

The Position of Humanitarian Advisors of Discipline of Indonesian Medicine in Legal Enforcement System in Indonesia

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Abstract

The Indonesian Medical Disciplinary Council is an institution authorized to determine whether or not there is a mistake made by doctors and dentists in the application of medical and dental disciplines, and establish sanctions.

The position of the Indonesian Medical Discipline Honor Board is as part of a proportional system of law enforcement in Indonesia, against the actions of doctors suspected of committing a violation of the code of ethics or of medical malpractice. Where the authority possessed by the Honorary Council of Indonesian Medical Discipline can provide legal protection for the public as consumers and usually have a weak position.

Honorary Council of Indonesian Medical Discipline has a role in Law Enforcement in Indonesia. Honorary Council of Indonesian Medical Discipline plays a role in determining whether or not a doctor's guilt from his actions violate the code of ethics. In the event of any negligence or violation of the law in the fault of the physician, the Indonesian Medical Disciplinary Council shall submit this matter to the organization of the physician concerned. If the general practitioner will be returned to the Indonesian Doctors Association (IDI) organization or if the doctor is a dentist, it will be returned to the Indonesian Dentists Association (PDGI) organization. Where then the organization will submit this matter to the realm of the general court, either Criminal, Civil or Administrative Court, depending on the mistakes or cases that the doctor did.

Keywords: Existence, Honorary Council of Indonesian Medical Discipline, Law Enforcement

INTRODUCTION

A. Background

At this time of increasing knowledge, the mindset of people is now beginning to experience a shift. Society in this case the patient judged that the relationship between them with his doctor is balanced. Where the patient has the right to get good service from the doctor. The public's knowledge of the physician's duty to perform his duties with caution is to be the patient's right to get the best service from the treating physician. Nowadays professional demands on the profession of doctors are getting higher. Due to the many news about the violation of the code of ethics and the occurrence of malpractice doctors, which causes public confidence in the profession of doctors to be reduced. The number of events that cornered this, which makes the doctor's profession become more careful in doing his duty as a doctor.

The concept of dispute settlement between doctor or dentist through Indonesian Medical Discipline Honor Board existing in Law Number 29 Year 2004 regarding Medical Practice enacted in September 2004 is to replace article 54 paragraph (3) Act No.23 year 1992 about Health that is Replacing the role of the Assembly of Health Care Discipline. This Assembly has the duty to ascertain whether the professional standard has been properly implemented. The Indonesian Medical Discipline Honor Board is an autonomous institution established by the Indonesian Medical Council (KKI) which in its duties is independent. To maintain the neutrality of the members of the Medical Council Discipline of Indonesia consists of 3 (three) doctors and 3 (three) dentists from each professional organization, a doctor and a dentist representing the hospital association, and 3 (three) persons Law scholar. In chapter 66 that reads: ¹

¹ Undang-Undang RI No. 20 Tahun 2013 Tentang Pendidikan Kedokteran dan Undang-Undang RI No. 29 Tahun 2004 Tentang Praktik Kedokteran, Citra Umbara:Bandung. Hal 70

4. Any person who knows or interests are harmed or the actions of a doctor or dentist in carrying out medical practice may complain in writing to the Chairman of the Honorary Board of Medical Discipline of Indonesia.
 5. Complaint must at least contain; A) Identity of complainant, b). Name and address of the practitioner's office or dentist and the time of action taken, and c). The reason for the complaint.
 6. Complaints as referred to in paragraphs (1) and (2) shall not eliminate the right of any person to report any alleged criminal acts to the authorities and / or sue for civil damages in court.
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The problems that arise in medical practice can be put forward as follows:

2. Philosophical

d. Ontological

The Indonesian Medical Disciplinary Council is an institution authorized to determine whether or not there is a mistake made by doctors and dentists in the application of medical and dental disciplines, and establish sanctions (look at **Pasal 1 angka 14 UU Praktik Kedokteran**).

To enforce the discipline of doctors and dentists in the conduct of medical practice, established the Honorary Board of Discipline of Indonesian Medicine (**Pasal 55 ayat (1) UU Praktik Kedokteran**). The Honorary Council of Indonesian Medical Discipline has a duty to determine whether or not there is an error in the application of medical discipline and to impose sanctions on it. The Indonesian Medical Disciplinary Council is an autonomous institution of the Indonesian Medical Council ("KKI"). This is called within **Pasal 55 ayat (2) UU Praktik Kedokteran**.¹

e. Epistemological

The Indonesian Medical Discipline Honor Board using **Pasal 64 UU Praktik Kedokteran** in resolving cases of doctors who violate the code of ethics.

