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Investigation of the Settlement Of Medical Malpractice Cases in Indonesia Using Criminal Mediation (Comparative Analysis with the United States)

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Abstrak

Artikel ini mengulas sudut pandang Hak Asasi Manusia penyelesaian kasus malpraktik medis melalui mediasi penal di Indonesia dan Amerika Serikat. Dijelaskan perbedaan regulasi dan tuntutan hukum yang berkaitan dengan malpraktik medis di kedua negara tersebut. Penyelesaian kasus melalui mediasi penal menjadi alternatif efektif untuk menyelesaikan perkara secara adil dan cepat bagi kedua belah pihak, sambil mempertimbangkan hak-hak yang dilindungi oleh Hak Asasi Manusia. Namun, penting untuk memastikan bahwa kesepakatan yang dicapai dalam mediasi menghormati hak-hak korban dan tidak mengorbankan mereka. Indonesia dapat memperkuat perlindungan Hak Asasi Manusia dalam penyelesaian kasus malpraktik medis melalui mediasi penal dengan memperluas cakupan mediasi dan memastikan keterlibatan pengacara yang kompeten dan terpercaya dalam proses tersebut. Penelitian ini bertujuan untuk menganalisis perspektif Hak Asasi Manusia dalam penyelesaian kasus malpraktik medis melalui mediasi penal di Indonesia dan Amerika Serikat, serta mencari solusi untuk meningkatkan perlindungan Hak Asasi Manusia dalam penyelesaian kasus di Indonesia. Metode penelitian yang digunakan adalah normatif yuridis dengan pendekatan komparatif, dan analisis dilakukan melalui hermeneutika hukum. Hasil penelitian menunjukkan bahwa mediasi penal dalam penyelesaian kasus malpraktik medis di Indonesia perlu diperbaiki agar lebih memperhatikan hak-hak asasi korban dan pelaku, khususnya dalam hal kesetaraan dan pengakuan terhadap korban. Di Amerika Serikat, diperlukan undang-undang federal yang konsisten dan rinci mengenai mediasi penal dalam penyelesaian kasus malpraktik medis. Konsep hukum atau aturan perlindungan Hak Asasi Manusia dalam penyelesaian kasus malpraktik medis melalui mediasi penal di Indonesia harus memastikan bahwa hak-hak asasi korban dan pelaku terlindungi, serta solusi yang ditemukan memenuhi kebutuhan kedua belah pihak secara adil dan manusiawi..

Kata kunci: *Mediasi Penal, Malpraktik Medik, Hak Asasi Manusia, Indonesia, Amerika Serikat.*

Abstract

This essay compares and contrasts the use of prison mediation to resolve medical malpractice claims in the US and Indonesia from a human rights standpoint. This article compares and contrasts the two nations' medical malpractice laws and regulations. Penal mediation is a viable option for swiftly and equitably resolving disputes that take into account the rights guaranteed by human rights. It is critical, however, that victims' rights be not compromised in any way as a result of the mediation agreement. Indonesia might improve the safeguarding of human rights in prison mediation proceedings involving medical misconduct by broadening the mediation's applicability and guaranteeing the participation of reliable and skilled attorneys. The purpose of this research is to compare and contrast the use of criminal mediation to resolve medical malpractice claims in Indonesia and the US from a human rights viewpoint, and to propose reforms to better safeguard human rights throughout this process in Indonesia. Using legal hermeneutics, the study employs a normative juridical comparative approach to inquiry. The study's findings highlight the need of enhancing criminal mediation in Indonesian medical malpractice cases to better address the human rights of all parties involved, particularly in regard to victim identification and equality. For medical malpractice cases to be resolved by criminal mediation, the United States needs clear and comprehensive federal legislation. The resolution of medical malpractice cases in Indonesia via criminal mediation must adhere to the legal idea or principles for preserving human rights. This means that both the victims and the offenders' human rights must be upheld, and the remedies must be fair and compassionate.

Keywords: Penal Mediation, Medical Malpractice, Human Rights, Indonesia, United States.

