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THE LEGAL RENEWAL OF MALPRACTICES BY MEDICAL PERSONNEL BASED ON RESTORATIVE JUSTICE

Asep Hendradiana

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: aseph@unissula.ac.id

Gunarto

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: gunarto@unissula.ac.id

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ABSTRACT

The purpose of this research is to analyze and find regulations for handling suspected malpractice by medical personnel based on restorative justice. The research method uses empirical juridical; The results of the research indicate that the legal reform of malpractice carried out by medical personnel based on restorative justice is currently not in accordance with Restorative Justice, the current regulation of handling alleged malpractice by medical personnel lies in the substance of the law, namely the absence of nomenclature and rules for handling suspected malpractice by medical personnel in positive law. Indonesia. a legal structure that is still limited in its understanding and understanding by law enforcement officials. health law is not yet in accordance with the provisions of the health law, the legal culture of medical personnel whose legal understanding and awareness of health law is still not high, so that a just legal life in accordance with restorative justice has not been created. The value of justice in handling suspected malpractice provides balanced protection between medical personnel and patients, namely by providing services with noble and superior morals. health services, without stigma towards health workers and are fair and professional.

1. Introduction

The Article 28 letter D of the Constitution of the Republic of Indonesia in 1945 mandates that everyone has the right to recognition, guarantee, protection, and fair legal certainty as well as equal treatment before the law.¹ According to Article 1 point 3 of the National Police Regulation of the Republic of Indonesia Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, what is meant by rhetorical justice is the resolution of criminal acts by involving perpetrators, victims, perpetrators' families, victims' families, community leaders, religious leaders, traditional leaders or

1 Simon Butt., Constitutional Recognition Of "Beliefs" In Indonesia, *Journal of Law and Religion*, Vol.35 Issue.3, December 2020, page.450 - 473

stakeholders to jointly seek a just solution through peace by emphasizing restoration to its original state.²

Law is all rules containing moral considerations aimed at human behavior in society which serve as guidelines for state authorities in carrying out their duties. Law is also defined as a collection of regulations (commands and prohibitions) that regulate the order of a society and therefore must be obeyed by that society.³ According to the formal juridical school, the aim of law is to create legal certainty. According to Gustav Radbruch, the purpose of this law is to achieve justice, create benefits and create certainty. Certainty is aimed at protecting the interests of each individual so that they know what actions are permitted and conversely which actions are prohibited, so that they are protected from government arbitrariness. Legal utility means that the law was created for true benefit, namely the happiness of the majority of the people. Meanwhile, justice means that a law must be fair, the image of law is nothing other than justice.⁴

Medical malpractice is the wrongful conduct of a medical professional resulting in the loss of a patient, or the negligence of a physician to use the level of skill and science by the usual measures of others in treating a patient of standard standards in the same environment⁵. It is said that a profession's negligence is definitely no element of intentionality, because if there is an element of intentionality, it is not a classification of malpractice anymore but a classification of persecution, murder and the like against patients⁶.

Malpractice is a health service that disappoints patients due to the doctor's lack of success or inability to achieve healing health for the patient.⁷ When a doctor carries out an action, he or she must be responsible as a legal subject who bears rights and obligations. Legal responsibilities arising in connection with the implementation of the medical profession can be differentiated between; responsibility for the professional provisions contained in the Decree of the Minister of Health Number 434 of 1983 concerning KODEKI and; responsibility

2 Seow Hon Tan., Radbruch's Formula Revisited: The Lex Injusta Non Est Lex Maxim in Constitutional Democracies, *Canadian Journal of Law & Jurisprudence*, Vol.34 Issue.2, August 2021, page.461 - 491

3 Teguh Prasetyo., *Penelitian Hukum, Suatu Perspektif Teori Keadilan Bermartabat*, Bandung, Nusa Media, 2019, page.8

4 Ida Bagus Gede Putra Agung Dhikshita., *Manifestasi Teori Tujuan Hukum Gustav Radbruch dan Mashab Positivisme di Indonesia*, 2021, <https://advokatkonstitusi.com/manifestasi-teori-tujuan-hukum-gustav-radbruch-dan-mashab-positivisme-di-indonesia/>

