

Establishment of Special Court for Health Service Disputes: Opportunities and Challenges

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Article	Abstract
<p>Keywords: Dispute Resolution; Health Service Disputes; Special Courts</p> <p>Article History Received: Jan 10, 2023; Reviewed: Mar 01, 2023; Accepted: Mar 09, 2023; Published: Apr 02, 2023;</p>	<p>This study analyzed the establishment of Special Court for Health Service Disputes which is based on the occurrence of a legal vacuum and the existence of certain advantages that will be regulated in the Special Court for Health Service Disputes. The non-regulation regarding the Law on Special Courts for Health Service Disputes in Indonesia can be interpreted as a legal vacuum because a judicial institution has not been established that can enforce the law to the fullest and has legal certainty. It can also result in the emergence of injustice in society. Therefore, this study was a juridical - normative research using a legal approach and a conceptual approach. The results of the study found that the establishment of Special Court for Health Service Disputes could be performed within the scope of criminal justice and under the general court as stipulated in Article 27 of Law Number 48 of 2009 Concerning Judicial Powers which has its own characteristics which include philosophical, sociological and juridical foundations. The urgency of the establishment of special court for health service disputes was due to a legal vacuum (<i>rechtsvacuum</i>), the advantages of a special court for health service disputes, the specificity of the malpractice case, ad hoc judge and restitution.</p>



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Introduction

As a state of law, Indonesia guarantees its citizens to obtain justice in accordance with applicable law through judicial power with the intermediary of judicial institutions. As emphasized in Article 24 paragraph (1) of the 1945 Indonesia which regulates that "judicial power is an independent power to administer justice in order to uphold law

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and justice". While health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation as also regulated in Article 28H paragraph (1) of the 1945 Constitution which stipulates "the judicial power is an independent power to administer justice in order to enforce law and justice". Thus, health must have a strong legal basis in order to achieve the goals and ideals of the Indonesian nation (Ramadhan, Rafiqi, 2021).

The development of the world of health is now quite rapid, not only regarding several diseases that arise, but also the way to treat these diseases. However, in this case, it is inversely proportional to the current regulations (there is a legal vacuum), where regulations regarding specificity in resolving health service disputes are very necessary, this is also in line with Machli Riyadi who states (Riyadi, 2016):

"Since the VI World Congress in August 1982, Health Law has developed rapidly in Indonesia. On the initiative of a number of doctors and legal scholars, on November 1, 1982, a Group for the Study of Medical Law in Indonesia was formed with the aim of studying the possibility of its development in Indonesia. But until now, Medical Law has not appeared in its own modified form. Every time there is a problem related to it, the handling still refers to Indonesian health law in the form of Law no. 36 of 2009, Criminal Code and Burgerlijk Wetboek."

Regulations are not made or it can be said that there is a legal vacuum, which can be interpreted as an empty state or absence of laws and regulations or laws governing (certain) order in society, so that the legal vacuum in positive law is more accurately described as a void in laws or regulations (Nasir, 2017).

A legal vacuum due to the absence of regulation on the handling or resolution of health service disputes was because such matters or events cannot yet be regulated in a statutory regulation, or even though it has been regulated in a statutory regulation but it is not clear or even uncomplete. This is actually in line with the saying that "the establishment of a law and regulation is always left behind or underdeveloped compared to events in the development of society" (Nasir, 2017).

As a result of a legal vacuum or lack of regulation regarding the resolution of health service disputes, legal problems may arise between health service providers and patients. The legal relationship between health service providers and patients contains two elements simultaneously, the science element and the art element. First, science element: it includes all observable and measurable medical knowledge, competence recognition, and all knowledge in order to improve health quality. Second, art Element: it relates to the application of medical science and medical technology to patients,

communities and families so that it has limitations when it comes to culture, religion, freedom, rights and responsibilities (World Medical Association, 2005).

The application of the rights and obligations experienced by health service providers and patients currently has many legal problems or conflicts, such as malpractice where doctors commit negligence in performing their obligations so that patients experience both material and immaterial losses in the end, legal disputes arise between health service providers and patients.

Based on the Case Tracing Information System of Surabaya District Court in 2021 alone, there were at least 45 cases in the Health case classification while from January 2022 to July 21 2022 in the Surabaya District Court the Health case classification reached around 47 cases, therefore, the Cases regarding health disputes have continued to grow.