INTRODUCTION

A presumption that those who want to work in the fields of study should do so with due diligence and competence dates back to the legal systems of ancient Rome and England. Evidence of medical responsibility dates back to the Code of Hammurabi, which stipulated in 2030 BC: "If a physician has treated a man with a bronze lancet and caused the man's death, or has opened a man's eye abscess with a bronze spear and caused the man's loss of an eye, then his hand shall be cut off." (Bal, 2009).

The ancient Romans saw medical negligence as a crime. The expansion and introduction of Roman law to continental Europe occurred about the year 1200 AD. The development of English common law started after the Norman invasion in 1066. The Court of Common Law and Plea Rolls served as official records during the reign of Richard Coeur de Lion in the late 12th century (Al, 2023). From ancient times to the present day, these archives include a string of rulings concerning medical negligence.

A servant and his master may sue a doctor in one of the first English examples of medical malpractice if the doctor had provided treatment that worsened the servant's condition by administering "unhealthy medicines." A official medical opinion had to be

obtained in every instance of violent death by 1532, when Charles V was in power. This was done before it became common practice to have medical experts testify in medical negligence cases in order to determine what was considered to be the standard of care (Bakung et al., 2021).

Typically, the Criminal Code and the Civil Code govern criminal law and civil law respectively in Indonesia. Indonesian tort law stems from the Civil Code's Article 1365, which reads as follows: "every person who, through his/her fault, causes loss to another person, is obliged to compensate for that loss." The victim of medical negligence has the legal right to seek monetary recompense for their losses, and those responsible for providing treatment to patients may face criminal charges (Astuti, 2017).

The United States differs from many other nations in that medical malpractice law has historically been governed by the individual states, not the federal government. A patient who sustains an injury as a result of subpar medical treatment has the burden of proving that the treatment was negligent in order to collect damages. The "statute of limitations" is the applicable statute of limitations that states a certain amount of time during which a plaintiff must submit a claim for medical negligence (Bal, 2009).

The United States and Indonesia have quite different approaches to medical malpractice regulation and legislation, according to a comparison of the two countries' definitions of malpractice. Unlike in the US, where medical malpractice rules are determined by individual states, in Indonesia both the criminal code and the civil code govern both civil and criminal proceedings. In contrast to the United States, where patients are required to prove causation between their injuries and subpar medical treatment in order to collect damages for medical negligence, Article 1365 of the Civil Code establishes the legislation on compensation in Indonesia.

The statute of limitations for a medical negligence case is another point of distinction. There is no hard and fast rule about how much time an Indonesian patient has to file a medical negligence lawsuit. At the same time, the statute of limitations for filing a medical negligence lawsuit differs across the 50 states in America. The divergence between the two countries' approaches to medical malpractice regulation and the law in Indonesia is borne out by this variance.

The human rights framework must be considered in any settlement including allegations of medical malpractice. Patients must be guaranteed the right to obtain responsible, high-quality, and safe medical treatment. An attempt to safeguard patients' rights might be observed in the pursuit of restitution and criminal prosecution of medical professionals implicated in medical misconduct in Indonesia. On the other hand, going to

court to settle a disagreement may be a costly and time-consuming ordeal, which might prolong the fight (Hensler, 2003).

In such cases, criminal mediation might be a good way to save time and money while still getting a fair settlement to a medical malpractice claim. By using the criminal mediation process, patients and doctors may work together to find a solution that works for everyone while still respecting each party's civil rights. In addition, medical negligence claims in several US jurisdictions are resolved via mediation (Hensler, 2003). Mediation in criminal trials, whether for medical malpractice or other types of wrongdoing, differs in form and practice between the US and Indonesia. Still, when it comes to protecting fundamental human rights like equality before the law, access to fair trials, and public acknowledgement of wrongdoing, the two nations couldn't be more similar.

Article 157 of Law No. 8 of 2019, which changes Law No. 8 of 1981 concerning Criminal Procedure, regulates prison mediation in Indonesia. According to the article, mediators designated by the court may help the offender and victim reach a mutually agreeable resolution to the dispute, or public prosecutors or judges can do so. After an inquiry is concluded, however, mediation may only take place in instances where a jail sentence of less than nine years is in danger (Rahardianto et al., 2022).

