

Problems Faced by The Indonesian Medical Council in Determining Discipline Sanctions For The Medical Professional

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ARTICLE INFO

Article history:

Received Nov 25, 2022

Revised Des 17, 2022

Accepted Des 28, 2022

Keywords:

Disciplini;
Doctor;
Indonesian Medical
Council;

ABSTRACT

Medical Practice is a series of activities carried out by Doctors and Dentists on patients in carrying out health efforts. During this practice, doctors and dentists did not escape disciplinary violations. If the patient / patient's family finds a doctor violating the doctor / dentist discipline, they have the right to submit a complaint to the Indonesian Medical Disciplinary Council. The complaint is an effort to protect the public from incompetent and non-standard medical practices. After the complaint is decided by MKDKI, MKDKI provides recommendations in the form of giving a written warning, revoking the Registration Certificate (STR) or Practice License (SIP) and / or the obligation to attend education or training at a medical or dental education institution to the Indonesian Medical Council (KKI).) to be immediately stipulated in the form of a Decree of the KKI concerning Sanctions for Medical Professional Disciplines. Even though doctors / dentists have been given penalties in the form of disciplinary sanctions from the medical profession, there are still many doctors / dentists who continue to practice medicine even though the STR and SIP have been revoked / frozen. And do not carry out education or training as directed by MKDKI and KKI. The imposition of disciplinary sanctions for the medical profession is solely intended to create a deterrent effect on doctors / dentists and to improve professionalism as a doctor / dentist.

ABSTRAK

Praktik Kedokteran adalah rangkaian kegiatan yang dilakukan oleh Dokter dan Dokter Gigi terhadap pasien dalam melaksanakan upaya kesehatan. Pada saat melakukan praktik kedokteran tersebut dokter dan dokter gigi tidak luput dari pelanggaran disiplin. Apabila pasien/keluarga pasien mendapati seorang dokter melanggar disiplin dokter/dokter gigi, mereka berhak mengajukan Pengaduan kepada Majelis Kehormatan Disiplin Kedokteran Indonesia. Pengaduan tersebut sebagai upaya melindungi masyarakat dari praktik kedokteran yang tidak kompeten dan tidak terstandar. Setelah pegaduan tersebut diputus oleh MKDKI maka MKDKI memberikan rekomendasi berupa pemberian peringatan tertulis, pencabutan Surat Tanda Registrasi (STR) atau Surat Izin Praktik (SIP) dan/atau kewajiban mengikuti pendidikan atau pelatihan di institusi pendidikan kedokteran atau kedokteran gigi kepada Konsil Kedokteran Indonesia (KKI) untuk segera ditetapkan dalam bentuk Keputusan KKI mengenai Sanksi Disiplin Profesi Kedokteran. Meskipun dokter/dokter gigi sudah diberikan hukuman berupa sanksi disiplin profesi kedokteran namun masih banyak dokter/dokter gigi yang tetap melakukan praktik kedokteran meskipun STR dan SIP sudah dicabut/dibekukan. Serta tidak menjalankan pendidikan atau pelatihan seperti yang diarahkan oleh MKDKI dan KKI. Pemberian sanksi disiplin profesi kedokteran semata-mata untuk menimbulkan efek jera bagi dokter/dokter gigi dan memperbaiki sikap profesionalisme sebagai dokter/dokter gigi.

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I. INTRODUCTION

The right to live a healthy life is stated in Article 28 H paragraph (1) of the 1945 Constitution after being added to the second Amendment to the 1945 Constitution which was carried out through the general session of the MPR on 14-21 October 1999 which reads that everyone has the right to live in physical and spiritual prosperity, having a place live, and get a good and healthy living environment and have the right to obtain health services. Here it is quite clear that every Indonesian citizen has the right to live a healthy life and to support their health they have the right to receive health services. The definition of health services according to Lavey and Loomba 1973 is every effort either carried out alone or jointly in an organization to be able to improve and maintain health, prevent disease, treat disease and also restore health aimed at individuals, groups and also the community. , (Siswati, S, 2013).

