



INTEGRATION OF RESTORATIVE JUSTICE IN MEDICAL DISPUTE RESOLUTION AS A REFORM TO THE INDONESIAN CRIMINAL LAW SYSTEM

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Article Info	Abstract
<p>Article History Received : 2024-09-03 Revised: 2024-09-05 Published: 2024-10-01</p> <p>Keywords: <i>Restorative Justice, Medical Disputes, Criminal Law, Legal Reform, Indonesia</i></p>	<p>Medical dispute resolution in Indonesia often presents a dilemma between the criminal law aspect and the need for a more humane approach. The integration of Restorative justice in handling medical disputes offers a new paradigm that prioritizes the restoration of relationships between the parties involved, rather than focusing only on punishment. This approach is in line with the principle of restorative justice that places victims, perpetrators, and communities in a collaborative and dialogue-based resolution process. This study aims to explore the concept of integrating Restorative justice into the Indonesian criminal law system as a step towards legal reform that is more relevant and contextual to the needs of modern society. With normative juridical methods and analytical approaches, the results of the study show that the application of Restorative justice in medical disputes can encourage the creation of more inclusive justice, reduce conflict levels, and increase public trust in the legal system. Therefore, regulatory reform that accommodates Restorative justice in resolving medical disputes is an urgent need to realize a criminal law system that is more adaptive and responsive to social dynamics.</p>

I. INTRODUCTION

The development of the legal system in Indonesia shows significant dynamics in responding to the needs of society and the challenges of the times. As a country that adheres to a mixed legal system, Indonesia combines elements of customary law, Islamic law, and western law in the formation of its regulations. However, the applicable criminal law system is still dominated by the retributive justice paradigm, which emphasizes punishment for perpetrators of criminal acts. This approach is often considered less able to fulfill the sense of justice of society, especially in cases involving social and emotional aspects, such as medical disputes.(Rahardjo 2009)

Medical disputes are a serious concern because of their wide-ranging impacts on victims, perpetrators, and society. These cases are often resolved through formal and repressive criminal law, without considering the dimension of restoring relations between the parties involved. As a result, the legal process not only exacerbates the conflict but also has the potential to damage the reputation of the medical profession as a whole. In situations like this, the Restorative justice approach offers a more humane and comprehensive solution.

Medical disputes are a form of complex conflict, because they involve legal, ethical, and medical professionalism aspects. In practice,

medical disputes are often resolved through criminal law that is oriented towards punishment (retributive justice), so that it often causes dissatisfaction for both victims and perpetrators. This process often exacerbates the conflict without providing a comprehensive and just solution for all parties involved. In the context of Indonesian criminal law, a more humane and recovery-oriented approach, such as Restorative justice, is still rarely applied in resolving medical disputes.(Njoto 2011)

Restorative justice is an alternative approach in the legal system that emphasizes the restoration of relations between victims, perpetrators, and the community, through dialogue and mutual agreement. This approach is considered more relevant in medical disputes, considering their nature which is not entirely criminal, but is often caused by non-intentional factors, such as procedural errors or unintentional negligence. By integrating Restorative justice into the criminal law system, the resolution of medical disputes can be directed to create more inclusive justice, restore victims' losses, and encourage perpetrators to be professionally responsible without having to go through retributive criminal penalties.(Sidi 2022)

Restorative justice is a legal paradigm that emphasizes the restoration of losses, reconciliation between disputing parties, and restoration of public trust. This approach is very

relevant in resolving medical disputes, given their nature which often involves non-intentional negligence or differences in perception in medical services. However, the application of Restorative justice in the Indonesian criminal law system is still limited due to regulatory constraints, lack of understanding, and resistance from stakeholders.

