The Establishment Of The Special Court For The Medical Profession As An Instrument For The Legal Protection Of Patients And Medical Personnel In Indonesia

Muhammad Adib Al Wafa, Irsyam Risdawati, Marice Simarmata

Abstract

Legal protection for patients and medical personnel is an important aspect in realizing health services that are fair, legally certain, and provide a sense of security for all parties. The relationship between patients and medical personnel has special characteristics because it is not only related to legal aspects, but also involves professional, ethical, discipline, and medical risk aspects. Patients have the right to receive safe, quality, and standard health services, while medical personnel have the right to receive legal protection as long as they carry out their profession in accordance with professional standards and the provisions of laws and regulations. However, the resolution of medical professional disputes in Indonesia still faces various problems, including the complexity of medical cases, differences in understanding of legal and medical aspects, and the use of various settlement mechanisms that are not yet fully integrated. Medical disputes can intersect with civil, criminal, administrative, ethical, and disciplinary aspects so that they have the potential to cause legal uncertainty and difficulties in determining the right settlement forum. This study aims to analyze the urgency of establishing a Special Court for the Medical Profession as an instrument of legal protection for patients and medical personnel in Indonesia and formulate the concept of an ideal special court. The research uses normative legal research methods with legislative, conceptual, case, and comparative approaches. Primary, secondary, and tertiary legal materials are analyzed qualitatively juridically to identify gaps and the need to update the dispute resolution mechanism of the medical profession. The results of the study show that the characteristics of medical disputes require a resolution mechanism that has special competence in understanding professional standards, service standards, medical actions, medical risks, medical records, informed consent, and proving the causal relationship between the actions of medical personnel and patient losses. The limitations of existing mechanisms indicate the need for a forum that is able to examine medical disputes in a more professional, objective, and comprehensive manner. The concept of the Special Court for the Medical Profession offered is directed as a special forum in the judicial system that has the competence to handle disputes and cases related to the implementation of the medical profession, supported by judges who have competence in health law and independent medical experts. The examination mechanism needs to consider professional standards, service standards, medical records, informed consent, expert opinions, and the ability to distinguish between medical risks, complications, and professional negligence. The special court is not only oriented towards the protection of medical personnel, but must also ensure access to justice, legal certainty, and restoration of patients' rights.

Keywords: Special Courts, Medical Professions, and Legal Protection.

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Introduction

1.1 Development of legal relations between patients and medical personnel

The relationship between patients and medical personnel can no longer be seen solely as a professional relationship in the provision of health services, but has developed into a legal relationship that gives birth to rights and obligations for each party. The development of health science and technology, increasing public awareness of the right to health, and the increasingly complex form of medical services have placed patients as legal subjects who have a position and rights that must be respected in every health service process. Law Number 17 of 2023 concerning Health expressly regulates patients' rights, including the right to obtain information about their health conditions, obtain adequate explanations about the health services received, obtain services according to medical needs and professional standards, approve or reject medical procedures under permissible conditions, obtain access to information in medical records, and ask for the opinions of medical personnel or other health workers. This provision shows a paradigm shift from a paternalistic relationship to a relationship that places the patient as a subject who has autonomy in determining actions against him. In this context, health services are a legal relationship that requires information disclosure, approval of medical measures, respect for patients' rights, and the implementation of services based on professional standards and service standards. The regulation of medical records also strengthens the legal dimension of the relationship because medical records function as documents that contain the patient's identity, examinations, treatments, actions, and services provided and must be managed with regard to security, confidentiality, integrity, and availability of data.

On the other hand, the legal relationship not only provides rights to patients, but also provides legal protection for medical personnel in carrying out their profession. Law Number 17 of 2023 stipulates that medical personnel and health workers in carrying out their practice have the right to receive legal protection as long as they carry out their duties in accordance with professional standards, professional service standards, operational procedure standards, professional ethics, and patient health needs. These provisions show that legal relations in health services must be built based on the principle of balance between the protection of patients' rights and the protection of the professionalism of medical personnel. Patients have the right to receive safe, quality, and standard services, while medical personnel have the right to certainty and legal protection when they have carried out professional actions based on applicable standards. Thus, the relationship between patients and medical personnel is a complex legal relationship because it brings together patient rights, obligations of medical personnel, professional standards, service standards, informed consent, medical records, ethics, discipline, and the possibility of legal liability in the event of losses. This complexity is increasingly important to consider in the context of medical dispute resolution, because it is not enough to assess the actions of medical personnel based only on the consequences experienced by the patient, but must also consider professional standards, service standards, patient conditions, actions taken, medical risks, and causal relationships between medical actions and losses that occur.