If in the investigation is found an ethics violation, the Indonesian Medical Discipline Honor Board continues the complaint on the professional organization (Indonesian Doctors Association or Indonesian Dentist Association), pursuant to article 68 "If in the investigation is found an ethical violation, the Indonesian Medical Discipline Honor Board continues the complaint on the professional organization".

If a suspected case of malpractice is complained of by the public and found to be a violation of the law, it is recommended that the case be taken directly to the court for review. Because the Medical Practice Act only focuses on medical discipline alone, so the problem of civil or criminal lawsuits is submitted to the public court by using expert witness testimonium if necessary, as well as abroad.²

The discipline of a physician through the Honorary Council of the Indonesian Medical Discipline is limited to discipline and ethics only, which for the patient or the family is obviously not easy to know and understand. So that the proof of whether or not discipline or ethical violations become "difficult to understand" by the patient or family. In addition, the decisions taken in this discipline are merely administrative in nature which is not directly related to the patient only with the physician. Without any solution to the patient or family, so the patient or family "less satisfied" with the decision given. Legal blurring in article 69 Act number 29 of 2004 on Medical Practice, Indonesian Medical Discipline Honor Board only regulates sanctions for violation of discipline and ethics only. No Regulation For sanctions and law enforcement against doctors who violate the law.

f. Axiological

¹ Nusye KI Jayanti, *Penyelesaian Hukum Dalam Malapraktik Kedokteran*, Pustaka Yustisia, Yogyakarta, 2009 hal

² Nusye KI Jayanti, *Penyelesaian Hukum Dalam Malapraktik Kedokteran*, Pustaka Yustisia, Yogyakarta, 2009. Hal 34

The duties and obligations of the Indonesian Medical Discipline Honor Board are in accordance with **Pasal 64 UU Praktik Kedokteran**. Honorary Council of Indonesian Medical Discipline duty:¹

- c. *Receive complaints, examine, and decide cases of discipline of doctor and dentist being filed; and*
- d. *Prepare guidelines and procedures for handling cases of disciplinary offenses of doctors or dentists.*

MKDKI's decision is a disciplinary and binding sanction. In accordance with Article 69 it reads:²

4. *The Indonesian Medical Discipline Honor Board binds doctors, dentists and the Indonesian Medical Council.*
5. *The decision referred to in paragraph (1) may be declared guilty or disciplinary sanction.*
6. *Disciplinary Sanctions as referred to in paragraph (2) may be:*
 - c. *Written warning.*
 - d. *Recommendation for revocation of registration certificate or license of practice and / or obligation to follow education or training at institute of medical or dental education.*

The problematic is the lack of clarity of the existence of Honorary Council of Indonesian Medical Discipline in law enforcement system in Indonesia.

B. Research methods

1. Types of research

Type This research is legal research (legal research). Legal research is a series of actions or processes to discover the law due to the occurrence of legal vacuum, obscurity of norms or conflict of norms or finding legal principles. The function of legal research is to obtain the truth of coherence, namely to seek coherence or compatibility between something to be studied and rules or principles that are used as a reference. Scientific logic in legal research is built on scientific discipline and the workings of legal science whose object is law. The function of legal research is to obtain the truth of coherence, namely to seek coherence or conformity between something to be in carefully and the rules or principles used as a reference. Scientific logic in legal research is built on scientific discipline and the workings of legal science whose object is law.³

2. Research Approach

According to Johny Ibrahim, "there are 4 (four) forms of research approach. This research uses 4 (four) form of research approach mentioned above:

- e) *Phylosophical Approach*
- f) *Statute Approach*
- g) *Conseptual Approach*
- h) *Comparative Approach*

3. Source of Legal Material

There are 3 (three) main sources of legal material in this dissertation research, in the form of documents to be traced, researched and analyzed, wich is:

4. The primary legal material used in this research is the legal material in the form of legislation that is traced based on the hierarchy of the 1945 Constitution to the regulations and the