Therefore, the integration of Restorative justice in resolving medical disputes is an urgent need to realize a more humanistic and responsive criminal law system. This study aims to explore the potential of Restorative justice in the context of medical disputes in Indonesia and provide policy recommendations to support criminal law reform that is more relevant to the needs of society. (Hutagalung and Zarzani 2022)

However, to date, the Indonesian criminal law framework has not fully accommodated the Restorative justice approach in medical disputes. This raises the urgency to evaluate and update the criminal law system to be more responsive to the needs of modern society. This study aims to analyze the potential for integrating Restorative justice in resolving medical disputes in Indonesia, as well as to provide policy recommendations that support criminal law reform. (Iskandar 2021)

II. RESEARCH METHODS

This research uses a sociological legal approach method. (Indra Utama Tanjung 2024) Which is an approach to legal reality in society. The steps are interviews and empirical analysis, so that the design and steps of this research technique will follow the pattern of social science research, this starts from the formulation of the problem which begins with the determination of respondents and sources, and collecting data, making an analysis design and ending with a conclusion.

III. RESULTS AND DISCUSSION

A. Problems in health practice in Indonesia

Law in Indonesia is starting to lose its prestige and public trust. In fact, its current condition is "paralyzed" and has reached its lowest point, said Sunaryati Hartono. (Sustainable 2023) The law is unable to be a comprehensive solution in overcoming social problems. The conventional criminal justice system that has been in effect so far (positive law), especially those related to medical crimes, has failed to solve the problem because it is only oriented towards punishing the perpetrator, while the rights of the

victim are ignored, the community does not get any benefits, what happens is that it adds to the burden on the state.

Punishing the perpetrator in a medical crime case means that the doctor has proven not to have solved the problem, either for the perpetrator, the victim, the community, or the state. For the perpetrator and the victim, the punishment, whether physically, psychologically, socially, or economically, does not bring any benefits, except merely emotional revenge, so that empirically the punishment is completely ineffective. The victim and/or the victim's family in a criminal case, for example, during the process of handling the problem, from the examination to the implementation of the sentence (imprisonment), which can take years, seems as if it is not part of the ongoing legal event. The victim and/or the victim's family, even if occasionally called, examined, or heard from, is only to complete the examiner's belief, which sometimes actually deepens the psychological wounds of the victim and/or the victim's family because they have to reveal the heartbreaking incident over and over again. Moreover, if it turns out that the case is a case of sexual harassment or rape, then it is not impossible that the victim and/or the victim's family will suffer even more and be traumatized. After the judge's gavel is dropped and the perpetrator is sentenced to prison, again the victim and/or the victim's family also do not get any benefits, except that (some feel) their revenge has been avenged. Apart from that, there are no benefits whatsoever obtained by the victim and/or the victim's family, either morally or materially.

For the community, if the person punished is a doctor because he is considered to have committed a medical crime, then let alone getting benefits, they will actually be harmed because the quality and quantity of medical services in the area will decrease. This means that punishing the perpetrator, especially a doctor whose expertise is very much needed for humanity, does not provide any practical benefits to the community.

Conditions that show a disparity between expectations and legal reality require strategic steps to restore the function and purpose of law for society. For this reason, a reorientation of legal policies and objectives is needed, which have so far been more oriented towards efforts to realize justice and certainty, directed at the benefits of law, from deterrence and blasphemy to efforts for rehabilitation, reintegration, and social empowerment. That is what the author calls a

restorative justice policy or more popularly known as a restorative justice policy. (Hutagalung and Zarzani 2022)

The restorative justice policy is a response and criticism of the implementation of the (general) criminal justice system with the imprisonment system which has been proven to be ineffective in resolving legal problems. In Marian Leibmann's view, the concept of resolving criminal problems with a restorative justice approach: (1) prioritizes support and healing for victims, both physically and psychologically; (2) encourages perpetrators to be responsible for their actions to the victim; (3) prioritizes dialogue or deliberation between victims and perpetrators to reach a mutually beneficial agreement for the parties, so that the dispute resolution process brings benefits, especially for victims and perpetrators; (4) places the losses suffered by victims arising from the legal event correctly and proportionally; (5) makes perpetrators aware and prevents the emergence or recurrence of new crimes of the same type; and (6) involves the community in the integration process between victims and perpetrators after the incident, which generally results in disharmony, even mutual resentment, including disharmony of values in society.