1.2 Increasing complexity of medical disputes

The increasing complexity of health services has implications for the increasingly diverse potential for disputes between patients, medical personnel, and health care facilities. Medical disputes can arise from alleged malpractice, negligence in the implementation of medical procedures, misdiagnosis or therapy, inconsistency between the actions given and professional standards, to the results of medical services that do not meet the patient's expectations. The problem becomes increasingly complex because not every treatment result that is bad or not as expected can be automatically categorized as malpractice. From a health law perspective, it is necessary to distinguish between medical risks or complications that may occur even if the action has been carried out in accordance with standards and malpractice related to errors or deviations from professional standards that cause harm to patients.[1] These

differences require an examination that is not only based on the consequences experienced by the patient, but also takes into account professional standards, service standards, operational procedures, patient conditions, medical measures performed, and causal relationships between the actions of medical personnel and losses incurred. Complexity is also seen in the issue of informed consent, because lack of information or ambiguity about diagnosis, alternative course of action, benefits, risks, and possible complications can be a source of dispute between patients and medical personnel. Research on informed consent shows that the information gap between patients as parties who generally do not have medical knowledge and doctors as professionals can cause differences in perceptions about the risks and outcomes of medical procedures and ultimately have the potential to develop into disputes.

The complexity of medical disputes is increasingly evident because one health service event can have legal consequences in several domains at once, namely civil, criminal, administrative, ethical, and professional discipline. From a civil perspective, patients can dispute the existence of default or unlawful acts if the health service act is considered to cause losses; from a criminal perspective, certain actions or omissions can be questioned if they meet the elements of a criminal act; Meanwhile, from an administrative perspective, medical personnel or health service facilities may face legal consequences if there is a violation of licensing provisions, service standards, or administrative obligations.[3] In addition, there are ethical dimensions and professional discipline that require an assessment of medical personnel's compliance with professional norms. Research on medical dispute resolution shows that disputes related to medical actions and informed consent can lead to civil and criminal justice mechanisms, while other studies confirm that the difference between malpractice and complications has consequences for the legal liability of medical personnel. This condition shows that medical disputes have multidimensional characteristics so that their resolution requires a simultaneous understanding of law, medical science, professional standards, ethics, discipline, and medical evidence.

1.3 Problematics of medical dispute resolution mechanisms

The mechanism for resolving medical disputes in Indonesia faces problems because disputes arising from the relationship between patients and medical personnel can enter various forums and legal regimes. Medical disputes can be resolved through civil, criminal, administrative, ethical, and professional disciplinary mechanisms, depending on the nature of the problem and the basis of the claim submitted. Suwito, Gultom, and Sudarto's research shows that medical disputes between patients and doctors related to medical actions and informed consent can lead to settlement through civil and criminal courts.[1] This condition shows that medical disputes have a different character from legal cases in general because the object of examination is not only concerned with legal norms, but also professional actions based on science and certain medical standards. In therapeutic relationships, doctors are essentially exercising a professional obligation to perform medical efforts based on their professional competencies and standards, not guaranteeing specific results. Therefore, the appearance of service results that do not meet the patient's expectations does not automatically prove the error or negligence of medical personnel. Assessing the existence or absence of errors requires an examination of professional standards, service standards, patient conditions, actions taken, medical risks, and causal relationships between the actions of medical personnel and the losses experienced by patients.

The next problem is related to the need for understanding medical science in the case examination process and the potential imbalance of legal protection between patients and medical personnel. The examination of a medical case cannot be completely equated with an ordinary legal case examination because the judge must understand the context of the medical procedure, professional standards, informed consent, medical records, risk of action, and expert opinion to determine whether an action can be categorized as negligence or is still within the limits of acceptable medical risk. Research on the legal protection of the medical profession in

the resolution of medical disputes shows that there are problems when doctors are faced with claims of malpractice, default, or unlawful acts, while the process of determining fault requires consideration of professional aspects and medical discipline. On the other hand, patients are also in a position that requires protection due to the disparity in medical knowledge and information between patients and medical personnel. Informed consent has an important role in providing information to patients as well as being an instrument of protection for patients and medical personnel in therapeutic relationships.