After the malpractice appeared, based on the provisions of Article 29 of Law Number 36 of 2009 concerning Health (hereinafter referred to as the Health Law) which states that in the event that a health worker is suspected of negligence in performing his professional, the negligence must be resolved first through mediation. Thus, the health service dispute must first go through mediation, where the obligation to settle health service disputes through mediation also agrees according to Machli Riyadi who states that normatively the state requires mediation in disputes over negligence of health workers in providing health services (Riyadi, 2016). This is also in accordance with Article 29 of the Health Law. If mediation does not achieve a reconciliation, the patient may file the case to court, namely civil and criminal or other institutions, namely through the Medical Ethics Honorary Council (MKEK) under the auspices of the medical professional organization, namely the Indonesian Doctors Association (IDI) which resolves health disputes from a medical ethical perspective and the Indonesian Medical Discipline Honorary Council (MKDKI) which resolves health disputes from a scientific point of view and can only impose administrative sanctions like the medical disciplinary courts in the Netherlands (*Medische Tuchtraad*).

Apart from going through MKEK and MKDKI which resolve this administratively, patients may also report criminal cases to the Indonesian National Police and then be tried through general courts in a criminal case method. In the criminal context regarding malpractice, it is clear because there are positive laws that regulate it, such as Article 359 of Law Number 1 of 1946 concerning the Criminal Code (hereinafter referred to as the Criminal Code) or Article 360 of the Criminal Code regarding causing death or injury

injuries due to negligence, as well as criminal law regulated in other laws and regulations.

The form of compensation for the actions of health service providers that bring harm, patients may file a civil lawsuit, and civil cases regarding malpractice are quite complicated because before the existence of health services, health service providers first gave informed consent to patients and then made a health service contract. However, after a dispute occurs in health services, patients can hereby file 2 (two) types of lawsuits, namely. First, default on the basis of non-fulfillment or partial fulfillment of the health service contract. Second, unlawful acts because health service providers commit acts that are contrary to positive law and bring harm to patients.

In this civil lawsuit, there is a dualism in the types of lawsuits, because the health service providers have also defaulted and committed an unlawful act. So, in this case, it is possible that the health service provider can also be sued twice. By being able to file the same lawsuit, it is feared that legal certainty will not be achieved and violates the principle of *nebis in idem*.

In addition to the fears that legal certainty will not be achieved and violations of the *nebis in idem* principle, the current resolution of health service disputes also has problems in terms of examinations in court, both criminally and civilly (Walter F. et.al., 2004). In the examination at the court, there is currently no specificity in health science in law enforcement in general courts, especially in criminal cases, both the Prosecutor, Lawyers and the Panel of Judges examining the case. The lack of specialization in medical science in this court makes it difficult for law enforcers to distinguish whether the case is acquittal (*opzet*) or due to negligence (*culpa*) (Saputra, 2021). This can indeed be done in the current general court, but must use expert testimony which is also quite time-consuming and costly for the parties.

In court examinations, beside the knowledge regarding procedural law for law enforcers related to the discipline regarding the case being examined is also important, this is because law enforcement in court, especially in criminal cases, does not only examine the law as limited to statutory regulations, but also on there is an evil intention (*mens rea*) and there is an act (*actus reus*), thus of course this will be a problem, because the knowledge about health determines whether the health service provider is guilty or not based on the presence of malicious intent (*mens rea*) and actions (*actus reus*) and are in accordance with regulated procedures or not (Septiawan, et.al., 2019). As we know,

there are so many procedures for treating patients today that the location of health disciplines is very decisive and important in resolving healthcare disputes. Examples of case analysis related to the importance of health disciplines include:

First, Decision Number 79/Pid.Sus/2011/PN.KD.MN dated 6 October 2011 Jo. 1110 K/Pid.Sus/2012 dated 30 October 2013 Jo. 210 PK/Pid.Sus/2014 dated 9 June 2015. The researcher's analysis in the case above is that the researcher sees that there is still a lack of understanding and knowledge of judges to resolve court disputes in deciding cases, resulting in a loss to one of the parties seeking justice. The prosecutors actually looked at the license case to practice, not the case of threads left in the patient which caused the patient's death (Riyanto, 2017).