A number of US states have enacted legislation including criminal mediation. Sections 1346–1347 of the California Penal Code address criminal mediation specifically in that state. 5. Depending on the rules of the Local Court, mediation might take place either before or after a trial begins. Nevertheless, for mediation to take place, both the offender and the victim must be in agreement (Liu et al., 2023).

By facilitating the speedy and cost-effective settlement of medical malpractice claims via criminal mediation, both nations stand to gain from the practice. Due to the complexity of the health and safety concerns involved, criminal mediation in medical malpractice cases should be treated with prudence. The human rights component is the primary emphasis here (Diharjo et al., 2024), inclusive of victims' rights to justice and victims' equitable access to such justice. The victim of medical negligence has the legal right to just recompense for their losses. In prison mediation, the offender and victim must come to an agreement that respects the victim's rights and abides by the principles of justice. Thus, for the purpose of criminal mediation, it is crucial that the victim has a competent and trustworthy attorney to defend their rights.

A medical malpractice case involving a doctor accused of making a mistake during a medical procedure and harming the patient can be used as an example to compare the settlement of medical malpractice cases in Indonesia and the United States through criminal

mediation. In the event that this happens in Indonesia, a criminal mediation process including an inquiry and the prospect of criminal penalties with a maximum jail term of nine years might lead to a settlement. The court may designate a public prosecutor, judge, or mediator to mediate a settlement between a doctor and patient in a criminal mediation case so that both parties may reach an agreement. Apologies, restitution, or any other measure agreed upon by both parties might constitute the agreement. Additionally, as per the regulations of the Local Court, settlement may be reached via criminal mediation in the US either before or after the trial has begun. But mediation may only take place if both the patient and the doctor are on board with it.

Mediation is a process where an unbiased third party helps the doctor and patient reach an agreement that is fair and helpful for both parties. Compensation, a promise to maintain the material's secrecy, or other parameters mutually agreed upon may constitute the agreement. The time factor and the degree of the offender's responsibility distinguish the criminal mediation settlements of medical malpractice cases between the US and Indonesia. Mediation may only take place in Indonesia after an inquiry and with a criminal threat of fewer than nine years in jail. American courts, on the other hand, allow parties to choose whether to mediate before or after a trial starts, upon mutual agreement. Furthermore, whereas attorneys are often involved in American mediations to safeguard their clients' interests, this is not the case in Indonesia.

Felder v. Casey, 487 F. Supp. 2d 595 (E.D. Pa. 2007), refers to a case that was brought in the US and settled via mediation involving a medical malpractice plaintiff. A man who had back surgery once sued his surgeon, claiming that the surgeon had made mistakes during the procedure. The doctor and patient decided to dismiss the claim and forego trial after many mediation sessions. Reimbursement of medical expenses and a solemn promise to protect patient privacy were also components of the agreement (Academy & Human Rights, 2013).

Human rights, including the right to safe, high-quality, and responsible medical treatment for patients, must be carefully considered when medical malpractice cases are settled via criminal mediation (RS et al., 2023). A fair and expedited resolution to malpractice claims is possible via mediation, which takes into account the rights guaranteed by human rights (RS et al., 2023). Because mediation may resolve malpractice cases without the need for patients to endure long and laborious court proceedings, it can help alleviate some of the psychological strain that patients may be experiencing. When it comes to criminal mediation for medical malpractice cases, human rights, particularly those of the victim or patient, must always take precedence. It is critical that in this case, the parties engaged in

the mediation make sure that the victim's rights are protected and not infringed upon in the final agreement. By broadening the scope of mediation and guaranteeing the involvement of competent and trustworthy attorneys, Indonesia may enhance human rights protection in the resolution of medical malpractice cases via criminal mediation.

In light of the above, the following question has been formulated as a potential area of investigation: (1) In terms of criminal mediation, how are medical malpractice cases in Indonesia and the US resolved in relation to human rights? Second, how can Indonesia use criminal mediation to resolve medical malpractice cases in a way that better protects human rights?