1.4 The urgency of establishing a Special Court for the Medical Profession

The establishment of a Special Court for the Medical Profession becomes relevant to consider because medical disputes have different characteristics from legal cases in general. Medical disputes are not only related to the application of legal norms, but also concern the assessment of professional actions based on medical science, professional standards, service standards, standard operating procedures, codes of conduct, and the patient's clinical condition. Herman, Razak, and Riza emphasized that medical issues are specific issues so that a judiciary that has special quality and competence is needed to resolve medical disputes by integrating legal and medical principles. The need for such a special forum is also related to the ability of judges to understand the characteristics of the medical profession and distinguish between medical risks, complications, and actions that can be categorized as negligence or violations of professional standards. Research on medical dispute resolution also shows that existing mechanisms do not fully provide adequate protection for medical personnel, especially when allegations of malpractice are processed through general legal mechanisms without first considering administrative, ethical, and professional discipline aspects.

The urgency of establishing a Special Court for the Medical Profession is also related to the need for a more structured expert examination mechanism and a guarantee of justice for both parties. The examination of medical disputes requires expert opinions that not only explain the technical aspects of a medical procedure, but also help the judge assess the suitability of the action with applicable professional standards and service standards. Therefore, the expert examination mechanism needs to be designed independently, transparently, and accountably so that medical opinions do not solely become a tool of justification for one party. On the one hand, patients must have access to justice, certainty about the examination process, and recovery if proven to have suffered losses due to actions that are not in accordance with standards, on the other hand, medical personnel who have carried out their duties in accordance with professional standards, service standards, and applicable procedures must obtain legal protection and not necessarily be positioned as a guilty party just because the results of medical services do not meet the patient's expectations. Trisnadi emphasized the importance of legal protection for the medical profession in resolving medical disputes, while research on special medical courts shows that the establishment of special forums can be directed to realize certainty and justice for doctors and patients.

1.5 Context of national health law reform

The reform of the national health law is a necessity that cannot be separated from the development of health science and technology, the increasing complexity of medical services, and the development of public awareness of the right to health and legal protection. These changes require a health legal system to be able to provide certainty, justice, and legal protection for patients and medical personnel. One of the important milestones in the development of national health regulations is the birth of Law Number 17 of 2023 concerning Health, which regulates and integrates various aspects of health administration, including the rights and obligations of patients, medical personnel and health workers, the implementation of health services, and dispute resolution mechanisms. These regulatory developments show that Indonesia's health law continues to undergo a transformation from a scattered regulation to a more integrated legal framework. However, these developments also raise the need to ensure alignment between health law norms and enforcement and dispute resolution mechanisms in

the judicial system. Research on medical dispute resolution from the perspective of Law No. 17 of 2023 shows that there are still problems regarding the relationship between dispute resolution mechanisms, including ethical mechanisms, professional discipline, civil, criminal, and administrative, which have the potential to cause overlapping examinations and disharmonization of decisions. This condition shows that it is not enough to reform health law only through the formation of substantive norms, but also requires the renewal of institutional and procedural aspects so that these norms can be applied consistently and provide legal certainty.

In this context, harmonization between health law and the judicial system is becoming increasingly important, especially in the resolution of disputes related to the medical profession. Medical disputes have special characteristics because their examination requires the application of legal norms as well as an understanding of professional standards, service standards, medical actions, medical risks, medical records, and expert opinions. Nelwitis and Rias' research specifically places the establishment of the Special Court for the Medical Profession as a form of national health law reform to realize legal certainty in resolving medical disputes. This idea is in line with research on the urgency of health courts which shows that the resolution of medical disputes through various existing legal provisions still faces problems so that a mechanism is needed that is able to provide justice and certainty for the parties to the dispute.