¹Undang-Undang RI No. 20 Tahun 2013 Tentang Pendidikan Kedokteran dan Undang-Undang RI No. 29 Tahun 2004 Tentang Praktik Kedokteran, Citra Umbara:Bandung. Hal 61

²*Ibid*, hal 65

³Johny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*,(Malang: Banyumedia Publ., 2006) hal. 57

provisions at the level of hospitals and professional organizations. The meaning of this type of legal material is:

- 14) Law number 29 of 2004, on medical practice.
 - 15) Law number 36 of 2009, on health.
 - 16) Law number 36 year 2014, about health personnel.
 - 17) Law number 8 of 1999, concerning informed consent guidelines.
 - 18) Criminal law and criminal law.
 - 19) Decree of director general of medical service number HK. 00.06.6.5.1866, dated 21 April 1999 on the guidelines for informed consent.
 - 20) Regulation of the Minister of Health of the Republic of Indonesia number 290 / Menkes / Per / IX / 2008, concerning the approval of medical action.
 - 21) Indonesian Medical Council Regulation (KKI), an institution that is a product of Law number 29 of 2004 on Medical Practice
 - 22) Circular Letter of Indonesian Medical Council (KKI) number 21 / KKI / kep / 2005 year 2005 about Indonesian Doctor Competency Standard
 - 23) Results of the Indonesian Doctors Association (IDI) 2012 Conference on the Code of Ethics for Medicine (KODEKI).
 - 24) Regulations on Standard Medical Services (SPM)
 - 25) (*Hospital Standard Operational Procedure/SOP*).
 - 26) *Universal Declaration of Human Rights (United Nations, 1948)*
5. Secondary Legal Material, is the legal material obtained from the literature with the primary legal material on aspects of legal theory about the existence of MKDKI in law enforcement system in Indonesia.
 6. Tertiary legal material is a legal material that provides information about primary and secondary legal materials with guidance or explanation of the existence of Honorary Council of Indonesian Medical Discipline in law enforcement system in Indonesia.

4. Legal Material Collection Method

The method of collecting legal materials in this research is by library research, that is all the legal material obtained related to the problem to be discussed is described, systematized, then the legal material is analyzed to interpret the applicable law, that is concerning the standard and formulation of the format, Content and procedures of validation of the informed consent of the ideal and juridical qualifications (Legal Substance), with the aim of knowing the existence of the Indonesian Medical Discipline Honor Council in the system of law enforcement in Indonesia.

5. Material Legal Analysis

All the legal materials that have been traced and collected are grouped according to the priority scale of the problem to be analyzed:

3. *Descriptive analysis*
4. *Content analysis*

DISCUSSION

A. History of the establishment of Honorary Council of Indonesian Medical Discipline

The medical profession and other medical personnel are regarded as noble and honorable professions in the eyes of society. A doctor before practicing medicine or doing medical services has been through education and training long enough. From this profession many people rely on life expectancy from the healing and pain suffering. The relationship between patients and doctors who had been deemed to be unequal because of the higher doctors' standing is now experiencing a shift. The community in this case the patient judge that the relationship between them with the doctor is balanced, where in the duty of the doctor to carry out their duties carefully there is the patient's right to get the best service. Now this professional demand for this profession is getting higher. News that cornered and allegations that doctors have made mistakes in the medical field have sprung up.¹

The Indonesian Medical Discipline Honor Council was formed by the Indonesian Medical Council (KKI). This Indonesian Medical Disciplinary Council is an autonomous institution established by the Indonesian Medical Council (KKI), which in its duties is independent. To maintain the neutrality of the members of the Indonesian Medical Discipline Council (MKDKI) consists of 3 (three) doctors and 3 (three) dentists from each professional organization, a doctor and a dentist representing the hospital association, and 3 (three) Law graduate.

