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The Justice Medical Disputes Resolutions

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Abstract
This study aims to explain the dispute resolution process in the medical field, according to the provisions of the applicable laws and regulations and to find a solution for resolving medical disputes that is fair for both patients and medical personnel (doctors and dentists). The analysis shows that the process of resolving medical disputes caused by medical malpractice is still not fair, both in the dispute resolution process at the Indonesian Medical Disciplinary Council (MKDKI) and in the Civil Court. The injustice occurs in procedural and substantive. From this injustice, the researcher felt that it was necessary to form a special medical court.
KeyWords: Medical Dispute, Medical Court, Justice Court Trial

Introduction

Health is a basic need for everyone and is a human right guaranteed in the constitution of the Republic of Indonesia (UUD NRI 1945). In the context of providing health services, the State is obliged to facilitate the establishment of health service facilities, one of which is a hospital. In providing health services in hospitals, there is a legal relationship between patients and medical personnel (doctors and dentists). In healthcare services, the patient and the doctor are bound by an effort, engagement (*inspanningverbintenis*) not a result engagement (*resultants verbintenis*). The effort in the engagement relationship (*inspanningverbintenis*) does not require that the medical doctor will provide certain results. The medical doctor does not responsible that the result is not going to be what is expected by the patient. The medical doctor only needs to prove the best effort that he has done for the patient. Somehow disputes may always happen.

For example, in the case of malpractice that occurred at the *Medika PermataHijau Jakarta* Hospital with Decision No. 625/Pdt.G/2014/PN.JKT.BRT. jo Decision No. 614/PDT/2016/PT.DKI jo. Decision No. 42K/Pdt/2018 jo. Decision No. 19/2020Ex. jo. Decision No. 625/Pdt.G/2014/PN.JKT.BRT. The chronology of the case: The Plaintiff (1. Oti Puspa Dewi; 2. Muhammad Yunus) are the biological parents of Raihan AlyustiPariwesi, a patient in the hospital, who at the time of the malpractice was (twelve) years old. The malpractice claim was made against 1. dr. Elizabeth A.P (Defendant I); 2. dr. Aurizan Daryan Karim, SP. B (Defendant II); 3. Permata Hijau Medika Hospital (Defendant III); 4. PT. The solemn treatment of medical services (Defendant IV).Raihan, the plaintiff's child had received and underwent treatment at Defendant

III's place, from September 22, 2012, to November 2, 2012,due to the initial diagnosis from Defendant II, which stated that the Plaintiffs' child had appendicitis and had to be operated on immediately. The patient Raihan AlyustiPariwesi experienced blindness and complete paralysis after undergoing surgery (Situmorang, 2020). As can be seen from the above case, the medical dispute resolution process takes a very long time, which includes the process that must be followed by the victim in Medical Discipline Honorary Council Indonesia (hereinafter referred to as MKDKI). Moreover, there is no guarantee that the decision can be executed, including if the patient wins in the Medical Discipline Honorary Council Indonesia (MKDKI). Indonesian Medical Counsel (hereinafter referred to as KKI) even made a regulation that MKDKI's decision cannot be used as evidence in civil or criminal cases. The hard time and uncertainty in the long legal process and decision have made the current dispute resolution in medical disputes injustice. Based on the issue that arise above, the research aims to describe the current dispute resolution in medical disputes and then elaborate further to find the justice dispute resolution in medical cases caused by malpractice.

Theoretical Review

Dispute Resolutions

In Indonesia, there are 3 (three) dispute resolution mechanisms that can be taken by patients who experience losses due to medical malpractice errors, namely (Widjaja, 2015):

(1) Report to Medical Ethics Honorary Council (MKEK);
(2) Make a complaint to MKDKI;
(3) Take legal action, in form of:
  a. File a claim for compensation to the District Court (civil litigation), and/or
  b. Report any suspected criminal acts to the Indonesian National Police (criminal case).

Besides those, the law also allows the use of alternative disputes resolutions, such as mediation (Friedrich, 2004; Widjaja, 2020; Widjaja & Aini, 2022).

Honorary Council of Medical Ethics (hereinafter referred to as MKEK) is the institution under the Professional Organization, the Indonesian Doctors' Association (also referred to asIDI) that take care of ethical issues. Meanwhile, the Indonesian Medical Discipline Honorary Council (MKDKI) is the only institution authorized to determine whether malpractice occurs as a result of a medical disciplinary violation that has been determined by the Indonesian Medical Council.

