

## **The Urgency of Utilizing Restorative Justice as An Alternative in the Enforcement of Medical Crime in Indonesia**

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### **Abstract**

This paper aims to describe the urgency of using restorative justice as an alternative to resolving medical crimes. In the Indonesian legal system, medical crimes are understood as medical crimes and are understood as forms of criminal acts committed in the context of the implementation of the medical profession, which is enforced through special laws and regulations. This paper is the result of normative legal research. Based on the results of the study, it is known that the problem in law enforcement for medical crimes lies in the unclear provisions of medical crimes in Law 36/2009 concerning health resulting in the enforcement of medical crimes subject to the provisions of the Criminal Procedure Code so that it can be said that the paradigm of medical crimes and ordinary crimes in the context of to Indonesia is still considered the same. Furthermore, alternative enforcement of medical crimes based on restorative justice is important regarding suffering or material losses (light reading) experienced by victims due to crimes committed by other people.

**Keywords:** Medical Crime, Law Enforcement, Restorative Justice

### **Introduction**

Health is one of the elements of human rights and welfare that must be realized following the provisions of the 1945 Constitution, which stipulates that everyone has the right to enjoy physical and spiritual well-being, live life, obtain a good and healthy living environment, and access health services. As a human right, the state regulates these provisions through Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that everyone has the right to enjoy health services and Article 34 paragraph (3) of the 1945 Constitution which states that the state is obliged to provide health services, decent service. Health service facilities and public service facilities. (Lehmusvaara et al., 2012)

The right to health services is further emphasized in the Law of the Republic of Indonesia Number 36 of 2009 concerning Health which states that health development must be aimed at increasing awareness, willingness and ability to live a healthy life of the community as high as possible, as an investment for the development of productive human resources, social and economic. This law emphasizes that the government has some responsibilities that must be carried out, which include the responsibility to plan, regulate, organize, foster, and supervise the implementation of health efforts that are equitable and affordable by the community. In addition, the Government of the Republic of Indonesia is also one of the state parties that has declared its commitment to the international community to bind itself to the international

convention that regulates economic, social and cultural rights or the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Covenant has been ratified through Law No. 11 of 2005 concerning the Ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 12 of Law No. 11 of 2005 states that states parties to this covenant recognize the right of everyone to enjoy the highest attainable standard of physical and mental health. (Appludnopsanji & Purwanti, 2021)

Given the importance of providing good health services to the community, the government has made various efforts to realize better health services. In addition to providing health services, the government is also responsible for increasing and encouraging the community's active role in various health services. Doctors and patients are two legal subjects that form a medical and legal relationship. Medical relations and legal relations between doctors and patients are those whose objects are health care or health services. In this health service relationship, in addition to the rights and obligations between doctors and patients, they also give birth to their respective legal responsibilities, which form the basis of a doctor-patient agreement that is more specific in a therapeutic agreement or therapeutic transaction. (Yuningsih et al., 2020)

The practice of a doctor is the provision of individual assistance by doctors to patients in the form of medical services. If someone comes to the doctor to take advantage of the available medical services, a legal relationship occurs between the doctor and the patient, called a therapeutic transaction. This kind of legal relationship that does not promise a cure or death is called *inspanning verbintenis*, which is different from the legal relationship that usually applies in agreements in general, which promises a definite outcome (*riskoverbentenis/resultaatsverbentenis*). Legal relations arise in medical services between doctors and patients as professional relationships, which arise in several contexts and can give rise to rights and obligations from agreements made by the parties. (BUDIONO et al., 2022)

So it is clear that the legal relationship between doctors and patients is a business agreement relationship (*inspannings verbintenis*), meaning that doctors will try their best in providing medical services to patients, and doctors do not guarantee that they will always be successful in providing medical services. However, the concept of a legal relationship between a doctor and a patient, in a therapeutic transaction, the position of the patient, which was originally only as a party depending on the doctor in determining the way of healing (therapy), has now turned into an equal party to the doctor. For example, doctors should no longer ignore the patient's opinion in choosing a treatment method, including determining whether or not surgery is necessary. Although in a therapeutic contract, the doctor is in a superior position compared to the patient, because of the existence of "professional power" which affects the patient's psychological and physical condition, the protection of this patient is built by heeding the principles of vulnerability. The criteria for determining someone to be categorized as a vulnerable person involves several aspects such as biological, economic, cultural, etc. This vulnerability can be caused by disability, environmental problems, social injustice, gender, and unbalanced relationships, so a person cannot freely defend himself. (Ali & Setiawan, 2022)

Furthermore, the position of patients in patient health services can be found in Article 4 of Law Number 36 of 2009 concerning Health which states that everyone has the right to health. Furthermore, Article 5 of the Law states that everyone has the same right to access health sector resources. These provisions have juridical consequences for three patient rights where the three things are interrelated, namely medical consent (informed consent), the right to medical records (medical records) and medical secrets (medical secrecy). This is necessary because it is a respect for human dignity, which is free and has autonomous rights to himself.