Second, Decision Number 257/Pid.B/2015/PN.Dps dated 9 July 2015. The defendant's actions were actually inappropriate if charged with Article 360 paragraph (2) of the Criminal Code, because the error in that article was in the form of negligence while the defendant's actions were intentional. The defendant's actions are more relevant to being charged with maltreatment, because medical malpractice can become malpractice if there is intentional action or consequence of the act or violation of professional standards and procedural standards. The defendant should have been charged with Law Number 29 of 2004 concerning Medical Practice. From this conclusion, the articles that are relevant to the defendant's actions that caused the injury are Article 79 letter c, and Article 51 of the Law on Medical Practice. The author also found that one of the elements of the article that the public prosecutor charged was not fulfilled, then according to Article 191 Paragraph (1) of the Criminal Procedure Code the defendant should be acquitted (Ismi Qomariyah, et.al., 2018).

Regarding law enforcers in court who do not understand the principles of health law, this is also in line with Eko Pujiono in his book *Justice in Medical Treatment*, in certain cases, the judge's refusal occurs because of the knowledge factor of the judge who does not understand the principle of patient autonomy contained in the relationship of medical care (Pujiyono, 2017).

This study aimed to analyze and describe the resolution of health service disputes and special courts of health service disputes in Indonesia which have benefits as study material for the benefit of developing legal knowledge related to resolution of health service disputes and special courts of health service disputes in Indonesia.

Method

The type of research conducted in this study was normative legal research. The type of research that researchers performed was normative research namely research provided that the problems studied revolve around Legislation, namely the relationship between one regulation and another and its relation to implementation in practice, and based on the doctrines of jurists (Ali, 2016).

Discussion

1. Health Service Dispute Resolution

Health Service Dispute Resolution in Indonesia

Before discussing health service disputes, the author first explains the legal relationship between doctors and patients. Basically, the legal relationship occurs because of two things, namely based on an agreement or based on a law order, while the legal relationship between a doctor and a patient is slightly different from other legal subjects, the difference lies in the object (Winoto, 2020). The object of this legal relationship between doctor and patient is not the patient's recovery, but the doctor's or health care provider's appropriate efforts to cure the patient (*inspanning verbintenis*) (Astuti, 2017).

The legal relationship between doctors and patients in general also applies to the terms of the validity of the agreement as stipulated in Article 1320 *Burgerlijk Wetboek* (BW), namely: Agreement, the ability to make an agreement, regarding a certain matter (the existence of an object), and a cause that is allowed (not against the law).

Based on Article 1320 BW regarding the legal terms of the agreement, there are categories of conditions, namely subjective conditions regulated in numbers 1 and 2 and objective conditions regulated in numbers 3 and 4 (Muhammad, 2014). If the subjective conditions are not met, the agreement can be canceled by submitting an application to the court, whereas if objective conditions are not met, the agreement is automatically deemed to have never existed (null and void) (Tutik, 2008). Even the legal relationship between doctor and patient, it is also based on the terms of the validity of the agreement according to Article 1320 BW, namely with the subject of the doctor as the provider of health services and the patient as the recipient of health services with the object of the doctor making all the right and best efforts to cure the patient for his illness. This is also

in accordance with Article 39 of Law Number 29 of 2004 concerning Medical Practice (hereinafter referred to as the Medical Practice Law), namely "Medical practice is organized based on an agreement between a doctor or dentist and a patient in an effort to maintain health, prevent disease, improve health.", treatment of disease and restoration of health." (Ma'ruf Akib, et.al., 2022).

The application of this health service agreement begins with the doctor or health service provider first examining the patient and then the doctor or health service provider provides information related to the disease experienced by the patient and explains the actions, benefits, and risks that the patient will experience in the health service (informed consent) (Mahendradhata, et.al., 2017). Basically, informed consent is needed to ensure that the patient has understood all the information needed to make a decision, and that patient is able to understand the relevant information and the patient gives consent. Based on the informed consent doctrine, the information that must be disclosed is as follows (Gatra, 2021):

- a. An enforced diagnosis;
- b. The nature and extent of the actions to be taken;
- c. The benefits and urgency of performing the action;
- d. The risks of the action;
- e. The consequences if no action is taken; and
- f. Sometimes the costs are associated with the action.

With this informed consent, the patient can be free to obtain clear medical information and can make his own choice of medical treatment that he will undergo. After the health service provider gave informed consent and the patient agreed to the informed consent, at that time the health service agreement was born.