According to Howard Zehr, restorative justice is a compass, not a map. This means that restorative justice is a dynamic (not static) guide to obtain a complete solution to the legal problems being faced by the parties, adjusted to the conditions of each party in the case without reducing the rights of each to "bargain" to find a mutually beneficial meeting point (win-win solution). According to one of the figures who advocated the concept of restorative justice, John Braithwaite, restorative justice is a new direction between justice and welfare models or between retribution and rehabilitation. This means that restorative justice is a model for resolving legal problems that is oriented towards efforts to realize the values of justice as well as welfare or benefits or between elements of sanctions and elements that are intended to improve conditions (especially economic). This means that the aspect of justice can be achieved by prioritizing benefits. So, the focus of attention is on the value of legal benefits for society which is in line with the concept of Islam and Bentham's theory of benefits. (Saragih and Hadiyanto 2021)

In other words, the restorative justice policy is a renewal of the conventional criminal justice process (which is ineffective) towards a

settlement that is in accordance with the wishes of the parties, which is in line with the spirit, soul, and ideology of the Indonesian nation to make law a comprehensive solution through deliberation with a family spirit. That is what Padmo Wahjono calls a state of law based on Pancasila and the 1945 Constitution. (Soekanto 1977) The same thing was also expressed by Oemar Seno Aji and Romli Atmasasmita that the concept of a state based on law with the characteristics of a family-based deliberation approach is a Pancasila State of Law. (Al Kautsar and Muhammad 2020)

B. Criminal liability for perpetrators of medical crimes in Indonesia

From a criminal law perspective, medical crimes are seen as crimes that are a matter of state authority and therefore only the state has the right to punish them, although in fact indigenous communities (meaning not only the state) can also impose criminal sanctions that are no less effective. However, because the state authority is given the authority to take over all public roles related to criminalization, only the state has the authority to represent the public in resolving criminal law problems. Whether it is recognized or not, the role of the state in the contest for resolving criminal law problems often does not represent the interests, desires, and demands of the needs of the parties, especially the victims and perpetrators. Because, in fact, victims almost always do not get a sufficient portion of attention, except for hearing the testimony of witnesses (witnesses as victims). The victim's testimony is also not necessarily referred to by the judge in the name of the judge's neutrality and integrity as the main consideration in the court decision-making process. That is why it often happens that the judge's decision and the victim's wishes are two different things that seem to show no correlation. Because of that, imprisoning perpetrators of crimes is often considered as an outlet for hatred, revenge, and blasphemy against society carried out by the state. This imbalance of circumstances is what gave birth to the idea of restorative justice as an alternative that is more beneficial and in accordance with the sense of justice for victims, perpetrators, society and the state together.

Unlike criminal acts in general, medical crimes have specific characteristics and in some cases their conditions are the opposite of ordinary crimes. For example, if the focus of attention in ordinary crimes is the consequences (gevolg), in medical crimes the main object of attention is the cause (causa). Therefore, whatever is done by a

doctor, is measured by whether or not the medical action is in accordance with the provisions of medical practice, namely: medical competency standards, medical authority, medical service standards, operational procedure standards, medical indications, informed consent, medical ethics standards, medical practice discipline, and applicable laws and regulations. Therefore, whatever the consequences, as long as the medical action carried out by the doctor is in accordance with the medical provisions above, the doctor cannot be prosecuted. This is justified, among other things, based on a therapeutic agreement made between the doctor and the patient. In a therapeutic agreement, the guideline and object of the agreement or what is agreed upon is the doctor's "serious efforts" for the patient's recovery (inspaningverbintenis), not the final result (resultatverbintenis) in the form of recovery. (Sidi 2020)

In other words, if there is a medical action performed by a doctor and has been in accordance with the applicable provisions as mentioned above, but has a bad effect on the patient, for example the patient's condition worsens, the patient experiences permanent physical disability, or even dies, then such a condition is included in the category of medical risk, not medical malpractice. So, in the context of medical crimes, the main focus of the criminal investigation lies in the cause (medical actions performed by the doctor), not the consequences that occur to the patient after the medical action.

