The role and position of the indonesian medical discipline honorary council in the fair resolution of medical disputes

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Abstrak

The primary objective of this study is to provide a comprehensive description of the role and position of the Medical Ethics Council of Indonesia (MKDKI) in facilitating the equitable resolution of medical disputes within the Indonesian context. The present study constitutes a normative legal research. The research findings indicate that the resolution of medical disputes should be channelled through MKDKI, as it possesses the necessary expertise in the application of professional discipline within the medical field. Furthermore, MKDKI is an authoritative institution responsible for determining whether a doctor has violated professional disciplinary standards. The term "can" as stipulated in Article 66 paragraph (1) of Law Number 29 of 2004 regarding Medical Practise encompasses the possibility of either initiating a complaint against MKDKI or refraining from doing so. Legal confusion may occur, thus necessitating the replacement of the word "can" with "must." This implies that complaints regarding medical issues must be resolved through MKDKI as a mandatory step. It is imperative to conduct a judicial review of Article 66, paragraph (1) of Law Number 29 of 2004 pertaining to Medical Practise. Additionally, it is essential to deliberate on the authority of the Medical Council of Indonesia (MKDKI) in determining compensation for disputing parties. In order to ensure legal clarity for both medical practitioners and the general public, it is imperative that every decision made by the MKDKI (Medical Knowledge and Decision-making Institute) is carefully considered.

Keywords: Medical Disputes; MKDKI; Doctors

A. Introduction

The importance of access to healthcare is underscored in the Law of the Republic of Indonesia Number 36 of 2009 on Health. This legislation asserts that the advancement of public health should prioritise enhancing societal awareness, motivation, and capacity to lead healthy lives, thereby serving as an investment in the development of productive human capital. The subject matter under consideration pertains to both social and economic aspects.(Prabandari et al., 2019) This legislation underscores the government's obligation to fulfil many duties, such as the duty to strategize, govern, coordinate, direct, and oversee the execution of health initiatives that are fair and readily available to the populace.(Utomo, 2015)

Furthermore, the Government of the Republic of Indonesia is among the state parties that have expressed their dedication to the global community by adhering to international agreements that govern economic, social, and cultural rights, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR).(Muhlis et al., 2020) The International Covenant on Economic, Social and Cultural Rights (ICESCR) has been officially ratified by means of Law Number 11 of 2005, which pertains to the ratification process of the Covenant. According to Article 12 of Law Number 11 of 2005, the state parties involved in this Covenant acknowledge the entitlement of every individual to have the utmost achievable level of physical and mental well-being.(Prahara, 2017)

In light of the significance attributed to the provision of quality health services to the community, the government has undertaken many initiatives aimed at attaining improved

healthcare provisions. In addition to the provision of health services, the government bears the responsibility of fostering and promoting community engagement in diverse facets of healthcare services.(Aditya et al., 2019) The doctor and patient are two distinct legal entities that establish a professional and legal association within the medical field. Medical ties and legal relations between healthcare providers and patients pertain to the preservation of health or the provision of healthcare services.(Rian Saputra and Silaas Oghenemaro Emovwodo, 2022) Within the context of the health care connection, doctors and patients are not only bound by their rights and obligations, but they also assume their respective legal responsibilities. These legal responsibilities serve as the foundation for more detailed agreements between doctors and patients, such as therapeutic agreements or therapeutic transactions.(Purwadi, 2017)

Medical practise refers to the delivery of personalised care by physicians to patients through the provision of various medical services. When an individual seeks medical services from a healthcare professional, a legal association is established between the doctor and the patient, sometimes referred to as a therapeutic transaction. Legal relationships that do not guarantee any specific consequence, such as healing or death, are referred to as "*inspannings verbintenis*".(Saputra et al., 2021) These differ from legal relationships commonly found in general agreements, which typically have a promise of a specific result or outcome, known as "riskoverbentenis" or "resultaatsverbentenis."(Ummah et al., 2019) Legal relationships are established in the field of medical services when doctors and patients engage in professional interactions. These interactions occur in various situations and can result in the creation of rights and obligations through mutually agreed-upon agreements between the parties involved.