1.6 Problem Formulation

1. What is the current arrangement and mechanism for resolving disputes in the medical profession in Indonesia?
2. Why is the establishment of a Special Court for the Medical Profession necessary as an instrument of legal protection for patients and medical personnel?
3. What is the ideal concept of the Special Court for the Medical Profession in the Indonesian judicial system?

Research Objectives

This study aims to analyze the arrangements and mechanisms for resolving disputes in the medical profession that apply in Indonesia, examine the urgency of establishing a Special Court for the Medical Profession as a more specialized and professional dispute resolution mechanism, and formulate the ideal concept of a Special Court for the Medical Profession that is able to provide legal protection in a fair and balanced manner for patients and medical personnel, while still paying attention to the aspect of legal certainty. fairness, professionalism, and protection of the rights of the parties.

Research Benefits

Theoretically, this research is expected to contribute to the development of legal science, especially in the field of health law, by enriching the study of medical professional law and the judicial system in resolving medical disputes. In addition, this research is expected to develop the concept of ius constituendum as a legal idea that can be used in building a more effective, fair, professional, and regulatory dispute resolution mechanism in the medical profession that is more effective, fair, professional, and in accordance with the development of health law needs in Indonesia. Practically, this research is expected to be a consideration for lawmakers in formulating policies and regulations related to the resolution of medical profession disputes. This research can also provide an alternative model for medical dispute resolution through the idea of establishing a Special Court for the Medical Profession, so that the case settlement process can be carried out more professionally and proportionately.

Literature Review

2.1 Legal Protection Theory

Legal protection theory is one of the important foundations in research on medical professional dispute resolution because law basically functions to provide guarantees for the rights and interests of each legal subject. In the perspective of legal protection theory developed by Philipus M. Hadjon, legal protection can be distinguished into preventive and repressive protection. Preventive protection is a legal remedy provided before a violation or dispute occurs, through the establishment of regulations, the establishment of standards, the provision of rights, obligations, and mechanisms that can prevent losses. Meanwhile, repressive protection is provided after violations or disputes occur through dispute resolution mechanisms, sanctions, and judicial processes. In the context of health services, preventive protection for patients is realized through the right to obtain adequate information about medical actions, service risks, and approval of medical measures (informed consent), while repressive protection can be carried out through complaint mechanisms, mediation, compensation claims, and legal proceedings if patients suffer losses. A number of health law studies also confirm that patient protection needs to include preventive and repressive aspects so that patients' rights as recipients of health services can be effectively protected.

On the other hand, legal protection theory is also relevant to ensure the rights and interests of medical personnel in carrying out their profession. Medical personnel need legal protection in order to be able to provide services based on competence, professional standards, service standards, operational procedure standards, and codes of ethics without facing disproportionate lawsuits. Preventive protection for medical personnel can be carried out through clarity of regulations regarding rights, obligations, authorities, professional standards, and procedures for medical services, while repressive protection is provided through dispute resolution mechanisms and legal processes if medical personnel face accusations or demands due to the services provided. Research on the protection of health workers shows that both forms of protection are needed to provide legal certainty while maintaining the professionalism of medical personnel.

2.2 Legal Reform Theory

The theory of legal reform basically views law as a system that must always adapt to the development of society, social needs, science, technology, and changes in values that live in society. Legal reform is the process of improving, perfecting, or reshaping legal norms and institutions in order to provide legal certainty, justice, utility, and answer evolving legal problems. In the perspective of law as a tool of social engineering, law not only functions as a tool of social control, but can also be a means to direct and encourage societal change in a planned and responsive manner. In the context of national health law, legal reform is needed to adapt the legal system to the development of health services, health science and technology, patient protection needs, and the interests of medical personnel. The establishment of Law Number 17 of 2023 concerning Health is a form of national health law reform because it integrates various aspects of health administration in one comprehensive legal framework, including rights and obligations, health human resources, health service facilities, health technology, health information systems, coaching and supervision, as well as investigation and criminal provisions.