Malpractice

Malpractice, according to Black's Law Dictionary (Garner, 2009) is:

"An instance of negligence or incompetence on the part of a professional. To be Succeed in a malpractice claim, a plaintiff must also prove proximate cause and damages. Also termed professional negligence."

Meanwhile, Isfandyarie(2005) defines:

"Malpractice is a doctor's fault for not using knowledge and skill level in accordance with professional standards which ultimately results in the patient being injured or physically disabled and even dead."

According to Widjaja (2022), medical malpractice is not a crime, it is merely a breach of contract, a default in a civil case. In such a view, medical malpractice can cause medical disputes.

Theory of Justice

With respect to the justice dispute resolution caused by medical malpractice, the researcher uses the theory of justice proposed by Luypen and Prasetyo. Quoted from the book by Atmasasmita(2012) entitled Integrative Legal Theory, it is said that the correct law, according to Luypen is a law whose goal is justice. According to Luypen, the law must provide mutually beneficial solutions. Justice in the conception of Luypen is more of an attitude of justice. Luypen defines justice as an attitude of paying attention to duties and obligations to maintain and develop humanity. Without this attitude, living together with humans is impossible to build properly. What advances humanity is just, and what opposes it is unjust.

In the book Legal Theory, Remembering, Collecting and Reopening, Otje& Susanto (2007) said that according to Luypen, even a legal system does exist, it is not sufficient enough to guarantee a good order of living together. Luypen explains this by referring to experiences during the Nazi regime. However, Luypen believed that norms of justice have long been recognized as an inherent part of the law.

In view of justice theory, Prasetyo(2020), in the Book of Law and Legal Theory "The Perspective of Dignified Justice Theory" sparked a new legal theory, namely the dignified justice theory, which explained as follows:

"Dignified justice theory, or often abbreviated as dignified justice, seeks to find a middle way in justifying the law. This theory, as outlined in this book, combines and seeks a meeting point between law as a result of the thoughts of God Almighty in the upper stream and also as a result of human thought and society in the lower stream."

Further, Prasetyo(2020) states that the basis of legal theory must consist of a series of events that are correct in its way of thinking and have the ability to know in investigating all the basic facts or in the philosophy itself. By fulfilling the basic concept of philosophy, the philosophy of law, the dignified justice theory can be said as an idea, rather than a legal theory or legal philosophy or jurisprudence. The idea is that the truth is essentially a system of thinking or a system of theory. Dignified justice serves to explain and provide adjustments to the applicable legal system. It explains and justifies a legal system by, among other things, a postulate that the law exists, and grows in the soul of the nation or the *Volksgeist*.

Research Methods

This is normative legal research with a descriptive-analytical approach. It uses primary data and secondary data. Primary data were obtained by conducting interviews with practicing experts in the field of medical law. While secondary data was obtained from literature searches, literature, legislation, and internet searches using keywords, namely: medical malpractice, medical dispute, as well as MKDKI. The analysis is conducted using the qualitative method, to find the answer to the purpose of the research.

Results and Discussion

As explained previously, the current legal system does not support the easy settlement of medical disputes, not because of the long period of time but also the uncertainty in the execution. With respect to the role of MKDKI, if the MKDKI has decided whether there is an error or violation of medical discipline, then the patient can file a claim for compensation to the District Court or make a complaint to the Indonesian National Police. However, these provisions are unfair and cause many

problems in practice, especially for patients and doctors. The opinion of the researcher was corroborated by practitioners of medical law. As stated by Sidipratomo, a medical doctor, in his interview with the researcher, stated that the legal provisions governing medical practice do not provide legal certainty and can result in the criminalization of the profession of a doctor. This situation is very dangerous because the provisions of the law are supposed to provide justice. Furthermore, Sidipratomo agreed that disciplinary errors were the authority of the MKDKI, but if errors were already related to legal issues, the resolution had to be resolved in court. Doctors who are suspected of committing malpractice will be very disturbed because in several cases doctors are also reported to the MKDKI, reported alleged criminal acts to the Police, and sued for compensation to the District Court.

According to Yulita, as a medical doctor, in her interview, argues that the provisions of Article 66 of the Medical Practice Law have two options that make people confused about where to complain? But in the end, it opens up opportunities, people can complain to MKDKI or the police depending on which one is profitable for them. There should only be one place (institution) so that there is legal certainty in the resolution of medical disputes. This avoids if the MKDKI's decision differs from that of the Indonesian National Police and the Civil Court.