It is evident that the legal association between medical practitioners and patients can be characterised as a commercial arrangement, denoted as a "inspannings verbintenis" in Dutch. This implies that physicians are committed to exerting their utmost efforts in delivering medical services to patients, while acknowledging that they cannot ensure absolute success in every instance of medical service provision.(Abubakar, 2018) However, the notion of a legal association between a physician and a patient within a therapeutic exchange has undergone a transformation. Initially, the patient's role was limited to relying on the doctor's expertise in identifying the appropriate healing procedure (therapy). Presently, the patient has assumed an equal place alongside the doctor in this connection.(Dwi Erawati & Dini Iswandari, 2022) For example: doctors may no longer overlook patient opinion concerns in choosing a treatment strategy, including assessing whether or not surgery is necessary.

In the context of a therapeutic contract, it is important to acknowledge the inherent power imbalance between doctors and patients. This power dynamic, often referred to as "professional power," has a significant impact on the psychological and physical well-being of the patient. However, safeguards for these patients are established through the application of principles that recognise their vulnerability.(Rachmanto, 2023) The categorisation of an individual as a vulnerable person is contingent upon various factors, encompassing variables such as biology, economics, culture, and other relevant dimensions. This vulnerability may arise due to factors such as disability, environmental challenges, social inequities, gender disparities, and unequal power dynamics, resulting in an individual's limited ability to assert their autonomy.

Moreover, the status of the patient within the realm of patient health services can be identified in Article 4 of Law Number 36 of 2009 pertaining to Health, wherein it is stipulated that every

individual possesses the entitlement to health. Moreover, Article 5 of the legislation stipulates that all individuals possess equal entitlements to avail themselves of resources within the domain of the healthcare sector. This provision has legal implications for three patient rights that are interconnected: medical consent (informed consent), access to medical data (medical records), and medical confidentiality (medical secrecy). This imperative is seen essential because to its adherence to the principles of human dignity, wherein individuals possess inherent autonomy and entitlement to their own rights. One instance involves the patient granting consent for medical intervention subsequent to receiving information or an explanation from the physician regarding the intended medical procedure.

The idea of informed consent serves to safeguard the autonomy and integrity of persons, granting them the freedom to freely exercise their own decision-making in relation to medical treatment administered by healthcare professionals. In practical application, the execution of informed consent is frequently neglected by physicians who hold the belief that all medical interventions conducted on patients do not carry any potential risks. Furthermore, in instances where risks are acknowledged, physicians maintain a sense of confidence in their ability to effectively manage and mitigate them.(Alfarizi & Maharani, 2022) The avoidance and lack of justification for such actions are crucial, notwithstanding the possibility of emergency medical operations being performed without obtaining informed consent.

In addition to this, with regard to medical malpractice, it typically arises when the outcomes of a physician's interventions in the treatment of a patient do not align with the patient's anticipated results, leading to the patient's demise or impairment, hence giving rise to a legal claim against the physician. This circumstance ultimately gave rise to medical disagreements between healthcare professionals and individuals seeking medical treatment. Based on the patient's account, an incident of medical disagreement transpired, prompting the patient or their family to register a complaint with the authorities and initiate a civil litigation against the physician, alleging negligence on the part of the doctor.(Ramadhani, 2022) In his dissertation, Widodo Trenso Novianto asserts that medical disputes arise as a result of patient dissatisfaction, which may be attributed to instances where doctors fail to fulfil their commitments. Consequently, patients or their relatives seek to identify the underlying reasons for their discontentment. The discontent arises from instances where the medical profession engages in unlawful practises that result in harm to patients. This typically occurs when there is a failure to fulfil the terms outlined in the therapeutic agreement, or when doctors violate its provisions.(Ridwan, 2019)

The rise in public complaints and litigation is commonly interpreted as indicative of inadequate medical care. However, it is important to note that the escalating number of lawsuits targeting healthcare professionals and institutions can also be viewed as a positive development, reflecting an increasing awareness among individuals regarding their entitlements within the healthcare domain.(Toguan & Ricky, 2021) The complaint was predicated upon the doctor's failure to exercise due care and diligence in the execution of his professional duties. Nevertheless, the task of substantiating the occurrence of a medical offence perpetrated by a physician against a patient is inherently challenging, as articulated by Nova Riyanti Yusuf, the Deputy Chairperson of Commision IX of the House of Representatives (DPR). Yusuf elucidates that evaluating an instance of medical misconduct necessitates individuals possessing a comprehensive understanding of the pertinent domain.(Fitriono et al., 2016)