This health service can also be said to be an institutionalized health service effort based on social functions in the field of health services for individuals and families (Irawati, Jovita, 2019). The social function here means that it focuses more on the humanitarian element and also does not take advantage commercially (Parta Ibeng, 2021). From the above understanding, it can be understood that health services are an effort to achieve health that is carried out by oneself or by professionals who are experts in handling health itself, one of which is the profession of doctors and dentists. According to Article 1 number 4 of Law Number 36 of 2014 concerning Health Workers (Supriyatin, Ukilah, 2018), Health efforts are any activity and/or series of activities carried out in an integrated, integrated and sustainable manner to maintain and improve the degree of public health in the form of prevention of disease, promotion of health, treatment of disease, and restoration of health by the Government and/or the public. So indeed to get good health services one must understand the meaning of the health effort itself, and in terms of seeking health it is necessary to get help and support from the medical profession. One of the health efforts is Medical Practice. The definition of medical practice according to Law Number 29 of 2004 concerning Medical Practice is a series of activities carried out by doctors and dentists for patients in carrying out health efforts. The role of doctors and dentists in realizing physical health is very large starting from promotive, preventive, curative and rehabilitative (Aribowo, Bonifasius Nadya, B. Resti Nurhayati, and Sofyan Dahlan, 2017).

No wonder getting the title of doctor and dentist is not easy. After completing their education at the medical faculty, doctors and dentists must have competency certificates. A competency certificate according to UUPK is a letter of recognition of the ability of a doctor or dentist to practice medicine throughout Indonesia after passing a competency test. After obtaining a competency certificate, a doctor and dentist must arrange to have a Registration Certificate (STR). Without an STR, a doctor and dentist are not allowed to practice medicine and are subject to criminal penalties as stipulated in Article 75 of Law Number 29 of 2004 concerning Medical Practice. In carrying out medical practice, doctors and dentists who practice medicine in Indonesia are required to have a Practice License (SIP). Therefore, it is mandatory for doctors and dentists to have STR and SIP in order to protect the community and maintain the professionalism of doctors and dentists.

The profession of doctors and dentists is not free from mistakes, in this case these mistakes are known as violations. In the realm of medicine, there are 2 (two) types of violations, namely ethical violations and disciplinary violations. Violations of Doctor Ethics are handled by the Medical Ethics Honorary Council, which is under the supervision of the Executive Board of the Indonesian Doctors Association. Violations of Dentist Ethics are handled by the Dental Ethics Honorary Council, which is under the supervision of the Executive Board of the Indonesian Dentist Association (Santoso, Arif Dian, 2019). Meanwhile, Violation of Physician and Dentist Discipline is a violation of the rules and/or provisions in the scope of education, training, research, and/or health services including social service that is attended by Doctors and Dentists, this is based on the operational definition contained in Regulation of the Indonesian Medical Council Number 51 of 2017 concerning Guidelines for Integrated Development of Doctors and Dentists. Doctors and Dentists discipline violations are handled by the Indonesian Medical Discipline Honorary Council (MKDKI) under the supervision of

the Indonesian Medical Council. The Professional Discipline of Doctors and Dentists has been regulated in the Regulation of the Indonesian Medical Council Number 4 of 2011 concerning the Professional Discipline of Doctors and Dentists. According to this regulation, Professional Discipline for Doctors and Dentists is compliance with the rules and/or provisions for the application of science in carrying out medical practice. The regulation of Doctors and Dentists Professional Discipline aims to (1) provide protection to the public; (2) maintain and improve the quality of health services; and (3) maintain the honor of the profession. So it is very important for a doctor and dentist to continue to implement discipline regarding the rules and/or provisions for the application of science in carrying out medical practice so that there are no violations of the discipline of medical practice. A total of 28 (twenty eight) forms of violation of the professional discipline of doctors and dentists are mentioned in the Indonesian Medical Council Regulation Number 4 of 2011 concerning the Professional Discipline of Doctors and Dentists. These 28 (twenty eight) forms of violations are the guidelines for the Indonesian Medical Discipline Honorary Council in deciding a case that is being complained about. Meanwhile, the Handling of Physicians and Dentists Discipline Complaints has been regulated in the Indonesian Medical Council Regulation Number 50 of 2017 concerning Procedures for Handling Physicians and Dentists Discipline Complaints.

