

## Medical Court in Medical Dispute Resolution in Indonesia

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### Abstract

The number of medical disputes between doctors and patients continues to rise, but rules regarding medical dispute resolution have failed to safeguard the rights of doctors. This study will examine the role of the Indonesian medical court in settling medical disputes. This study is empirical in nature. Several sources, including the head of IDI, judges, legal experts, and the Komnas HAM, were interviewed to collect primary and secondary data, in addition to conducting literature reviews and analyzing relevant documents. This investigation was undertaken in an informative fashion. The results of the study indicate that the process of resolving medical disputes between doctors and patients continues to be handled by general courts, because patients and doctors have the same rights as individuals and, if there is a medical dispute, because the parties' positions are treated equally in court. Each party has the same right to present evidence in court.

**Keywords:** Medical Court; Medical Disputes; Doctor; Patient.

### Introduction

Special courts are established due to their unique qualities. The special court must be situated within one of the judicial circles. Up until now, the Supreme Court of Indonesia has been in control of four judicial circles, including special courts inside each judicial circle. This is in compliance with Article 27 of Law Number 48 of 2009 respecting Judicial Power, which says that special courts can only be established in one of the judicial environments under the supervision of the Supreme Court. The establishment of special courts is governed by legal provisions. (Lakitan, Hidayat, and Herlinda 2012)

The special courts that have been established, first and foremost the Human Rights Court (abbreviated as the Human Rights Court), are the Special Courts for serious human rights violations, which are also special Courts within the General Courts pursuant to Law Number 26 of 2000 pertaining to the Human Rights Court. Man. Second, the Fisheries Court is a Special

Court within the general judiciary with the competence to investigate, prosecute, and render judgments regarding criminal crimes in the realm of fisheries. The Fisheries Court was established in accordance with Law No. 31 of 2004 pertaining to Fishing. Law No. 2 of 2004 concerning the Settlement of Industrial Relations Disputes established the Industrial Relations Court as a specialized court within the general judiciary. (Hartini 2022)

Fourth, the Corruption Court, located inside the General Court and formed by Law No. 46 of 2009 pertaining to the Court of Criminal Acts of Corruption. Fifth, the Juvenile Court is a Special Court within the General Court, as established by Law No. 11 of 2012 pertaining to the Juvenile Criminal Justice System. Sixth, the Commercial Court is a Special Court established within the general judiciary for the settlement of bankruptcy cases and suspension of obligations and debt payments (PKPU), disputes in the field of intellectual property rights (HKI), and disputes in the bank liquidation process carried out by the Deposit Insurance Corporation (LPS). It was

established in accordance with Law Number 37 of 2004 regarding Bankruptcy and Suspension of Debt Payment Obligations. The six Islamic Sharia Courts (Mahkamah Syar'iyah) were established in accordance with Law No. 11 of 2006 pertaining to the Government of Aceh as Special Courts within the Religious Courts. (Syukriani, Novita, and Sunjaya 2018)

A special court was established to seek justice for those who want justice, with the expectation that it will render a fair verdict based on the knowledge of the law enforcement officers who resolve the case. One option is to present ad hoc judges, because ad hoc judges seek to bring justice for the opposing parties and are appointed because they have the ability, knowledge, and expertise to resolve conflicts. This is in compliance with Article 32 of Law Number 48 of 2009 on Judicial Power, which provides that ad hoc judges may be appointed to special courts to examine, hear, and rule on issues that need competence and experience in specific subjects within a specified timeframe. (Kuo, Longmire, and Cuvelier 2010)

