

Legal Basis for the Idea of Establishing Specialized Court for Medical Profession**Darto Supadmo¹, Handoyo Prasetyo²**

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darto.supadmo22@gmail.com¹, handoyoprasetyo@upnvj.ac.id²**Keywords**Legal Basis, Medical
Profession Court, Health**Abstract**

This research discusses which laws and regulations can be used as a legal basis for the establishment of Special Medical Courts in Indonesia. The aim of this research is to find out which laws and regulations can be used as a legal basis for the establishment of Special Medical Courts in Indonesia. The method in this research is normative legal research using normative case studies in the form of legal behavior products, for example reviewing laws. The research results obtained are that the laws and regulations that can be used as a legal basis for the establishment of a Special Medical Court in Indonesia are (1) Pancasila and the 1945 Constitution as a philosophical basis, and (2) Article 28D, Article 28 H (paragraph) 1 Constitution of 1945, Law Number 29 of 2004 concerning Medical Practice, Law no. 48 of 2009 concerning Judicial Power, Law no. 36 of 2009 concerning Health, Law Number 44 of 2009 concerning Hospitals, Law Number 36 of 2014 concerning Health Workers as jurisdiction.

Corresponding Author : Darto SupadmoE-mail: darto.supadmo22@gmail.com**INTRODUCTION**

Juridical, medical dispute cases directed by patients or their legal representatives against doctors are submitted to criminal or civil courts as allegations of malpractice (Setiaji, Isharyanto, & Sulistiyono, 2023). In legal claims, medical disputes can be resolved in two ways, namely: litigation (through the judicial process) and non-litigation (outside of court) (Angelia, 2023).

Currently, medical disputes are still handled by general courts. Juridical, the normative authority of the Supreme Court is clear as regulated in the provisions of statutory regulations, but the context or point of view of IDI and doctors sees that: knowledge and understanding of law enforcers regarding health law is still lacking, this cannot be separated from the fact that not all Law enforcers understand health law and disputes that occur between doctors and patients, so that anything that is unexpected due to the efforts made by doctors in helping patients is considered malpractice by the patient, or the patient's family (Hall et al., 2024).

Apart from that, so far, the process of resolving medical disputes taken by patients is often through professional health worker organizations (He & Qian, 2016). The doctor must go through a long process when the patient is reported to the police, who then go through the investigation process and the court process. This has quite a detrimental impact on medical personnel, including tarnished reputation, risk of losing their job, depression, and so on (Kang et al., 2020).

The existence of problems regarding medical disputes in general courts, such as the lack of knowledge and understanding of law enforcers regarding health law and the ineffectiveness of general courts in deciding health cases, has made some people want the establishment of special courts for the medical profession.

According to Herman (2020), a special medical court was formed to adjudicate medical disputes between medical personnel and patients (Herman, Razak, & Riza, 2020). Therefore, a special court is needed to resolve medical disputes, where this special court adjudicates/resolves medical disputes both criminally and civilly which is expected to be able to provide justice to all parties, especially to medical personnel. In line with this, the Special Court for the Medical Profession is a necessity in resolving medical disputes. Because general courts can no longer provide justice in medical disputes which require special courts for the medical profession to carry them out.

The desire of some legal practitioners to establish a medical professional court is specifically based on several things. Among them comes from the view that states "Health law develops in line with developments in the field of health services and is seen as something that is increasingly necessary in maintaining the balance of each person in maintaining and improving their level of health. "Therefore, the normative health legal order fosters the development of special health law (Lax Specialist) which contains deviant/conceptual provisions when compared with general legal provisions (Lax Generalist) (Nugraheni, Wiyatini, & Wiradona, 2018)."

According to research conducted by Nelwitis, A., & Rias, AI (2023). with the title Basic Considerations for the Establishment of a Special Court for the Medical Profession as an Effort to Renew the National Health Law in Indonesia, that Efforts Will Be Made to Realize Legal Certainty in the Establishment of a Special Court for the Medical Profession as an Effort to Renew the National Health Law in Indonesia (Nelwitis & Rias, 2023). Efforts that will be made to realize legal certainty in the establishment of a special court for the medical profession as an effort to reform the National Health Law in Indonesia by reforming criminal law, through the legal system, which focuses on: Substances, Structure and Legal Culture (Legal Culture) for all components that contribute to the provision of health services, such as doctors, health workers and law enforcement officers by expanding their respective authorities, which can be grouped as follows: Professional Organizations (MKDKI/MKEK), Police, Prosecutor's Office, Assembly Judges, Experts, and Doctors. This effort was carried out in order to emphasize the role of a law which must fulfill the principles of establishing good laws and regulations as a legal basis for the establishment of a special court regarding criminal acts of medical negligence as a dispute resolution body in the future.