5 Mudakir Iskandar Syah., *Medical Malaprakti Lawsuit*, Jakarta, Bahana Ilmu Populer, 2019, page.1-2

6 Ong Argo Victoria & Myska., Doctor's Contributions in Transportation Monitoring During COVID-19 Pandemic, *KnE Social Sciences*, Dubai-Uni Emirates Arab (UEA), Vol.5 No.1, 2021, page.598-618, see to Ong Argo Victoria., Thaan Neet Bunprakop, Legal Protection For Doctor And Medical Staff In The Pandemic Period of COVID-19 (An Overview of Indonesia from International Perspective), *Jurnal Pembaharuan Hukum*, Vol.7 No.1, 2020

7 Muhamad Azhar, Utik Handayani., Perlindungan Hukum Terhadap Korban Malpraktik Layanan Kesehatan Berbasis Telemedicine, *Law, Development & Justice Review*, Vol.6 No.1, 2023, page.51-65

for the legal provisions contained in the Law, namely the Criminal Code (KUHP) and its procedural law (KUHAP), the Civil Code, the Consumer Protection Law and its procedural law, the Law No. 23 of 1992 concerning Health, and Law No. 29 of 2004 concerning Medical Practice.⁸

In relation to the legal responsibilities of doctors in the field of civil law, there are 2 main forms of responsibility, namely; liability for losses caused by non-performance; and liability for losses caused by unlawful acts. Lawsuits related to performance defaults usually take the form of compensation claims against doctors who are deemed to have committed acts that are detrimental to patients. In this lawsuit for default, the patient must have proof of losses as a result of the doctor not fulfilling his obligations towards him as promised by the doctor.⁹

Currently, the regulations for handling suspected malpractice acts of medical personnel have not been clearly regulated in the laws and regulations. It is still common for a medical worker when committing an act that is suspected of being malpractice, treated like a person who commits a criminal act. Even though it will not be possible for a medical worker in carrying out his professional duties to provide health services has the intention to injure, injure, mistreat or even kill.¹⁰

The incident that is currently being widely discussed is the case of the death of a 7 year old child named A after a tonsillectomy at a hospital in Bekasi. The tonsillectomy was carried out on Tuesday 19 September 2023. Victim A underwent surgery at the same time as her brother, victim A underwent surgery first, then her brother underwent surgery. However, after the operation was finished, victim A did not immediately regain consciousness, even until the third day victim A was not conscious. At that time, the hospital said that Victim A had experienced brain stem death. After being unconscious for 13 days, victim A was finally declared dead on Monday 2 October 2023. Due to this incident, the family reported this incident to the police due to alleged malpractice related to Law No. 8 of 1999 concerning Consumer Protection Article 62 paragraph (1) in conjunction with Article 8 paragraph (10) and/or Article 360 of the Criminal Code and/or Article 361 of the Criminal Code and/or Article 438 and/or Article 440 paragraph (1) and (2) of Law No. 17 of 2023 concerning Health.

Research conducted by Arnoldus Thomas L Djogo with the title Penal Mediation as an Effort to Resolve Malpractice Cases in the Medical Field. Forms of penal mediation in the criminal justice process from its existence influence between "being" and "not being". In terms of "being" because of practice more specific penal mediation in malpractice cases in the field Medicine has been carried out by law enforcers, namely the police, doctors and others patients and their

8 Anny Isfandyarie., *Tanggung Jawab Hukum dan sanksi bagi Dokter*, Jakarta, Prestasi Pustaka, 2006, page.2-3

9 *Ibid*, page. 8-10

10 E. Kursumovic., Deaths in Healthcare Workers due to COVID-19: The Need For Robust Data And Analysis, *National Library of Medicine*, Vol.75 No.8, Aug 2020, page. 989-992

families and the solution can be said to be done outside courts as well as health institutions carry out procedures, well through the directors of the hospital concerned or from the profession medicine that uses family deliberation and reaching out consensus. Meanwhile, in terms of "nothing" it is because it is in resolution unknown laws in the criminal justice system exist penal mediation, but in a hierarchy under known law specifically by exercising law enforcement discretion damn.¹¹

