Research Article

LEGAL INFORMATION SYSTEM POLICY ANALYSIS HEALTH IN INDONESIA

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ABSTRACT

The resolution of malpractice cases in Indonesia is very ambiguous and confusing, not only for legal practitioners but also for ordinary people. How not, every time there is an alleged malpractice experienced by a patient, the patient is also confused about who and where to report this case, especially when there is no accompanying lawyer. What if the alleged malpractice is experienced by a patient whose standard of living is classified as poor, just go to the hospital using ASKESKIN (health insurance for the poor) where it is possible to pay a lawyer to file a lawsuit against a doctor or hospital. There are two processes for resolving malpractice cases, the first by way of litigation, namely according to legal procedures submitted to legal institutions or ethical institutions, the second by non-litigation, namely solving problems through alternative channels with family deliberation. It may even be necessary to have a special court (ad hoc court), or a special institution formed by a special government to resolve all problems related to malpractice using deliberation.

Keywords: Legal Policy, Cyber Crime, , malpractice

Introduction

Prior to the birth of the Medical Practice Law, Law No. 29 of 2004 and the Health Law, Law No. 36 of 2009, the settlement of malpractice cases always referred to the Criminal Code, so that the cases that went to trial were mostly resolved peacefully, or perhaps the cases simply disappeared. , especially if the person suing the health practitioner is a patient whose standard of living is below the standard.

Malpractice, that is the term used for a case that happened to a patient who experienced, or considered to have received improper treatment for himself by a health practitioner, so that the patient felt harmed or did appear to have an accident or even death.

The poisoning of the mechanism for solving malpractice cases also occurs everywhere throughout Indonesia, so this has implications for case resolution and makes patients feel pessimistic that the cases they experience can be resolved legally or ethically.

In contrast to the Netherlands, for example, the mechanism for solving Malpractice cases
clear who will finish. In the Netherlands, the Court for Malpractice charges has its own system called the Tuchtraad, which is similar in composition to the General Medical Council but with a significant role for doctoral associations. In the procedure, the complaint is submitted to the Rechtkamer (District Court), then the Rechtkamer determines whether the case will be submitted to Tuchtraad or tried by the District Court. The Netherlands also has a wet op de beoefening der individuele geneeskunst, namely regulations regarding therapeutic agreements between doctors and patients.

Settlement of malpractice cases, in this case disputes between doctors and hospitals dealing with patients and their families or their legal representatives, can be resolved in two ways, namely litigation (through the court process) and non-litigation methods (outside the court process).

This study concentrates on discussing the understanding of Health law by legal practitioners and law enforcement officers in Indonesia. Are malpractice cases that are brought before the judge's table completed as expected, or have problems because of the shallowness of HealthLaw knowledge of people who sit and are involved in judicial institutions?

Health law in Indonesia is still often interpreted as part of the criminal law discipline, even almost all legal practitioners in this country always argue that health law is a criminal law discipline.

So it is not surprising that almost every case that has to do with the medical world, law practitioners or law enforcers conclude that the case is included in criminal law.

The Police as the Inspector will receive the report and conclude the provisional law is included in the

violation of the Criminal Code, as well as the Prosecutor as the Public Prosecutor will agree with the Police as the Investigator who makes the Investigation Report (BAP) that the suspect is charged with criminal charges, after the file from the Public Prosecutor reaches before the Panel of Judges, the Judge will decide the case as an act of violating the Criminal Law. Although judges have the right to interpret a case, if they do not have a scientific basis in interpreting, they will produce ridiculous interpretations that are even contrary to law and legal ethics.

Not only that, even most students who study in higher education, especially the Faculty of Law, students are introduced by the teaching staff that the act of Malpractice / Health Law or Medical Law is included in the realm of criminal law.

LIBRARY REVIEW

This type of legal research, the author uses a normative research type that is prescriptive with the aim of studying legal norms and legal objectives that can produce arguments in the form of recommendations to resolve problems related to the criminal act of commercializing kidney organs.

By using a statutory approach and a comparative approach which compares the legal system and the enactment of positive law in Indonesia and the Philippines regarding the criminal act of commercializing kidney organs.