Medical professionals have the potential to exhibit carelessness in the execution of their duties, either intentionally (dolus) or accidentally (negligent, culpa). However, society perceives these errors as instances of medical malpractice, thereby allowing patients to pursue legal recourse to address such situations. Each instance of implementing a medical intervention inherently carries a degree of risk, regardless of its magnitude.(Kusumaningrum, 2016) The field of medicine does not formally acknowledge the concept of medical malpractice, as it pertains to intentional acts committed by healthcare professionals. According to Article 66 paragraph (1) of Law Number 29 of 2004 concerning Medical Practise, there exists a normative regulation pertaining to the resolution of medical disputes. This regulation stipulates that in the event a patient experiences dissatisfaction with a medical procedure conducted by a physician, the patient has the option to file a complaint with the Medical Discipline Honorary Council. Indonesia is a country located in South-east Asia.(Nasution et al., 2022) Ideally, the resolution of medical conflicts should prioritise non-litigation methods as a preliminary step, prior to resorting to additional measures such as civil or criminal actions.

In accordance with the Constitutional Court of the Republic of Indonesia's Ruling Number 14/PUU-XII/2014, the resolution of medical disputes is also addressed in Article 66 paragraph (3) of Law Number 29 of 2004 concerning Medical Practise. This provision stipulates that individuals who perceive harm resulting from medical interventions are entitled to exercise their right to report suspected criminal acts to the authorities and/or seek civil damages through legal proceedings, without waiving this right.(Suparman, 2020) Jovita Irawati argues that the presence of regulatory incongruities within the healthcare industry, specifically pertaining to the regulation of patient rights in the resolution of medical disputes, creates avenues for the resolution of such conflicts through diverse channels.(Sulolipu et al., 2019) The presence of regulatory disharmony within the health sector has the potential to adversely impact both patients and doctors, as it gives rise to contradictions in regulatory norms, particularly with regard to patient rights.

According to Setyo Sugiharto, the resolution of medical disputes should prioritise efficiency, cost-effectiveness, and a streamlined process, hence suggesting the adoption of alternative methods of dispute resolution outside the traditional court system.(Istiana Heriani, 2019) The institution known as MKDKI possesses the jurisdiction to ascertain whether a doctor, who has been convicted, has committed an error. This is in spite of the provision stated in Article 29 of Law Number 36 of 2009 pertaining to Health, which mandates that in cases where a healthcare professional is suspected of professional negligence, the matter must initially be addressed through mediation. According to Andryawan (year), the legal status of MKDKI continues to be a subject of contention. One notable concern is the frequent lack of productivity of MKDKI, attributed to the hurdles imposed by KKI. Additionally, the State Administrative Court has nullified several disciplinary enforcement decisions taken by MKDKI.(Santoso et al., 2019) The enforcement of medical discipline lacks assurance. Despite the fact that the enforcement of medical discipline determined by MKDKI is considered a conclusive and obligatory judgement.

Furthermore, the research conducted by Arif Dian Santoso, titled "Medical Dispute Resolution through Mediation by MKDKI," aims to promote equity in the doctor-patient relationship.(Chintia & Kusumaningrum, 2020) It is recommended that the resolution of medical disputes be pursued through a mediation process, which is founded upon the establishment of trust. It is important to note that the mediation process should not be conducted by the MKDKI,

as the primary responsibility of the MKDKI is to oversee medical discipline. However, decisions made by the MKDKI can serve as valuable reference material in the mediation process, aiding in the resolution of medical disputes.(Santoso et al., 2019) This article seeks to address the stance of the Indonesian Medical Discipline Honorary Council regarding the resolution of medical disputes, which can be achieved either by direct litigation or judicial proceedings, as outlined in the aforementioned description.

B. Research Methods

This study employs a normative juridical research methodology, which relies on secondary data sources for the purpose of generating content for scholarly works.(Saputra, Zaid, et al., 2023) The legal sources utilised in this study consist of a range of laws and regulations. These sources will be analysed through both a statutory approach and a conceptual approach, employing relevant concepts from area specialists to address the specific topic under discussion.(Saputra, Setiodjati, et al., 2023) This study employs a qualitative data analysis approach to examine the collected legal information, which will be presented in a descriptive manner. Specifically, it focuses on characterising the role of the Indonesian Medical Disciplinary Council in resolving medical disputes.