Apart from being based on agreements, the legal relationship between doctor and patient also arises from statutory orders (*zaakwaarneming*). Based on Article 1354 BW formulates *zaakwaarneming* namely (Subekti, 2011):

"If someone voluntarily, without being assigned, represents other people's affairs, with or without that person's knowledge, then he secretly binds himself to carry on and settle the matter, until the person he represents for his interests can carry out the matter himself. He must burden himself with everything that includes the matter. He must also carry out all the obligations that he must assume if he accepts powers that are expressly stated."

People who bind themselves voluntarily without being ordered to represent other people's affairs, then the law imposes a legal obligation on that person to carry out other people's affairs as well as possible. In this case a legal obligation arises if the legal

obligation is not performed properly and causes harm to other people, then he is responsible for compensating for the loss. In general, legal relations arising from legal orders have been regulated based on Article 531 of the Criminal Code, namely:

“Whoever witnesses that a person is in a state of danger of death, neglects to provide or organize assistance to him while such assistance can be given or provided without worrying that he himself or others will be in danger, shall be punished with imprisonment for a maximum of three months or a fine as much as possible. Rp. 4,500, - If the person who needs help dies.”

Specifically, the legal relationship between doctors and patients based on the law is stated in Article 51 letter d of Medical Practice Law jo. Article 59 of Law Number 36 of 2014 concerning Health Personnel (hereinafter referred to as the Health Personnel Law) jo. Article 29 paragraph (1) letter c of the Hospital Law states that if a doctor or hospital does not immediately provide assistance on the grounds that there is no informed consent or consent from the patient or family or pays advance money causing the patient to die, then the doctor or health service providers can be prosecuted criminally and the hospital can be sued for unlawful acts. In such an emergency situation, a doctor or hospital can perform medical procedures without informed consent from the patient or his family. Doctors and/or hospitals cannot be sued by patients even though a medical procedure has been performed without informed consent, except if the medical action performed violates the standards of the medical profession and Standard Operating Procedures, either intentionally or forehand, causing harm to the patient. In addition, there is an obligation for health service facilities (hospitals, health clinics, etc.) to provide medical services and efforts to cure patients who are in an emergency, this has also been regulated in Article 32 of the Health Law:

Article 32

(1) In an emergency situation, health service facilities, both government and private, are obliged to provide health services to save the patient's life and prevent disability in advance.

(2) In an emergency, health service facilities, both government and private, are prohibited from rejecting patients and/or asking for advance payments.

Meanwhile, the sanctions for not implementing Article 32 of the Health Law have also been regulated in Article 190 of the Health Law:

Article 190

(1) Leaders of health service facilities and/or health workers who practice or work at health service facilities who deliberately do not provide first aid to patients who are in an emergency as referred to in Article 32 paragraph (2) or Article 85 paragraph (2)) shall be subject to imprisonment for a maximum of 2 (two) years and a fine of a maximum of Rp. 200,000,000.00 (two hundred million rupiahs).

(2) In the event that the act as referred to in paragraph (1) results in disability or death, the head of the health service facility and/or the said health worker shall be punished with maximum imprisonment of 10 (ten) years and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

So, in essence the legal relationship between the doctor and the patient is formed on the basis of the agreement as stipulated in Article 1320 BW and informed consent. Whereas in an emergency situation (whether the patient is conscious or unconscious) it is automatically binding on the basis of statutory obligations that have been regulated in Article 1233 BW and the obligation of health service facilities to provide health services to emergency patients based on Article 32 of the Health Law.

Thus, the legal relationship between doctors or health service providers and patients is not always harmonious, in this legal relationship problems often occur (disputes over health services) between health service providers (doctors/hospitals) and recipients of health services (patients) (Novianto, 2017). This health service dispute occurred due to several factors, namely the actions of the health service provider that violated the law bringing harm to the patient and the health service provider not performing the best efforts for the patient's recovery.

After the occurrence of health service disputes, the resolution of health service disputes in Indonesia is currently also quite complicated, but there are many ways to resolve health service disputes, namely by litigation (court) and non-litigation (outside the court), which include mediation, honorary Council of Medical Ethics, Indonesian Medical Discipline Honorary Council, through the Court (criminal/civil).