Observing the rising amount of patient-physician medical disagreements. The doctors, through the IDI group, expect that the government would quickly establish a special court to settle medical disagreements. The construction of a special court for the resolution of medical disputes is urgently required due to a number of factors, including the yearly increase in the number of such disputes. Second, there are contradictions in the norms controlling the patient's entitlement to make complaints for suspected violations of professional standards or malpractice in the health field, from a normative juridical perspective. Law No. 29 of 2004 pertaining to Medical Practice stipulates the opening of a complaint line to the MKDKI, prioritizing medical professional standards based on medical science in the processing of medical matters. This preferred path does not, however, eliminate the patient's right to report suspected illegal activities to the authorities and/or sue for civil damages in court. If the three pathways are pursued simultaneously, this circumstance may result in inconsistencies and even legal problems. This legal discrepancy has the potential to have countless legal consequences. (Wu et al. 2021)

Thirdly, an empirical investigation of medical situations reveals that the settlement procedure was not initiated via the MKDKI. Therefore, the trial court's verdict was legally faulty and even erroneous. This is due to the fact that the judge's decisions are not founded on professionalism and medical norms about the autonomy of doctors to perform technical medical treatments and surgical interventions on the human body. In the legal relationship between cause and effect, the Supreme Court's ratio decidendi focuses solely on the criminal aspect, the error aspect, and the culpability aspect. If the MKDKI addressed the medical situation from the beginning, legal repercussions of this nature would not be necessary. (Ishak, Ranaivo, and Manitra 2022)

Fourth, the level of complexity in the medical field is difficult for law enforcers, such as investigators (POLRI), public prosecutors, and judges equipped with the *ius curiae novit* principle, to comprehend in order to differentiate medical professional actions that fall under the category of medical malpractice or medical risk. That every medical action carries a medical risk of varying degrees. There is a previously certain action whose risk, according to medical science, may even be fatal; however, doctors are now faced with a choice of actions that must be taken despite the possibility of unanticipated consequences; if no action is taken, it is estimated that additional consequences will occur. (Iqra, Korompot, and David 2021)

## Research Methods

**Method** This study employs a sociological legal approach, as it examines and discusses social problems in society as a result of the rising number of lawsuits against doctors for medical disputes and as a result of observing the decisions of the general court, which has been handling medical dispute resolution. (Sofiana, Utama, and C 2021) In light of this, the purpose of this study is to investigate the possibility of establishing a special court to resolve medical conflicts between doctors and patients or the patient's family in order to attain justice. In accordance with the provisions of Article 17 of Law No. 39 of 1999 pertaining to Human Rights, which provides that

the judiciary guarantees an objective, honest, and fair examination by judges in order to reach a just conclusion.(Dian and Jenvitchuwong 2021)

This research utilizes both primary and secondary data types. Because this study represents a sociological rule. This study seeks and collects the essential facts centered on the fundamental issues of the existing difficulties, so that there are no detours and ambiguity in the conversation. Legal research that is sociological in character is constantly concerned with societal events and data sources. Types and sources of data utilized in this study include both primary and secondary sources. Interviews with informants at the Head of IDI, judges, legal experts, and members of the National Human Rights Commission yielded primary data. Secondary sources of information include rules, books, journals, research results in the form of papers, and the Internet. In research, secondary data can be categorized as primary legal resources, secondary legal materials, and tertiary legal materials.(Triasari 2021)

The method of data gathering in research utilizes data that is tailored to the investigation's scope and the objectives to be investigated. Based on the scope, objectives, and methodology of this study, the data collection techniques employed are: first, primary data through interviews with informants; and second, secondary data through library research methods, namely data obtained from books, scientific works, seminar materials, and laws and regulations pertaining to the establishment of special courts for medical dispute resolution.(Oktora and Tegnan 2021)

## Results and Finding

### *1. Protection of Human Rights for Doctors in Medical Disputes*

A physician possesses the same inherent and protected personal rights as other persons. The medical profession is granted the legal permission to practice by statute. Profession is a sector of work that not everyone can perform since it demands specialized knowledge and autonomy. These talents are acquired through a planned and quantifiable sequence of education,

training, and experience. The right to practice this profession is outlined in Law No. 29 of 2004 about Medical Practice, Law No. 36 of 2009 regarding Health, Law No. 44 of 2009 regarding Hospitals, and Law No. 36 of 2014 regarding Health Workers.(Putri et al. 2021)