Research conducted by Lalu Riyana Doddy Setiawan with the title Expansion of Hospital Legal Responsibility for Negligence in Health Human Resources. Previously, the hospital was only responsible for health workers' negligence, but now it is responsible for health human resources (HRK) like health workers. The hospital's legal responsibility now includes criminal, civil, and administrative responsibility as well as corporate liability so it can act as a substitute legal subject for a legal liability. The factors that cause negligence of health human resources, such as not paying attention to standards, measures, and institutionally hospitals as legal entities do not carry out hospital obligations in the Health Law, are closely related to law enforcement and the effectiveness of existing rules. Substance, structure, and legal culture factors can also affect hospital health services. Article 308 of the Health Law regulates efforts to prevent and resolve acts of negligence, including the use of criminal law through prevention without crime by prioritizing other legal remedies (*ultimum remedium*), the Police, Prosecutors, and Courts, restorative justice, and procedural criminal law relating to hospitals as legal entities.¹²

The aim of this research is to analyze and find current regulations for handling suspected malpractice by medical personnel based on restorative justice; Analyzing and finding weaknesses in regulations for handling alleged malpractice by medical personnel currently viewed from restorative justice-based justice; Finding a Reconstruction of Regulations for Handling Alleged Malpractice by Medical Personnel Based on Restorative Justice.

2. Research Methods

Legal research is basically a process of discovering legal rules, legal principles and legal doctrines in order to answer the legal issues faced. One of the types of legal research referred to is empirical legal research.¹³ The empirical legal research method is a legal research method that functions to see the law in real terms and examine how the law works in society.¹⁴ Because this research examines people in their living relationships in society, the empirical legal research method can be said to be sociological legal research. It can be said

11 Arnoldus Thomas L Djogo., Penal Mediation as an Effort to Settle Malpractice Cases in the Medical Field, *Mandalika Law Journal*, Vol.1, No.2,2023, page. 54-60

12 Setiawan., L. R. D. Expansion of Hospital Legal Responsibility for Negligence in Health Human Resources, *Delicta Law Review*, Vol.1 No.1, 2024, page.11-28

13 Soetrisno Hadi, *Metodologi Riset*, Yogyakarta, Pustaka Pelajar, 2015, page. 21

14 Guba, E. G., & Lincoln., *Competing paradigms in qualitative research*. In N. K. Denzin & Y. S. Lincoln (Eds.), *The Handbook Ofqualitative Research*, 1994, page.105-117.

that legal research is taken from facts that exist in a society, legal entity or government agency.¹⁵

3. Results and Discussion

3.1. Regulations For Handling Alleged Malpractice by Medical Personnel Currently are not Show Restorative Justice

In Article 1365 it is mandated that, *“Every act that violates the law and causes harm to another person, requires the person who caused the loss through his fault to compensate for the loss”*. Meanwhile, Article 1366 states that, *“Every person is responsible, not only for losses caused by actions, but also for losses caused by negligence or recklessness”*.¹⁶

According to article 1370, it is mandated that, in the event of deliberate murder or the death of a person due to the carelessness of another person, the husband or wife left behind, the child or parent of the victim who usually earns a living and the victim's job, has the right to claim compensation which must be assessed according to position and wealth of both parties. Meanwhile, Article 1371 mandates that, *“Causing injury or disability to a person's body parts intentionally or through carelessness, gives the victim the right, apart from demanding compensation for medical costs, to also demand compensation for losses caused by the injury or disability”*. Also, compensation for losses is assessed according to the position and abilities of both parties and according to the circumstances. This last provision generally applies in terms of assessing the losses caused by a crime to a person's person.