According to research conducted by Herman, H., Razak, A., & Riza, M. (2020) that a special medical court was formed to adjudicate medical disputes between medical personnel and patients (Herman et al., 2020). Therefore, a special court is needed to resolve medical disputes, where this special court adjudicates/resolves medical disputes both criminally and civilly which is expected to be able to provide justice to all parties, especially to medical personnel. In this case the author explains the concept of a special court for medical disputes which has its own characteristics and applies legal and medical principles in the court. In this research, researchers used normative research methods. What is meant by normative research is library legal research. In conclusion, a special court in resolving medical disputes should be formed to provide justice for the parties in dispute, especially for medical personnel because medical problems are something specific so a court that has quality is also needed to resolve medical disputes later.

Apart from that, according to research conducted by Riyanto, OS (2017), stated that a special court was formed to seek justice for those in dispute, and hoped that a decision would be as fair as possible based on the knowledge of law enforcers regarding the dispute being resolved (Kang et al., 2020). One of the things that ad hoc judge's show is that the existence of ad hoc judges aims to provide justice to the parties in dispute, because ad hoc judges are appointed because they have knowledge and expertise regarding the dispute that will be decided. This is in accordance with Article 32 of Law Number 48 of 2009 concerning Judicial Power in Viewing Medical Disputes.

Even though it is urgent to establish a special court for medical professions in Indonesia, the establishment of a special court must of course have legal foundations that already exist in Indonesia, therefore it is necessary to ascertain whether there are legal grounds regarding the permissibility of establishing a Special Court for Medical Profession or

not (Pisani, Olivier Kok, & Nugroho, 2017). Based on the formulation of the problem, the aim of this research is to find out which laws and regulations can be used as a legal basis for the establishment of Special Medical Courts in Indonesia.

This research contributes to the development of a judicial system specialized in handling medical disputes in Indonesia, where with the existence of a Medical Special Court, medical dispute issues can be resolved more quickly, cheaply, and simply and meet the standards of justice in accordance with Pancasila and the 1945 Constitution. Implementation of this research involves drafting and passing regulations that support the establishment of a Medical Specialty Court, including provisions regarding the court's structure, functions and operational procedures. In addition, training and education for legal and medical personnel on health law and medical judicial procedures, as well as an understanding of relevant professional standards and medical ethics are required. There is also a need for an oversight body that ensures that the Specialized Medical Courts function as intended and adhere to the principles of law and justice. Socialization to the general public and stakeholders is also important to ensure all parties understand the workings and benefits of these courts. By implementing these measures, it is hoped that the Medical Specialty Courts can operate effectively and provide maximum benefit to the community as well as improve the fairness and quality of medical dispute resolution in Indonesia.

RESEARCH METHODS

The type of research used is normative research. Normative legal research uses normative case studies in the form of legal behavior products, for example reviewing laws. The subject of study is law which is conceptualized as norms or rules that apply in society and become a reference for everyone's behavior. So normative legal research focuses on the inventory of positive law, legal principles and doctrine, legal discovery in cases in concerto, legal systematics, and the level of synchronization, comparative law and legal history. This type of normative research is used in the research to examine normatively which laws and regulations can be used as the legal basis for the establishment of a Specialized Medical Court in Indonesia, as well as the advantages and disadvantages of laws and regulations used as the legal basis for the establishment of a Specialized Medical Court in Indonesia. Statute approach.

The data source used for processing in normative legal research is secondary data. Secondary data sources in this research are divided into two types. Namely: Primary Legal Materials and Secondary Legal Materials. The research uses one type of data collection tool, namely document studies or library materials. Data collection techniques through literature studies, namely examining laws and regulations, literature books, and written works from legal experts related to research. In normative legal research, secondary data sources are usually only used, namely books, diaries, laws and regulations, court decisions, legal theories and opinions of leading legal scholars. In this research, the normative juridical legal research method will be used to obtain data regarding which laws and regulations can be used as a legal basis for the establishment of a Specialized Medical Court in Indonesia. As well as to find out what are the advantages and disadvantages of the Legislation which is the legal basis for the establishment of the Specialized Medical Court in Indonesia.