In ordinary criminal cases, the relationship between cause and effect can be drawn directly. This means that there is a causal relationship between cause and effect that is interrelated or influences each other. This does not apply in cases of medical crimes. This is because the same medical action (as a cause) carried out by a doctor on more than one patient, the consequences that arise or are experienced by each patient can be different. The differences in the consequences experienced by the patient are greatly influenced by the following factors:

1. the condition or severity of the disease suffered by the patient at the time of treatment;
2. patient's immune system condition;
3. availability of medical equipment, health facilities and medicines at the relevant health facilities;
4. the emergence of other diseases that could not be predicted beforehand (medical risk);

5. the presence of other diseases that are not previously known to the patient and/or doctor

Medical criminal acts (criminal malpractice) are medical actions that fulfill criminal elements carried out by medical personnel:

- 1) the existence of unlawful medical actions/conduct;
- 2) carried out by medical personnel who are capable and responsible;
- 3) done intentionally or negligently;
- 4) there is no excuse.

Unlawful medical actions are actions that are contrary to the provisions of the practice. Responsible medical personnel are those who carry out their duties in a conscious state, are physically and mentally healthy, and are not under pressure from any party. The intentional element includes: performing an abortion without medical indication, euthanasia, leaking medical secrets, not providing medical assistance in emergency cases, making false statements, making false visum et repertum, and giving false statements in court as an expert. Meanwhile, the element of negligence (culpa) is a form of careless action that causes, for example: medical equipment being left in the patient's body during surgery, the patient being injured, and the patient being disabled or dying. The elements of culpa consist of: culpa lata, which is carelessness, recklessness, or a serious error (grossfault); culpalevis, which is negligence or ordinary error (ordinaryfault); and culpalevissima, which is negligence or slight error (slightfault). According to J. Guwandi, the elements that can eliminate criminal penalties (forgiveness) are special factors that are not found in generally applicable laws, for example medical accidents or treatment risks. (Rahmadsyah and Sidi 2023)

Of the seven cases of alleged medical crimes that occurred in several regions, which the author studied, namely in Banda Aceh, Medan, Jakarta, Depok, Tasikmalaya, Manado, and Kerinci, all began with medical actions/assistance (as the cause) of patient emergencies with various medical indications and all ended with the death of the patient although, once again, in cases of medical crimes between cause and effect cannot be drawn a causal line. In these seven cases, the patient's family sued criminally and civilly, plus there were elements of extortion, threats, and intimidation from other parties. Criminally, in general the patient's family charged the doctor and/or hospital with alleged medical negligence,

intent, and unpleasant acts, with Articles 334, 335, 347, 359, and 360 of the Criminal Code. Meanwhile, the patient's family's civil lawsuit accused the doctor and/or hospital of committing unlawful acts as regulated in Article 1365, 1366 of the Civil Code and/or of committing a breach of contract as regulated in Article 1239 of the Civil Code, with demands for material and immaterial damages varying between 10 and 100.65 billion rupiah.

C. The urgency of resolving medical crimes through restorative justice

Based on the findings, study results and analysis conducted by the author, the seven cases can be resolved in the following ways:

- 1) Non-litigation, namely by applying the concept of a restorative justice approach through dialogue and deliberation between the parties involved. This method was chosen and was able to resolve effectively and efficiently as many as 5 cases (71.43%);
- 2) Quasi-litigation, which involves law enforcement as in the normal litigation process, but ends with peace through dialogue (non-litigation). This method was able to resolve the problem in 1 case (14.29%); and
- 3) Litigation, namely using a pure criminal law approach. This method was able to resolve as many as 1 case (14.28%)

In other words, the restorative justice approach was chosen by the majority of the parties, namely 6 out of 7 cases (85.72% or 86%) as a way out to resolve and end medical disputes between doctors and hospitals (on the one hand) and patients and/or patient families (on the other hand). This shows that the restorative justice policy in resolving cases of alleged medical crimes is a solution that is considered the most beneficial, dignified, just, and more beneficial to the parties, both for victims, perpetrators, society, and the state, when compared to settlement through the courts (litigation).