C. Results and Discussion

The present discourse aims to elucidate the duties, functions, and authorities vested in the Indonesian Medical Discipline Honorary Council.

The Indonesian Medical Disciplinary Honorary Council (MKDKI) is an authoritative institution responsible for assessing the adherence to medical discipline and enforcing regulations governing medical practise among doctors. Its primary role is to determine the presence of any deviations in the application of medical discipline and ensure compliance with the established rules within the medical profession. The members of MKDKI comprise doctors who serve as representatives of professional organisations, hospital groups, and legal experts.(Afandi, 2009) The membership of MKDKI comprises three doctors and three dentists who are affiliated with their respective professional organisations. Additionally, there is one doctor and one dentist who represent the hospital association, as well as three individuals with legal degrees. The primary objective of the MKDKI is to ensure impartiality in fulfilling its responsibilities.

According to Article 3 of the Indonesian Medical Council Regulation Number 3 of 2011, which pertains to the Organisation and Work Procedure of the Indonesian Medical Discipline Honorary Council and the Medical Disciplinary Honorary Council at the Provincial Level, the responsibilities of the Medical Disciplinary Honorary Council (MKDKI) involve two main tasks. Firstly, MKDKI is responsible for receiving complaints, conducting examinations, and making decisions on cases of alleged violations of professional discipline by doctors and dentists that have been filed. Secondly, MKDKI is tasked with preparing guidelines for the procedures to be followed in handling cases of suspected violations of the professional discipline of doctors and dentists.(Zaluchu & Yusra, 2022)

In addition, MKDKI also has the authority that has been regulated in Article 5 of the Indonesian Medical Council Regulation Number 3 of 2011 concerning the Organization and Work Procedure of the Indonesian Medical Disciplinary Honorary Council and the Indonesian Medical

Disciplinary Honorary Council at the Provincial Level, namely MKDKI has the authority to prepare procedures for handling cases of alleged violations of the professional discipline of doctors and dentists; carry out the preparation of guidebooks in carrying out the tasks of MKDKI and MKDKI-P; receipt of complaints of alleged violations of the professional discipline of doctors and dentists, and accept any appeals; reject complaints that are not within the jurisdiction of MKDKI and refuse if there is an appeal; carry out the handling of cases of alleged violations of the professional discipline of doctors and dentists by carrying out investigations, clarifications, and disciplinary examinations, in addition to requesting and examining medical records and other documents originating from several parties related to the first level and the level of appeal; summon complainants, defendants, witnesses, as well as experts related to complaints so that their statements can be heard; make a decision whether or not there is a violation of the professional discipline of doctors and dentists both at the first level and at the appeal level; make determinations of disciplinary sanctions based on violations of the professional discipline of doctors and dentists at the first and appellate levels; implement MKDKI decisions that will serve as the authority of MKDKI; carry out guidance, coordination, and supervision of the implementation of the tasks of MKDKI-P; preparing and giving consideration to the proposed formation of MKDKI-P at KKI; conduct counseling, outreach, and dissemination regarding MKDKI and MKDKI-P; record and document complaints, the inspection process, and MKDKI decisions.(Siregar et al., 2022)

According to Article 4 of the Indonesian Medical Council Regulation Number 50 of 2017 Concerning Procedures for Handling Discipline Complaints of Doctors and Dentists, MKDKI is not an institution that can mediate, reconcile, or negotiate between Complainants, Defendants, Patients, and/or their proxies; MKDKI also does not accept complaints related to ethical issues and legal issues, whether civil or criminal; if during the examination an ethical violation is discovered, the disciplinary.(Chintia & Kusumaningrum, 2020) Professional discipline violations in Indonesian Medical Council Regulation No. 4 of 2011 concerning the Professional Discipline of Doctors and Dentists can be categorised as follows: 1. Incompetent medical practises; 2. Doctor's professional duties and responsibilities that must be given to patients are not carried out properly; and 3. Conducting disgraceful acts that could undermine the dignity and honour of the medical profession.(Sinaga, 2021)