Regulations for handling alleged acts of malpractice committed by medical personnel in Indonesia are still very diverse, meaning that there is still no unified view of either the patient and/or victim's family, medical personnel and/or family of medical personnel, legal enforcement officials, in this case the Indonesian National Police and Prosecutor's Office, up to judges at the Supreme Court level. This causes the handling of alleged acts of malpractice committed by medical personnel to be difficult to enforce legally, which causes the sense of justice in society to be difficult to achieve and the benefits of the law will not be felt by people seeking justice.¹⁷

For this reason, it is time for a regulation to be created that allows for firm and indiscriminate law enforcement,¹⁸ as well as providing a sense of justice to the community so that the community gets a true sense of justice, both the community in the sense of patients and their families who are victims of malpractice acts committed by staff. medical personnel, as well as medical

15 Matthew Dahl., Large Legal Fictions: Profiling Legal Hallucinations in Large Language Models, *Journal of Legal Analysis*, Vol.16 Issue.1, 2024, page. 64-93

16 Khairul Saleh Amin., *Perkembangan Sistem Peradilan Pidana di Indonesia*, Jakarta, Pamator Press, 2010, page. 90.

17 Farah Purwaningrum., Medical Liability in Indonesia: Overview and Regulatory Trends, *Springer Link*, Vol.94, Nov 2021, page. 83-96

18 R. Daniel Kelemen, Tommaso Pavone., Where Have the Guardians Gone? Law Enforcement and the Politics of Supranational Forbearance in the European Union, *World Politic Johns Hopkins University Press*, Vol.75 No.4, October 2023, page.779-825

personnel and their families as professionals who are carrying out their professional work. So that the enactment of the law can be felt by those seeking justice in Indonesia.

3.2. Weaknesses of The Regulation of Alleged Malpractice by Medical Personnel Currently from A Justice based on Restorative Justice

3.2.1 Weakness of Legal Substance

There is no concrete substance in the regulations for handling alleged acts of malpractice in positive law which is still in force in Indonesia. Nomenclature regarding Malpractice has not been found in the positive legal provisions currently in force in Indonesia. This certainly has a big influence on the success of the law enforcement process in cases of malpractice in Indonesia. If it is enforced, there will certainly be an injury to society's sense of justice, whether it is the sense of justice of society from the victims of alleged malpractice and their families or the sense of justice of society from medical personnel or health workers and their families.¹⁹

The lack of regulatory legal substance for handling alleged malpractice committed by medical personnel in the positive law currently in force in Indonesia is a very clear weakness and quite worrying, because handling alleged malpractice acts committed by medical personnel will not be optimally successful. Thus, it can be said that the regulations for handling alleged acts of malpractice committed by medical personnel have so far not been in accordance with justice based on restorative justice.

3.2.2 Weaknesses of Legal Structure

The legal structure in Indonesia based on Law No. 8 of 1981 includes; Police, Prosecutor's Office, Court and Criminal Execution Agency²⁰. The authority of law enforcement agencies is guaranteed by law, so that in carrying out their duties and responsibilities they are free from the influence of government power and other influences. The law cannot operate or be upheld if there are no credible, competent and independent law enforcement officials. How good are laws and regulations if they are not supported by good law enforcement officials then justice is just a dream. The weak mentality of law enforcement officers results in law enforcement not running as it should.²¹

The investigators and investigators of the Indonesian National Police at the Polrestabes / Polresta and Polres on average are high school graduates who later became police officers at the State Police School. They have never

19 Jean Calvin Simanjuntak., *Restorative justice Metamorfosa Kearifan Lokal Indonesia*, Rajawali Pers, Depok, 2023, page. 16

20 Supardi Hamid, I Gusti Kade Budhi Harryarsana, Adhi Iman Sulaiman, Jufryanto Puluhaulawa., *Reconstruction Of Authority Attorney General In Disclaimer Of Case For The Sake Of The Public Interest In The Criminal Justice System In Indonesia*, *Russian Law Journal*, Vol.11 No. 2, 2023, page. 394-408

21 Sutarno., *Hukum Kesehatan, Euthanasia, Keadilan dan Hukum Positif Indonesia*, Malang, Setara Press, 2014, page.136

received learning about Health Law. So that their way of thinking and acting is in line with what they have learned, namely in line with the provisions in the Criminal Code and the Civil Code.