RESULTS AND DISCUSSION

According to Sumartini, et al (2023), the Legal Basis is written or unwritten regulations which are the crystallization of values agreed upon by society or those who represent it and promulgated and enforced by authorized institutions to serve as guidelines or guidance in carrying out obligations and/or to realize objectives, where the substance refers to the norms in the constitution (Sumartini et al., 2023).

Furthermore, in law and legal science various meanings or concepts have been formed which are known as juridical concepts (legal concepts). This concept is expressed in terms of expression which is realized in one or several words. The concept in question is used to facilitate understanding or connect knowledge both theoretically and practically (Jonaedi Efendi, Johnny Ibrahim, & Se, 2018).

Each term regarding basic legal concepts has its meaning defined within certain limits as clearly as possible and then formulated into a definition with the aim of facilitating its arrangement, understanding and use so that a building of knowledge can be rationally studied and understood. The basic concepts in law that have been formulated include Subject, Law, Legal Event, Legal Act, and Legal Consequences (Nurhayati, 2020).

Court in English is called court, and *rechtbank* in Dutch, what is meant is a body that carries out justice in the form of examining, adjudicating and deciding cases. Meanwhile, the word "judicial" comes from the word "fair" with the prefix "per" and with the suffix "an". The word "Judicial" is a translation of *qadha*, which means "to decide", "to carry out", "to settle" and some say that generally dictionaries do not differentiate between judiciary and court (Yuanda, Dewilly, & Dijunmansaputra, 2020). Thus the special medical court can be interpreted as a body that carries out justice for medical personnel only. This also means that a special medical court was established to adjudicate medical disputes between medical personnel and patients (Prasdyantoro & Zamroni, 2023). Therefore, a special court is needed to resolve medical disputes, where this special court adjudicates/resolves medical disputes both criminally and civilly which is expected to be able to provide justice to all parties, especially to medical personnel (Herman et al., 2020).

According to Health Law, it is specifically regulated in statutory regulations that recognize the professionalism of Medical Personnel or health workers (Harahap, 2022). Furthermore, based on Law no. 36 of 2014, in article 60 concerning Health Workers are responsible for: 1) Dedicating themselves according to the knowledge they have 2) Increasing competence; 3) Behave and behave in accordance with professional ethics; 4) Prioritize the interests of society rather than individuals or groups; and 5) Carry out service quality control and cost control in implementing health efforts (Organization, 2015).

Based on Law no. 36 of 2014, in article 44 concerning Health Workers, the registration section is: 1) Every Health Worker who practices is required to have an STR. 2) The STR as referred to in paragraph (1) is given by the council of each Health Worker after fulfilling the requirements. 3) The requirements as referred to in paragraph (2) include: a) Having an educational diploma in the health sector; b) Have a Competency Certificate or Professional Certificate; c) Have a physical and mental health certificate; d) Have a statement letter of having taken a professional oath/promise; and e) Make a statement complying with and implementing the provisions of professional ethics.

According to Article 66 Paragraph (1) of Law no. 29 of 2004 concerning Medical Practice explains that a medical dispute is a dispute that occurs because the patient's interests are harmed by the actions of a doctor or doctors who practice medicine (Anesa, Hasnati, & Afrita, 2022).

In a dispute, especially in the civil realm, there are at least two parties, namely the plaintiff who files the lawsuit, and the defendant (Andreas & Ariawan, 2023). The relationship between doctors and patients or the relationship between hospitals and patients is a relationship between legal subjects and legal subjects, so it is regulated by civil law rules. The disputing parties in a medical dispute are disputes that occur between patients and doctors.

Furthermore, according to Nelwitis and Irzal (2023) that the laws and regulations that can be used as the legal basis for the establishment of Special Medical Courts in Indonesia are Pancasila and the 1945 Constitution, in realizing a just and prosperous, safe, state and national order of life (Nelwitis & Rias, 2023). Peaceful and orderly, as well as guaranteeing equal legal standing for members of the public, and must refer to Law Number 29 of 2004 concerning Medical Practice, Law No. 48 of 2009 concerning Judicial Power, Law no. 36 of 2009 concerning Health, Law Number 44 of 2009 concerning Hospitals, Law Number 36 of 2014 concerning Health Workers (Hall et al., 2024).