In addition, the right of protection for the medical profession in the practice of medicine has been clearly outlined in the law. During the provision of medical care, the physician adheres to professional norms and standard operating procedures. This is established in Article 50 of Law 29 of 2004 pertaining to Medical Practice and Article 57 of Law 36 of 2014 pertaining to Health Workers. This is inextricable from the objective of providing doctors with a sense of job security.(Noor et al. 2021) Observing Article 58 paragraph (2) of the Law on Health and Article 57 of the Law on Health Workers, which state that for doctors who have attempted to take life-saving actions and prevent disability in emergency situations, as well as for doctors whose efforts in helping patients have been carried out in accordance with Professional Standards, Professional Service Standards, and Standard Operating Procedures, it is abundantly clear that the doctor is legally protected and exempt from all lawsuits.(Lintang, Adriano Martufi, and J.W. Ouwerker 2020)

Everyone has the same rights, one of which is a sense of safety in society, in activities, and in the workplace. Article 30 of Law No. 39 of 1999 pertaining to Human Rights declares that everyone has the right to a sense of security and serenity, as well as protection against the fear of doing or not doing something. But if, in the course of his activities or work, he is constantly plagued by feelings of anxiety, worry that what he does may result in legal repercussions for everyone, then his right to security has been obviously violated. This includes the medical profession, which believes that its efforts to assist others, in this case the patient, will have an effect on litigation resulting from the patient's unhappiness or feeling of being wronged.(Pungky and Wijaya 2021)

In accordance with the notion of human rights, every human being was born with certain inherent rights. Others must respect the inherent rights of every individual, regardless of ethnicity, color, religion, gender, citizenship status,

economic standing, social standing, or occupation. Everyone who works or suffers a particular profession has human rights that must be safeguarded, guaranteed, and defended, both personally and when others carry out the profession. Dignity and dignity as a human being are conditions that can be met when a person has the freedom to life and the possibility to be recognized on an equal basis with others. (Saidah Fasiah Binti Che Yusoff and Nordin 2021)

This accolade is only awarded to those who engage in useful actions for others based on their skills and in conformity with societal changes. Human rights include the right to work, the right to benefit from information, the right to advance oneself and the right to grow oneself, as well as the right to a sense of security and protection from all types of fear-based pressure to do or not do something. The medical profession is a manifestation of the rights to employment, self-improvement, and knowledge. A physician in charge of the medical profession must feel secure and protected from the dread of doing or not doing something in accordance with the requirements of his profession. In addition, carrying out a profession necessitates specialized knowledge that is not possessed by everyone; all choices regarding whether or not to perform a medical action must be founded on this knowledge. (Mishra and Negi 2021)

The 1945 Constitution does not explicitly mention the protection of the profession, but undergoing a medical profession and performing a medical action in the medical profession are manifestations of several rights guaranteed in the 1945 Constitution, including the right to work, the right to benefit from science, the right to promote self, the right to develop oneself, and the right to feel safe, including protection from threats that cause fear to take medical action. (Saputra and Emovwodo 2022)

## ***2. The pros and cons of establishing a Special Court for Medical Disputes.***

Reviewing the discourse from IDI and doctors to promptly establish a special court, it appears that the medical profession is always at the bottom, despite the fact that the patient has the weakest position in the process of resolving medical dispute cases in the general court. The number of medical disagreement cases won by

doctors demonstrates this. Although numerous district court verdicts have been reversed, the disagreeing doctor's appeal, cassation, and judicial review (PK) efforts have been successful. (Presser and Van Voorhis 2002)

According to the researcher, the advantages and cons of IDI's formation of a special court to resolve medical disagreement cases are still being debated. The advantages and disadvantages are derived from academia, the community, and IDI members themselves. The proposal for the establishment of a special court, titled "Special court for the medical profession," was submitted by the Chairperson of the Executive Board of the Indonesian Doctors Association (PB IDI for the period 2012-2015) dr. Zaenal Abidin, MH and the Chair of IDI Yogyakarta dr. Bambang Suryono, Sp.An, KIC, M.Kes, KNA. Dr. Bambang Suryono, Sp.An, KIC, M.Kes, KNA noted that the "special court for the medical profession" had been included in the Bill on Medical Practice, but was deleted in response to concerns from physicians. (Windayani and Adipradana 2020)