The research sources used by the author are from official records or treatises in making legislation in Indonesia and the Philippines related to the criminal act of commercializing kidney organs, as well as secondary legal sources including legal dictionaries and comments on court decisions related to regulations. health about criminal acts of commercialization of kidney organs in Indonesia and the Philippines.

The data collection carried out by the author uses library research research techniques by collecting statutory regulations, documents, journals, books, and other library materials related to positive law against criminal acts against the commercialization of kidney organs.

The stages of kidney organ transplantation start from the consideration of experts in the health sector, namely the first in the field of Nerfology, which is needed to conduct examinations, reviews and make decisions on patients who will receive organs from other people. The second field of Psychology, the psychological field is needed to analyze and provide services to those who want to give their organs to those who need organs. The three areas of Ethics and the Medical Profession are needed to monitor and evaluate the performance of doctors towards recipients and donors.

If a donor kidney organ is found that has not gone through medical procedures, it may be subject to administrative sanctions Article 20 paragraph (1) Government Regulation Number 18 of 1981. Based on Article 2 of Government Regulation Number 18 of 1981 concerning Clinical Corpse Surgery and Anatomical Corpse Surgery and Transplantation of Devices or Tissues The human body has organ transplant procedures.

While the procedure for meeting the needs of kidney organs in the Philippines begins with administrative data collection through the Pilipphone Network for Organ Sharing (PHILNOS) institution, people are required to register themselves as kidney organ donors. In addition, there is the NTEC (National Transplant Ethisc Committee) which has the function of supervising the data collection process to the practice of kidney organ transplantation. So that with the existence of special health institutions, kidney organ donors can produce a selective selection process. If there is a violation of the procedure for fulfilling the need for kidney organs, then based on the regulations of the Ministry of Health regarding human organ transplantation, the health workers or other parties involved may be subject to administrative sanctions.

METHOD

There are two very different methods but concluded by some who understand them as the same scientific discipline. The author will try to review these two different disciplines.

1. Medico Legal (Medical Law)

In general, cases received by the police, especially regarding malpractice, are included in the criminal law (KUHP), especially after the existence of the Medical Practice Law. Health practitioners (doctors, midwives, nurses and pharmacists, etc.) as well as health institutions such as hospitals, health centers and clinics feel pressured by the birth of this law, let alone making mistakes or negligence in treating patients, not having a Registration Certificate, they have concluded will be sentenced to imprisonment for a maximum of 3 years or a fine.

Medicolegal is different from Health Law, medicolegal is a small part of health law which includes studies around the medical world, for example Doctors, Dentists, Patients, Nurses, Midwives, Mantri,Hospitals, Clinics and Pharmacists etc. Violations that often occur are also limited to acts of Medical Negligence, Informed Consent, Prudent Patient Test, Liability of Hospitals, Abortion, Euthanasia.

According to Hermien Hadiati Koeswadji, the essence of the medicolegal aspect, which is a medicolegal approach in legal science, is not a new thing, because in legal science, various types of

jurisprudence have been studied, including medical jurisprudence, what is new in this case is the approach, especially to issues related to arising from the practice of the medical profession. This approach is different from the approach in terms of legal science in general, because it must be included in the consideration of two fields of science, namely medical science and law. The essence of this medicolegal approach is based on the right to health care, namely the right to self-determination and the right to information.

Another term for medicolegal is Medical Law or medical law. Medical law rests on 2 (two) basic human rights which are basic social rights, namely the right to health care (the right to health care), and which is supported by the right to self-determination. and the right to information, which is a basic individual right.

In relation to medical law. The right to health services which is a basic social human right can be found in article 25 of the United Nations Universal Declaration of Human Rights 1948, more specifically in paragraph 1 which reads: "Every has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing, medical care and necessary social services and the right to security in the event of unemployment. Sickness, disability widowhood, old age or other lack of livelihood incircumstances beyond his control"

In accordance with its definition, medicolegal or medical law is a law that has to do with the medical world and its legal witnesses are not only included in the criminal realm, but also involve civil and state administrative matters.

In European countries medicolegal cases are no longer questioned in criminal prosecutions, but rather in civil lawsuits. What are the considerations? The author views not only the law enforcement side but more on the morals and psychology of a health practitioner.

