

## **Criminal Legal Protection Formulation Policy Towards Victims Of Criminal Acts In The Medical Field**

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### **ABSTRACT**

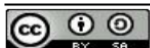
In fact, the officer cannot be blamed if he asks the patient whether he has money or not, but not because he is worried that the patient will not pay for the treatment/care, but because there is a fairly expensive prescription that must be filled at the pharmacy. In addition, the hospital is always blamed if there are bad consequences for the patient that occur during or after receiving treatment/care/medical actions in the form of a worsening condition of the disease, injury or even death. However, in fact, these complaints cannot be ignored so as not to cause prolonged and tiring legal conflicts. The objectives of this study are: (1) To describe the policy of formulating criminal law protection for victims of criminal acts in the medical field today. (2) To analyze the policy of formulating criminal law protection for victims of criminal acts in the medical field in the future. The type of approach used in this study is normative juridical. The data sources used in this study are primary legal materials, secondary legal materials and tertiary legal evidence. The data collection technique uses literature studies, including documentaries. Data analysis is normative-qualitative by interpreting and constructing statements contained in documents and legislation. The conclusion of this study is: (1) The policy of formulating legal protection for victims of medical crimes in positive criminal law in Indonesia, namely based on the Criminal Code, Law No. 36 of 2014 concerning Health, Law. No. 29 of 2004 concerning Medical Practice, apparently still has weaknesses. The weaknesses of the formulation policy are: (a) Formulation of medical crimes. (b) The formulation of responsibility for medical crimes can have individual or corporate legal subjects. (c) Formulation of criminal and criminal penalties in positive criminal law. (2) The policy of formulating legal protection for victims of medical crimes, criminal law in Indonesia is expected to provide a formulation of protection for victims in the form of guarantees/legal compensation for suffering/losses and also a formulation of legal protection not to become victims of similar crimes. The policy formulation of protection for victims of medical crimes in criminal law in Indonesia is as follows: (a) Through the policy of reformulation and reorientation of criminal law in the field of health and medical practice. (b) Based on the basic idea or principle of the idea of balance.

**Keywords:** Formulation Of Criminal Law Protection, Policy, Victims Of Crime

### **INTRODUCTION**

Indonesia as a country of law based on Pancasila wants to protect all Indonesian people for the welfare of all Indonesian people themselves. Indonesia is a country based on law, so it is only right that the law be made supremacy, where everyone submits and obeys without exception. This condition is very possible if there is a legal instrument that regulates all sectors of life, in this case including health law, therefore it is necessary to create a legal instrument that will determine the pattern of life in the health sector.

The ideals of the Indonesian nation, as stated in the preamble to the 1945 Constitution, are to protect all Indonesian people and all of Indonesia's territory and to advance public



welfare, to educate the nation and to participate in implementing world order based on independence, eternal peace and social justice, so the independence of the Indonesian nation is formulated in a Constitution of the State of Indonesia, which is formed in a structure of the Republic of Indonesia with people's sovereignty based on the One Almighty God, Just and civilized humanity, the Unity of Indonesia and Democracy guided by the wisdom of deliberation/representation, and by realizing social justice for all Indonesian people.<sup>1</sup>

The welfare referred to in the health sector is protection from various threats including disease. To realize this ideal in the health sector, health efforts are needed. Health efforts in the context of curing disease or restoring health are efforts that have the potential to cause harm to someone, especially if carried out by health workers (Doctors) who are not competent in their fields. Article 61 of Law No. 36 of 2014 concerning Health (hereinafter abbreviated as the Health Law) states that "Health in the form of maximum efforts (inspanningsverbintenis) for health maintenance, disease prevention, health improvement, disease treatment, and health recovery in accordance with Professional Service Standards, Professional Standards, Standard Operating Procedures, and the health needs of Health Service Recipients".<sup>2</sup>

The main purpose of the regulation is to protect the public, in this case patients, from poor quality medical practices, which are experimental or can endanger health. Likewise, if a doctor or health worker in performing medical actions or services to a patient can use his skills and knowledge properly and carefully so as not to cause errors that can harm the doctor himself or the patient.

