Principles of Ultimatum Remedium and Ne Bis in idem in Medical Dispute Resolution

Arina Ikasari Muhtadi[1], Evita Isretno Israhadi[2]
{arinamuhtadi.pdh@gmail.com}

Universitas Borobudur, Jakarta, Indonesia[12]

Abstract. The principle of ultimum remedium and ne bis in idem in medical disputes by the same party, the same object, and the same reasons cannot be done a second time. The law is finally the last resort in resolving this medical dispute. The approach used in this research is the applied methodology, the legal methodology, and the allure approach. The strategy utilized in this exploration is standardizing juridical by examining statutory issues in a coherent legal system. To meet the criteria for the ultimum remedium principle, criminal sanctions are heavier than other sanctions, and to fulfill the need bis in idem principle. This lawsuit includes the object of the suit, the basis or reason for the lawsuit, and the regulations that can be used as the basis for deciding a case.

Keywords: Ultimatum Remedium; Ne Bis In Idem; Medical Dispute

1 Introduction

In a therapeutic relationship (professional conduct), medical disputes in Indonesia are triggered by adverse events and become the opinion that any generalized adverse event is malpractice; this is influenced by internal and external factors of the patient. Cases of suspected malpractice were reported to the Indonesian Medical Council During the period 2016 to 2021, and there were 317 cases.[1] One hundred twenty of them were general practitioners, followed by surgeons 60 cases, obstetricians (gynecologists) 56 cases, and pediatricians 22 cases. This proposition is based on the legal doctrine of negligence, namely, res ipsa loquitur or "the thing speaks for itself." This doctrine only applies and is appropriate in its application only to the field of civil law with the concept of without proof of negligence or error regarding an unlawful act (onrechtmatige daad) between the patient as the plaintiff for the fault of the doctor as the defendant.

The question now is, can negligence in practicing medicine be categorized as a medico-crime? The answer lies with us all. But what is clear is that common law countries (countries whose laws are in addition to statute law and common law) do not criminalize doctors who commit negligence in carrying out medical practices.[2] If we want to imitate the common law state, then there needs to be a law that is lexed specialis, which can ignore Article 359 and Article 360 of the Criminal Code. In addition, the article in the Medical Practice Law, which criminalizes doctors from practicing substandard medicine, also needs to be reconstructed. The policy in the article is in the form of formal offenses (not material offenses), which are considered heavy for doctors.[3]

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The triggers for disputes are misunderstandings, contrasts in understanding, muddled game plans, disappointment, offense, doubt, ill-advised activities, misrepresentation or deceptive nature, intervention or bad form, and unforeseen conditions.[4] Medical disputes in law are also known as malpractice. From the word's origin, malpractice is aimed at the health profession and general. Still, after generally starting to be used abroad, the term is now associated with or aimed at the health profession. The meaning of negligence is any expert wrongdoing or nonsensical absence of expertise or loyalty in expert or trustee obligations, malicious practice, or unlawful or indecent direct.[5] The understanding of malpractice is still not uniform. With malpractice not regulated in the existing laws and regulations (not having legal certainty), the handling and resolution of malpractice problems also become uncertain.

This problem is compounded by the absence (and almost impossible) of health professional service standards standardization. This is because health problems are very complex, ranging from the impact of the application of health services on different people to the variety of technology in each health care facility and the capabilities of each community of doctors or other health workers.[6]

The absence of professional legal service standards and the number of hospitals that issue different standards from other hospitals will cause difficulties in distinguishing malpractice from negligence, accidents, and failures.[7] Furthermore, it is difficult to prove malpractice if the patient moves from one hospital to another. Thus, the most appropriate and entitled to determine the rejection of health professional service standards is the Medical Committee at the hospital concerned. The Medical Committee is aware of the community standards of doctors, other healthcare professionals, and available technologies in detail.[8]

The purpose of criminal law consists of preventive and repressive, namely: to frighten everyone to prevent the occurrence of a criminal act and educate everyone who has committed a criminal act to become better and can be accepted back into society. Criminal law also recognizes the ultimum remedium principle, namely criminal sanctions as a last resort to improve human behavior. The punishment is extraordinary suffering; its use is carried out if other legal sanctions are no longer sufficient.

2 Research Methods

In this study, the author will use a normative juridical research method. Therefore the data used as a research source is secondary data originating from primary and secondary legal materials.[9] The secondary data were obtained through a literature study.[10] The analytical method used to answer the research problem uses the descriptive analysis method. Empirical legal research is carried out by going directly to the field to obtain primary data supported by library research.[11]

3 Results and Discussion

3.1 Forms of Dispute Resolution

Two routes can be used in the dispute resolution process, in particular suit (court) also, non-case/consensual/non-settlement. We can all grasp that suit in court is a costly and dreary connection. Since the standard court system is typically detached, it oftentimes achieves one party being the victor and the other party being the waste of time. Meanwhile, sharp investigation of the lawful leader in finishing its abilities is considered unnecessarily impeded, slow and monotonous, exorbitant, and lazy to the public premium. It is considered to be

unreasonably formalistic and exorbitantly particular. To that end the issue of examining the improvement of the value system in a fruitful and useful heading is everywhere. To be sure, even intellectuals say that the normal connection is seen as inefficient and nonsensical.