For example, a doctor who was successfully prosecuted criminally and served a number of years. The doctor not only suffered a loss of several years serving his sentence in prison, but the sociological assessment of the people living around him would give the doctor a bad judgment and if he finished serving his sentence, the doctor would be ostracized by the community and even considered a bad person.

On the other hand, the doctor will experience psychological disorders because as a doctor who has a life guide to help humans, but in the end because of an negligence he has to deal with the law and even go to prison.

In the view of economics, the assets or patients of a doctor who have trusted and matched treatment with a doctor who has practiced for many years will experience setbacks and even lose trust and money as medical services provided to his patients.

For this reason, it is very important to study all of the Faculty of Law, Faculty of Medicine and Faculty of Public Health in Indonesia for Medical Law and Health Law courses. Not as an elective course, but as a compulsory subject for all majors. Not all lecturers who hold the SH degree can continue to provide subject matter for medical and health law disciplines. But lecturers who have works in scientific writings, actively participate in seminars, conferences and who are specifically studying medicolegal and health law are eligible to provide subject matter on campus about health and medical law.

Even in institutions that have to do with health practitioners and legal practitioners such as Police schools, STAN, etc., it is mandatory to include them in the syllabus.
on Medical Law and Health Law courses. Not only 2 credits are given, but more than 4 credits or there are advanced courses.

At several universities in Indonesia there is still an assumption that Forensic Medicine or Judicial Medicine courses already represent the field of study of medical law and health law. This course is the smallest part of medical law, the breadth of medical law studies makes it unfit to only study 1 or 2 credits on campuses. People, but in the end, due to negligence, he had to deal with the law and even go to prison.

2. Health Law

Health Law or health law is a broader discipline than medical law.

According to Sampurno, health law is all legal provisions that are directly related to the maintenance or service of health and its application. This means that health law is a written rule regarding the relationship between the health service provider and the community or community members. By itself the health law regulates the rights and obligations of each service provider and service recipient or the community.

In Indonesia, health law instruments are very well developed, in addition to major laws such as the Criminal Code and the Civil Code, there are other laws that regulate Health law, for example Law No. 23 of 1992 concerning Health, Law No. 36 of 2009 concerning Health and Law No. 29 of 2004 concerning Medicine. , is a typical law on medico legal, but this law is not yet complete for Indonesia.

Likewise with Law no. 44 of 2009 concerning Hospitals, only regulates issues between patients and hospitals, for example, the maximum penalty if there is death due to hospital negligence is subject to a fine of Rp. 1 billion and 10 years in prison for each person involved in endangering the patient. In addition to the incomplete special laws, general laws are also

used as the main guide in resolving civil and criminal medico legal cases in Indonesia, so that the resolution seems ineffective. Another example is Law no. 29 of 2004 regarding the practice of medicine. This law stipulates various cases regarding the principles and objectives of medicine, the establishment of the Medical Council Council, the implementation of medical practice, the establishment and regulations of the MKDKI and the regulation of allegations of crimes. The regulation regulates the rights and responsibilities of medical experts and dentists, the rights and obligations of legal protection for patients and doctors and dentists who recommend medical practice. However, this law does not specifically regulate malpractice.

In addition, clients or patients as service users are also consumers so that in this case the provisions of Law no. 8 of 1999 concerning Consumer Protection ("UUPK"). The professions as mentioned above are included as business actors (Article 1 point 3 UUPK), which means that the provisions of Article 19 paragraph (1) of the UUPK apply to them: "Business actors are responsible for providing compensation for damage, pollution, and/or loss consumers as a result of consuming goods and/or services produced or traded. "

In addition, there are several ministerial regulations related to Health Law, Regulations that are not included in the hierarchy of the Indonesian legal system but are related to medical malpractice, among others: Minister of Health Regulation No. 269/Menkes/Per/III/2008 concerning Medical Records, Minister of Health Regulation No. 512/Menkes/Per/IV/2007 concerning License to Practice and Implementation of Medical Practice, Regulation of the Minister of Health No: 585/Men.Kes/Per/IX/1989 concerning Approval of Medical Actions

This is legally the development of health law in Indonesia, but in the implementation of resolving cases of malpractice or violations of health law in Indonesia, it is still far from what legal practitioners expect.