Next, looking at the Basic Considerations for the Establishment of Special Courts in the Medical Profession in Indonesia, covering 4 (four) aspects, namely: Philosophical, Sociological, Juridical and Psychological Considerations.

First Basic Philosophical Considerations. That the establishment of a special medical court must refer to the Indonesian people's view of life in the nation and state, namely Pancasila and the 1945 Constitution, which must guarantee the realization of a just and prosperous, safe, peaceful and orderly state and national order of life, as well as guaranteeing the position of the same laws for citizens.

Second, basic sociological considerations, that increasing understanding of patient rights cannot avoid the emergence of doctor-doctor medical disputes which require fair resolution with fast, cheap and simple procedures and processes.

Third Basic Juridical Considerations, that from a juridical aspect, the establishment of a special court for medical disputes should not conflict with Article 28D, Article 28 H (paragraph) 1 of the 1945 Constitution, Law Number 29 of 2004 concerning Medical Practice, Law no. 48 of 2009 concerning Judicial Power, Law no. 36 of 2009 concerning Health, Law Number 44 of 2009 concerning Hospitals, Law Number 36 of 2014 concerning Health Workers.

Fourth Basic Psychological Considerations, that looking at the psychological aspect can be seen from the perspective of society, patients and also doctors. Increasing awareness of health and the right to health in society as well as developments in science and technology, this indirectly requires doctors to be able to provide better health services. The rapid development of information also influences news in society. This condition must be addressed by both the doctor and the patient (Walsh-Childers, Braddock, Rabaza, & Schwitzer, 2018). The patient's level of trust in the doctor must always be well maintained by the doctor. There is a need for good and clear communication between doctors and patients, so that in an effort to provide health services in accordance with the complaints suffered by patients. Likewise, understanding the patient's personal health condition also influences healing efforts, because the healing process for an illness is influenced by many factors, one of which is the patient's enthusiasm to recover.

The four aspects explained above are needed in order to provide understanding and increase understanding of patient rights which in daily implementation cannot avoid the emergence of medical disputes between doctors and patients, without ignoring the three standards, namely: Professional Standards, Service Standards, and Standard Operating Procedures which must be the basis, which are fulfilled and become the core in finding the criteria that measure the occurrence of a medical dispute, so that they require in-depth analysis and become a milestone in fair resolution with procedures and processes that are fast, cheap and simple. So as to achieve the fulfillment of the right to health with legal certainty for all components that contribute to the provision of health services, such as doctors, health workers and law enforcement officers in an effort to maintain the right to life and the right to defend life which of course must refer to the worldview The Indonesian people in their nation and state, namely Pancasila and the 1945 Constitution, in realizing a state and national life system that is just and prosperous, safe, peaceful and orderly, as well as guaranteeing equal legal status for citizens, and must refer to the Law. Law Number 29 of 2004 concerning Medical Practice, Law no. 48 of 2009 concerning Judicial Power, Law no. 36 of 2009 concerning Health, Law Number 44 of 2009 concerning Hospitals, Law Number 36 of 2014 concerning Health Workers.

CONCLUSION

Based on the results of the research and discussion that have been described, the laws and regulations that can be used as the legal basis for the establishment of Special Medical Courts in Indonesia are (1) Pancasila and the 1945 Constitution as the philosophical basis, and (2) Article 28D, Article 28 H (paragraph) 1 of the 1945 Constitution, Law Number 29 of 2004 concerning Medical Practice, Law no. 48 of 2009 concerning Judicial Power, Law no. 36 of 2009 concerning Health, Law Number 44 of 2009 concerning Hospitals, Law Number 36 of 2014 concerning Health Workers as jurisdiction.