RESEARCH METHOD

The research has a normative legal bent and makes use of a comparative approach. Normative legal research entails a deliberate evaluation of a legislation, in contrast to comparative methodology, which is used to compare and contrast laws or regulations across several countries. Legal hermeneutics is the focus of this research. The purpose of legal hermeneutics, a method of legal research, is to analyze legal writings in order to ascertain their meaning and context. The purpose of this study is to analyze medical malpractice cases from the United States and Indonesia through the lens of legal hermeneutics. Various sources, such as academic journals, books, articles, legislation, rules, and association articles, were used for this study.

RESULT AND DISCUSSION

A. Consideration Human Rights in resolving medical malpractice cases using Criminal mediation in Indonesia and the United States.

In criminal mediation, an unbiased third party facilitates a process of discussion as an alternative to traditional dispute settlement methods (Wantu et al., 2023). Reaching a settlement that satisfies both the criminal and everyone else impacted by the crime is the ultimate aim (Lesmana, 2019).

Looking at criminal mediation from a human rights lens requires familiarity with certain legal ideas and concepts (Imran et al., 2022). The restorative justice theory is relevant here since it stresses the importance of mending broken relationships after criminal actions by means of a fair and inclusive mediation procedure that includes all parties. Additionally, the foundation of sentence mediation is the basic idea of human rights. Essential rights guaranteed by human rights treaties, such as the right to privacy, equality, and fair treatment, must be considered throughout the mediation process. The parties' rights may

be protected throughout the mediation process and any agreements that come out of it if human rights issues are adequately addressed.

Criminal mediation provides a more humane alternative to traditional methods of resolving criminal cases by listening to and responding to the needs of victims and offenders alike. Offenders may accept responsibility for their wrongdoing and work toward resolving their relationship with victims via mediation. Note that criminal mediation is not a substitute for regular criminal justice processes; this is particularly true in cases of extreme violence or major infractions. Criminal mediation may only be used in cases involving mild to moderate violations, and it must adhere to the standards of fairness and human rights (Brown, 1994).

There are pros and cons, from a human rights standpoint, to using criminal mediation to settle criminal situations, such as medical malpractice claims. When it comes to criminal matters, including medical malpractice trials, legal experts say that criminal mediation is the best option since it is faster, more efficient, and takes human rights into consideration.

For instance, according to Markou's findings, jail mediation may be a faster and cheaper way to settle criminal disputes, especially when it comes to medical mistakes. On the other hand, professionals emphasize that human rights, including the rights to justice, equality, and victim identification, must be carefully considered during prison mediation (Mok & Wong, 2013). On the other side, from a human rights standpoint, some legal academics have also questioned the use of punitive mediation in medical negligence cases. According to Greenberg, victims' rights to seek justice and have their losses recognized might be undermined by jail mediation. Victims may also feel pressured into accepting low-ball or unjust settlement offers when punitive mediation is used (Wenzel et al., 2008).

The offender may actually gain from sentencing mediation, according to De Silva's study, as it lessens the harshness of the penalty handed down in comparison to a trial. The victim may feel wronged, and the offender may feel emboldened to behave similarly in the future (Patterson, 2024). Hence, taking into account the human rights issues surrounding the case, it is crucial to assess if criminal mediation is the best way to resolve medical malpractice claims. When it comes to settling criminal concerns, including medical negligence, Gavrielides believes that criminal mediation should be used in conjunction with or instead of fair criminal justice systems, and not in place of them (DeLaubenfels, 2013). Justice, equality, and victim acknowledgment are only a few of the human rights that must be considered in criminal mediation.

Taking all of this into consideration, the author concludes that criminal mediation is the best way to resolve criminal cases, including situations of medical negligence, quickly and efficiently without sacrificing any of the human rights that are at stake. The offender

may be brought to terms with his wrongdoing and make amends with the victim via the criminal mediation procedure. In contrast to the drawn-out process of going to court, victims may be able to get the restitution they need more quickly via criminal mediation. Additionally, restorative justice may be considered in criminal mediation for medical malpractice cases. This approach emphasizes the importance of reclaiming damages for unlawful activities via an inclusive and fair mediation method for all parties. A more humane solution that takes into account the human rights issues surrounding the case and satisfies the interests of victims and offenders alike may be provided via prison mediation.