According to the Chairman of the Indonesian Medical Council, Bambang Supriyanto, general practitioner practice ranked first in cases of suspected malpractice during the period 2006 to 2015. Of the 317 suspected malpractice cases reported to the Indonesian Medical Council (KKI), 114 of them were general practitioners, followed by surgeons in 76 cases. , obgyn doctors (gynecologists) 56 cases and pediatricians 27 cases.

RESULT

The condition of Indonesian Health Workers requires registration and licensing of health workers, professional organizations, Indonesian citizen health workers who graduate from abroad and foreign health workers, rights and obligations of health workers, professional administration, dispute resolution, guidance and supervision, administrative sanctions, criminal sanctions , transitional provisions and closing conditions. The contents of the Health Manpower Bill include arrangements for all types of health workers, including medical personnel. Although in the mandate of Law No. 36 of 2009 concerning Health, Elucidation of Article 21 paragraph (3) it is stated that the regulation of health workers in the law is health workers outside of medical personnel. This happened because at the beginning of the drafting at the Ministry of Health, the substance of the bill did not cover medical personnel. In discussions with the DPR, the development of the unification of the Indonesian Medical Council (KKI) into the Indonesian Health Workers Council to avoid the formation of several councils, each of which is responsible to the president. Several arrangements regarding KKI since the enactment of the Health Manpower Act refer to the Health Manpower Act. Regulation regarding KKI in Law Number 29 of 2004 concerning Medical Practice Article 4 paragraph (2), Article 17, Article 20 paragraph (4) and Article 21 are declared revoked and not valid since the promulgation of the Health Manpower Law. In the Health Manpower Bill, health workers are divided into two, namely health workers and assistant health workers. Health workers must have a minimum qualification of three diplomas, except for medical personnel; while assistant health workers must have secondary education qualifications, diploma one or diploma two in the health sector. Health workers are grouped into 13 types, namely medical personnel, clinical psychology staff, nursing personnel, midwifery personnel, pharmaceutical personnel, public health workers, environmental health workers, nutritionists, physical therapy personnel, medical technicians, biomedical engineering personnel, traditional health workers. and other health workers as determined by the Minister of Health. In the previous regulation of health workers, namely Government Regulation Number 32 of 1996 concerning Health Workers Article 2, it is stated that 7 groups of health workers consist of 27 types of health workers, namely medical personnel, nursing personnel, pharmaceutical workers, community health workers, nutrition workers, therapists. physical, and medical technicians. The various types of health workers are based on their scientific field, profession and the existence of higher education in each type of health worker. Currently there are around 32 Health Polytechnic Universities under the Ministry of Health such as nursing, midwifery, dental nursing, environmental health, nutrition, physiotherapy, occupational therapy, speech therapy, orthotic prosthetics, pharmacy,

pharmaceutical and food analysts, radio diagnostic and radiotherapy techniques, medical analyst, dental engineering, electromedical engineering, optical refraction, recording and health informatics, blood transfusion technology, acupuncture, and cardiovascular engineering. In contrast to the classification of types of health workers in Government Regulation Number 32 of 1996 concerning Health Workers, the Bill on Health Workers includes additional types of health workers, namely clinical psychology personnel and traditional health workers. In addition, there is a breakdown of the types of health workers, namely midwifery personnel, which previously included the type of nursing staff, environmental health personnel, which previously included the type of public health personnel, and biomedical engineering personnel, which previously included the type of medical technician. WHO uses the ISCO-08 guidelines as the basis for classifying health workers used in WHO international reports. At ISCO-08, health professionals are grouped into doctors consisting of general practitioners and specialists, nurses and midwives consisting of nurses and midwives, traditional and complementary medicine professionals, paramedical practitioners, veterinarians, and other types of health professionals. such as dentists, pharmacists and occupational health and safety professionals, environmental health professionals, physiotherapists, dietitians and nutritionists, audiologists and speech therapists, optometrists and optometrists and other health professionals who do not fall into the above categories. In addition to medical personnel, supporting professionals in the health sector are also grouped such as medical and pharmaceutical technicians, nursing and midwife support professionals, traditional and complementary medicine professionals, veterinarians and technicians assistants, and other types of support professionals.