Honorary Council of Indonesian Medical Discipline in Draft of Medical Practice (already promulgated in September 2004 into Law No. 29 on Medical Practice), it is proposed to establish a Medical Personnel Disciplinary Court which is a special court within the general judicature duty to resolve every medical dispute. After being discussed in the DPR, the chapter on the Trial of Professional Medical Personnel in the general court is not included in the Act. In an effort to enforce discipline to doctors and dentists in the conduct of medical practice then through Law No. 29 of 2004 on Medical Practice established the Honorary Board of Indonesian Medical Discipline, as stated in Chapter VIII Act No. 29 of 2004 on Medical Practice. MKDKI is an autonomous institution of the Indonesian Medical Council (KKI) and in carrying out its duties is independent and responsible to the Indonesian Medical Council.²

B. Existence of Honorary Council of Indonesian Medical Discipline in Law Enforcement System in Indonesia

The existence of Honorary Medical Discipline Council of Indonesia is as an institution formed by Indonesian Medical Council and oversees the organization of Indonesian Doctors Association (IDI) and Indonesian Dentists Association (PDGI). The position of the Honorary Council of Indonesian Medical Discipline is as part of the law enforcement system in Indonesia, where the Indonesian Medical Disciplinary Council has the authority to determine the guilt or innocence of the actions of doctors suspected of violating the code of ethics or of medical malpractice.

The provision of health services is required to comply with the standards established by international and national policies agreed upon under the authority of the government or the authority of professional associations with a degree of moral and legal compliance. The degree of adherence to this excellent health service is the reason that developed countries also develop health laws into specific laws applicable to legal subjects, being a "lex specialis" type of law, no longer subject to the legal provisions of "lex generalis".³

Some developed countries have cultivated a type of health law as a very specific "law of tort" for the providers or receivers of health care, and not mixed with criminal or civil law. In the event of a health service conflict due to the patient or the patient's family being deemed harmed or having medical risks, the settlement is not through criminal or civil litigation, but through "medical mediation," or "ad hoc" special health judiciary without the intervention of the general court of General law enforcement

¹<http://opickmohammed.blogspot.co.id/2013/04/penegakan-hukum-terhadap-dugaan-tindak.html>, di akses tanggal 11-12-2016, pukul 11.31 WiB.

² disusun oleh Konsil Kedokteran Indonesia (KKI), lembaga yang merupakan produk dari UU nomor 29 tahun 2004 tentang Praktik Kedokteran

³ Nusye KI Jayanti, *Penyelesaian Hukum Dalam Malapraktik Kedokteran*, Pustaka Yustisia, Yogyakarta, 2009. Hal 73-74

officers. This new development of health law tends to use the legal proposition of "moralization in law, legalization in morals", namely the enforceability of the elaboration of moral norms and legal norms for health services containing exceptional norms for "providers" and "receivers health care" synchronized with health services Which is universal.¹

According to Arief Sidharta, to know what is fair and what is unfair is not a great policy, especially if justice is associated with the rule of positive law, how an action should be done and the distribution of justice, and how to promote justice. But certainly not the case if you want to play the role of upholding justice.²

The debate over justice has spawned various schools of legal thought and other social theories. Two extremes of justice are justice that is understood as something irrational and at another point understood rationally. Of course, many variants that are between these two extremes. From W. Friedmann's theory of justice, the authors found that the role of the Indonesian Medical Discipline Honor Board in providing a sense of justice to patients and families is still lacking. Because in the process of enforcing the rules against doctors who violate the code of ethics and medical malpractice is still not open to patient and patient's family.

Most patients and families expect to know firsthand how to enforce internal rules against their members. What is the operational standard (SOP) that doctors should do ?, What does the doctor do to the patient in accordance with the operational standard (SOP)? Is the testimony given by the doctor in the enforcement of the rules in the Honorary Council of Indonesian Medical Discipline is in accordance with what happened in the field / not? And maybe many more questions that may be a question mark in the minds of patients and families of patients. The sense of justice understood as irrational and at other points understood rationally still has not been felt by the patient and the patient's family. Especially for patients who have to experience disability or the family of patients who have lost their families due to malpractice doctors. The intervention of the government and especially the internal health agencies in an effort to enforce the law in this country is very meaningful for patients and their families. Where the right of patients and their families to obtain justice, legal certainty in the state of Indonesia as a State of law that upholds the rule of law and human rights. The authority possessed by the internal health agency which is none other than the Indonesian Medical Discipline Honorary Council can be the lowest root in helping to enforce the law against doctors who do negligence or malpractice of medicine.