Criminal mediation in medical malpractice proceedings must take human rights into account from a human rights standpoint. The Indonesian Criminal Mediation Commission (KMP) is responsible for enforcing the rules of criminal mediation as outlined in Article 185a of the Criminal Code in order to resolve cases involving criminal conduct, such as medical negligence. Medical malpractice cases in Indonesia may benefit from punitive mediation, according to Fatmah, since it is a more sensible, efficient, and equitable option for everyone involved (Sulistiyanta et al., 2021). The authors do stress, however, that fundamental human rights like privacy and the right to justice must be considered in criminal mediation.

Additionally, Azmi emphasized the need of settling medical malpractice cases via jail mediation in Indonesia in a way that is consistent with human rights and restorative justice principles (Hadi et al., 2023). The use of criminal mediation in American medical malpractice cases is very restricted, mostly because this technique is outright forbidden by federal law. Nevertheless, medical malpractice sentence mediation is legal in a number of US states, provided that the victims' and offenders' human rights are adequately protected. Sections 1152-1154 of the California Evidence Code regulate the criminal mediation process in instances of medical malpractice in the state, and it is required that the victim's and the defendant's interests be considered.

Accordingly, there are a number of factors that should be considered in the optimal model for using punitive mediation to resolve medical malpractice cases. To begin, victim and offender rights to justice, equality, and victim acknowledgment must be upheld in criminal mediation. Make sure victims aren't coerced into accepting a subpar or unjust settlement. Second, restorative justice ideas, which stress the significance of restitution for wrongdoing via a mutually beneficial mediation process, must be considered in this case. Third, penitentiary mediation has to be kinder than the current system, flexible enough to meet the needs of both victims and offenders, and respectful of all human rights concerns. Last but not least, prison mediation is not a substitute for, but rather an adjunct to, a just criminal justice system.

The Criminal Mediation Commission (KMP) is responsible for mediating criminal cases in Indonesia, including those involving medical misconduct, as outlined in Article 185a of the country's criminal code. U.S. federal rules specifically prohibit the use of criminal mediation in the settlement of medical malpractice claims, which limits its use in this context. Prison mediation in medical malpractice cases is permitted in some US states, subject to stringent conditions meant to safeguard the rights of victims and perpetrators alike.

When it comes to medical malpractice proceedings in Indonesia, the criminal mediation process might need some work to better protect the rights of victims and offenders, particularly in regards to victims' entitlement to fair treatment and proper acknowledgment. Federal law forbids criminal mediation in medical malpractice cases, while several states have passed laws allowing it. For this reason, criminal mediation must be governed by clearer and more consistent rules on a nationwide scale.

More clear and thorough rules on the use of criminal mediation to settle medical malpractice cases, taking into account applicable human rights, are necessary to strengthen Indonesia's legal system. Making sure victims have enough access to information about their rights during mediation is a crucial step toward improving victim engagement in the process. Also, there has to be a set of clear criteria for deciding whether a case is suitable for criminal mediation or needs to go through the entire criminal court process.

Since some states permit punitive mediation in the settlement of medical malpractice lawsuits and others do not, it is crucial for the federal government to establish consistent and thorough rules on this practice. Furthermore, the human rights of the victims and the offenders must be taken into consideration. To do this, it is necessary to ensure that all parties are treated fairly throughout the mediation process and to create clear criteria for determining whether or not cases should be settled using punitive mediation. Furthermore, it is essential to think about how insurance might facilitate punitive mediation in the resolution of medical malpractice cases, and what reasonable compensation plaintiffs should get for their losses.

B. Examination of the security idea Human Rights in resolving medical malpractice cases using criminal mediation in Indonesia.

In Indonesia, the restorative justice framework is strongly tied to the notion of protecting human rights in criminal mediation situations involving medical misconduct. According to this view, it is crucial to take into account the victim's losses as a result of the perpetrator's illegal conduct while resolving criminal cases in order to repair the victim's relationship with the offender and the community. think about the healing nature. Aiming

to rehabilitate the harmed parties, mend broken relationships, promote reconciliation, and establish societal harmony, restorative justice seeks to compensate for the harm that has been done (Braithwaite, 2016).