According to the regulation, after reading the verdict in a trial open to the public, the MKDKI chairman will issue a decision of the Indonesian Medical Discipline Honorary Council to be submitted to the chairman of the Indonesian medical council no later than 7 (seven) days after the hearing to read the decision. The author needs to convey that the decision of the Indonesian Medical Discipline Honorary Council is only in the form of a recommendation but is binding on doctors, dentists and the Indonesian Medical Council. The decision can be in the form of a statement of innocence or the imposition of disciplinary sanctions. According to article 69 of Law Number 29 of 2004 concerning Medical Practice, disciplinary sanctions can be in the form of (a) giving a written warning; (b) recommendation for revocation of registration certificate or practice license and/or; (c) the obligation to attend education or training at educational institutions of medicine and dentistry. Based on the recommendation for the imposition of disciplinary sanctions from the Indonesian Medical Discipline Honorary Council in the form of an Indonesian Medical Disciplinary Honorary Council Decision, the Indonesian Medical Council issues a Decision of the Indonesian Medical Council regarding Medical Professional Discipline Sanctions and submits a copy of the decision of the Indonesian Medical Discipline Honorary Council to the Defendant for a maximum of 7 (seven)) day.

After the Indonesian Medical Council stipulates the Indonesian Medical Council's Decision regarding Discipline Sanctions for the Medical Profession against doctors/dentists who are complained by the Complainant, the imposition of disciplinary sanctions is declared effective from the time they are stipulated. The imposition of disciplinary sanctions for at least 1 (one) month is the revocation of the Registration Certificate and the most severe is the revocation of the Registration Certificate for life. The author found several problems in imposing disciplinary sanctions for the medical profession, including: (1) Doctors/Dentists continue to practice even though the Registration Certificate has been revoked; (2) difficulties for a doctor/dentist in carrying out the obligation to attend education or training at medical and dental educational institutions.

II. RESEARCH METHOD

Using a normative juridical approach, namely legal research carried out by researching literature or secondary data as basic material for research by conducting a search of regulations and literature related to the problem under study (Marzuki, P. M, 2015). The approach method above is used bearing in mind that the problems studied revolve around various legal instruments and existing laws and regulations (Khairunnisa Nugrianti (et.al) 2017). The normative juridical approach consists of research on legal systematics, research on the level of legal synchronization. This writing uses secondary data as the main data, which means that the data comes from library research which of course is guided by regulations, books or legal literature (Muhaimin, 2020).

III. RESULT AND DISCUSSION

Law Number 29 of 2004 concerning Medical Practice outlines the functions of the Indonesian Medical Council, namely regulation, approval, determination and guidance of doctors and dentists who practice medicine, in order to improve the quality of medical services (Riyanto, Ontran Sumantri, 2018). Meanwhile, one of the duties of the Indonesian Medical Council is to provide guidance on the implementation of medical practice which is carried out together with related institutions in accordance with their respective functions. In carrying out its duties, the Indonesian Medical Council has the authority to carry out joint coaching for doctors and dentists regarding the implementation of professional ethics established by professional organizations.

