to find out how alternative legal solutions for cases of malpractice committed by health workers according to regulations related to the field of health workers.

Theoretical Framework

The author in this study uses the theory of the state of law to support data analysis to find answers to the questions that the author raises, as for the theories that the author uses such as the theory of the state of law proposed by Plato, where the use of the term state of law theory will not be separated from its own concept, namely the principle of the state of law as a basis in acting in doing all the included actions perform health services. The view of the existence of this theory of the legal state has suggested that the highest power lies in the law itself through laws and regulations that have been enacted throughout the country, and there is no other power than the law itself in the form of written legislation that aims to protect the rights of the community itself, especially in the criminal law of health workers. According to Plato in the legal theory of the existence of the state of law which is very formal and classical, the state which has held the principles of the state of law is a state whose duty is to be able to maintain the security and welfare of its people. This is done so that an action that can harm the community such as interference with the public interest of contract workers can be accommodated in a fair and legal certainty. In countries that adhere to legal theory and have applied it in the legal system of laws and regulations in writing, this can be connected with the applicable law in Indonesia, where the state has an active and passive responsibility in protecting the lives, property, and human rights of its citizens including in the economy or welfare of its people, in line with the principle of "laissez faire, Laissez Aller" in a country that adheres to legal theory.¹³

Research Methods

This scientific journal research in finding data that is fairly accurate, the author can use the method by conducting scientific research where the research that the author uses is in the form of normative legal research or normative juridical legal research. Normative legal research is based on the existence of

¹² WP, then M. Thunder Payasan. "Medical malpractice and His condemnation At Indonesia." *Humanities and Social Sciences Communications* 4, no. 5, 2020Pp.6.

¹³ Zulkarnain Ridlwan. "The State of Indonesian Law is the Opposite *Nachtwacherstaat*." *Fiat Justitia Journal of Legal Studies* 5, No. 2, 2012, p.143.

literature material where research by reviewing a study with a review of legal literature documents, using various secondary data such as laws and regulations, court decisions, legal theories from experts, and can be other legal literature. Research with this type of normative can use a qualitative analysis, which will explain as existing data using words or by using descriptive statements instead of with research in the form of numbers. As for this scientific journal research, the author uses primary types of data such as the existence of the Criminal Code (KUHP), especially those listed articles related to malpractice of health workers and suber also in the Law Number 36 of 2014 concerning Health Workers. This scientific journal research is used using data collection techniques which are focused on a research in literature by reviewing materials such as the provisions of legislation that are the main object of study of this research such as the Law Pidana and Law Number 36 of 2014 concerning Health Workers. This method of research will later be able to examine more deeply related to the author's legal analysis of the malaraktic occurrence of medical personnel along with criminal penalties that are ready to be able to ensnare medical personnel who violate health regulations.

Results and Discussion

Criminal Response to malpractices committed by health workers according to the Criminal Code and Law Number 36 of 2014.

In this case, there has been a qualification of criminal acts that fall into the category of medical malpractice which in Law No. 36 of 2014 concerning Health Workers, provisions have been determined regarding an act. acts that can be categorized as criminal acts in media personnel as stated in the provisions of Article 84 of Law Number 36 of 2014 concerning Health Workers, which states that everyone who works in the field of health has and should be suspected of negligence With the weight category where the actions of medical personnel cause a person or a group of health

workers to have received serious injuries, then a person or group of medical personnel including doctors can be punished by using A maximum penalty of imprisonment is an obsolete or longer than three years, but if the gross negligence has caused death to the patient, then by itself each of them can To be sentenced using a maximum prison sentence of around five years. The author conducts a legal analysis of the elements contained in a provision of the criminal law as follows, asking the element of Every Health Worker, in Law number 36 of 2014 concerning Health Workers, it is stated in the regulation that there are provisions from health workers is a group of people or ¹⁴everyone who has been fully dedicated in the field of health and has a knowledge or skill with which through an education which is in the field of health It is possible to create exclusive types by requiring authority to carry out operations in the health sector. The element of gross neglect, negligence by medical personnel here is a form of errors that have existed because of the perpetrators of medical ¹⁵malpractice by violating Medical standards that have been determined, such negligence occurs due to the actions of medical personnel who neglect hospital operational standards. Finally, the existence of elements due to these actions has resulted in health services seriously injuring patients. If when providing health services to patients has been carried out synchronously using standard medical service mechanisms but in the end the patient is seriously injured or dies, it is considered a medical risk. However, if the patient is seriously injured and even dies due to negligence from doctors who perform services below medical standards, it can be considered as malpractice of medical personnel, especially medicine.