Article 66 of Law Number 29 of 2004 pertaining to Medical Practise, paragraph (1) stipulates that a person may file a written complaint with the Chairperson of the Indonesian Medical Discipline Honorary Council if he knows or feels harmed as a result of a doctor's actions while carrying out medical practise. This complaint does not affect a person's ability to report an alleged crime to the authorities and/or initiate a civil lawsuit for damages.(Dwi Erawati & Dini Iswandari, 2022)

In accordance with Article 66, paragraph 1, of Law No. 29 of 2004 on Medical Practise, a person who feels aggrieved by a medical procedure may file a complaint with the MKDKI chairman. The word "may" in (1) may indicate that a complaint against MKDKI may or may not be filed.(Mulyadi et al., 2020) In light of the fact that Article 3 paragraph (2) of the Indonesian Medical Council Regulation Number 4 of 2011 concerning the Professional Discipline of Doctors and Dentists states that there are 28 forms of violations of professional discipline, it is clearly stated that if a doctor is suspected of violating one of the 28 forms of violations of professional discipline, the complaint must be filed with MKDKI. In accordance with Article 4 of the Indonesian Medical

Council Regulation No. 4 of 2011 concerning the Professional Discipline of Doctors and Dentists, disciplinary sanctions may be administered to doctors suspected of violating regulations established by the Indonesian Medical Council (KKI).(Chen et al., 2017)

According to Article 67 of Law No. 29 of 2004 on Medical Practise, MKDKI is responsible for examining and deciding on complaints relating to the discipline of the medical profession. And Article 69 paragraph (2) of Law No. 29 of 2004 concerning Medical Practise states that the issue is whether a physician is found culpable or not guilty and given disciplinary sanctions. In accordance with Article 69 paragraph (3) of Law No. 29 of 2004 concerning Medical Practise, MKDKI may impose disciplinary sanctions in the following ways: 1. Issuing written sanctions/warnings; 2. Making recommendations to revoke the Registration Certificate (STR) or Practise Licence (SIP); 3. Requiring doctors found guilty of violating medical discipline to attend training or education at medical educational institutions.(Shin et al., 2014)

Nevertheless, it should be noted that according to Article 66 paragraph (3) of Law Number 29 of 2004 on Medical Practise, the provision allowing individuals to file a complaint against the Head of the MKDKI does not preclude the potential for the affected party to report an alleged criminal offence to the appropriate authorities or initiate a legal action seeking compensation through the court system.(Afiful Jauhani et al., 2022) The aforementioned situation has led to instances where individuals who perceive themselves as wronged by medical operations promptly file grievances with the judicial system, so generating a state of legal ambiguity. In medical disputes, the primary concern typically lies with the outcome of the health service, irrespective of the process involved. According to legal principles, medical professionals, such as doctors, bear responsibility solely for the efforts exerted during the course of treatment, known as the "inspanning verbintennis," rather than guaranteeing the ultimate result, referred to as the "resultalte verbintennis."(Istiana Heriani, 2019)

Whenever a medical intervention is undertaken, it is inevitable that there will be associated medical hazards, varying in severity from moderate to potentially fatal. In some instances, physicians have the dilemma of deciding whether to proceed with a medical intervention despite the potential risks, or to refrain from taking any medical activity that could lead to an unforeseen outcome. Physicians, like any individuals, are susceptible to errors in their professional practise, whether these errors are intentional (dolus) or unintentional (negligent, culpa). Consequently, the altruistic intention to aid and restore patients' health does not always yield favourable outcomes, and can instead result in deficiencies or even fatalities arising from medical practise.(Muhlis et al., 2020) In the course of executing their medical profession, physicians possess no intention to inflict harm upon their patients. The presence of Article 66 paragraph (3) of Law Number 29 of 2004 regarding Medical Practise may potentially lead to legal ambiguity. In the event that a physician, who has undergone an examination and has been cleared of any disciplinary transgressions by the MKDKI, may potentially be pronounced culpable in both a criminal and/or civil court.(Azizah, 2021)