This of course has an impact on the personality and character of the investigators and investigators of the Indonesian National Police, which is greatly influenced by the provisions in the Criminal Code and the Civil Code. The character that is formed will certainly be closer to the spirit of the Criminal Code and the Civil Code.²² where their way of thinking and acting will be more colored by their way of thinking and acting on how to treat people as lawbreakers or criminals.

Individual law enforcement officers as a legal structure who are not equipped with complete knowledge²³ and understanding of health law will certainly not be able to understand, let alone interpret, what is or is contained in health law. They will not be able to place or treat appropriately a medical personnel suspected of committing malpractice as a medical personnel carrying out their professional work. They will treat these medical personnel like law violators or criminals as stipulated in the provisions of the Criminal Code and Civil Code. This will certainly result in the handling of suspected malpractice by medical personnel not being able to be successful. This is certainly a weakness in handling allegations of malpractice committed by medical personnel. So it can be said that the current handling of alleged acts of malpractice by medical personnel is not in accordance with justice based on restorative justice.

3.2.3 Weaknesses of Legal Culture

Legal culture is human attitudes towards the law and the legal system, their beliefs, values, thoughts and hopes.²⁴ Legal culture is the atmosphere of social thought and social forces that determine how the law is used, avoided, or misused. Legal culture is closely related to society's legal awareness. The higher the public's legal awareness, the better legal culture will be created and can change people's mindset regarding the law.

This can be seen in the handling of alleged malpractice acts carried out by medical personnel so far. We still often hear and see that quite a few medical personnel or healthcare workers are treated as law violators or criminals, although it is not yet known whether medical personnel or health workers commit violations of the law while carrying out their professional work providing health services to the community.

22 Tody Sasmitha Jiwa Utama., Between adat law and living law: an illusion of customary law incorporation into Indonesia penal system, *The Journal of Legal Pluralism and Unofficial Law* Vol.53 Issue.2, 2021, page.269-289

23 Gustavo A. Flores-Macías., The Militarization of Law Enforcement: Evidence from Latin America, *Cambridge University Press*: 27 December 2019, Vol.19 Issue.2, June 2021, page. 519 - 538

24 Lawrence M Friedman, Harry N Scheiber., *Legal Culture And The Legal Profession*, New York, Routledge, 1996, page.5

Such legal cultural conditions will certainly greatly influence the success of law enforcement in Indonesia,²⁵ especially in cases of alleged malpractice committed by medical personnel. If the legal culture is not good then law enforcement will also not be able to run optimally. This is certainly a weakness in handling allegations of malpractice committed by medical personnel.

3.3. Reconstruction of Regulations on Alleged Malpractice by Medical Personnel Based on Restorative Justice

Medical malpractice is not a legal formulation regulated in law but rather a collection of behavior that can occur due to a deliberate action (intentional), an act of negligence or an unreasonable lack of skill/incompetence (professional misconduct).²⁶ According to Article 1 paragraph (1) of the Criminal Code: "No act can be criminalized, except by the strength of criminal regulations in existing legislation, before the act is committed." This is known as the principle of legality, namely the principle that determines that no action is prohibited and punishable by crime if it is not previously determined in law. In Latin, it is known as *Nullum delictum nulla poena sine praevia lege poenalli* which means more or less no offense, no crime without prior regulations. Simply put, this principle states that you will not be punished if there are no regulations.²⁷

Nomenclature regarding Malpractice has so far not been included in the positive legal provisions in force in Indonesia, no one has explained in detail what malpractice is and what the regulations are for handling suspected malpractice acts committed by medical personnel. The closest explanation regarding malpractice is only in Article 11 paragraph (1) letter b of Law No.: 6 of 1963 concerning Health Workers and that Law is no longer valid.

