



Restorative Justice in Medical Case Resolution for Health and Medical Workers

M. Aris Munandar¹, Syamsuddin Muchtar², Rafika Nurul Hamdani Ramli³.

¹Hasanuddin University, South Sulawesi, Indonesia, m.arismunandar@unhas.ac.id.

²Hasanuddin University, South Sulawesi, Indonesia, syamsuddin.muchtar63@gmail.com.

³Hasanuddin University, South Sulawesi, Indonesia, rafikaramli@unhas.ac.id.

Corresponding Author: m.arismunandar@unhas.ac.id¹

Abstract: This research discusses the application of restorative justice in the settlement of criminal cases in the health sector, especially those involving medical personnel and health workers. The background of this research is the increasing number of cases of alleged medical malpractice that have created a negative stigma against the medical profession. The purpose of this study is to analyze the restorative justice arrangements in Law Number 17 of 2023 concerning Health, as well as assess the urgency of more detailed technical arrangements. This research uses a normative legal research method with a statutory approach. The results show that although Article 306 of the Health Law has opened up space for case settlement through restorative justice, there are no clear indicators regarding the types of criminal offenses that can be resolved with this mechanism. In addition, Government Regulation No. 28 of 2024 has not yet regulated the technical implementation, and there is no clarity on the division of authority between professional organizations and law enforcement officials. The findings of this study emphasize the importance of drafting independent technical regulations so that restorative justice in medical cases can be implemented effectively, fairly, and provide legal protection for all parties involved.

Keyword: Restorative Justice, Health Crimes, Health Workers, Medical Personnel.

INTRODUCTION

Criminal acts in the health sector are one of the issues and problems that are commonplace in public discussions. The number of cases that occur becomes its own paradigm and stigma for the public, even public sentiment sometimes causes reproach for the medical profession and health workers. This can certainly have a negative effect on the medical profession. One of the things that sometimes becomes a polemic is related to the mechanism for resolving medical cases or disputes. Although there have been disciplinary sanctions applied by the relevant parties, namely the Government by forming a panel that carries out tasks in the field of professional discipline.

Based on data from the Indonesian Medical Discipline Honor Council (MKDKI), that in the period 2018 to 2022, there were 182 cases of medical negligence or malpractice that

occurred in Indonesia. These cases have been proven to be committed by doctors after going through the trial process at MKDKI. Of the total cases, 60 cases involved general practitioners, 49 cases involved surgeons, 33 cases involved obstetricians, 16 cases involved pediatricians, and 10 other cases came from various fields.

In addition, based on data from PB IDI, the number of complaints and lawsuits against doctors in Indonesia has increased every year. In 2020, there were 10 lawsuits against doctors, then increased to 30 lawsuits in 2021, and increased again to 38 lawsuits in 2022. Meanwhile, in the first semester of 2018 alone, the number of lawsuits has reached 33 cases.

Referring to the data above, it is certainly a general picture that medical malpractice or medical errors in Indonesia are still rampant. In addition, the development of criminal law and health law is very dynamic in influencing law enforcement against perpetrators of medical errors or medical malpractice. This can be seen with the issuance of Law Number 17 of 2023 concerning Health (Health Law). In the new Health Law there are several novelties, one of which concerns the mechanism for resolving disputes through restorative justice.

Basically, the concept of restorative justice in the settlement of criminal cases in Indonesia is not new, there are already several rules that regulate restorative justice. Among others:.

1. Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice.
2. Regulation of the Police of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice.
3. Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice.

What is unique is the mechanism for resolving cases or disputes through restorative justice for medical personnel and health workers. This is a new thing that exists in the provisions of laws and regulations in Indonesia. However, in regulating it through the Health Law, normatively it is still necessary to conduct further research using interpretation and projection regarding the potential impact that will arise in law enforcement. Moreover, in Government Regulation Number 28 of 2024 concerning Implementing Regulation of Law Number 17 of 2023 concerning Health (PP Implementing the Health Law), it is still not explicitly described *verbis* (clear and clear) regarding the technical implementation of restorative justice.

Basically, restorative justice does have the potential to be applied to criminal acts in the health sector, especially for medical personnel or health workers who have undergone disciplinary sanctions in which there are allegations of criminal acts. As in Article 306 paragraph (3) of the Health Law, it is explained that: "Medical Personnel or Health Workers who have carried out disciplinary sanctions as referred to in paragraph (1) where there is an allegation of a criminal act, law enforcement officials prioritize the resolution of disputes with restorative justice mechanisms in accordance with the provisions of laws and regulations." The article emphasizes that if a medical worker or health worker has undergone disciplinary (Yusri Lisangan, Ruslan Renggong, dan Baso Mading, 2024) sanctions related to the offense he committed, but there is still an allegation of a criminal act in the case, then law enforcement officials are expected to prioritize settlement through the restorative justice mechanism.