Article 52 of the Draft Law on Medical Practice recommends the formation of a Medical Professional Disciplinary Court as one of the applications of judicial power to determine the existence or absence of mistakes or omissions in the performance of medical practices by physicians. In performing its tasks, the Medical Professional Disciplinary Court is a special court housed within the General Court. The proposal for the formation of a Professional Disciplinary Court for Medical Personnel refers to the provisions for the formation of a special court in Article 27 of Law Number 48 of 2009 concerning Judicial Powers, which states that special courts can only be formed in one of the judicial environments under the Supreme Court. (Muslih et al. 2021)

If we examine Article 56 of the Draft Law on Medical Practice, we see that the Medical Professional Disciplinary Court was established by a Decree of the Chief Justice of the Supreme Court; in this case, this is in compliance with the procedure for establishing a special court. Article 27 of Law No. 48 of 2009 on Judicial Power and Article 8 of Law No. 49 of 2009 on the Second Amendment to Law No. 2 of 1986 on General Courts state expressly that provisions regarding

the establishment of special courts may only be established in one of the following circumstances: a judicial environment supervised by the Supreme Court and governed by law.(Chandra 2015)

According to Article 60 of the Medical Practice Bill, the Medical Professional Disciplinary Court and the High Court for Medical Professional Discipline are comprised of legal experts and medical professionals. Ad hoc judges may be drawn from the medical profession. The Medical Practice Bill does not specifically mention the number of career judges and ad hoc judges at the Medical Professional Disciplinary Court, only explaining the number of judges is at least 5 judges<sup>119</sup> with a composition of judges consisting of the Chair, Deputy Chairperson and ad hoc judges. In the proposal, the requirements for appointing ad hoc judges are not specified. In addition, the proposed establishment of a special court is no different from a general court, because Article 54 and Article 89 state that there is a Professional Disciplinary Court of Medical Personnel located in the District Court and a High Court of Discipline for Professional Medical Personnel located in the High Court. The construction of a special court should nonetheless pay respect to the principles of a rapid, simple and low-cost trial, which strives to make the examination process straightforward and to defend the rights of suspects to acquire a speedy examination so that legal certainty may be obtained promptly.(Prayitno 2012)

The proposal was then rejected by the Ministry of Health, Expert Staff of the Minister of Health for Medico Legal Affairs, Budi Sampurna, explaining that the proposal for a special court was not necessary, because the forum regarding medical service disputes already existed, namely the Medical Ethics Honorary Council (MKEK) and the Disciplinary Honorary Council. In addition, the Indonesian Medicine (MKDKI) requires facilities and a sizable workforce. Because it must be constructed in each district/city, the cost of infrastructure for the medical profession's judiciary is astronomical. In addition, they must train judges, prosecutors, and other legal officers so that they can comprehend medical procedures and risks.(Raineri Bernain et al. 2019)

If a special court is established, the position of the patient in seeking justice and proving whether a doctor has committed medical malpractice is weakened relative to the position of the doctor. This can be observed in the results of the decision if the lawsuit filed by the patient or the patient's family prevails in the medical disagreement litigation proposed by the Medical Professional Disciplinary Court in Article 136 paragraph (8) – paragraph (11) of the Medical Practice Bill.(Murhaini and Achmadi 2021)

Additionally, from the patient's perspective, the ad hoc judges and expert witnesses presented were peers. This is due to the fact that if an ad hoc judge is appointed from the medical profession, it will raise questions about the judge's independence in decision-making. Because according to the explanation in Article 5 of Law Number 48 of 2009 on Judicial Powers, a judge must have integrity, be truthful, impartial, professional, free from outside interference, and free from all forms of pressure. The purpose of this clause is to ensure that the judge's decision is consistent with the law and the community's sense of justice. Article 17 of Law No. 39 of 1999 protecting Human Rights clearly makes this clear.(Raharjanti et al. 2021)