According to Rezaldy, another medical doctor, gave an argument against the provisions of Article 66 of the Medical Practice Act. He said that the provisions of Article 66 paragraphs (1), (2), and (3) of the Medical Practice Act must be carried out correctly and proportionally considering the level of error whether administrative, civil, and or criminal based on chronology and liability of each party that plays a role in medical service and or health service. The MKDKI Decision states that the MKDKI Decision does not rule on unlawful acts and there is a statement from the Indonesian Medical Council that the MKDKI Decision is not evidence. According to Rezaldy, regarding the role and function of the MKDKI which is engaged in the disciplinary aspect, the MKDKI's decision should only conclude whether there is a violation of the disciplinary aspect or not. Regarding the decision against the law or not, that is the authority of the judge according to the law on judicial power. Rezaldy disagreed that the MKDKI decision was not evidence. In his view, the MKDKI's decision can be used as documentary evidence

Meanwhile, according to Tan, a practicing lawyer argues that the current medical dispute resolution is too time-consuming and costly. In addition, there are still technical problems of proof, especially for patients or families who file claims for compensation to the District Court. Additionally, according toSjahdeini, a legal scholar, criticize the MKDKI's decision which never wanted to include a sentence of violation of medical discipline as a mistake in an unlawful act.

The opinions of Medical Practitioners and Legal Practitioners above show that the current legal provisions do not fulfill procedural justice and do not fulfill substantial justice. The existing legal provisions do not treat the disputing parties fairly and with dignity, do not humanize the disputing parties, and do not provide significant benefits as intended by the legal objectives referred to by the theory of dignified justice according to Prasetyo(2020).

Therefore, the researcher does not agree with the opinion which says that the MKDKI decision only tests the presence or absence of errors in the medical discipline while the MKDKI has no authority to test whether there is an unlawful act even though whether there is an error made by a doctor in applying his medical discipline must be in accordance with the standard operating procedures made by the College of Medicine and the College of Dentistry. The researcher agrees with the opinion of

Sjahdeini because if the MKDKI's decision at the same time includes an error that causes an unlawful act, it will facilitate the process of proving a civil lawsuit in the District Court.
In view of the above-mentioned case, the Decision No. 625/Pdt.G/2014/PN.JKT.BRT in conjunction with Court of Appeal Decision No. 614/PDT/2016/PT.DKI in conjunction with the Cassation Decision Number 42/Pdt/2018 did not fulfill substantial justice. This decision has become binding. In the Supreme Court's Cassation Decision, the verdict granted not all of the plaintiff's claims, where material compensation is fulfilled and immaterial is not fulfilled and the protracted dispute resolution process has resulted in unhappiness. The judge did not grant the claim for immaterial losses, since the material losses was considered sufficient to replace the blindness and paralysis experienced by Raihan AlyustiPariwesi. This decision of the Panel of Judges based on the provisions of Article 1365, Article 1367, and Article 1371 of the Indonesian Civil Code has eliminated substantial justice. Substantial justice is not also felt by medical personnel (doctors and dentists). The perceived injustice is the result of:

1. As a doctor, his life is disturbed physically and mentally, and experiences unhappiness.
2. The period for obtaining justice is almost 10 (ten) years.

Nevertheless, all current medical dispute resolution efforts have not met the values of ethical justice that meet the utilitarian criteria, namely justice that is not only given to patients but also to doctors. Because the resolution of medical disputes in the current legal provisions has not provided justice, the researcher expresses the opinion that a special court institution under the Supreme Court should be formed with special authority to adjudicate medical disputes. According to the researcher's view, a Medical Court should be established as one of the special courts in Indonesia. Hence, it is hoped that the establishment of a medical court can provide fast, simple, and low-cost, executable, and fulfills ethical justice.

Conclusions

Based on the findings and discussions above, it can be concluded that the establishment of a Medical Court which is expected to create justice can enrich the development of medical law originating from the Medical Practice Act, Health Act, Hospital Law, Jurisprudence, and Doctrine in National Law Development. Equitable resolution of medical disputes in the national medical law reform in the medical justice system will be able to create values of justice that are ethical and can be accepted by the utilitarian.

Recommendation

The result of the research recommends that the Government and the House of Representatives (also referred to as DPR) amend several laws and regulations that can provide a fair resolution of medical disputes for both patients and medical personnel (especially doctors and dentists) and consider the establishment of the special medical court (Widjaja, 2021).

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