2.3 Theory of the Judicial System

Judicial system theory views the judiciary as an institutional unit and legal mechanism that functions to receive, examine, adjudicate, and decide cases based on the law to realize justice, legal certainty, and utility. In the state of law, the judicial system must be supported by the principle of judicial independence, namely judicial power that is free from the intervention of other powers so that judges can carry out judicial functions objectively, impartially, and responsibly. In its implementation, the authority to adjudicate is divided into absolute competence and relative competence; Absolute competence is related to the authority of the court based on the judicial environment and the type of case under its authority, while relative

competence is related to the division of authority based on the jurisdiction of the court of the same and the same level. Indonesia's judicial system also allows for the establishment of special courts to deal with specific cases that have special characteristics and resolution needs, while remaining within the framework of independent judicial power. Special courts are basically a form of differentiation in the judicial system that is expected to be able to increase effectiveness, efficiency, and substantive justice in resolving certain cases.

2.4 Justice Theory

Justice theory is an important foundation in analyzing the resolution of medical profession disputes because justice must be able to place the interests of patients and medical personnel in a balanced and proportionate manner. Distributive justice emphasizes the proportionate distribution of rights, obligations, benefits, and burdens according to the conditions and positions of each party, while corrective justice is oriented towards restoring balance in the event of violations or losses, including through the provision of appropriate compensation or sanctions. Furthermore, substantive justice emphasizes the achievement of a truly fair final result, so that the application of the law is not solely fixated on the fulfillment of formal rules, while procedural justice demands that each party obtain a dispute resolution process that is fair, transparent, objective, impartial, and has a balanced opportunity to convey its rights and interests. In the context of medical professional disputes, the application of these four perspectives is important so that the protection of patients who suffer losses is guaranteed without neglecting the right of medical personnel to a fair legal process and protection from disproportionate prosecutions.

2.5 The Concept of Ius Constituendum

The concept of ius constituendum is the idea of the law that is aspired to or the law that is expected to apply in the future as a result of the process of law reform. In contrast to ius constitutum which is a positive law that is currently in force and already has binding power, ius constituendum is still at the stage of ideas, concepts, or directions in the formation of laws that are expected to be able to improve the weaknesses of the current law. In the context of health law reform, the ius constituendum serves as an instrument to formulate a legal system that is more responsive to the development of science, health technology, community needs, and the dynamics of legal relations between patients and medical personnel. The development of the ius constituendum needs to be based on the evaluation of the ius constitutum, so that the law to be formed not only creates new norms, but also becomes a solution to the vacancies, weaknesses, or ineffectiveness of existing arrangements. Within this framework, the idea of establishing a Special Court for the Medical Profession can be placed as an ius constituendum, which is a law that aspires to present a more specialized, professional, independent, and fair dispute resolution mechanism for the medical profession. The idea is directed to provide legal certainty while creating a balance of protection between patients and medical personnel in resolving medical disputes, so that its formation can be part of the agenda for the reform of national health law in Indonesia. Studies on the establishment of special courts for the medical profession also show that this idea can be considered as one of the efforts to develop national health law.

Research Methodology

This research is a normative legal research that is descriptive using a statutory *approach* and a *conceptual approach*. The legislative approach is carried out through a study of the Civil Code (Civil Code), Law Number 17 of 2023 concerning Health, and regulations governing the operation of hospitals. The conceptual approach is used to examine the concepts of default, civil

liability, and therapeutic agreements. The source of legal material consists of primary legal materials in the form of laws and regulations and court decisions, as well as secondary legal materials in the form of books and journal articles relevant to the research.

Results and Discussion

4.1 Medical Professional Dispute Resolution System in Indonesia

The legal relationship between patients and medical personnel is basically a professional relationship that places the patient as a party who has the right to safe, quality, humane health services, and obtain adequate information about the medical actions to be carried out. On the other hand, medical personnel are obliged to provide services in accordance with professional standards, service standards, and the provisions of laws and regulations. The principle of informed consent is an important part of this relationship because every individual health service action must in principle obtain the patient's consent after the patient has received an adequate explanation of the diagnosis, actions, objectives, risks, alternative actions, and prognosis. This provision is affirmed in Article 293 of Law Number 17 of 2023 concerning Health and strengthened through Government Regulation Number 28 of 2024. In practice, these relationships can give rise to various forms of disputes, both in the form of civil disputes due to alleged losses or defaults/unlawful acts, criminal cases if there are suspected criminal acts, administrative disputes, violations of professional discipline, or ethical violations. Alleged medical malpractice or negligence essentially needs to be assessed carefully by distinguishing between medical risks, complications, violations of professional standards, and negligence that actually causes harm.