Restorative justice approaches help victims, offenders, and the community work together to find a fair and humane solution to medical malpractice claims via improved communication, negotiation, and cooperation. This method is in line with the principles of criminal mediation, which stress the need of victim and offender participation in order to achieve a win-win resolution.

In contrast, restorative justice emphasizes protecting victims' and offenders' human rights as part of the case settlement process (Pujayanti et al., 2024). Restorative justice, according to Pelikan and others, should put the rights of victims and offenders first. This includes the fundamental rights to fair treatment, equality, and acknowledgement of wrongdoing. Accordingly, the right to due process and secrecy, among other human rights, must take precedence during sentence mediation in Indonesian medical malpractice cases. In addition, Azmi stressed the importance of human rights and restorative justice in the criminal mediation of medical malpractice cases in Indonesia (Wulandari, 2018).

Criminal mediation in Indonesia is based on the principle of restorative justice, which emphasizes the need of victims' and offenders' active participation in reaching a fair resolution to medical malpractice cases. While implementing restorative justice practices, it is crucial to keep in mind the rights of victims and offenders alike, such as the entitlement to fair treatment, equality, and acknowledgement of the harm done. In such a situation, jail mediation is responsible for protecting human rights while resolving the case and making sure that everyone's needs are satisfied. The resolution of medical malpractice cases in Indonesia must take into account both human rights and the principles of restorative justice if it is to be fair and unbiased for all parties involved.

Securing the victim's rights to justice, equality, and recognition of the losses endured, as well as their rights to privacy and protection against prejudice or abuse of power, are among the legal challenges that come up when applying the principle of human rights protection in resolving medical malpractice cases through criminal mediation in Indonesia. Mediation in medical malpractice cases should follow the principles of restorative justice and safeguard the rights of all parties involved. In this way, the needs of the society at large and the parties involved may be adequately addressed by the final agreement. Furthermore, current rules and regulations pertaining to the settlement of medical negligence lawsuits in Indonesia must be carefully considered. For instance, the duties of physicians, patient protections, and the processes for handling malpractice cases are all outlined in Law No. 29

of 2004 on Medical Practice.

A major flaw in Law No. 29 of 2004 on Medical Practice is the vagueness around the criminal sanctions for malpractice-related breaches of medical ethics. According to the law, those who break the rules of medical ethics may face less severe punishments, such as a fine of up to 500 million rupiah or up to 5 years in jail. Indeed, the victim of certain forms of negligence may endure quite severe harm, perhaps death or permanent disability. Problems with the legislation's execution include, among other things, a lack of oversight of medical practices, no consequences for those who break the law, and a lack of community engagement in these areas.

Concerns have been raised about the failure of Law No. 29 of 2004 on Medical Practice to fully accommodate the human rights of victims of medical malpractice in Indonesia when it comes to the resolution of these cases via criminal mediation. Mediation inside correctional institutions is one approach to conflict resolution that may help bring about a more equitable and humane society. Here, criminal mediation is essential for safeguarding victims' and offenders' human rights while the case is resolved, and for reaching a fair and humane settlement that satisfies everyone involved. The goal of criminal mediation is to help the community, victims, and offenders work together to find a solution that fixes the harm that has been done and restores trust amongst everyone.

Concerning medical practice, the wording of Article 50 of Law No. 29 of 2004 is deemed problematic. Revocation of practice permits and loss of membership privileges of medical professional groups are examples of sanctions that may be imposed on persons who break medical ethics, as given permission to do so by this article's Medical Ethics Honorary Council (MKEK). There is no defined mechanism for determining consequences for individuals who break medical ethics, which makes the implementation of penalty by MKEK subjective and less transparent (Article 50). Revocation of practice licenses and membership privileges of medical professional organizations without fair processes is a clear example of how Article 50 disregards the human rights of wrongdoers (Beritno & Kurniasi, 2023).