For patients and/or families of patients as victims, the application of the general criminal justice system to resolve medical criminal cases always leaves new problems for them because they are never included in the problem-solving

process in court trials except to be heard as witnesses; criminalization or imprisonment for perpetrators of criminal acts does not provide any benefits for victims and/or families of victims, because in fact many victims and/or families of victims after the implementation of the judge's verdict have their lives increasingly difficult or psychologically severe, both physically and economically. This will not happen if the resolution of medical criminal cases is carried out based on a restorative justice approach because the victim will be empowered, given moral and material compensation by the perpetrator of the crime, and each party has forgiven each other.

For doctors as perpetrators, the application of the general justice system to resolve medical criminal cases always creates new problems because doctors have to undergo a long and complicated legal process that takes up a lot of time, energy, and thought during the legal process, thus breaking the doctor's concentration in carrying out his duties. This results in frustration due to psychological pressure during the legal process, especially if the legal process ends with a prison sentence, then a doctor who usually carries out a noble and honorable profession (*Officium Nobile*) is treated no differently than a thief or murderer, resulting in serious psychological trauma. This will not happen if the resolution of medical criminal cases uses a restorative justice approach because the decision is based on the results of joint deliberation.

For the community, the application of conventional criminal law to resolve medical criminal cases does not provide restoration of the damage to the social order in society. The verdict of the judge in the form of criminal punishment or imprisonment has proven not to provide a deterrent effect, so that similar cases continue to occur from time to time. In the case of resolving medical criminal cases using a restorative justice approach, the damage to the social order can be easily restored because the perpetrator is given the responsibility to carry out social recovery.

For the state, the application of prison sentences based on judges' verdicts in criminal cases, including medical crimes, adds a very heavy financial burden, namely related to the limited

availability of buildings or prison space capacity, limited budgets for managing prisons and limited human resources, both in terms of quality and quantity. Such matters can be overcome by using a restorative justice approach in resolving criminal cases, because the state does not need to provide all of that. In fact, in a number of countries that have implemented a restorative justice approach, the prisons are empty and can be used for other purposes.

The concept of restorative justice in resolving each case is different, but in the final goal the essence of recovery from the crime can be achieved, as well as in medical criminal cases, the restorative justice solution formula, whether carried out in a non-litigation or quasi-litigation manner, produces the same solution formula, which is generally accepted by all parties, especially the victims and perpetrators, namely in the form of:

(1) empowerment of the victim/victim's family by providing long-term economic assistance by the perpetrator, for example in the form of business capital assistance and/or employment; (2) the perpetrator provides compensation in the form of money in a certain amount that is mutually agreed upon as compensation to the victim/victim's family; (3) a statement and apology from the perpetrator to the victim and/or victim's family and the community openly through the mass media; (4) an apology from the perpetrator personally or as a family to the victim/victim's family and the community; and (5) recognition of being a family or relative by the perpetrator to the victim/victim's family, for example as a foster child, foster parent, adoptive family, and so on.

IV. CONCLUSIONS AND RECOMMENDATIONS

- 1) The legal system in Indonesia, especially in handling medical criminal cases, is currently ineffective and does not provide comprehensive benefits for all parties involved. The punishment-oriented justice system fails to fulfill justice, ignores the rights of victims, does not support the rehabilitation of perpetrators, and even harms society at large. Therefore, a new

approach is needed, such as restorative justice, which is more humane, inclusive, and oriented towards benefits. The restorative justice approach offers a better solution by prioritizing physical and psychological support for victims, encouraging perpetrators to take responsibility for their actions, prioritizing dialogue between victims and perpetrators to reach a mutual agreement, restoring social harmony and preventing prolonged resentment, involving the community in the process of reintegrating victims and perpetrators.