Hence, it is imperative to substitute the term "can" found in paragraph (1) with "must," signifying that all grievances pertaining to medical issues necessitate resolution through MKDKI as a prerequisite, hence precluding alternative avenues for lodging complaints outside of MKDKI. Up to this point, individuals who perceive themselves as wronged tend to choose for lodging complaints with court institutions due to their belief that such institutions hold the capacity to

resolve medical disputes through both civil and criminal dimensions. In contrast, the MKDKI lacks the jurisdictional authority wielded by these court institutions. The limited authority of the Indonesian Medical Council (MKDKI) is evident in its ability to impose disciplinary sanctions on doctors who commit violations as stipulated in Article 69 paragraph (3) of Law Number 29 of 2004 on Medical Practise. These sanctions primarily take the form of disciplinary measures. Furthermore, the lack of binding force for the medical profession is a consequence of the provisions outlined in Article 66 paragraph (3) of Law Number 29 of 2004 on Medical Practise.(Vatikawa & Amnawaty, 2018)

If the term "can" as stated in Article 66 paragraph (1) of Law Number 29 of 2004 regarding Medical Practise were to be replaced with "must," it would result in the establishment of absolute competence for the Medical Council of Indonesia (MKDKI) and require that all medical dispute matters be settled exclusively through MKDKI. This scenario arises in the context of... The adjudication of this medical disagreement is not suitable for litigation in the court system. If it is deemed necessary to file a complaint over a medical dispute with MKDKI, it should be noted that if the complaint is subsequently brought before a judicial institution, the court institution is obligated to dismiss the case. The exclusive jurisdiction over the reception of medical dispute complaints is vested in MKDKI.(Syaufi et al., 2021)

The presumption of guilt cannot be attributed to a doctor who is facing a lawsuit from a patient, especially when the complaint is still undergoing the processing phase at MKDKI. This can potentially provide challenges for the physician who is facing a lawsuit. Moreover, the challenges encountered by medical professionals can escalate in complexity when issues are brought to the attention of the media or the public, potentially leading to character defamation due to patients' inclination to prematurely assign blame to the physician.(Saputra, 2019) The conduct of character assassination is unjust when used at doctors who are being sued in a court of law. The uncertainty surrounding the doctor's guilt is juxtaposed with the negative perception of his professional reputation within society.(Hatta, 2018)

In February 2010, a medical conflict arose between Dr. TS and Dr. FMK at K Hospital Central Jakarta. As a consequence, K Hospital was subject to a complaint filed with the Medical Council of Indonesia (MKDKI) on August 10, 2010. On June 26, 2012, the MKDKI rendered a verdict on the complaint filed by Siti Chomsatun, which had undergone a 23-month long process of case examination. The complaint was assigned the number No. 43/P/MKDKI/VIII/2010. According to the judgement made by the Medical Council for Professional Discipline (MKDKI), it has been determined that Dr. TS and Dr. FMK have been found guilty of violating medical discipline as stated in Article 3, paragraph (2), letter f of Council 4 of 2011, which pertains to the Professional Discipline of Doctors and Dentists.

The role of medical practise holds significant importance in enhancing the health state of the Indonesian population, hence granting doctors a strategic position and role within the field of medicine. In the realm of healthcare, individuals within society often place their trust in medical professionals, relying on them to address their health concerns and safeguard their well-being. Consequently, doctors bear the responsibility of delivering services that align with the standards of their profession.(Ayuningtyas, 2023) A professional service refers to a service that is delivered with a notable degree of expertise, diligence, comprehensiveness, meticulousness, and adherence to ethical principles. Professional conduct is of utmost importance for doctors and dentists in the

execution of their medical practise. Therefore, it is imperative to comply with and adhere to professional actions and behaviour.(Hartanto et al., 2018)

Efforts aimed at the preservation and adherence to professional conduct. The Honorary Council of Indonesian Medical Disciplines (MKDKI) was established by the Indonesian Medical Council (KKI). As per Article 1, Section 14 of Law no. 29 of 2004 pertaining to Medical Practise, the Indonesian Medical Discipline Honorary Council (MKDKI) refers to an authorised institution responsible for assessing potential errors committed by medical practitioners, including doctors and dentists, in the implementation of medical and dental disciplines, as well as determining appropriate disciplinary measures.

The jurisdiction of external institutions in managing medical disputes beyond the purview of MKDKI.