Protection and law enforcement in Indonesia in the health sector are clearly still very lacking. One by one there are several examples of cases that occur to a patient who does not receive proper service, the worst, and sometimes will end in death. Cases of criminal acts in the medical field that often occur and are exposed in various media are only a few cases that have evaporated, so it can be said to be like an iceberg. The evaporation of these criminal cases is also a sign of progress in society, on their awareness of their rights regarding health and medical services, as well as awareness of their rights to receive equal legal protection in the health sector.

The enactment of Law No. 36 of 2014 concerning Health, provides an opportunity for users of services or goods to file lawsuits/lawsuits against business actors if there is a conflict between customers and business actors who are considered to have violated their rights, are late in doing/not doing/being late in doing something that causes losses for users of services/goods, either property losses or injuries or even death. This means that patients as consumers of health services can sue/sue hospitals, doctors or other health workers if a conflict occurs.

In today's global era, medical personnel are one of the professions that are in the spotlight of the public, because the nature of their dedication to the community is very complex. Lately, the public has been highlighting the performance of medical personnel, both the spotlight delivered directly to the Indonesian Doctors Association (IDI) as the parent organization of doctors, and broadcast through print and electronic media.

Most people do not understand that there are actually many other factors beyond the control of medical personnel that can affect the results of medical efforts, such as the stage of the disease, physical condition, endurance, quality of medicine and also patient compliance in following the doctor's advice. These factors can cause medical efforts (even the best) to be meaningless. Therefore, it is not wrong to say that the results of a medical effort are full of uncertainty and cannot be calculated mathematically.<sup>3</sup>

In everyday reality, complaints are often heard from the public about the quality of services received from hospitals. These complaints include inpatient services that are considered uncomfortable, rare/no visits from specialist doctors or facilities received that do not match the high costs incurred by patients. There are also complaints about patient reception

officers who require advance payment for the next 10 (ten) days. Complaints are also submitted regarding IGD/UGD services that are considered not agile and inhumane. It is complained that IGD officers do not immediately provide assistance to traffic accident patients on the grounds of waiting for their close family. After the patient's close family arrives, the officer asks them who is responsible for the hospital costs. These complaints are not entirely true, for example in the case of IGD officers.

The patient's assessment of the hospital/medical personnel complained about above is certainly not entirely true and is subjective. However, the complaint cannot be ignored in fact so as not to cause a prolonged and tiring legal conflict.

## **METHOD**

The type of approach used in this study is normative juridical. The data sources used in this study are primary legal materials, secondary legal materials and tertiary legal materials. Data collection techniques use literature studies, including documentaries. Data analysis is normative-qualitative by interpreting and constructing statements contained in documents and legislation.

## **RESULTS**

### **Current Policy on Formulating Criminal Legal Protection for Victims of Criminal Acts in the Medical Field**

The Policy on Formulating Criminal Law Protection for Victims of Crime includes the Criminal Code (KUHP), Law No. 36 of 2014 concerning health, Law No. 29 of 2004 concerning Medical Practice and Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP):

1. Criminal Code (KUHP)
2. Law No. 36 of 2014 concerning Health
3. Medical Practice Act
4. Policy on Formulating Criminal Legal Protection for Victims of Criminal Acts in the Medical Field in Relation to Compensation (KUHAP)

### **Policy on Formulating Criminal Legal Protection for Victims of Criminal Acts in the Medical Field in the Future**

Comparative Study of Health Sector Regulations from Several Countries Health problems are human problems faced by the entire world, including developed countries. Health problems have become very important in terms of being comparable to current human needs, which include not only clothing, food and shelter but also extend to modern human lifestyle issues with all their problems.

Health problem regulation becomes very urgent and in various countries have regulated health problems in their legislation. Health problem regulation in various countries is not the same, both in terms of its scope and the material regulated including the sanctions threatened.

#### **Reorientation and Reformulation Policy for Victim Protection**

Considering that malpractice crimes can have quite serious impacts, then the enforcement efforts through the criminal law formulation policy against victims of criminal acts, should not only be daad, daader but also the victim. Through the criminal law formulation policy, the legal protection policy covers the problem of formulating criminal acts (in the medical field), criminal liability, as well as criminal and criminal penalties.