The Indonesian Medical Disciplinary Assembly as the nearest institution to assist law and order enforcement, before the case enters trial in court. The result of the decision issued by the Indonesian Medical Discipline Honor Board is a way to facilitate the apparatus in solving the cases it handles. Due to the process of obtaining the decision result from the Indonesian Medical Discipline Honor Board, all facts, until the process until the occurrence of negligence or medical malpractice can be seen more clearly. This is because in the Institute of Honor Medical Discipline Indonesia members of experienced doctors and know the right action which should be done by sipelaku according to medical medical standards that have been set in the Law of Republic of Indonesia number 36 of 2009 on Health and Legislation Republic of Indonesia number 29 of 2004 on Health Manpower.

On the other hand for doctors who are involved with legal issues if it has been through the judicial process and proven not to commit the act of malpractice will be able to restore the good name that is considered contaminated, because the relationship between physician and patient is not a relationship of ordinary work or superiors subordinates but the nature of trust. The patient will come to a doctor to submit his or her health care, because the patient believes or believes in the doctor's ability through an open offer provided by the doctor through the installation of a doctor's practice board and his or her skill qualification or so-called specialist.

The concept of the legal state put forward by the Anglo Saxon upholds the sovereignty of the state and human rights. As with the existence of this Honorary Medical Disciplinary Council of Indonesia which is in accordance with the concept of upholding the sovereignty of the state and human rights. Where the rules and laws that exist in Indonesia should be enforced. Legal certainty must be given in real to the community. Human rights, as well as the rights of physicians and patients to be administered fairly by using the authority that has been mandated to the Board of Trustees of the Indonesian Medical Discipline.

According to Moch. Mahmud MD legal certainty is as one of the objectives of the law can be said as part of efforts to realize justice. The real form of legal certainty is the enforcement or enforcement of a

¹ *Ibid*, hal 74

² Darji Darmodiharjo dan Shidarta, *Pokok-Pokok Filsafat Hukum; Apa dan Bagaimana Filsafat Hukum Indonesia*, Jakarta, PT Gramedia Pustaka Utama, 1995, hal. 137.

law regardless of who does it. With the legal certainty for everyone, it can predict what will be experienced if a certain legal action takes place. Certainty is necessary to realize the principle of equality before the law without discrimination.¹

The public expects the legal certainty of what doctors do ethics violations, negligence or even medical malpractice against patients, even against the malpractice of the doctor who causes death for his patients. Law enforcement is highly desired by the community. Especially for patients who become victims and families of patients who also suffered losses to the actions of doctors who violate ethics, negligence or medical malpraktik to his family. Against these offenses the law can be enforced or enforced the law. In the case of law enforcement Satjipto Rahardjo states that the essence of law enforcement is a process to achieve the desire or legal idea becomes a reality. The desire or idea is the mind of the formator of the law in the form of the concept of justice, legal certainty and social benefits as outlined in the formulation of a regulation.

A narrower opinion is mentioned by Suharto, that law enforcement is a series of activities undertaken by law enforcement officers both precautionary measures as well as enforcement in applying the applicable law to create peace, security, order for legal certainty in society. The meaning of law enforcement in the handling of medical malpractice case is intended as an effort to utilize or function instrument / legal instrument (administrative law, civil law and criminal law) against malpractice case to protect society (patient) from intentional act or negligence of doctor in doing medical action.

In general the unlawful nature of medical malpractice lies in the violation of patient confidence in the theoretical contract. From a civil law perspective, medical treatment by a physician is based on a bond or verbintenis inspanings relationship (business engagement), in the form of an attempt to make the best possible treatment in accordance with professional standards, standard operational procedures, reasonable general practice in medicine but also attention to decency And appropriateness. Improper conduct will make a violation of the wonders (wan achievement). As for the difference due to loss by civil malpractice with criminal malpractice. Losses in civil malpractice are wider than the consequences of criminal malpractice. The consequences of civil malpractice including unlawful acts consist of material and idiological damages, this form of loss is not specifically specified in the Act. In contrast to the consequences of criminal malpractice, the consequences shall be in accordance with the consequences of the elements of that article. Medical malpractice only occurs in material crime (which prohibits the consequences arising, where the consequences become the requirement for the completion of a crime). In relation to medical criminal malpractice, death, serious injury, pain or injury that results in illness or which impedes tasks and livelihoods constitute an element of criminal offense.