In addition to the grouping of health workers, the contents of the Health Manpower Bill on planning, procurement and utilization of health workers also involve provincial and district/city governments. Planning the need for health workers is based on considerations of type, qualification, number, procurement and distribution of health workers, implementation of health efforts, availability of health service facilities, financing capacity, geographical and socio-cultural conditions and community needs.

The context of the Health Workforce Act In David Easton's theory of political systems, policy formation cannot be adequately considered in isolation from its environment. Demands regarding policy actions arise from within the environment and are transmitted into the political system. Public policy is seen as a response from a political system to demands arising from the environment, which are conditions or conditions that are outside the boundaries of the political system. The forces that arise from within the environment and affect the political system are seen as inputs to the political system.

The environment can consist of cultural, political, social and economic conditions that affect the formulation of public policies (Winarno, 2012). Culture is a social heritage that is passed down from one generation to the next, so that it becomes the identity of a community. Culture is only one of many factors that influence human actions or behavior. Human actions will influence policy formulation. As in the formulation of the Health Manpower Bill, there are cultural values that are generally inherent in the world of health in Indonesia. It is known that since time immemorial people have been familiar with the treatment and health care carried out by shamans and parajis to become a culture in a community. Until now, the role of shamans and parajis is still common, especially in the DTPK and DBK areas.

The culture of treatment and care by shamans is no longer suitable with current conditions, with advances in science and technology and various types of diseases, as well as increasingly complicated health problems. It is known that the high MMR is caused by delivery assistance by health workers which is still far from the 2015 target. It is undeniable that this cultural context was one of the reasons for the formulation of the Health Manpower Bill. With the stipulations in the article concerning the utilization of health workers in the territory of Indonesia and the right to obtain special promotions, as well as protection in the implementation of duties for health workers serving in the DTPK area. From the social aspect that influenced the formulation of the Health Manpower Bill, it can be stated that health is one of the elements of social welfare which is the aspiration of the Indonesian people to be achieved. It is undeniable that professional and non-professional health workers are part of social work that not only demands compensation for rights, but also aspects of community service. Health is a human right, so that health workers are the most instrumental in providing health service efforts.

Health workers are required to have a sense of sympathy for the community. As stipulated in the Principles of the Health Personnel Bill, it is stated in the principle of service, that the regulation of health workers is directed to prioritize the interests of providing health services to the community rather than personal interests. In addition to cultural and social aspects, there are political aspects in the discussion of the Health Manpower Bill. The political policy process is the process of legitimizing

public policy as a solution to public problems by relying on the policy discussion process in political institutions that are recognized as public representatives. Barriers to the legitimacy of policy recommendations into policies arise when these policy recommendations face challenges from other groups (usually the opposition) by also relying on arguments on behalf of the public. Then the political process of policy must enter into the realm of bargaining for interests. Policies that come out of the political process based on the politics of bargaining formulate that the policies that come out as winners are policies that are born from recommendations that have the most power from a political system (Indiahono, 2009). Decision makers may assess policy alternatives based on the interests of their political parties and groups. Decisions are made based on political advantage and are seen as a means to achieve party goals or interest group goals (Winarno, 2012). The Health Manpower Bill is a government initiative proposal in the 2010-2014 National Legislation Program.

CONCLUSION

From the brief review above, it can be concluded that the importance of the study program of Health Law in Indonesia is not just a science that is only learned to be free from obligations, but rather for the benefit of mankind, so that in the midst of human life, which has many life problems, legal issues exist. rules of law and ethical rules that make this life more orderly and purposeful.

Furthermore, in studying and understanding a scientific discipline, it should be taught by people who have disciplines that are in accordance with their midwives, the aim is to produce legal practitioners who do not fail to understand science, especially Health Law.

In the future, it is hoped that Indonesia can become a state figure that can lead to a developed country, advanced in development, technology and law, so that later this country will have legal practitioners and law enforcement officers who have established legal knowledge, are well established in science and are well established in law enforcement. carry out practice.

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