Based on the current resolution of health service disputes, there were still some deficiencies that the state should be able to provide more services to the community so that law enforcement efforts are more effective in certain fields by means of a new judicial institution, namely by establishing a Special Court for Health Service Disputes which was formed based on Constitution. The urgency of establishing a Special Court for Health Service Disputes is due to a legal vacuum and there are several advantages if a Special Court for Health Service Disputes is formed.

The Urgency of Establishment of Special Court for Health Service Disputes

Based on the resolution of health service disputes, there were still some shortcomings that the state should be able to provide more services to the community to be more effective in law enforcement efforts in certain fields by means of new judicial

institutions, namely the establishment of a special court of health services formed based on Constitution. The urgency of the establishment of a special court for health service disputes is due to the legal vacuum and there are several advantages if the Special Court of Health Services Disputes is formed.

First, the Legal Vacuum (*rechtsvacuum*). Until now there were many opinions regarding the understanding of the legal vacuum, this is in line with the many opinions regarding the understanding of the law itself in a day understanding of the law is a rule that is forced to regulate the association of human life that is passed by the authorities. Grotius in his book *De Jure Belli AC Pacis* (1625) states that law is a rule of moral acts that guarantee justice (Nasir, 2017).

Understanding Vacuum according to the Big Indonesian Dictionary is an vacant/empty condition/there is no content. Based on this explanation, it can be concluded that the notion of a legal vacuum is the absence of laws or laws and regulations governing a particular problem.

The legal vacuum occurs because the lawmaker only stipulates general regulations, while considerations regarding concrete matters are submitted to judges and lawmakers are always lagged by social events that arise in society. Pay attention to this, the judges often add the law. The consequences arising from the legal vacuum can occur as legal uncertainty (*rechtlphsonzkerheid*) or can even result in (*rechtsverwarring*) resulting in legal chaos (Hidayati, 2022).

In addition to the occurrence of legal uncertainty and legal chaos, the consequences arising from the legal vacuum are injustice, this happens because of the establishment of government institutions that have the duty to enforce the law or justice such as the police, prosecutors, judicial institutions and advocate organizations.

Thus, it is not regulated regarding the special court for health service disputes in Indonesia can be interpreted as a legal vacuum because the judicial institution is not established that can enforce the law to the maximum and has legal certainty. It can also result in the emergence of injustice in the community.

Second, the advantages of special court for health service disputes. Every establishment of a special court must have a specific purpose for more effective law enforcement efforts in certain fields and must have special characteristics/differences from the court in general. Like a children's court that has special characteristics, namely the legal subjects are children and the Corruption Court that have special characteristics,

namely the cases that are tried are criminal acts of corruption with ad hoc judges and have an inverse procedure.

Therefore, the special court for this health service disputes must also have its own special characteristics, namely the case that is tried are the cases related to health services or negligence of health services (malpractice), the existence of ad hoc judges and the existence of restitution in each decision stating the defendant is guilty of committing acts criminal. The definitions of malpractice, ad hoc judges and restitution are as follows: First the Specificity of The Malpractice Case. Understanding of the negligence of health services or commonly referred to as malpractice based on the Big Indonesian Dictionary (KBBI) is the wrong practice of medical, incorrect, violating the law or code of ethics. While the understanding of malpractice in Black's Law Dictionary is "malpractice = any professional misconduct, unreasonable lack of skills or fidelity in professional or fiduciary duties, evil practice, or illegal or immoral conduct." In the current laws and regulations in Indonesia there are no regulations regarding the definition of the negligence of health services (malpractice) for sure, until finally several opinions emerged about the definition of malpractice itself, one of which according to Adami Chazawi concluded that the understanding of malpractice is (Chazawi, 2016):

"Medical malpractice is a doctor or someone else who is under his orders intentionally or negligently performs (active or passive) in medical practice in patients in all levels that violate professional standards, standard procedures, principles of medical professional, or by breaking the law or without authority caused: without informed consent or outside of informed consent, without SIP or without STR, not in accordance with the patient's medical needs; Which causes the consequences (*causaal verband*) Disadvantages for the body, physical and mental health and or the life of the patient, thus forming legal accountability for doctors."

Second, the Ad hoc Judge. The definition of ad hoc judges has been regulated based on Article 1 paragraph (9) of the Law on Judicial Powers "Ad hoc judges are temporary judges who have expertise and experience in certain fields to assess, adjudicate, and decide on a case they appoint are regulated in law." The existence of ad hoc judges can help law enforcement in court because they have specific knowledge in certain fields that are applied in court. Thus the ad hoc judge can apply in a special court for health service disputes.