As outlined in Article 64 of the Medical Practise Law, the Medical and Dental Disciplinary Committee (MKDKI) is entrusted with specific responsibilities. These include the reception of complaints, the examination of cases pertaining to disciplinary infractions committed by medical practitioners and dentists, as well as the determination of appropriate actions to be taken. Additionally, MKDKI is tasked with the development of guidelines and procedures aimed at effectively addressing instances of disciplinary violations within the medical and dental professions. The execution of this mission is supported by the inclusion of MKEK (Medical Ethics Honorary Council) alongside MKDKI, as outlined in Article 1 Point 3 of the MKEK Guidelines.

MKEK, an autonomous entity within the Indonesian Doctors Association (IDI), was established at the national, regional, and branch levels to fulfil its responsibilities in professional courts, promoting professional ethics, and undertaking other institutional and ad hoc assignments within their respective domains.(Prabandari et al., 2019) Complaints pertaining to instances of doctors and dentists breaching disciplinary standards, as outlined in Article 54 of the Medical Practise Law, encompass three distinct categories: ethical transgressions, civil infractions, and both criminal and administrative errors. The term "medical malpractice" refers to actions performed by healthcare professionals that are in violation of established medical ethics. The field of medical ethics, as delineated in the KODEKI, encompasses a collection of ethical guidelines, concepts, regulations, or standards that are specifically applicable to physicians. Civil malpractice, also known as civil medical negligence, refers to situations in which healthcare professionals, such as doctors, fail to satisfy the terms of an agreement or engage in unlawful actions that result in harm to patients.(Shenoy et al., 2022)

Criminal malpractice refers to situations in which a patient experiences fatality or disability as a result of a healthcare professional's negligence or lack of diligence in providing appropriate medical treatment to the deceased or disabled individual. Criminal malpractice can be attributed to three distinct factors. Firstly, intentional factors contribute to this phenomenon, as seen in cases involving abortion without medical indications, euthanasia, disclosure of medical secrets, failure to provide assistance in emergency situations despite being aware that no one else can offer aid, and the issuance of inaccurate medical certificates. Secondly, negligence stemming from recklessness is another contributing factor, characterised by actions taken by medical professionals that are not in accordance with legal standards or professional norms, and actions performed without obtaining proper medical approval. Lastly, negligence resulting in disability or death of a

patient can occur when a doctor's actions lack due care or involve negligence, such as leaving surgical instruments inside a patient's body cavity.(Anindyajati et al., 2016)

Lastly, administrative malpractice refers to instances where a medical practitioner or other healthcare professional contravenes the relevant State Administrative law. Examples of such malpractice include engaging in medical practise without a valid licence or permit, practising with an expired permit, and failing to maintain proper medical records.(Li et al., 2019) In the context of medical malpractice, pertaining to instances where a doctor has engaged in professional misconduct, it is imperative to address such cases in accordance with the Medical Practise Law. The physician who is under suspicion for engaging in malpractice is currently undergoing proceedings in an ethics trial within the field of internal medicine. The penalties imposed on physicians who engage in medical malpractice are tailored to correspond with the specific classification and severity of the error committed by the doctor. Prior to being subjected to the scrutiny of the ethics committee, law enforcement authorities lack the jurisdiction to address instances of medical misconduct.

D. Conclusion

The prefered avenue for resolving medical disputes should involve the utilisation of MKDKI, as it is the institution that possesses a comprehensive understanding of the implementation of professional discipline within the medical field. Furthermore, MKDKI holds the necessary authority to assess and determine whether a doctor has indeed engaged in a violation of professional discipline. The term "can" as stated in Article 66 paragraph (1) of Law Number 29 of 2004 regarding Medical Practise encompasses the possibility of either filing a complaint against MKDKI or refraining from doing so. Legal confusion may occur, necessitating the replacement of the phrase "can" with "must." This implies that complaints regarding medical issues must be resolved through MKDKI as a mandatory step. It is imperative to conduct a judicial review of Article 66 paragraph (1) of Law Number 29 of 2004 pertaining to Medical Practise. Additionally, careful consideration should be given to the authority of the Medical Council of Indonesia (MKDKI) in determining compensation for disputing parties. In order to ensure that each decision made by MKDKI (Medical Knowledge and Decision-making Committee) offers legal clarity for both medical practitioners and the general public.

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