The position of medical personnel who commit violations due to their negligence has been regulated in the provisions of Article 85 of the Law on Health which states that each of them who have deliberately carried out a medical practice without having a license of practice as which has been regulated in the Law on Health, the perpetrator who commits the malpractice can be punished with a maximum

¹⁴ Heryanto. "Physician malpractice in legal perspective." *Journal of Legal Dynamics* 10, no. 2, 2010, p.36.

¹⁵ Hadi. "Unlawful acts in the doctor's accountability for malpractice Nedis." *Juridical Journal* 7, no. 1, 2018, p.97.

fine of Rp. 100,000,000, - or wherever every medical person who has a foreign national who has deliberately provided services-Health services without having an official license can be punished with a maximum fine of Rp100,000,000,-.¹⁶ The author will conduct an analytical dissection of the elements contained in the criminal provisions, starting from the elements of each health worker. In the provisions of Undang-Undang Number 36 of 2014 concerning Health Energy, it has been clearly said that health workers are everyone who has devoted themselves to the health sector and already has expertise or skills through the field of Education in health activities has entered into an exclusive type by requiring the authority to carry out the efforts of health workers. The next element is deliberately carrying out practices without having a registration certificate, the essence of the Registration Certificate (STR) is evidence that can be given in writing by the government to workers engaged in the health sector, which already has a certificate of competency registered. In this case, health workers who already have a registration certificate can carry out various activities related to the existence of health services. STR is also obtained by health workers who previously have a diploma and already have a competency test certificate that has been given to students after being declared to have passed the exam in an educational event and passed the competency test. A diploma that has been issued by the university to students and a competency test certificate that has been issued by DIKTI. The Registration Certificate (STR) is only valid for 5 years and can be renewed every 5 years.¹⁷

Furthermore, the author will analyze the criminal provisions for medical personnel who do not have a registration certificate but practice. The provision is in Article 86 which states that, any medical personnel engaged in the health sector who have practiced medicine without having a license in the form of an STR can be subject to criminal penalties in the form

of a maximum fine of Rp. 100,000,000, -, besides that it is also regulated to sEvery Health Worker who is a foreign national who has deliberately provided a service in the form of health and in this case without having a permit in the form of a SIP can also be subject to criminal penalties in the form of fines where a maximum of Rp100.000.000,- Here the author will conduct a¹⁸ juridical analysis again on unsur – elements which have been contained in the provisions of criminal law such as the element of every health worker, in Law number 36 tIn 2014 regarding Health Workers, it is stated in the regulation that there is a provision that health workers are a group of people or everyone who has been fully dedicated in the health sector and has a knowledge or skill with which Through an education which exists in the field of health that can make exclusive types by requiring authority to carry out implementation in the health sector. The next element is someone who has practiced without having a license where there are reasons for medical personnel in the form of doctors to practice without having a license which can be described as follows:

Not Licensed Yet

It has not received recommendations from the IDI Professional Organization. If a doctor is not yet a member of the IDI Professional Organization, then the doctor cannot obtain a recommendation from the IDI Chairman which later the recommendation will be used as a condition to complete the STR management. A doctor can also pass the competency test, after graduating from medical education, therefore a doctor is required to be able to take the competency test. Where the output of this competency test is also used as a condition in completing the preparation of the STR.¹⁹

The permission has expired.

So medical personnel have not extended the STR. A permanent SIP is valid as long as the STR is still valid. In the case of extending it, a

¹⁶ Munir Fuady. "Responsibility Criminal Against Malpraktken Medical personnel." *Medical Journal* 1, No. 1 (2016), p. 112.

¹⁷ Muhammad Shah. *Lawsuits Malpractice Medical*. Bandung: Bhuanan Popular Science, 2019, p.43.

¹⁸ Cindy Anggraeny. "Health Service Innovation in Improving Service Quality at Jagir Health Center Surabaya City." *Journal of Public Policy and Management* 1, no. 1, 2023, p.123.

¹⁹ Sutan Remy Sjahdeini. *Health Law About Law Malpractice Medical Personnel Volume 1*. Semarang: Pelangi Cendikia, 2020.

doctor or medical personnel first has the obligation to be able to extend his STR. Some doctors have not extended the STR because they have not met the affected requirements or because the SKP (Membership Credit Unit) is still lacking. The impact that occurs can be caused if the practice of medicine carried out without STR or SIP has resulted in a negative impact that has harmed physical health or violated Law Number 20 in 2012 regarding Licensing in the Field of Mental Health or the life of patients, the dispute occurred in the existence of medical malpractice, even though the practice of medicine had contradicted regulations regarding health.²⁰