Article 54 paragraph (1) and (2) of Law Number 29 of 2004 concerning Medical Practice states that in order to carry out quality medical practice and protect the public in accordance with the provisions referred to in this Law, it is necessary to provide guidance to doctors or physicians, dentists practicing medicine. The training is carried out by the Indonesian Medical Council together with professional organizations. KKI cannot carry out all the duties and functions of coaching to guard the medical profession and protect the public. Cooperation and coordination with all stakeholders is an absolute requirement for the realization of quality medical professional services and prioritizing patient safety (Indonesian Medical Council Regulation Number 51 of 2017). This article is quite clear that the Indonesian Medical Council needs to provide guidance to doctors and dentists who are subject to disciplinary sanctions in the medical profession. Medical Practice Development is a series of activities aimed at: (a) improving the quality of health services provided by Doctors and Dentists; (b) protect the public from the actions taken by doctors and dentists; and (c) provide legal certainty for the public, doctors and dentists (Indonesian Medical Council Regulation Number 51 of 2017).

Coaching must always be carried out within the framework of developing the quality and professionalism of doctors/dentists through various techniques for conveying information from various policies related to laws and regulations, clinical governance, patient safety (Hartiningsih, Retno Harjanti., 2020), in addition to the field medical science. Coaching also needs to be carried out if a Doctor/Dentist has committed a disciplinary violation which results in the imposition of disciplinary sanctions. The imposition of Disciplinary Sanctions will not be of much benefit if it is not accompanied by steps of guidance from stakeholders (stakeholders), so that doctors or dentists who are imposed with disciplinary sanctions do not only feel punished, but can realize their shortcomings and try to improve through guidance from stakeholders. (stakeholders) (Indonesian Medical Council Regulation Number 51 of 2017).

One form of coaching is carrying out monitoring and evaluation activities on the Indonesian Medical Council's Decision regarding Disciplinary Sanctions for the Medical Profession. Monitoring and evaluation activities against the Indonesian Medical Council's Decision regarding Disciplinary Sanctions for the Medical Profession have been regulated in the Indonesian Medical Council Regulation Number 51 of 2017 concerning Guidelines for Integrated Doctor and Dentist Development. Monitoring and evaluation is carried out in an integrated manner according to the role of each stakeholder. One month after the Indonesian Medical Council's Decision regarding Disciplinary Sanctions for the Medical Profession was stipulated by the Chairperson of the Indonesian Medical Council, the Indonesian Medical Council conducted a visitation to monitor the results of coordination between stakeholders, including ensuring the revocation of STR and SIP to the District/City Health Office, ensuring doctors/dentists the person concerned does not practice medicine but is still given non-clinical activities in the work unit, and ensures that the Professional Organization/Colegium monitors re-education or training activities for the doctor/dentist concerned.

As for the advantages of monitoring and evaluation activities, supervision of doctors/dentists who are subject to disciplinary sanctions in the medical profession becomes more optimal. However, the imposition of discipline in the form of revocation of the STR will have an impact on the 3 (three) SIPs owned by the doctor/dentist in question. With this supervision, it is hoped that the doctor/dentist concerned will not practice medicine but is still allowed to do work of an administrative nature. For doctors/dentists who are subject to sanctions in the form of temporary STR revocation

and are required to attend education or training, the Indonesian Medical Council issues 1 (one) Educational Registration Certificate (STR-P) for the doctor/dentist concerned to be used only for the purpose of re-education or training activities under the supervision of the collegium and with permission from the educational institution and/or teaching hospital where the re-education or training is carried out. Based on the STR-P, the District/City Health Office issues SIPs for re-education or training. The disciplinary sanction for the medical profession is expected to be a deterrent effect for the doctor/dentist concerned and is expected to be aware of his shortcomings and try to improve his professional attitude as a doctor/dentist. Meanwhile, the shortcomings encountered by the Indonesian Medical Council from this monitoring and evaluation activity were that communication and coordination between stakeholders in several areas was still lacking, so doctors/dentists were still practicing even though the STR and SIP were revoked. The doctor/dentist argued that the revocation of the STR only had an impact on 1 (one) SIP, namely the SIP where the doctor/dentist practiced. Article 88 paragraph (1) and paragraph (2) of the Indonesian Medical Council Regulation Number 50 of 2017 concerning Procedures for Handling Disciplinary Complaints of Doctors and Dentists reads (1) in the event that the MPD issues a Decision for imposing disciplinary sanctions in the form of a recommendation for the revocation of STR as referred to in Article 23 paragraph (2) letter b has the effect that all of the Respondent's authority to carry out medical practices is revoked within the period during which the disciplinary sanction is carried out in accordance with the Rulings of the Judgment. (2) The revocation of the STR as referred to in paragraph (1) will result in the entire SIP of the Respondent being invalid. It is quite clear that doctors or dentists practicing without STR/SIP, doctors/dentists will be subject to criminal penalties if they continue to practice medicine.