Considering the position of the ad hoc judge and the administrative character of the judgement that will be handed down if the doctor is found to have committed malpractice, justice is not served, especially for the patient or the patient's family. This circumstance means the patient's right to seek justice has not been met. The establishment of a special court to settle medical issues should constitute an expansion of a court's authority. According to the perspective of Hermien Hadiati Koeswadji, this expansion of jurisdiction is the result of a number of factors, including an increased public awareness of their rights guaranteed by laws and regulations. Second, the link between medicine and the law is getting increasingly complex, resulting in an increase in the number of claims for compensation for medical errors. Thirdly, the community recognizes limitations within the sphere of settling medical disputes.(Nurdin and Grydehøj 2014)

Establishing a special court must also consider why it is necessary to organize a special court, and the formation's requirements must be

explicit. The establishment of a special court in this instance is the establishment of a special court for medical disputes, which must be evaluated from multiple perspectives, namely: First, the philosophical aspect, which must guarantee the realization of a just and prosperous, safe, peaceful, and orderly state and nation's life order, as well as guarantee the same legal standing for citizens. Second, the sociological aspect, which entails a greater understanding of patient rights, and the legal aspect, which entails the need to avoid medical disputes between doctors and doctors, which necessitate a fair resolution involving quick, inexpensive, and straightforward procedures and processes, respectively. The establishment of a special court for medical disputes does not conflict with Article 28D, Article 28H (paragraph) 1 of the 1945 Constitution, Law No. 29 of 2004 pertaining to Medical Practice, Law No. 48 of 2009 pertaining to Judicial Power, Law No. 36 of 2009 pertaining to Health, Law No. 44 of 2009 pertaining to Hospitals, and Law No. 36 of 2014 pertaining to Health Workers, according to a legal analysis. (Budiwan and Efendi 2016)

Article 27 of Law Number 48 of 2009 on Judicial Power stipulates that it can only be constituted in one of the judicial bodies subordinate to the Supreme Court and that its formation must be governed by law. The special court must have a clear explanation of its authority, must not be in conflict with the public interest, and must strive for equal justice without favoring a single party. This refers to Article 28D of the Constitution of 1945, which declares that "everyone has the right to recognition, protection, fair legal certainty, and equal treatment before the law." It can be concluded that the establishment of a special court is permissible so long as it is subordinate to an existing court. This is done to ensure that there is no conflict with the Law on Judicial Power and that this provision has special power. (Moeliodihardjo et al. 2012)

## Conclusion

Based on the research findings and preceding discussion, the authors draw the following conclusions: first, the majority of medical disagreements between doctors and

patients are addressed through litigation or the judicial system. In medical disagreement cases, the function of law enforcement is the Prosecutor in filing demands and the Judge in making decisions; yet, there is still a lack of understanding regarding medical disputes. One of them is the application of Article 75, Article 76, and Article 79 of the Medical Practice Law, where in some cases criminal sanctions are still imposed, thereby creating a sense of unease among doctors at work, despite the fact that this violates Article 28 G of the 1945 Constitution and Article 3 paragraph (3) of Law No. 39 of 1999 pertaining to Human Rights. Second, the IDI and doctors' discussion over the urgency of establishing a special court is currently irrelevant. The establishment of a special court must not infringe the human rights of the opposing parties, satisfy a sense of fairness, and ensure that both doctors and patients are treated equitably before the court. In addition, it evaluates three major factors, including legal substance, such as whether the law can be executed equitably, legal structure in upholding justice, and legal culture, which is the acceptability of the legal system by society. It is anticipated that the interaction of these three factors will have a significant impact on the settlement of each medical disagreement case. In addition, it becomes a preventative measure for future medical conditions.

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