If the physician takes an action that is contrary to medical ethics then he has only committed malpractice of ethics, in order to claim compensation for negligence the plaintiff must be able to prove the existence of a duty to the physician to the patient, the doctor has violated the standard medical service which is commonly used, the plaintiff has Suffered losses that could be requested for damages. Sometimes the claimant does not need to prove the negligence of the defendant. In law known as Res Ipsa Loquitur (the things speaks for it self), for example in the presence of gauze left in the patient's abdominal cavity causing post-surgical complications. In this case the doctor must prove his absence of negligence.

C. The position of Honorary Council of Indonesian Medical Discipline in Law Enforcement System in Indonesia

The position of the Indonesian Medical Discipline Honor Board herein is as part of a proportional system of law enforcement in Indonesia, against the actions of physicians suspected of violating the code of ethics or of medical malpractice. Where the authority possessed by the Honorary Council of Indonesian Medical Discipline can provide legal protection for the public as consumers and usually have a weak position

Honorary Council of Indonesian Medical Discipline in Draft of Medical Practice (already promulgated in September 2004 into Law No. 29 on Medical Practice), it is proposed to establish a Medical Personnel Disciplinary Court which is a special court within the general judicature duty to resolve every medical dispute. Having discussed in the DPR, the chapter on the Disciplinary Institute of Medical Professionals in general courts is not included in the Act. In an effort to enforce discipline to doctors and dentists in the implementation of medical practice, through the Act No. 29 of 2004 on

¹ Mahfud, Moh., *Hukum dan Pilar-pilar Demokrasi*. Yogyakarta: Gama Media, 1999.
Hal 161

Medical Practices established the Honorary Council of Indonesian Medical Discipline, as listed in Chapter VIII Act No. 29 of 2004 on Medical Practice.

The Indonesian Medical Disciplinary Council is an autonomous institution of the Indonesian Medical Council (KKI) and in carrying out its duties is independent and responsible to the Indonesian Medical Council.

D. Special Authority of Honorary Council of Indonesian Medical Discipline in Giving and Implementing Sanctions against Doctors or Dentists Conduct Code Violations.

The Indonesian Medical Discipline Honor Board is an autonomous institution established by the Indonesian Medical Council (KKI) which in its duties is independent. To maintain the neutrality of the members of the Medical Council Discipline of Indonesia consists of 3 (three) doctors and 3 (three) dentists from each professional organization, a doctor and a dentist representing the hospital association, and 3 (three) persons Bachelor of Law. In chapter 66 that reads: ¹

1. Any person who knows or interests are harmed or the actions of a doctor or dentist in carrying out medical practice may complain in writing to the Chairman of the Honorary Board of Medical Discipline of Indonesia.
2. Complaint must at least contain; A) Identity of complainant, b). Name and address of the practitioner's office or dentist and the time of action taken, and c). The reason for the complaint.
3. Complaints as referred to in paragraphs (1) and (2) shall not eliminate the right of any person to report any alleged criminal acts to the authorities and / or sue for civil damages in court.

As contained in article 69 paragraph (2) The disciplinary sanctions given by the Indonesian Medical Discipline Honor Board as referred to may be :

- a. Written warning
- b. Recommendation for revocation of registration letter or license of practice
- c. Obligation to attend an education or training at a medical or dental education institute.

From the results of the decision of the Indonesian Medical Discipline Honor Board, it can be used as a consideration for the Minister of Health to revoke the letter of registers (STR) or licensing practice (SIP) doctor. Not all professions have institutions that have special authority as well as Honorary Council of Medical Discipline Indonesia. Institutions that can sanction the revocation of practice permits, so as to provide syock therapy for other doctors, in order to maintain the code of ethics and perform its obligations to patients. Therefore, the existence of Honorary Council of Indonesian Medical Discipline in enforcement of rules against doctors who commit violations, be it code of ethics or law violation is needed. Without the existence of internal institutions such as the Honorary Council of Indonesian Medical Discipline, then the enforcement of rules against doctors will be difficult to control and realized. Mistakes without punishment or sanction, will not provide a deterrent effect, either to the perpetrator or to the doctor and fellow physician profession.