The resolution of medical profession disputes in Indonesia can be pursued through several mechanisms, ranging from internal settlement at health service facilities, mediation, professional discipline mechanisms, to processes through judicial institutions in accordance with the nature of the dispute. In the aspect of professional discipline, there is currently a Professional Discipline Assembly as part of the mechanism for enforcing the discipline of medical personnel and health workers, the regulation of which is outlined in the Regulation of the Minister of Health Number 3 of 2025 concerning the Enforcement of Professional Discipline of Medical Personnel and Health Workers. Mediation can also be used as a means of peaceful dispute resolution, including in the judicial process based on PERMA Number 1 of 2016 concerning Mediation Procedures in Court. However, the current system still faces problems in the form of fragmentation of settlement forums, possible differences in interpretation between civil, criminal, administrative, ethical, and disciplinary aspects, as well as the complexity of proof that requires medical knowledge and expertise. This condition shows the importance of a settlement mechanism that has special competence in assessing professional standards and medical actions, while still guaranteeing the right of patients to obtain justice and legal protection and providing legal certainty for medical personnel so that there is no criminalization of professional actions that have been carried out according to standards.

4.2 The Urgency of the Establishment of a Special Court for the Medical Profession

The establishment of a Special Court for the Medical Profession has urgency because medical disputes have different characteristics from legal disputes in general. Medical disputes are not solely related to the application of legal norms, but also require an understanding of medical science, professional standards, service standards, operational procedure standards, medical records, informed consent, therapeutic relationships, and medical risks inherent in every health service action. The assessment of a medical action cannot therefore be based only on the consequences that arise, but must consider whether the medical personnel have carried out the action in accordance with the applicable professional standards and service standards. This complexity causes the process of examining medical cases to require an adequate understanding of the legal aspects as well as the medical aspects. Research by Busthomi et al. (2023) shows that medical disputes have special problems and the idea of a health court can be

one of the solutions to provide justice in the resolution of medical disputes. The idea of establishing a special court is also supported by research that assesses that the specificity of medical issues requires a judicial institution that has special quality and understanding in resolving disputes between patients and medical personnel.

The next urgency relates to the need for judges who have legal competence and are supported by adequate medical expertise. Judges must still have independence and judicial competence, but in medical cases, an effective expert examination mechanism is needed to clarify whether an action is in accordance with professional standards, service standards, and applicable medical procedures. Expert support is essential to distinguish between the medical risks that can inherently occur in medical actions and negligence or violations of professional standards that can give rise to legal liability. With the existence of a special forum, the examination of cases is expected to be carried out more objectively, consistently, and proportionately because the evidentiary process can be designed to accommodate the characteristics of medical science. This can also prevent legal assessments that are only oriented towards the occurrence of losses without first proving a violation of professional obligations. Research on the legal protection of patients and doctors shows that alleged malpractice can have civil, criminal, and administrative consequences, so a settlement mechanism is needed that is able to understand both perspectives in a balanced manner.

From a legal protection perspective, the Special Court for the Medical Profession must be designed to provide a balance between the protection of patients' rights and legal certainty for medical personnel. For patients, the existence of a special court is expected to strengthen access to justice, ensure an objective examination, provide certainty about dispute resolution mechanisms, and open up space to obtain compensation if proven to have suffered losses due to violations of professional obligations. At the same time, medical personnel must obtain protection through the application of the principle of presumption of innocence, examination based on professional standards, and a clear distinction between medical risks, complications, and medical negligence. This protection is important so that medical personnel do not experience criminalization just because of treatment results that do not meet expectations, as long as the action has been carried out professionally and in accordance with applicable standards.