The problem is that there is no further explanation as to in what cases restorative justice can be applied as a mechanism for resolving medical disputes. So there is a legal vacuum and it is necessary to study more deeply normatively about case indicators that can be applied for settlement through the mechanism for resolving medical cases. In addition, in the principle of criminal law, it is said that the law must be clear and clear because it has the potential to have multiple interpretations. It is also necessary to provide certainty on the indicators of cases or violations of medical personnel and health workers that can be applied for settlement through restorative justice mechanisms.

Based on the description above, it is very important to conduct research related to the settlement of cases or disputes through restorative justice for medical personnel and health workers for suspected criminal acts. This research also aims to support the achievement of the 16th Sustainable Development Goals (SDGs), which are to create a peaceful and inclusive society in sustainable development, ensure access to justice for all, and build effective, transparent, and inclusive institutions at all levels (*Peace, Justice, and Strong Institutions*).

METHOD

The method used in this paper is normative legal research, as stated by Peter Mahmud Marzuki. This approach is categorized as normative legal research because it focuses on the analysis of laws and regulations and applicable legal norms. Legal research, or *rechtszoekend onderzoek*, is a systematic process of tracing and studying legal rules, principles, and legal doctrines in order to find answers to the legal problems being studied.

The approach applied in this study is the statute approach. Using this method, the researcher comprehensively examines the laws and regulations related to the legal issues raised. In addition, this research also aims to uncover the philosophical and ontological basis that is the basis for the formation of certain laws, including exploring the ratio legis behind it.

RESULTS AND DISCUSSION

Restorative Justice as an Alternative to Medical Case Resolution.

Medical personnel are everyone who devotes themselves to the health sector and has a professional attitude, knowledge, and skills obtained through medical or dental professional education, where in the implementation of their duties requires special authority to carry out health efforts.

Meanwhile, Health Workers are any person who also devotes themselves to the health sector with a professional attitude, knowledge, and skills acquired through higher education, which in certain types also require special authority in carrying out health efforts (Vide: Article 1 numbers (6) and (7) of Law Number 17 of 2023 concerning Health/Health Law). Because of the high professional responsibilities and risks, in the event of alleged violations of the law, it is important to apply a restorative justice approach to ensure proportionate legal protection for them.

Restorative justice is one of the concepts of justice that is concretized through provisions or regulations in Indonesia. As is known, justice is part of the purpose of the law. So justice should be an abstraction from the purpose of the law. However, along with the development of (Peter Mahmud Marzuki, 2010), (Peter Mahmud Marzuki, 2017), science, restorative justice began to be used as one of the inseparable parts of the criminal justice system in Indonesia.

Suratman, in his journal, argued that the concept of restorative justice is a new model of approach to criminal case resolution that is different from the conventional criminal justice system. This approach emphasizes the active involvement of perpetrators, victims, and community elements directly in the case settlement process. Because the role of state institutions in this mechanism is minimal or even non-existent, restorative justice is often referred to as a "non-state justice system." Thus, restorative justice as proposed by Suratman, affirms a new paradigm in handling criminal cases that focuses on the participation of perpetrators, victims, and the community, while minimizing the role of state institutions in the resolution mechanism.

Restorative justice as a mechanism for resolving cases outside the judicial process, is a new breakthrough in the Indonesian legal system. Not only for criminal acts in general (conventional), but also for criminal cases involving medical personnel and health workers. As is known, a criminal act should go through a careful examination to collect valid evidence. This is so that all forms of mistakes can be proven by applying the principles of criminal law. Because, the context of proof in criminal law must prioritize legitimate evidence. However, in

the realm of criminal acts involving medical personnel and health workers, it has its own characteristics (*sui generis*) to prove the criminal act.

In the realm of health crimes, not all losses, whether injuries, disabilities, or deaths, come from medical negligence as the basis for doctors' errors. On the contrary, many of these incidents are inherent medical risks. Medical negligence occurs when doctors are considered to be less careful or less careful in carrying out their practice so that it causes adverse consequences. Meanwhile, incidents that arise solely due to medical risks can still occur even though doctors have worked with great care according to applicable service standards. If the patient's loss, injury, disability, or death is caused by medical risk alone, the doctor has the right to be exempt from all lawsuits as a form of legal protection in carrying out his profession.