It is expected to be a reference for doctors, in order to provide maximum service for patients. So that mistakes in medical medical action can be avoided as early as possible. With the utmost service and carefulness of the physician in doing the action, will give a sense of safety and comfort to the patient handled, as well as for the patient's family. Subject to article 66 above, patients or families of patients who feel disadvantaged due to ill-considered medical practices may file their case through the Indonesian Medical Disciplinary Council, which is a non-litigation path. In addition to non-litigation channels, patients / families of patients who suspect malpractice has

¹ Undang-Undang RI No. 20 Tahun 2013 Tentang Pendidikan Kedokteran dan Undang-Undang RI No. 29 Tahun 2004 Tentang Praktik Kedokteran, Citra Umbara:Bandung. Hal 70

occurred in the patient's self is not closed the possibility to simultaneously take the path of litigation, namely through civil or criminal lane.¹

If in the investigation is found an ethics violation, the Indonesian Medical Discipline Honor Board continues the complaint on the professional organization (Indonesian Doctors Association or Indonesian Dentist Association), pursuant to article 68 "If in the investigation is found an ethical violation, the Indonesian Medical Discipline Honor Board continues the complaint on the professional organization".²

If a suspected case of malpractice is complained by the public and found to be a violation of the law, the Indonesian Medical Disciplinary Council will recommend that the case be taken to court for review. Because the Medical Practice Law only focuses on medical discipline alone, so the problem of civil or criminal lawsuits is submitted to the general court by using expert witness testimonium when necessary, as well as abroad.³

The Constitutional Court states, if there is a medical dispute between the patient and the doctor then the medical dispute is resolved first through the internal institution of the Medical profession. The internal institution of the medical profession as mandated by the Medical Practice Act is the Indonesian Medical Discipline Honorary Council. If ethics violations are found, the Indonesian Medical Discipline Board of Honor continues the complaint to the physician profession organization, the Indonesian Doctor Association (Ikatan Dokter Indonesia), which is then forwarded to the Ethics of Medical Ethics Council (MKEK). Whereas if a suspected case of malpractice is complained by the public and found to be a violation of the law, the Indonesian Medical Discipline Honor Board will recommend that the case be taken directly to the court for questioning.⁴

The Indonesian Medical Disciplinary Board is an institution authorized to determine whether there is a mistake by doctors and dentists in the application of medical and dental disciplines, and to impose sanctions. The Indonesian Medical Disciplinary Assembly at the provincial level is the institution authorized to determine whether or not there is a mistake made by doctors and dentists in applying the discipline of medicine and dentistry in the province and to set sanctions.⁵

E. The function of Honorary Council of Indonesian Medical Discipline in Law Enforcement System in Indonesia

The function of Honorary Council of Indonesian Medical Discipline is to enforce the discipline of medicine and dentistry in the conduct of medical practice. Enforcement of discipline as referred to in paragraph (1) is the enforcement of rules and / or application of science in the implementation of services to be followed by doctors and dentists.

The function of the Honorary Council of Indonesian Medical Discipline can be seen in **Pasal 64 UU Praktik Kedokteran**, which is:⁶

Honorary Council of Indonesian Medical Discipline duty:

- a. Receive complaints, examine, and decide cases of discipline of the doctor and dentist being filed; and
- b. Preparing guidelines and procedures for handling cases of disciplinary offenses of doctors or dentists.

The Indonesian Medical Discipline Honor Board functions to receive complaints, examine and decide cases of discipline of physicians and dentists submitted by the public. The Indonesian Medical

¹Ibid, hal 76

²Loc Cit, Hal 83.

³Marcel Seran dan Anna Maria Wahyu Setyowati, *Dilema Etika dan Hukum Dalam Pelayanan Medis*, Mandar Maju, Bandung, 2010, hal 21

⁴Op Cit, hal 25

⁵Undang-Undang RI No. 20 Tahun 2013 Tentang Pendidikan Kedokteran dan Undang-Undang RI No. 29 Tahun 2004 Tentang Praktik Kedokteran, Citra Umbara:Bandung. Hal 45

⁶Undang-Undang RI No. 20 Tahun 2013 Tentang Pendidikan Kedokteran dan Undang-Undang RI No. 29 Tahun 2004 Tentang Praktik Kedokteran, Citra Umbara:Bandung. Hal 51

Discipline Honor Board will handle cases of violations according to the guidelines and procedures in handling cases of ethical violations committed by doctors and dentists.