The following will discuss the policy for formulating protection for victims of medical crimes from the perspective of criminal law in Indonesia.

## **DISCUSSION**

### **a. Formulation of Criminal Acts in the Medical Field**

As explained in the discussion in sub-chapter A above, the criminal policy in protecting victims of criminal acts in the medical field is manifested in the form of criminalization, actions that were originally not criminal acts are changed into criminal acts which result in the imposition of criminal sanctions.

In the legislation relating to the field of criminal acts in the medical field, the number is basically very limited and the scope of the regulation is also still very limited. In material law, it is only based on the Medical Practice Law and the Law on Health and the Criminal Code, while in procedural law it is the same as criminal procedural law in general, namely by referring to Law Number 8 of 1981 concerning Criminal Procedure Law.

In laws that materially touch on criminal acts in the medical field, they basically only regulate the subject of the medical profession or the subject of ordinary people who do not touch on the medical profession, even though doctors in carrying out their profession are closely related to other medical professions, including nurses, midwives, medical radiologists, pharmacists and other medical personnel, all of whom can play a role in the occurrence of criminal acts in the medical field.

### **Formulation of Criminal Liability for Medical Crimes**

Crime can be identified by the occurrence of harm which then results in the birth of criminal liability. So criminal liability is a form of legal protection for victims of criminal acts or losses suffered.

Criminal liability by prioritizing and determining the perpetrator of a crime as a subject of criminal law in the provisions of the legislation so that the perpetrator of a crime can be held accountable for all legal actions he/she has committed as a manifestation of responsibility for his/her mistakes towards others (victims). The accountability of the subject of criminal law will certainly provide a deterrent effect not to commit a crime, so that it can prevent the occurrence of a crime and directly prevent the existence of victims of a crime in the future. In the positive Criminal Code, criminal acts related to the mistakes or negligence of medical personnel (health) can occur in the field of criminal law, regulated among others in: articles; 346, 347, 348, 359, 360, 386 of the Criminal Code (KUHP).

### **b. Criminal Formulation and Punishment of Medical Crime Cases**

The policy of reorientation and reformulation of protection of victims of criminal acts in the medical field in criminal and criminal provisions must be able to provide direct access to protection for victims. Criminalization can be interpreted as the stage of determining sanctions and also the stage of providing sanctions in criminal law. This can be seen in Sudarto's opinion which states that the imposition of criminal penalties in abstracto is to determine the criminal law sanction system concerning the legislators. While the imposition in concreto concerns various bodies that all support and implement the criminal law sanction system.

The purpose of the policy of establishing a criminal sanction cannot be separated from the purpose of criminal politics in its overall sense, namely "protecting society to achieve prosperity. One form of such community protection is legal protection to not become a victim of a crime, or legal protection if you have become a victim of a crime.

### **Policy Formulation of Protection of Victims of Medical Crimes Through Penal Mediation**

Formulation/legislative policy as one part of the functionalization/operationalization of criminal law policy in preventing and overcoming criminal acts is actually also inseparable from efforts to provide protection and justice for victims of crime. Formulation policy can be said to be the most strategic initial access in efforts to provide protection and justice for victims of criminal acts. As previously stated in this article, substantive renewal of criminal law needs

to be carried out considering the weaknesses of the formulation policy for the protection of victims of medical crimes in current health and medical practice legislation. However, related to the substantive renewal of criminal law in efforts to provide protection and a sense of justice for victims of medical crimes.

## CONCLUSION

- a. The formulation of criminal acts in the medical field, although it has been formulated and efforts have been made to prevent and prohibit them, however, the formulation of material crimes in Law No. 36 of 2014 concerning Health contains weaknesses in efforts to provide legal protection.
- b. The formulation of criminal liability in the medical field can have individual or corporate legal subjects, where in current positive criminal law there are no uniform and consistent rules.
- c. The formulation of criminal and penal provisions in positive criminal law, victim protection is more as "abstract protection" or indirect protection (Criminal Code).

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