- 2) Medical crimes in Indonesia have different characteristics compared to ordinary crimes, because the main focus is on the cause of the action (*causa*), not the consequences (*gevolg*). In many cases, medical actions that are considered unlawful are often caused by misunderstandings regarding medical standards and risks, so they cannot always be categorized as malpractice or criminal acts. Criminal liability in medical crimes that need to be considered are: characteristics of medical crimes; elements of medical crimes; conditions that affect medical consequences; issues in the legal process. the need for a wiser legal approach, such as restorative justice, to provide a solution that is fairer, more humane, and beneficial to all parties, especially in the context of complex medical crimes.
- 3) The restorative justice approach has proven to be a more effective, humane, and equitable method in resolving medical crimes compared to conventional litigation approaches. The restorative justice approach in medical crimes not only resolves legal issues, but also provides real benefits for victims, perpetrators, society, and the state together. This creates a more dignified, equitable, and socially and economically recovery-oriented solution, compared to conventional litigation approaches.

REFERENCE LISTAN

Hutagalung, Mangara, and T Riza Zarzani. 2022. "An Implementation of Restorative Justice in Settlement Framework Criminal Acts Fraud and Employment to Provide Useful And Fair Legal Guarantee (Study In Police Regional

North Sumatra)." *Legal Briefs* 11(4): 2148–54.

Development 7 (6): 462–71.

Indra Utama Tanjung. 2024. *BASICS OF LEGAL RESEARCH METHODS*. Karanganyar: CV Pustaka Dikara).
https://scholar.google.com/citations?view_op=view_citation&hl=id&user=rToGqjUAAA AJ&cstart=20&pagesize=80&citation_for_view=rToGqjUAAA AJ:Wp0gIr-vW9MC.

Iskandar, Farid. 2021. "Implementation of Criminal Accountability of Dealers Against Victims of Narcotics Abuse." *Journal of Law Enforcement and Justice* 2 (2): 96–116.

Kautsar, Izzy Al, and Danang Wahyu Muhammad. 2020. "The Urgency of Renewing Legal Principles in Law No. 37 of 2004 Based on the Theory of Distributive Justice." *Journal of Legal Panorama* 5 (2): 182–92.

Lestari, Rinna Dwi. 2023. "Reconstruction of Legal Protection Regulation for Doctors and Patients in Health Services Through Telemedicine Based on Justice Values." *SULTAN AGUNG ISLAMIC UNIVERSITY*.

Njoto, Haryanto. 2011. "Accountability of Doctors and Hospitals Due to Detrimental Medical Actions in the Perspective of Law No. 44 of 2009 Concerning Hospitals." *DiH: Journal of Legal Studies* 7 (14): 240016.

Rahardjo, Satjipto. 2009. *Progressive Law: A Synthesis of Indonesian Law*. Genta Pub.

Rahmadsyah, Rudi, and Redyanto Sidi. 2023. "The Position of Informed Consent in Medical Services for Patients in Hospitals Who Have the Status of a Suspect." *Journal of Nursing* 7 (1): 240–44.

Saragih, Yasmirah Mandasari, and Alwan Hadiyanto. 2021. *Introduction to Criminology Theory & Theory in Criminal Law*. Cattleya Darmaya Fortuna.

Sidi, Redyanto. 2020. "The Position of Informed Consent in Patient Services at Hospitals." *Iuris Studia: Journal of Legal Studies* 1 (2): 214–19.

———. 2022. "ASPECTS OF THE IMPLEMENTATION OF MEDICAL PRACTICE LAW BASED ON LAW NO. 9/2004 CONCERNING MEDICAL PRACTICE." *Journal of Public Health Research* 4 (2): 1–9.

Soekanto, Soerjono. 1977. "Legal Awareness and Legal Compliance." *Journal of Law &*