Restorative justice is the resolution of cases outside formal court, is the resolution of criminal acts by involving the perpetrator,²⁸ victim, victim's family, community leaders, religious leaders, traditional leaders or stakeholders to jointly seek a fair resolution through peace by emphasizing restoration of the situation. beginning.²⁹

As a mandate that has been written in existing laws and regulations and looks at the conditions and dynamics that are developing in Indonesian society. So the author considers it necessary to reconstruct/update several articles in Law

25 Derita Prapti Rahayu., Law Enforcement in the Context of Legal Culture in Society, *Law Reform*, Vol.16 No.2, Sep. 2020, page.276-289

26 Sulistyanta, Riska Andi Fitriano, Hartiwiningsih, R Ginting, Winarno Budyatmojo, Subekti, Budi Setyanto, Dian Esti Pratiwi., Restorative Justice Sebagai Alternatif Penyelesaian "Win-Win" Kasus Resiko Atau Kekeliruan Medis (Medical Malpractice), *Lex Librum: Jurnal Ilmu Hukum*, Vol.7 No.2 Juni 2021, page.229-242

27 Maximo Langer., Penal Abolitionism and Criminal Law Minimalism: Here and There, Now and Then, *Hein Online*, Harv. L. Rev. F. 42, 2020-2021, page. 42

28 Nurul Putri Awaliah Nasution., The Concept of Restorative Justice in Handling Crimes in the Criminal Justice System, *EJ Politic, European Journal of Law and Political Sciences*, Vol.1 No.5 2022, page.52

29 Sana Akhter, Fatima Mahr, Anoosha Imtiaz., Exploring Restorative Justice: An Alternate Dispute Resolution Mechanism in Islamic Law and Customary Law, *Journal of Law & Social Studies (JLSS)*, Vol. 5 Issue.4, page. 625-636

No. 17 of 2023 concerning Health, including: Reconstruction of Article 310 of Law no. 17 of 2023 concerning Health, before reconstruction. In the event that medical personnel or health workers are suspected of making mistakes in carrying out their profession which causes harm to patients, disputes arising as a result of these mistakes are resolved first through alternative dispute resolution outside of court. Weaknesses: In Article 310 before reconstruction In the event that medical personnel or health workers are suspected of having made a mistake in carrying out their profession which causes harm to the patient, the dispute that arises as a result of the mistake is resolved first through alternative dispute resolution outside of court. Procedures or methods for how to resolve disputes outside of court are not included here. it was implemented. So reconstruction is needed, to provide legal certainty as to how settlements outside of court are carried out. so that there are no different interpretations in implementing out-of-court settlements for handling alleged malpractice.

The author recommends reconstructing the regulations so that they become (1). In the event that medical personnel or health workers are suspected of committing acts or omissions in carrying out their profession that cause harm to patients, disputes arising as a result of such acts or omissions are resolved first through alternative dispute resolution outside of court. (2). In the case of medical personnel or health workers who are suspected of committing acts or omissions in the implementation of health services which may be subject to criminal sanctions, after first requesting a recommendation from the assembly as intended in Article 308, law enforcement officials prioritize resolving disputes using a restorative justice mechanism in accordance with the provisions of regulations. legislation. (3). In the case of medical personnel and health workers who are held accountable for the implementation of health services that cause civil harm to patients, after requesting a recommendation from the assembly as intended in Article 308, law enforcement officials prioritize resolving disputes using restorative justice mechanisms in accordance with the provisions of statutory regulations. (4). Dispute resolution using restorative justice mechanisms as intended in paragraph (2) and paragraph (3), is carried out by taking into account: (a). The interests of victims and other protected legal interests (b). Avoidance of negative stigma (c). Avoidance of retaliation (d). Community response and harmony (e). Decency, decency and public order (5). Dispute resolution using restorative justice mechanisms as intended in paragraph (2) and paragraph (3), is carried out by: (a). At the investigation level, it is handled by assistant investigators and/or investigators who have health legal competence if d (b). At the investigative level, it is handled by assistant investigators and/or investigators who have health legal competence (6). Dispute resolution using the restorative justice mechanism as intended in paragraph (2) and paragraph (3), is carried out in the following manner: (a). return items obtained from the victim (b). compensate victims' losses; (c). reimburse costs arising from the actions of medical personnel and/or health workers; and/or (d). repair damage resulting from the actions of medical

personnel and/or health workers (e). there is a peace agreement between the victim and medical personnel and/or health workers.