In short, in health crimes, the losses or negative impacts that arise are not always due to the negligence of the doctor, but are often an unavoidable medical risk. If the patient's loss is caused solely by medical risk rather than negligence, the physician is entitled to be exempt from lawsuits.

So far, the settlement of medical cases still uses the conventional settlement system through the criminal justice system involving law enforcement officials such as the Police, Prosecutors, and Judges. Starting from the stage of investigation, investigation, prosecution to verdict. The birth of Law Number 17 of 2023 concerning Health (Health Law) provides a new face in the criminal system for suspected perpetrators of criminal acts involving medical personnel and health workers.

Based on Article 306 of the Health Law, violations of discipline of medical personnel or health workers as referred to in Article 304 paragraph (3) will be subject to disciplinary sanctions. The sanctions can be in the form of written warnings; the obligation to participate in education or training programs at competent health institutions or teaching hospitals; deactivation of the Registration Certificate (STR) for a certain period of time; and/or recommendation for the revocation of the Practice License (SIP).

The decision to impose this sanction is final and binding for the affected party. Furthermore, if in the process of examining (Suratman, 2025), (Aquino CMD Santos and Hudi Yusuf, 2024) sanctions an alleged criminal act is found, law enforcement officials are required to prioritize settlement through restorative justice mechanisms in accordance with the provisions of laws and regulations. In conclusion, Article 306 affirms the health system's commitment to uphold professional discipline while providing space for restorative conflict resolution when there is a suspected criminal element. So that law enforcement runs a balance between community protection, sanctioning, and restoring relations between related parties.

Legal Protection of Medical and Health Workers Through Restorative Justice.

The presence of restorative justice in the renewal of health law through Law Number 17 of 2023 concerning Health (Health Law) is very vital and provides legal protection for medical and health workers. Moreover, medical personnel and health workers have an important role in providing safety for patients. So that trust in doctors as medical personnel is basically a burden for the doctor himself. In order to provide health services in accordance with human rights principles.

The constitutional basis in the provision of health services through hospitals is based on Article 28H of the 1945 Constitution of the Republic of Indonesia (Constitution of the Republic of Indonesia), namely "everyone has the right to live a prosperous life in birth and mind, to live, and to have a good and healthy living environment and the right to receive health services." Then it is strengthened through the principles in health law, namely the right to health care and the right to medical care .

According to J. Guwandi, the basic principles of medical and health law are built on two fundamental rights: first, the right to health care; second, the right of individuals to regulate and choose their own destiny. Based on these two rights, every individual (patient/client) in

obtaining health services must always refer to that right. The human rights that have been mentioned are rights that must be respected and upheld by all health workers without exception.

In order for this right to be fulfilled, a medical personnel such as a doctor are obliged to provide ideal and proportionate health services. As well as preventing malpractice or medical errors that are contrary to the law. According to Leenen, quoted by S. Soetrisno, a medical procedure is materially considered legally valid (*ontbreken van de materiele wederrechtelijkheid*) if it meets the following criteria:

- a) *de handeling is medisch geïndiceerd met het oog op een concrete behandelingsdoel*; (The action has a medical indication/indication based on a specific medical action/treatment objective)
- b) *de handeling wordt volgens de regeling van de kunst uitgevoerd*; (The action is carried out in accordance with the provisions of the treatment therapy)
- c) *de handeling wordt met toestemming van de betrokkene uitgevoerd*; (The action is carried out with the consent/permission of the person concerned/patient).

Based on the jurisprudence of the Supreme Court of the Republic of Indonesia, *materiele wederrechtelijkheid* is formally eliminated when a medical action is supported by the legitimate professional authority of the doctor.

For example, surgical procedures performed by doctors in accordance with the provisions of the law regarding their rights and authorities in applying professional expertise and skills (*professionele zorgvuldigheid*) are considered as the legal basis (Andi Muhammad Sofyan and M. Aris Munandar, 2021), (J. Guwandi, t.th), (S. Soetrisno, 2010), that justifies such actions.

Thus, the authority of this profession becomes an unwritten juridical exception (*medisch exceptie*), so that the medical act is not classified as an unlawful act. According to Adami Chazawi, as quoted in the book Ari Yunanto and Helmi, a medical malpractice can only be qualified as a criminal act if it meets three main criteria, namely: the doctor's mental condition (*mens rea*), the technical aspects in the implementation of medical measures, and the causality relationship to the consequences that arise. In line with that, the Executive Board of the Indonesian Doctors Association (PB IDI) emphasized that every medical procedure has significant potential risks.