4.3 Ideal Model of a Special Court of the Medical Profession

The ideal model of the Special Court for the Medical Profession needs to be placed in a judicial power system that still guarantees independence and impartiality, with institutional options in the form of a special court within the general judiciary or a special chamber that handles medical profession cases. This model needs to have clear absolute competence, namely examining disputes in the medical profession, alleged medical negligence, cases related to violations of professional standards and service standards, and disputes between patients and medical personnel under certain conditions. To ensure the quality of the examination, the composition of the judges may consist of career judges who have certification or competence in health law, with the support of independent medical experts who have no conflict of interest with the parties. The use of experts is not to replace the function of judges, but to provide an explanation of the technical aspects of medicine so that judges can assess an action objectively based on applicable professional standards and service standards. Such a model is in line with the principle that special courts are part of the judicial environment under the Supreme Court and can involve judges who have certain expertise as stipulated in Law Number 48 of 2009 concerning Judicial Power.

In the aspect of proof, the Special Court for the Medical Profession needs to have a mechanism that is able to accommodate the characteristics of medical cases by assessing medical records, informed consent, professional standards, standard operating procedures, expert opinions, causality relationships, and evidence regarding the existence or absence of negligence. The assessment must clearly distinguish between medical risks or complications

that are part of medical actions and negligence that occurs due to deviations from professional standards. The principles of independence and impartiality must be the basis for the administration of the court so that the examination process is free from pressure from medical personnel, hospitals, professional organizations, patient interests, and political intervention. Therefore, the settlement mechanism can be designed in stages, namely Complaints → Mediation → Preliminary Examination → Special Court Examination → Decisions → Legal Remedies. This stage allows disputes that can still be resolved peacefully through mediation, while cases that contain alleged violations of the law or serious negligence can proceed to judicial examination. With this model, the special court is expected to be able to provide balanced protection to patients through access to justice and compensation for proven losses, while providing legal certainty to medical personnel who have carried out their profession according to standards.

4.4 Special Court for the Medical Profession as an Instrument of Legal Protection

The Special Court for the Medical Profession can be an important instrument in providing balanced legal protection to patients and medical personnel. From the patient's perspective, the existence of a special forum provides access to justice through a resolution mechanism that is more in line with the characteristics of medical disputes. In the aspect of proof, the special court can facilitate the examination of cases by considering medical records, informed consent, professional standards, and the opinions of medical experts. In addition, the specialized expertise possessed by judges and expert panels can ensure that cases are examined based on relevant medical science and standards. This condition provides certainty to patients regarding the dispute resolution mechanism and opens up opportunities to obtain recovery of losses if it is proven that there has been a violation or negligence in medical services. On the other hand, the existence of the Special Court for the Medical Profession also provides legal protection to medical personnel. Examination of cases based on professional standards and medical science can prevent legal judgments that are based only on the final results of medical actions without considering the risks, patient conditions, and applicable service standards. Special forums can also provide an objective examination process so that medical personnel obtain protection from disproportionate prosecution or criminalization if actions have been carried out according to professional standards. Thus, the special court is not solely oriented towards the protection of medical personnel, but establishes a balance between the right of patients to obtain justice and the right of medical personnel to obtain legal certainty. This balance can ultimately create a fairer, objective, more professional medical dispute resolution system, and provide legal certainty for both parties.

4.5 Perspective of the Ius Constituendum on the Establishment of a Special Court for the Medical Profession

In the perspective of ius constitutum, Indonesia's positive legal system has provided several mechanisms to deal with problems related to the medical profession, both through professional discipline mechanisms, mediation, and judicial channels. Law Number 17 of 2023 concerning Health and Government Regulation Number 28 of 2024 have provided a regulatory framework regarding medical personnel, professional standards, and disciplinary enforcement mechanisms. In addition, the Regulation of the Minister of Health Number 3 of 2025 specifically regulates the enforcement of professional discipline for medical personnel and health workers. However, the existence of these various mechanisms has not completely eliminated the problem of fragmentation of medical dispute resolution, especially when the same event has a disciplined, civil, and criminal dimension. The latest study shows that there are still problems regarding the position and strength of the recommendations of the Professional Disciplinary Council as well as the boundary between disciplinary violations and alleged medical negligence that have legal consequences. This condition shows that there is a gap between the community's need for fast, objective, professional medical dispute resolution, and providing legal certainty with the mechanisms currently available. Therefore, it is necessary

to reformulate a medical dispute resolution system that is able to integrate legal aspects and medical expertise in one more structured mechanism.