In Article 1, it is mandated about the meaning of the terms or nomenclature in Law No. 17 of 2023 concerning Health. In Chapter I Article 1, according to the author, it is necessary to add nomenclature regarding Malpractice. This nomenclature regarding Malpractice is placed at number 42 after the Village Government nomenclature. So Article 1 number 42 reads: Malpractice is any action or negligence committed by medical personnel and/or health workers while treating patients that deviates from accepted practice norms in the medical and/or health community and causes injury to the patient.

4. Conclusion

The legal reform of malpractice carried out by medical personnel based on restorative justice in the Regulations for Handling Alleged Malpractice by Medical Personnel in Indonesian Positive Law which is currently in force is not in accordance with Restorative Justice, the current regulation of handling alleged malpractice by medical personnel lies in the legal substance, namely There is no nomenclature and rules for handling suspected malpractice by medical personnel in Indonesian positive law. The current weakness in regulations for handling suspected malpractice by medical personnel is the legal structure which law enforcement officials still have limited understanding of. health law is not yet in accordance with the provisions of the health law, the legal culture of medical personnel whose legal understanding and awareness of health law is still not high, so that a just legal life in accordance with restorative justice has not been created. The value of justice in handling suspected malpractice provides balanced protection between medical personnel and patients, namely by providing services with noble and superior morals.

References

Books:

- Anny Isfandyarie., 2006, *Tanggung Jawab Hukum dan sanksi bagi Dokter*, Prestasi Pustaka, Jakarta;
- Guba, E. G., & Lincoln., 1994, *Competing Paradigms in Qualitative Research*. In N. K. Denzin & Y. S. Lincoln (Eds.), *The Handbook Ofqualitative Research*;
- Jean Calvin Simanjuntak., 2023, *Restorative justice Metamorfosa Kearifan Lokal Indonesia*, Rajawali Pers, Depok;
- Khairul Saleh Amin., 2010, *Perkembangan Sistem Peradilan Pidana di Indonesia*, Pamator Press, Jakarta;
- Lawrence M Friedman, Harry N Scheiber., 1996, *Legal Culture And The Legal Profession*, Routledge, New York;
- Mudakir Iskandar Syah., 2019, *Medical Malaprakti Lawsuit*, Bahana Ilmu Popular, Jakarta;

Soetrisno Hadi., 2015, *Metodologi Riset*, Pustaka Pelajar, Yogyakarta;

Sutarno., 2014, *Hukum Kesehatan, Euthanasia, Keadilan dan Hukum Positif Indonesia*, Setara Press, Malang,

Teguh Prasetyo., 2019, *Penelitian Hukum, Suatu Perspektif Teori Keadilan Bermartabat*, Nusa Media, Bandung;

Journals:

Arnoldus Thomas L Djogo., Penal Mediation as an Effort to Settle Malpractice Cases in the Medical Field, *Mandalika Law Journal*, Vol.1 No.2, 2023;

Derita Prapti Rahayu., Law Enforcement in the Context of Legal Culture in Society, *Law Reform*, Vol.16 No.2, Sep. 2020;

E. Kursumovic., Deaths in Healthcare Workers Due To COVID-19: The Need for Robust Data and Analysis, *National Library of Medicine*, Vol.75 No.8, Aug 2020;

Farah Purwaningrum., Medical Liability in Indonesia: Overview and Regulatory Trends, *Springer Link*, Vol.94, Nov 2021;

Gustavo A. Flores-Macías., The Militarization of Law Enforcement: Evidence from Latin America, *Cambridge University Press*, Vol.19 Issue.2, June 2021;