Criminal Provisions have been regulated in Article 75 Paragraph (1) and Article 76 of Law Number 29 of 2004 concerning Medical Practice which reads Every doctor or dentist who deliberately carries out medical practice without having a registration certificate as referred to in Article 29 paragraph (1) shall be punished with imprisonment for a maximum of 3 (three) years or a fine of up to Rp. 100,000,000.00 (one hundred million rupiah) and every doctor or dentist who deliberately practices medicine without having a license to practice as referred to in Article 36 shall be subject to imprisonment for a maximum period of 3 (three) years or a fine of up to Rp. 100,000,000.- Regarding the difficulty of a doctor/dentist in carrying out the obligation to attend education or training at medical and dental education institutions, this occurs because (1) the doctor/dentist in question does not report to professional organizations and the local collegium so it is difficult for collegiums to prepare for education or training directed by the Indonesian Medical Discipline Honorary Council and the Indonesian Medical Council. (2) professional organizations, collegiums and teaching hospitals do not yet understand the regulatory products of the Indonesian Medical Council. Stakeholders may not fully know the document products in the form of regulations, decisions or implementation related to the guidance and supervision of medical practice produced and carried out by each stakeholder (Indonesian Medical Council, 2010). In order to better enforce the discipline of the medical profession, a solution is needed for the problems faced by the Indonesian Medical Council in imposing disciplinary sanctions for the medical profession, including being active in carrying out (1) Dissemination of Product Regulations of the Indonesian Medical Council throughout Indonesia (2) Technical Guidance doctors and dentists in areas where violations of doctor and dentist discipline often occur (3) There is a kind of communication forum for the Indonesian Medical Council and stakeholders so that the coordination of the Medical Practice Guidance System can be carried out in an integrated manner for each stakeholder with their respective authorities respectively, standardized coordination is needed so that all efforts move simultaneously and in the same direction according to the basic concepts of coaching.

Guidance and supervision carried out by the Indonesian Medical Council is the prevention, maintenance and correction of efforts to uphold the discipline of the medical profession to protect the public from incompetent and undisciplined medical practices as well as to maintain and improve the quality of medical services on an ongoing basis. However, guidance and supervision must be carried out simultaneously by the Indonesian Medical Council with stakeholders such as the

Provincial/District/City Health Service, the Provincial/District/City Investment and One-Stop Service Office, Central/Branch Professional Organizations, Associations, Collegiums, and related Health Service Facilities. Guidance and supervision can be in the form of monitoring and evaluating the implementation of medical practice, technical guidance, and training for doctors and dentists. With the coordination of the Medical Practice Guidance System in an integrated manner, it is hoped that it can minimize the problems of the Indonesian Medical Council in establishing disciplinary sanctions for the medical profession.

IV. CONCLUSION

Based on the description above, the authors can convey the following conclusions (1) doctors and dentists who practice medicine are required to have an STR and SIP (2) The guidance and supervision carried out by the Indonesian Medical Council is an effort to prevent, maintain and correct efforts to uphold the discipline of the medical profession (3) in order to protect the public, KKI is obliged to issue, temporarily revoke or freeze and permanently revoke the STR of a doctor/dentist who has received a disciplinary sanction recommendation (4) To be able to overcome the problems of the Indonesian Medical Council in establishing disciplinary sanctions for the medical profession the need for integrated Medical Practice Guidance between the Indonesian Medical Council and relevant stakeholders.