REFERENCES

- Andreas, Darren, & Ariawan, Ariawan. (2023). Penerapan Teori Keadilan Dalam Putusan Verstek. *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)*, 7(1), 633–639.
- Anesa, Risfa, Hasnati, Hasnati, & Afrita, Indra. (2022). Penyelesaian Sengketa Medis Antara Dokter Gigi Dan Pasien Di Kota Pekanbaru Berdasarkan Undang Undang Nomor 29 Tahun 2004 Tentang Praktek Kedokteran. *Journal of Science and Social Research*, 5(2), 343–351.
- Angelia, Tata. (2023). *The Dispute Settlement Mechanism for Bullying Cases in High School Procedures in Yogyakarta*. Universitas Islam Indonesia.
- Hall, Mark A., Bobinski, Mary Anne, Orentlicher, David, Cohen, I. Glenn, Bagley, Nicholas, & Sawicki, Nadia N. (2024). *Health Care Law and Ethics:[Connected EBook]*. Aspen Publishing.
- Harahap, Reni Agustina. (2022). *Etika dan Hukum Kesehatan: Edisi Revisi*. Merdeka Kreasi Group.
- He, Alex Jingwei, & Qian, Jiwei. (2016). Explaining medical disputes in Chinese public hospitals: the doctor–patient relationship and its implications for health policy reforms. *Health Economics, Policy and Law*, 11(4), 359–378.
- Herman, Herman, Razak, Abdul, & Riza, Marwati. (2020). Gagasan Pengadilan Khusus Dalam Penyelesaian Sengketa Medis Sebagai Upaya Perlindungan Hukum Bagi Tenaga Medis. *Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum*, 7(1), 116–143.
- Jonaedi Efendi, S. H. I., Johnny Ibrahim, S. H., & Se, M. M. (2018). *Metode penelitian hukum: normatif dan empiris*. Prenada Media.
- Kang, Lijun, Ma, Simeng, Chen, Min, Yang, Jun, Wang, Ying, Li, Ruiting, Yao, Lihua, Bai, Hanping, Cai, Zhongxiang, & Yang, Bing Xiang. (2020). Impact on mental health and perceptions of psychological care among medical and nursing staff in Wuhan during the 2019 novel coronavirus disease outbreak: A cross-sectional study. *Brain, Behavior, and Immunity*, 87, 11–17.
- Nelwitis, A., & Rias, A. Irzal. (2023). Dasar Pertimbangan Dibentuknya Pengadilan Khusus Profesi Medis Sebagai Upaya Pembaharuan Hukum Kesehatan Nasional di Indonesia. *Unes Journal of Swara Justisia*, 7(3), 1017–1031.
- Nugraheni, Hermien, Wiyatini, Tri, & Wiradona, Irmanita. (2018). *Kesehatan Masyarakat dalam Determinan Sosial Budaya*. Deepublish.
- Nurhayati, Yati. (2020). *BUKU AJAR “Pengantar Ilmu Hukum.”* Nusa Media.
- Organization, World Health. (2015). *WHO global strategy on people-centred and integrated health services: interim report*. World Health Organization.
- Pisani, Elizabeth, Olivier Kok, Maarten, & Nugroho, Kharisma. (2017). Indonesia’s road to universal health coverage: a political journey. *Health Policy and Planning*, 32(2), 267–276.
- Prasdyantoro, Arief Kresna Wira, & Zamroni, Mohammad. (2023). Establishment of Special Court for Health Service Disputes: Opportunities and Challenges. *Hang Tuah Law Journal*, 14–31.

- Setiaji, Sigit, Isharyanto, Isharyanto, & Sulistiyono, Adi. (2023). The role and position of the Indonesian medical discipline honorary council in the fair resolution of medical disputes. *Proceeding ICTESS (Internasional Conference on Technology, Education and Social Sciences)*, 5(1).
- Sumartini, Ni Wayan Eka, Katjong, Rizky Wisudawan, Lubis, Arief Fahmi, Puspitaningrum, Jayanti, Rahman, Mujibur, Katjong, Revie Kurnia, Jannah, Miftahul, Meinarni, Ni Putu Suci, & Thalib, Emmy Febriani. (2023). *Buku Ajar Pengantar Ilmu Hukum*. PT. Sonpedia Publishing Indonesia.
- Walsh-Childers, Kim, Braddock, Jennifer, Rabaza, Cristina, & Schwitzer, Gary. (2018). One step forward, one step back: changes in news coverage of medical interventions. *Health Communication*, 33(2), 174–187.
- Yuanda, Ayu Christina Wati, Dewilly, Ratih Dara Ayu, & Dijunmansaputra, Pralistyo. (2020). Perlindungan Hukum Terhadap Kesalahan Dalam Penindakan Pelanggaran Lalu Lintas. *ADALAH*, 4(3), 63–72.