In the perspective of the ius constituendum, the establishment of a Special Court for the Medical Profession can be a direction for national health law reform by establishing a judicial forum that has special competence in medical profession disputes. The concept does not mean removing medical disputes from the judicial power system, but reconstructing the institution of its settlement so that it remains within the judicial environment under the Supreme Court with the support of judges who have health law competence and independent medical experts. This is in line with Law Number 48 of 2009 which stipulates that a special court can only be established in one of the judicial environments under the Supreme Court and its establishment must be regulated by law. Thus, the ius constituendum offered is the establishment of a special legal basis through laws that regulate the position of the court, absolute competence, composition of judges, expert panels, evidentiary mechanisms, relations with the Professional Disciplinary Council, mediation procedures, decisions, and legal remedies. The reconstruction is expected to result in a medical dispute resolution system that integrates medical expertise, legal certainty, judicial independence, patient protection, and medical personnel protection. The idea of the establishment of a medical court under judicial power has also been developed in previous research, but this research can provide novelty by formulating a more integrated institutional design and settlement mechanism as the ius constituendum model.

Conclusion

Based on the discussions that have been carried out, the dispute resolution system of the medical profession in Indonesia currently still uses several paths, namely the mechanism of professional discipline, alternative dispute resolution, and settlement through judicial institutions in accordance with the nature of the case. Law Number 17 of 2023 concerning Health stipulates that disputes due to alleged errors by medical personnel that cause losses to patients are first resolved through alternative dispute resolution outside of court. However, the system still faces problems in the form of fragmentation of mechanisms, the complexity of medical evidence, the differences in character between disciplinary violations, civil disputes, and criminal cases, and the need for specialized expertise in assessing medical actions. This condition shows the need to reformulate the dispute resolution system in order to provide legal certainty while ensuring the protection of patients and medical personnel.

The establishment of a Special Court for the Medical Profession is important in response to this need because the character of medical disputes requires an examination that integrates legal aspects and medical expertise. The ideal model offered is a special court that remains within the system of judicial power under the Supreme Court, with clear absolute competence, career judges with health law competencies, and the support of independent medical experts. Law Number 48 of 2009 provides the basis that special courts can be established in one of the judicial environments under the Supreme Court and allow the appointment of ad hoc judges for cases that require certain expertise. Thus, the Special Court for the Medical Profession ideally applies the mechanism of Complaint → Mediation → Preliminary Examination → Special Court Examination → Decisions → Legal Remedies, with evidence that considers medical records, informed consent, professional standards, expert opinions, causality relationships, and the difference between medical risks and negligence. The model is expected to be a balanced instrument of legal protection: providing access to justice and redress for patients, while providing legal certainty and preventing disproportionate criminalization of medical personnel who have carried out their profession according to standards.

Suggestions

The government is advised to conduct a comprehensive institutional and academic study on the possibility of establishing a Special Court for the Medical Profession as part of the reform of the health dispute settlement system. The study needs to consider the position of the court in the judicial power system, absolute competence, the composition of judges and experts, the evidentiary mechanism, as well as the relationship with the mechanism of professional discipline and dispute resolution outside the court. This is important because Law No. 48 of 2009 allows the establishment of a special court in one of the judicial environments under the Supreme Court as well as recognizing ad hoc judges for cases that require certain expertise. The House of Representatives of the Republic of Indonesia is further advised to consider the establishment of special regulations that provide legal basis, authority, procedures, and legal remedies mechanisms for the resolution of medical professional disputes in a more integrated manner.

The Supreme Court is recommended to improve the competence of judges in the field of health law and develop a mechanism for examining medical cases supported by independent medical experts. Medical professional organizations also need to support a dispute resolution system that is objective, transparent, and does not prioritize the interests of the profession alone, but still guarantees the rights of patients and medical personnel in a balanced manner. Meanwhile, health service facilities need to strengthen the implementation of informed consent, the implementation and maintenance of medical records, as well as compliance with professional standards and service standards. Strengthening this aspect is important because Law No. 17 of 2023 requires the approval of health service actions after the patient has obtained an adequate explanation, including diagnosis, actions, risks, alternatives, and prognosis. With this step, the medical profession dispute resolution system is expected to be more objective, professional, transparent, and provide balanced legal protection for patients and medical personnel..

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