References

- Aribowo, Bonifasius Nadya, B. Resti Nurhayati, and Sofyan Dahlan. "PERSEPSI PASIEN TENTANG ASPEK HUKUM PERIKATAN UPAYA (INSPANNING VERBIN TENIS) DALAM TRANSAKSI TERAPEUTIK ANTARA DOKTER DENGAN PASIEN DI RSUD KOTA SALATIGA." *SOEPRA* 3, no. 1 (2017): 52–59. <https://doi.org/10.24167/shk.v3i1.696>
- Hartiningsih, Retno Harjanti. "POLA HUBUNGAN HUKUM ANTARA DOKTER DAN PASIEN." *MAKSIGAMA* 14, no. 1 (July 27, 2020): 49–60. <https://doi.org/10.37303/maksigama.v14i1.88>
- Indonesia, Konsil Kedokteran, Konsep Dasar Pembinaan Penyelenggaraan Praktik Kedokteran sebagai Acuan Monitoring dan Evaluasi Penyelenggaraan Praktik Kedokteran di Indonesia. Jakarta: Konsil Kedokteran Indonesia, 2010
- Irawati, Jovita. "INKONSISTENSI REGULASI DI BIDANG KESEHATAN DAN IMPLIKASI HUKUMNYA TERHADAP PENYELESAIAN PERKARA MEDIK DI INDONESIA." *Law Review* 19, no. 1 (July 2019): 54–76. <https://doi.org/10.19166/lr.v19i1.1551>.
- Marzuki, P. M. (2015). *Penelitian Hukum*. Kencana Prenada Media Group, Jakarta
- Muhaimin. *Metode Penelitian Hukum*. Cetakan Pertama. NTB: Mataram University Press, 2020.
- Parta Ibeng, 2021. "Pelayanan Kesehatan: Pengertian, Jenis, Kriteria, Skema & Tujuan Menurut Para Ahli". (<https://pendidikan.co.id/pelayanan-kesehatan-pengertian-jenis-kriteria-skema-tujuan-menurut-para-ahli/>) . Diakses pada 17 April 2021, 8.07
- Peraturan Konsil Kedokteran Indonesia Nomor 4 Tahun 2011 tentang Disiplin Profesional Dokter dan Dokter Gigi.
- Peraturan Konsil Kedokteran Indonesia Nomor 50 Tahun 2017 tentang Tata Cara Penanganan Pengaduan Disiplin Dokter dan Dokter Gigi
- Peraturan Konsil Kedokteran Indonesia Nomor 51 Tahun 2017 tentang Pedoman Pembinaan Dokter dan Dokter Gigi Terpadu
- Riyanto, Ontran Sumantri. *Pembentukan Pengadilan Khusus Medis*. Cetakan Pertama. Surabaya: Deepublish Publisher, 2018.
- Santoso, Arif Dian. "PENYELESAIAN SENGKETA MEDIK MELALUI MEDIASI OLEH MAJELIS KEHORMATAN DISIPLIN KEDOKTERAN INDONESIA (MKDKI) UNTUK DAPAT MENJAMIN KEADILAN DALAM HUBUNGAN DOKTER DAN PASIEN." *Jurnal Pasca Sarjana Hukum UNS* 7, no. 1 (2019): 29–38.
- Siswati, S. (2013). *Etika dan Hukum Kesehatan (Dalam Perspektif Undang-Undang Kesehatan)*. Raja Grafindo Persada, Jakarta
- Supriyatin, Ukilah. "HUBUNGAN HUKUM ANTARA PASIEN DENGAN TENAGA MEDIS (DOKTER) DALAM PELAYANAN KESEHATAN." *Jurnal Ilmiah Galuh Justisi* 6, no. 2 (November 19, 2018): 184–94. <https://doi.org/10.25157/jigj.v6i2.1713>
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945
- Undang-Undang Nomor 29 Tahun 2004 tentang Praktik Kedokteran
- Undang-Undang Nomor 36 Tahun 2014 tentang Tenaga Kesehatan