It can be seen in the explanation above that there is a violation of an administrative rule obligation as a criminal act, it can be known the intention of the legislator who created the crime, which is to be a preventive measure to avoid doctors or dentists according to medical malpractice. As well as preventive efforts so that there are victims of the impact of medical malpractice. The form of criminal sanctions stipulated in Law Number 36 of 2014 concerning Health Workers can be qualified as follows: in Article 84 regarding the existence of criminal sanctions in the form of principal crimes such as imprisonment for three years. And there is negligence by medical personnel resulting in death, then the criminal sanction is a maximum of five years imprisonment. Both criminal penalties are determined in Article 85 where there is a type of crime in the form of a fine, which is in the form of a fine of Rp. 100,000,000. The last or last type of crime in the provisions of Article 86 is stated to be a type of crime in the form of a fine also with a maximum nominal value of Rp. 100,000.000,-²¹

Alternative Legal remedies for malpractices committed by health workers.

The health Law has stipulated that there is a resolution in the form of medical disputes by

means of consensus deliberation first carried out a mediation process and then taking legal channels. As for the extent of the medical process in the form of malpractice acts to patients who demand that the doctors who have treated them tend to be increasing in recent times. Therefore, it is necessary to know the process of concurrency settlement for medical personnel through mediation and through legal processes. Mediation is another way to resolve medical or medical personnel malpractice disputes in a fair, more effective and certainly satisfactory way than settlement through the courts, but keep in mind that mediation tends to be difficult to establish a mutual agreement.²² The author also needs to explain that a medical dispute is a dispute that can occur between one or a group of patients and a person or group of health workers, or between patients using a hospital residence or health facility where the medical is may occur before, during, or completion of treatment. The existence of medical disputes is inseparable from the existence of a service for health which is not always able to provide health services such as medical results that can be expected by patients who are suffering from illness.

Patients who may feel that they are not satisfied or do not get a good health service process or output and harm the client. Usually, the patient will view with a certain amount the cause of this dissatisfaction to be the fault or negligence of health workers or can be said to be malpractice of medical personnel. Which ultimately causes disputes between the parties, most of these medical disputes can be intentional but often the main cause is due to cases of communication between doctors and patients, which cause losses are usually negligence or even purely accidents carried out by medical personnel.²³ The existence of problems that occur in the realm of medical personnel, especially medicine, can be reported in the realm of medical ethics, the realm of

²⁰ Adami Chazawi, *Malpractice Medicine*, Malang: Bayumedia, 2007, hlm. 154

²¹ Abdur Rokhim, dan Sri Endah Wahyuningsih. "Regulation of criminal liability for health workers who commit Malpractice Medical (Medical Practice) is reviewed from the perspective of Law No. 36 of 2009 concerning Health and Act No. 36 of 2014 concerning Health Workers." *Sultan Agung Scientific Journal* 2, No. 1, 2023, p. 973.

²² Arif Dian Santoso, Isharyanto, dan Adi Sulistiyono. "Medical dispute resolution through mediation by the Indonesian Medical Discipline Honor Council (MKDKI) to be able to ensure justice in the relationship between doctors and patients." *Journal of Graduate Law* 7, no. 1, 2019 Pp.34.

²³ M. Joseph Hanafiah, dan Amri Amir. *Medical and Legal Ethics Health*. Jakarta: EGC, 2019, Pp.56.

medical discipline, or the last resort, namely the realm of law. Reporting of disputes with medical personnel, especially medicine, can be in the form of ethical violations from one or a group of doctors where there is an Honorary Council of Medical Ethics (MKEK) in a professional organization, and can also report disciplinary violations in institutions Honorary Council of Medical Disciplines (MKDI). Therefore, the community can choose complaints either by report by mediation process or by filing charges in the criminal realm, people usually believe that the resolution of medical disputes is better resolved through the courts. Another way to resolve disputes can also be through negotiation or mediation. This method is another method of resolving disputes for the parties to the patient with medicine where for the parties to the dispute to reach an agreement.²⁴ The process of resolving medical disputes will be explained as follows:

Negotiation

Negotiation is a discussion that is carried out jointly which can be carried out directly by the parties who are in dispute, to make a peace treaty convention in resolving the problem of malpractice of medical personnel. Where when to be able to carry out a discussion process between mutual agreements between the parties in dispute, mediation can use a person or group of mediators as neutral parties to be able to help reach a common ground. Especially to get an official mediator who already has an official certification, so that he can master dispute resolution methods for deliberation and consensus. Law number 36 of 2009 concerning Health has been stated in Porigin 29 which states that in the event that a person or group of health workers is suspected of negligence in carrying out their profession, then the negligence must first be resolved through mediation.