The idea of human rights protections raised by Article 50 might be applicable to medical malpractice cases that include jail mediation. Both the victim's and the offender's human rights must be taken into account when criminal mediation is used to resolve malpractice cases. Justice, equality, and acknowledgment of wrongdoing are all part of this. Every step of the settlement process must be conducted with the utmost care to safeguard human rights and guarantee that all parties are satisfied with the final product. Overuse of Article 50 without regard to the human rights of the offender might lead to complications

in this case.

The problems that emerge will be seen through the lens of Article 185a of the Criminal Code as a breach of the principles indicated in Article 185a, particularly as they pertain to Article 50 of Law Number 29 of 2004 regarding Medical Practice. Article 50 is flawed because it fails to take the offender's human rights into account when deciding on consequences, which results in penalties that are both subjective and opaque. It is critical to make sure that the criminal mediation process for medical malpractice cases follows the rules set down in Article 185a, which include that there must be no pressure or violence, and that the process must be fair, equitable, and transparent. In addition, the MKEK's treatment of malpractice cases is governed by this concept, which states that sanctions should be decided via transparent processes that take into account the human rights of everyone involved.

When it comes to criminal matters, particularly those involving medical malpractice and their resolution via criminal mediation, the ideas presented in Article 185a of the Criminal Code are considered fundamental in legal theory and doctrine. All people must be treated fairly and without bias throughout the criminal justice system, as stated in Article 185a of the Criminal Code, which is a principle of justice. In order to uphold human rights, it is essential that the criminal justice system be run according to the principles of equality, transparency, and non-violence. Legal scholars like Tamin Sukardi have voiced concerns about the problems with medical practice described in Article 50 of Law No. 29 of 2004 and have argued that judges' lack of clarity and fairness in sentencing decisions violates the human rights of criminals, particularly in cases where doctors' licenses and membership in professional organizations are revoked without due process.

In order for medical malpractice cases in Indonesia to be resolved via criminal mediation, a legislative framework that places a premium on human rights and restorative justice is necessary. In order to resolve cases in a fair and humane way, it is crucial to keep in mind this principle, which will help preserve the human rights of victims and perpetrators alike. Justice, equality, openness, and the absence of compulsion or violence are some of the principles stated in Article 185a of the Criminal Code that prison mediation methods must still uphold.

Law No. 29 of 2004 on Medical Practice requires an amendment to Article 50 in order to resolve the present legal difficulties. Any worries about the insufficient protection of human rights for victims and accused persons should be eliminated by this change. The Medical Ethics Honorary Council must adhere to clear and open processes while deciding on punishments, all the while keeping the victims' rights in mind. To reach a just conclusion that satisfies the needs of all parties involved in the criminal mediation process, it is essential

to maintain equal protection of the human rights of the victims and the perpetrators in this situation. Further, to prevent arbitrary punishment and maintain openness with the MKEK, it is crucial to set up a clearly defined framework for punishing those who breach medical ethics.

For medical malpractice cases in Indonesia to be resolved through criminal mediation in accordance with human rights protection legal principles, the settlement must be fair and compassionate, taking into account the needs of both the victims and the perpetrators. This may be accomplished by following the principles of human rights and restorative justice and by referring to the rules laid forth in Article 185a of the Criminal Code.

CONCLUSION

The victim's and the offender's human rights must be carefully considered in any criminal settlement involving medical misconduct. As part of this process, it is necessary to acknowledge the damage individuals have endured and address their rights to justice and equality. It is critical that human rights and restorative justice principles be integral to criminal mediation case resolutions. A legislative or regulatory framework that speaks directly to human rights and restorative justice concepts is crucial in this case. In order to resolve the case in a fair and humane way, it is essential to keep in mind this idea, which will help safeguard the victim's and the perpetrator's human rights. It is also critical to create a national framework that regulates criminal mediation in medical malpractice cases in a clearer and more consistent way. To allay fears that the accused and the victim may not have had their human rights adequately protected, it is essential to amend Article 50 of Law no. 29 of 2004 on medical practice. Therefore, in order to reach fair outcomes and satisfy the needs of both sides in the criminal mediation process, it is crucial to provide equal protection of the human rights of the victims and the offenders.

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