Third, the Restitution. The definition of Restitution has been regulated in Article 1 paragraph (1) of the Republic of Indonesia Supreme Court Regulation No. 1 of 2022

concerning Procedures for Completing Applications and Providing Restitution and Compensation to Victims of Crime (hereinafter referred to as PERMA 1/2022) which regulates "Restitution is compensation given to victims or their families by perpetrators of crimes or third parties." The provision of restitution can provide benefits to victims of criminal acts so that they no longer need to take legal action to obtain their rights.

2. Special Court for Health Service Disputes

Philosophical Foundation

The purpose of establishing a state of law is basically a response given to developments that occur in society. This development is related to the development of public views related to the material regulated in the law, the development of norms or developments in statutory regulations. Along with these developments, in terms of law enforcement, society is very sensitive to injustice. The creation of a sense of justice in society which is the mandate of Pancasila is very important because this is one of the legal ideals which is essentially the attainment of justice (Hapsari, 2021).

In the theory of justice, in philosophical conceptions, there is a very close bond between law and justice. Ulpianus of Rome once said that before the law can carry out its duties, we must know where the truths of the law come from. Uplian also said that law comes from justice because justice is its mother. According to Gustav Radbruch, justice is a measure of the value of positive law (Siahaan, 2017). So positive law is very decisive to achieve justice.

The framework of thinking concerning justice to be achieved in a health service dispute case that will be performed by Special Court for Health Service Disputes is that justice is not only substantively but also from a procedural point of view. Thus, as stated by John Rawls, "The primary subject of justice is the basic structure of society, or more precisely, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. By major institutions I understand the political constitution and the principal economic and social arrangements (Rawls, 1999)." In essence, John Rawls stated that the main subject of justice is the basic structure of society, or more precisely, the way the main social institutions distribute fundamental rights and obligations and determine the distribution of benefits from social cooperation with large institutions that understand the political constitution, economic and social.

Thus, the harmonization of law in the process of forming laws and regulations appears as a necessary need as soon as possible to minimize the possibility of injustice arising and to fulfill the rights of victims who have been harmed as a result of criminal acts of health services.

Sociological Foundation

Health as part of the elements of the welfare of every human being has an important role in national development which is very important (Arrieta-gómez, 2018). If health in the community is disrupted, it will have an impact on considerable economic losses to the country. Without the fulfillment of the right to health, automatic development in the health sector cannot be realized (Rekyan Pandansari, et.al., 2023).

Health in the community must be realized, by providing health services to everyone in an equitable manner and in accordance with applicable legal rules. To fulfill the right to health services, the role of the law, especially in court, is of course very important. Because in order to determine whether the health worker or medical worker committed an act to fulfill the right to health services to the community or actually committed a criminal act. Thus, to assess whether health workers or medical personnel fulfill the right to public health services or commit criminal acts, a Special Court for Health Service Disputes is certainly needed so that the decision is fair, beneficial and certain.

Juridical Foundation

In accordance with the mandate of Article 1 paragraph (3) of the 1945 Constitution, Indonesia is a legal state whose actions must be based on laws and statutory regulations. There are two elements in a rule of law state, namely the first is that the relationship between those who govern and those who are governed is not based on power but based on an objective norm, and the second is that objective norms must fulfill the conditions that are not only formal, but can be ordered dealing with legal ideas (Kusumohamidjojo, 2004).

The right to health services has been regulated in Article 28H paragraph (1) of the 1945 Constitution which stipulates "Every person has the right to live in physical and spiritual prosperity, to have a place to live, and to get a good and healthy environment and has the right to receive health services". The right to health services cannot be reduced under any circumstances.

In juridical, the Indonesian government has the authority to form a court in order to achieve the ideals of a law that is just, beneficial and has legal certainty. The legal basis for the establishment of the Special Court is regulated in Article 27 of the Judicial Powers Law which stipulates that special courts can only be formed in one of the judicial environments which are under the Supreme Court.