Therefore, the doctor is obliged to obtain written consent from the patient after the patient has received a comprehensive explanation of the urgency of the action and its potential risks as part of the principle of informed consent.

Herkutanto argues that medical risk, also known as an untoward result, is the impact of injury or danger that arises as a result of medical action, but occurs due to unpredictable factors and not due to negligence or lack of knowledge of medical personnel. In the context of medical law, this kind of condition cannot be used as a basis for asking for accountability. That is, if a medical risk arises, both predictable and unpredictable. Doctors or medical teams cannot be held criminally liable for the incident.

Thus, the presence of restorative justice in health law is an important bridge to balance legal protection for medical personnel and the fulfillment of patients' human rights, thereby encouraging the creation of safe, humane, and equitable health services for all parties.

However, the author has summarized some of the shortcomings of the new Health Law, including:

1. There are no indicators of what criminal acts can be applied to resolve cases through restorative justice when medical disputes occur;
2. The implementing regulations of the Health Law, in this case Government Regulation (PP) Number 28 of 2024 concerning the Implementation Regulation of Law Number 17 of 2023 concerning Health, do not regulate in detail the technical implementation of restorative justice for medical personnel and health workers;

3. It has the potential to cause disharmonization of authority between professional organizations and law enforcement officials regarding who has the right to carry out restorative justice.

Based on the above problems, the solutions offered by the author include:

1. It is necessary to make more technical regulations regulating the types of criminal acts that can be applied to the settlement of medical cases based on restorative justice;
2. There must be regulations that regulate the division of authority between professional organizations and law enforcement officials in the settlement of medical cases;
3. The settlement of medical cases through restorative justice requires separate regulations that are not directly linked to the sectoral regulations regulated by each law enforcement institution that have been implemented.

In conclusion, the implementation of restorative justice in the settlement of medical cases as regulated in the Health Law still faces several important challenges. Among them are the absence of clear indicators regarding the types of medical cases that can be resolved through (Adami Chazawi, 2007), (Herkutanto, 2008) this approach, the lack of technical details of implementation in Government Regulation Number 28 of 2024, and the risk of disharmonization of authority between professional organizations and law enforcement officials.

Therefore, there is a need for special regulations that regulate in detail the scope of medical cases that are suitable for restorative resolution, a clear division of authority between professional organizations and law enforcement officials, and implementation procedures that are independent and not bound by other sectoral rules. These regulations are very important to create legal certainty while protecting the rights of patients and medical personnel in a balanced and optimal manner.

CONCLUSION

The presence of the concept of restorative justice as an alternative to resolving medical cases as stipulated in Law Number 17 of 2023 concerning Health is an important step in updating the health legal system in Indonesia. The implementation of restorative justice provides legal protection guarantees to medical and health workers who face legal risks in carrying out their profession. The study found that not all adverse events for patients, such as injury, disability, or death, are always caused by medical negligence. On the contrary, some of them are unavoidable medical risks, which cannot be imposed on doctors criminal liability if they have acted in accordance with the standards of medical service.

However, the implementation of restorative justice in the medical field still faces serious challenges, such as the lack of clear indicators of what types of medical cases can be resolved restoratively, the lack of technical regulations regarding its implementation procedures in Government Regulation (PP) Number 28 of 2024, and the potential for disharmony of authority between professional organizations and law enforcement officials related to the authorities who are authorized to implement the mechanism. Therefore, this study suggests that special regulations be immediately created that explicitly regulate the types of medical cases that are suitable for resolution through restorative justice mechanisms, clear division of authority between professional organizations and law enforcement officials, and implementation procedures that are independent, detailed, and not directly tied to sectoral rules from other law enforcement agencies.

With this special regulation, it is hoped that the settlement of medical cases can be carried out fairly, humanely, and effectively. In addition, this regulatory update also contributes to improving the quality of health services, protecting patients' human rights, and providing legal certainty for medical personnel and health workers in carrying out their profession. More broadly, the application of restorative justice in the health sector can be a reference for the development of health law in Indonesia, while strengthening the position of medical personnel

as legal subjects who are entitled to balanced protection from legal risks in their professional practice The author would like to thank all parties who have provided support in the preparation of this article. In particular, the author expressed his appreciation to Hasanuddin University for the funding support through the Unhas Beginner Lecturer Research (PDPU) funding mechanism with Contract Number: 01260/UN4.22/PT.01.03/2025.

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