Expositions Intercession is a type of elective inquiry objective or elective critical thinking. Intercession is an approach to settling questions through arranging articles to acquire an arrangement between the gatherings with the help of an authority. Intercession itself should be possible through court or out of court by utilizing a go-between who as of now has a center individual declaration. A go-between is an unbiased party that helps the gatherings in the discussion cycle to look for different conceivable question goals without turning to breaking or forcing a settlement.

With the foundation of the Regulation of the Supreme Court of the Republic of Indonesia Number 01 of 2008 concerning mediation procedures in court, there has been a significant change in legitimate practice in Indonesia. Courts are not recently endowed and endorsed to break down, hear and settle cases they get however then again are obliged to search for agreement between the litigants. Courts, which have been fascinated as policing value foundations, as of now appear as establishments searching for a serene game plan between the conflicting social events.

However, mediation has a weakness: limited juridical support for the process and its results, including the execution of the resulting dispute resolution (peace) agreement. The process and the resulting decisions cannot simply be forced. Another weakness is the regulation of the supreme court itself; namely, according to the order of the Indonesian legislation, the Perma is not mandatory; or binding, so the Supreme Court Regulations can only be used as guidelines. It is necessary to form a law regulating mediation to provide legal certainty.

The relationship between mediation and patient safety is as follows: Patient safety is defined as an effort to avoid and prevent adverse events caused by health services and improve quality. Patient safety is focused not only on people, equipment, or departments, but also on the interaction of components and systems; Adverse events do not automatically constitute evidence of medical malpractice.

3.2. Application of the Ultimatum remedium and Ne Bis in idem Principles in medical disputes

The problem of the effectiveness of implementing alternative sanctions other than imprisonment in Indonesia makes law enforcers such as the police and prosecutors must comply with statutory regulations in carrying out legal processes. Medical dispute resolution can be carried out by applying premium remedium and Ne Bis in idem by applying criminal sanctions to be a form of accountability to defendants who have been legally proven and based on solid evidence that they have committed or not committed a crime. Every accused who has been proven to have committed a crime must be considered responsible for the occasions or criminal demonstrations he has carried out.

They can't be considered responsible for wrongdoings he has never perpetrated and just has the option to carry out a punishment forced by the adjudicator for the occasions and violations they carried outA criminal case that is prosecuted and retrial can only be declared as a ne bis in idem case if certain conditions have been met. According to M. Yahya Harahap in his book, the element of ne bis in idem can only be considered attached to a case.[12] It must meet the requirements specified in Article 76 of the Criminal Code, namely: the material of the case in court, then based on the results of the examination, and the judge has rendered a decision; The decision handed down has obtained permanent legal force; Although one of the conditions for a criminal case decision to be declared ne bis in idem is that the decision has permanent legal

force, but not all types of judicial decisions that have permanent legal force and then against the defendant and the same criminal case cannot be prosecuted and tried again or declared as a criminal case that has been ne bis in idem.

Therefore, if the decision handed down in a criminal case is not based on a favorable decision on the criminal incident charged to the defendant but is outside the criminal event, namely in the form of a decision handed down from a legal perspective or an unfavorable decision. Regarding the right and good, it is included in the statement 'the greatest good for the greatest number,' namely that actions (considerations) should bring the greatest good to as many people as possible. Then the question arises for the author "is it appropriate to resolve medical disputes using criminal charges against the warring parties, between the patient and the hospital in this case?". Law enforcement or applying the law is an attempt to apply an appropriate rule in people's lives. Therefore, the priority of applying criminal sanctions (principle of primum remedium) and Ne Bis in idem will be discussed in this study.

Ultimum remedium is one of the authentic norms in criminal guideline in Indonesia, which communicates that criminal guideline should be the last lodging in policing. The prerequisite of criminal guideline is an awful and sharp approval, so attempts ought to be made to diminish the persevering of hoodlums whatever amount as could be anticipated. In Van Bemmelen's point of view, the utilization of this ultimum remedium ought to be interpreted as 'effort' (focus), not similarly as a contraption to restore treachery or to recover setbacks yet furthermore as a work to restore uncomfortable and out of line conditions in the public arena, on the off chance that not done it can make individuals go rogue.

Before applying criminal sanctions, the ultimum remedium principle considers using other sanctions (administratively, civilly, or other means). If other legal sanctions are less effective, then criminal law is used. However, several laws and regulations regulate criminal sanctions as primum remedium without considering other sanctions, such as the Criminal Code (KUHP), law No. Number 1 of 1946 concerning Criminal Law Regulations (Criminal Law Regulations Law).

This creates a difference between das sollen (expected situation) and das Sein (what happened). A theoretical study of law enforcement related to applying the principle of ultimum remedium or primum remedium to positive law in society is required. The development of law adapts to developments in society, and the legal system cannot completely close itself to various social changes in society.

4 Conclusion

Mediation is the main effort in resolving medical dispute cases. In the mediation process, the doctor-patient relationship is expected and reaches a peace agreement that is a win-win solution. Efforts to apply the principle of ultimum remedium in medical disputes can be applied as an alternative if the mediation aspect does not find agreement. And the principle of ne bis in idem is a decision that someone who has received a court decision from the judge and applies inkrah cannot be sued again in court. This can be the end of a medical dispute decision so that medical dispute cases can be resolved in court.

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