The court is an official body or agency that implements the justice system in the form of examining, adjudicating, and deciding cases. The form of the Judicial system implemented in the Court is an official public forum and is performed based on the procedural law in force in Indonesia (Pope, 1931). According to Jimly Asshiddiqie, the term special justice is understood as an antonym of the notion of justice in general, which is tiered from the first instance court at the District Court, the appellate court at the High Court to cassation level court to the Supreme Court. In addition, the definition of a Special Court has also been regulated in Article 1 paragraph (8) of the Judicial Powers Law, namely "A Special Court is a court that has the authority to examine, hear and decide on certain cases which can only be formed within one of the judicial bodies under the jurisdiction of The Supreme Court is regulated by law (Asshiddiqie, 2013)."

In accordance with the provisions of Article 25 paragraph (1) of the Judicial Power Law, judicial bodies were also formed under the Supreme Court of the Republic of Indonesia, namely General Courts, Religious Courts, Military Courts and State Administrative Courts. Thus, in accordance with the provisions of Article 27 of the Law on Judicial Powers, this special Court can only be formed in one of the judicial environments which is under the Supreme Court of the Republic of Indonesia as referred to in Article 25 paragraph (1) of the Law on the Judiciary and the establishment of this Special Court can only be formed based on the Law Invite. As for the elucidation of Article 27 paragraph (1) of the Law on Judicial Powers "What is meant by "special courts" include juvenile courts, commercial courts, human rights courts, corruption courts, industrial relations courts and fisheries courts which are within the general court environment, as well as a tax court within the state administrative court."

The establishment of this special court whenever new ideas arise to form extraordinary special courts is intended to make law enforcement efforts more effective in certain areas. According to Adi Sulistiyono and Isharyanto, the establishment of this Special Court is divided into two, namely courts whose specialty is because of the material law that becomes their scope, and courts whose specialty is because of the

subjects involved (Sulistiyono, Isharyanto, 2018). The first concerns courts whose specialty is due to material law, for example, such as the Commercial Court, Human Rights Court, Tax Court and Fisheries Court whose absolute competence relates to the legal object that is the authority of this court, while the second concerns courts whose specialty is due to subjects such as the Juvenile Court which is the source of his specialty is the suspect/defendant, in this case, children between the ages of 8-18 years.

Thus, based on this legal basis and theory, the establishment of a Special Court for Health Service Disputes can very well be formed into a Special Criminal Court within the General Court environment through the establishment of a Law related to the Special Court for Health Service Disputes, whose specialty is material regarding health/medical services and the subject is a suspect. The defendant works as a medical and health worker.

This Health Service Dispute Court will later enter into the Special Criminal Court within the General Court environment in Indonesia thus it is very important to have examples of Special Criminal Courts within the General Court environment in Indonesia, in this case, the author takes the example of the Human Rights Court, the Court of Action Corruption Crime and Juvenile Court.

In the Establishment of the Special Court for Health Service Disputes, there is a special criminal procedural law in which the criminal procedural law is the same as the criminal procedural law in general, but there are differences from the general criminal procedural law, the difference is the specificity of the case being tried is a case of malpractice/negligence of health services, the existence of ad hoc judges and the issuance of restitution.

Conclusion

Indonesia has not yet regulated and has not formed a Court specifically in the Health sector, so this has become a legal vacuum in Indonesia, with the Special Court for Health Service Disputes is considered important because there are also several things that can provide its own advantages from the court specifically this. Thus, these reasons become the urgency of establishing a Special Court for Health Service Disputes. Establishment of a Special Court for Health Service Disputes can be formed under a general court pursuant to Article 27 of the Judicial Powers Law stipulates that a special court can only be formed in one of the judicial environments which is under the Supreme

Court, as referred to in Article 25 of the Judicial Powers Law, namely the judiciary which is located under the Supreme Court includes judiciary bodies within the realm of general courts, religious courts, military courts, and state administrative courts. While the establishment of Special Court Procedural Law for Health Service Disputes can be formed by using the mechanism of criminal procedural law for ordinary procedural examinations and using the Accusatoir System, however the difference is that the Panel of Judges consists of one Career Judge as Chair of the Panel of Judges and two ad hoc Judges as Members of the Panel of Judges as applied in the Corruption Court. The reason for the establishment of a lawsuit for filing health services is more suitable to enter as criminal justice is because if it is civil, the victim can still report the perpetrators of malpractice using Article 359 of the Criminal Code jo. 360 of the Criminal Code regarding the causes of loss of life or injuries due to negligence, as for specific criminal provisions in other laws, namely one of them in Chapter XX of the Health Law.

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