Based on the regulation, the basic rules of mediation are regulated in article 6 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Meanwhile, the details of mediation requests are regulated in Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in

Court. The legislation has significantly updated the law enforcement process in Indonesia. Enforcement of rules not only conducts investigations, investigations and adjudicates cases, but also seeks peace between the parties to the dispute.²⁵

District Court

The court process of requiring and receiving evidence is not an easy thing for patients who want to seek justice. Which is the existence of trial processes that take a very long time, are very complicated, and will also cost quite a lot. There is also the possibility of defamation because the news will be spread by the media by reflecting the truth in the form of facts. Dispute resolution does not only see the end of a conflict, but also to meet the interests of the parties fairly and satisfactorily. The existence of education and the existence of judicial proceedings against medical personnel malpractice disputes as a form of justice for each party which is not at all an effort of impunity, but is expected to increase the existence of professionalism in health services that are free from malpractice. The existence of legal proceedings against medical disputes is not to punish a person or group of health workers, but to be able to prevent the recurrence of malpractice in the health sector in the same case in the future.

Conclusion

Health development is a very important part of national development in the health sector where development can aim to realize the highest degree of life of health for the people of Indonesia as mandated in in the Preamble to the Constitution of the Republic of Indonesia in 1945 in accordance with the provisions of Article 28 concerning health as the right of the Indonesian people. The existence of development in the health sector can be directed at increasing awareness, willingness and ability to live a healthy life so that the highest degree of public health can be realized for the Indonesian state. Health development which basically can also involve the realization of physical life, mental life, social life, cultural life , and

²⁴ Alexandra Indriyanti Goddess. Health Law Ethics. Yogyakarta: Book Publisher Library, 2018, p.34.

²⁵ Ibid, p.37.

economic life of the community. Where the existence of health is part of the existence of human rights and is one of the elements that can prosper the community which must be realized in accordance with the ideals of the Indonesian nation as regulated to in Pancasila and the Constitution of the Republic of Indonesia Year 1945 as the most important regulations that practice in the state of Indonesia. This means that everyone can have the same rights in the health sector which can get access to health services. In accordance with Law Number 36 of 2009 concerning Health where the provisions of Article 1 Paragraph of the Health Law in question using health is a healthy state, both physically, mentally, spiritually, and socially that has made it possible that everyone able to live a productive life socially and economically. In addition, collateral regarding health services for Indonesian citizens has also been regulated in the 1945 U ndng Dasar in Article 28H which has explained that everyone has the right to live a prosperous life born and mental, resides, and can receive a good biological environment and is entitled to health services. In the provisions of Article 4 of the Undang-U ndang concerning Health, it is stated that everyone, everyone has the right to his health to get good service. The right to health in the provisions of P origin 4 and Porigin 5 has been regulated in the Health Law. With the development of knowledge and from technology, it is necessary to be supported in terms of implementation of these health efforts by utilizing health resources, including health workers, both in quality and in terms of quantity and distribution .

Related to the management of human resources in the health sector, the government has regulated nay into Law Number 36 of 2014 concerning Health Workers, which is stipulated in the provisions of Article 1 Number 1 which has defined the definition of the existence of health workers defined by which Everyone who is able to devote himself in the field of health and to be able to have knowledge and a skill through the existence of education in the field of health. Health for certain types of health in this case may require the existence of authorities to be able to carry out health efforts in the provisions of Article 11 paragraph 1 through Ministerial Regulation Number 41 of 2016 which has regulated the existence of The

competency standards for each cluster of health workers above are through programs from the acceleration of improvement and education from the qualifications in the field of health workers. The establishment of standards in terms of supporting the competence of health workers can aim to improve a quality and improve a quality of services in the health sector as desired needed by the people of Indonesia. It is also needed in encouraging public awareness to be able to use the facilities of safe, quality and affordable health services for all groups of society. The existence of increasing competence in the health sector is certainly inseparable from the background of high risk factors in the field of medicine or the medical profession that are vulnerable to abuse or malpractice. In the world of health, the incidence of health workers becoming human error in medical practice is often claimed as malpractice. And such malpractice can be classified into the provisions of Article 351 of the Law on the existence of persecution as explained by the Minister of Justice that any of the There are actions that have been done intentionally to make others suffer or deliberately in this case detrimental to the health of other people's bodies. Regarding the use of patient protection can be seen according to the provisions of Article 56, Article 57, Article 58 U ndang Health, if gross negligence is carried out by medical personnel as referred to in these provisions and results in death, then Every health worker can be sentenced to a maximum of five years imprisonment in accordance with the applicable criminal law.

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