Matthew Dahl., Large Legal Fictions: Profiling Legal Hallucinations in Large Language Models, *Journal of Legal Analysis*, Vol.16 Issue.1, 2024;

Maximo Langer., Penal Abolitionism and Criminal Law Minimalism: Here and There, Now and Then, *Hein Online*, Harv. L. Rev. F. 42, 2020-2021;

Muhamad Azhar., Utik Handayani, Perlindungan Hukum Terhadap Korban Malpraktik Layanan Kesehatan Berbasis Telemedicine, *Law, Development & Justice Review*, Vol.6 No.1, 2023;

Nurul Putri Awaliah Nasution., The Concept of Restorative Justice in Handling Crimes in the Criminal Justice System, *EJ Politic, European Journal of Law and Political Sciences*, Vol.1 No.5, 2022;

Ong Argo Victoria & Myska., Doctor's Contributions in Transportation Monitoring During COVID-19 Pandemic. *KnE Social Sciences*, Dubai-Uni Emirates Arab (UEA), Vol.5 No.1, 2021;

Ong Argo Victoria., Thaan Neet Bunprakop, Legal Protection For Doctor And Medical Staff In The Pandemic Period of COVID-19 (An Overview of Indonesia from International Perspective), *Jurnal Pembaharuan Hukum*, Doktor Hukum Unissula, Vol.7 No.1, 2020;

R. Daniel Kelemen., Tommaso Pavone, Where Have the Guardians Gone? Law Enforcement and the Politics of Supranational Forbearance in the European Union, *World Politic Johns Hopkins University Press*, Vol. 75 No.4, October 2023;

- Sana Akhter, Fatima Mahr, Anoosha Imtiaz., Exploring Restorative Justice: An Alternate Dispute Resolution Mechanism in Islamic Law and Customary Law, *Journal of Law & Social Studies (JLSS)*, Vol.5 Issue 4, 2021;
- Seow Hon Tan., Radbruch's Formula Revisited: The Lex Injusta Non Est Lex Maxim in Constitutional Democracies, *Canadian Journal of Law & Jurisprudence* , Vol.34 Issue.2, August 2021;
- Setiawan, L. R. D., Expansion of Hospital Legal Responsibility for Negligence in Health Human Resources, *DELICTA Law Review*, Vol.1 No.1, 2024;
- Simon Butt., Constitutional Recognition Of "Beliefs" In Indonesia, *Journal of Law and Religion* , Vol.35 Issue.3, December 2020;
- Sulistiyanta, Riska Andi Fitriono, Hartiwingsih, R Ginting, Winarno Budyatmojo, Subekti, Budi Setyanto, Dian Esti Pratiwi., Restorative Justice Sebagai Alternatif Penyelesaian "Win-Win" Kasus Resiko Atau Kekeliruan Medis (Medical Malpractice), *Lex Librum : Jurnal Ilmu Hukum*, Vol.7 No.2, Juni 2021;
- Supardi Hamid, I Gusti Kade Budhi Harryarsana, Adhi Iman Sulaiman, Jufryanto Puluhalawa, Reconstruction Of Authority Attorney General In Disclaimer Of Case For The Sake Of The Public Interest In The Criminal Justice System In Indonesia, *Russian Law Journal*, Vol. 11 No. 2 (2023)
- Tody Sasmita Jiwa Utama., Between *Adat* Law and Living Law: An Illusion of Customary Law Incorporation Into Indonesia Penal System, *The Journal of Legal Pluralism and Unofficial Law*, Vol.53 Issue.2, 2021;

Websites:

- Ida Bagus Gede Putra Agung Dhikshita., *Manifestasi Teori Tujuan Hukum Gustav Radbruch dan Mashab Positivisme di Indonesia*, diakses pada 2021, <https://advokatkonstitusi.com/manifestasi-teori-tujuan-hukum-gustav-radbruch-dan-mashab-positivisme-di-indonesia/>.