The function of the Indonesian Medical Discipline Assembly in law enforcement system in Indonesia is to enforce the code of ethics rules for doctors and dentists, and to play a role in law enforcement in Indonesia. Where the Honorary Council of Indonesian Medical Discipline sanctions doctors and dentists who violate the code of ethics and submit cases of violation of the law for doctors who perform medical negligence / malpractice.

F. Duties of Honorary Council of Indonesian Medical Discipline in Law Enforcement System in Indonesia

The task of the Indonesian Medical Discipline Honor Board can be seen in **Pasal 64 UU Praktik Kedokteran**, which is:¹

Honorary Council of Indonesian Medical Discipline duty:

- a. *Receive complaints, examine, and decide cases of discipline of the doctor and dentist being filed; and*
- b. *Preparing guidelines and procedures for handling cases of disciplinary offenses of doctors or dentists.*

The Indonesian Medical Discipline Honor Board is tasked with examining and making decisions on complaints relating to the discipline of doctors and dentists (**Pasal 67 UU Praktik Kedokteran**). The Indonesian Medical Discipline Honor Board in its duty is to give verdicts to doctors and dentists who violate ethics. However, in the case of doctors and dentists who perform medical negligence / malpractice act, the Indonesian Medical Disciplinary Council will immediately submit the case to law enforcement officers. Where doctors and dentists who perform medical negligence / malpractice, will be processed according to the law in force in Indonesia. Due to the authority possessed by the Indonesian Medical Disciplinary Council according to Law No. 29 of 2004 on Medical Practice, the authority possessed by the Indonesian Medical Discipline Honor Council is limited to sanctions to doctors and dentists who commit ethical offenses only. And still there is a lack of normality in the authority possessed by the Honorary Council of Indonesian Medical Discipline, in which the Medical Disciplinary Council of Indonesia has no authority to sanction doctors and dentists who are on probation for cases handled by the Indonesian Medical Disciplinary Board, As well as those handled by law enforcement officers (Police, Public Prosecutors until finally being found guilty or not guilty by a Judge in Court).

The decision of the Indonesian Medical Discipline Honor Council is binding on doctors, dentists, and the Indonesian Medical Council whose contents can be declared innocent or disciplinary sanction. The disciplinary sanctions can be (**Pasal 69 UU Praktik Kedokteran**):²

- a. *Written warning;*
- b. *Recommendation for revocation of registration letter or license of practice; And / or*
- c. *Obligation to attend education or training in medical or dental education institutions.*

CLOSING

A. Conclusion

Based on the description of the previous chapters, it can be concluded that :

1. The existence of Honorary Medical Discipline Council of Indonesia as part of the proportional system of law enforcement in Indonesia, against the actions of doctors who allegedly committed acts of code violation or conduct medical malpractice. The existence of Honorary Council of Indonesian Medical Discipline in the settlement of cases that befell doctors and patients is necessary. Although the Indonesian Medical Disciplinary Board is under the auspices of the medical corps, it does not mean that doctors who make mistakes or omissions are protected and will always be free from sanctions

¹Undang-Undang RI No. 20 Tahun 2013 Tentang Pendidikan Kedokteran dan Undang-Undang RI No. 29 Tahun 2004 Tentang Praktik Kedokteran, Citra Umbara:Bandung. Hal 51

²*Ibid*, hal 52

from medical organizations or escape from legal sanctions in Indonesia. Justice to patients and families should be given. In order to create a sense of justice for both parties.

B. Suggestions

4. here are many reasons why the issue of code violation and even the malpractice of the doctors sticking out lately in the community. Among them is the shifting relationship between physicians and patients who had been paternalistic unbalanced and trust, fiduciary relationship changed with increasingly critical views of society and higher legal awareness. In addition, the number of doctors in Indonesia is considered not balanced with the number of patients so that a doctor handles a lot of patients (practicing in various places) which resulted in the diagnosis to be not careful.
5. From the point of law enforcement, it is expected to uphold justice for patients and families, as well as for the physician himself.
6. To acts that are not only a violation of the ethics of the physician profession, but more to the alleged malpractice of the physician, the public may report to law enforcement (through criminal law), or civil claim of compensation, or follow article 98 of the Criminal Procedure Code As well as civilian gantirugi demands.

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