For example, approval of a medical action from a patient after receiving information or an explanation from the doctor regarding the medical action to be taken against him. The principle of informed consent protects the autonomy and integrity of individuals who have the right to make their own choices for themselves freely regarding the treatment to be carried out by doctors/medical personnel.(Gonzalez, 2015)

Informed consent in practice is often not carried out because doctors assume that all medical actions taken on patients will not pose a risk, and if there is a risk, the doctor is sure that he can handle it. This kind of thing should be avoided and cannot be justified even though emergency medical action can be done without informed consent. Apart from that, it is related to medical crimes that generally occur if the results of the doctor's efforts in dealing with the patient are not by the patient's expectations and have an impact on the death or disability of the patient, will lead to a patient's claim to the doctor.(Prabandari et al., 2019) This condition eventually led to medical disputes between doctors and patients. Because, according to the patient, there has been a malpractice action. As a result, the patient or the patient's family complains and reports to the police and even files a civil lawsuit against the doctor because the doctor has made negligence. Even Widodo Trenso Novianto, in his dissertation, said that medical disputes stem from patient dissatisfaction because some doctors do not complete their work as promised. Hence, patients or their family members look for the cause of the dissatisfaction. This dissatisfaction is due to violations that contain the nature of unlawful acts in the medical profession that cause harm to the patient, where this occurs if there is an assumption that the contents of the therapeutic agreement (therapeutic contract) are not fulfilled or are violated by the doctor.(McCarthy & Zen, 2010)

The increasing number of complaints and lawsuits filed by the public is usually considered as a failure of treatment carried out by doctors, although on the one hand, the increase in the number of lawsuits against doctors and hospitals shows a positive attitude, namely that people are starting to realize their rights in the health sector.(Ummah et al., 2019) The complaint is based on the doctor's negligence in his profession. However, even so, in terms of proving the existence of a medical crime committed by a doctor against a patient, it tends to be quite difficult, which is in line with the view of Nova Riyanti Yusuf, Deputy Chairman of Commission IX of the House of Representatives (DPR) explaining that it is not easy to assess the existence of an action. A doctor commits a medical crime because it requires people who understand the field. So the most basic question is whether law enforcement officers can assess a medical crime.(Gavrilova et al., 2015)

Even if it is explored further, it is known that there were only 2 (two) cases of medical crimes that were tried before the court. The rest only talked about "deliberately practising medicine without having a practice license". The following is a summary of some medical crimes that have been terminated, including First, Supreme Court Cassation Decision Number 365 K/Pid/2012 which sentenced three resident doctors to 10 months in prison, namely, dr. Dewa Ayu Sasiary Prawani SpOG, dr.Hendry Simanjuntak SpOG and dr.Hendy Siagian, SpOG that it is legally and convincingly proven guilty of committing a crime for an act that due to negligence caused the death of patient Julia Siska Makatey in Manado, North Sulawesi, giving rise to pros and cons. The Indonesian Doctors' Association and other medical circles consider the actions of the three doctors to be in accordance with the procedure because how to judge the actions of a doctor in the eyes of the law is a problem for doctors. Second, the case of doctor Dewa Ayu Sasiary Prawani and his colleagues, Hendy Siagian and Hendy Simanjuntak in Decision Number 365 K/Pid/2012 stating that the Defendant's actions due to his negligence resulted in the death of another person and imprisonment for 10 (ten) months each.

These two cases are the only ones that become the focus of discussion related to medical crimes. In contrast, other medical crime cases only talk about crimes committed for "deliberately practising medicine without having a practice license". Therefore, it can be concluded that there are problems in settlement of medical crimes in Indonesia. Theoretically, a criminal case can be closed for the sake of the law. The prosecution is terminated based on restorative justice if several conditions are met, namely, first, the suspect has committed a crime for the first time. Second, the criminal act is only threatened with a fine or imprisonment of not more than five years, and third, the crime is committed with the value of the evidence or the loss caused as a result of the crime of not more than Rp. 2,500,000.00. According to Moeljatno, a criminal act is an act that is detrimental to the community in the sense that it is contrary to or hinders the implementation of good and fair social relations, as well as anti-social. As a public law, criminal law regulates sanctions for perpetrators of criminal acts as punishment for harming the community's interests. One of these criminal sanctions is imprisonment. In retributive justice, a prison is a form of misery for the perpetrators, which is a recompense for the perpetrators and the purpose of the criminal law itself. Criminal punishment is punishment in the form of torture or suffering, which is a privilege and the most important element in criminal law.(Gavrilova et al., 2015)

This is where the concept of restorative justice was introduced, on the pretext that imprisonment does not produce much of the expected output, namely that if someone has served a crime, he will become a better person. This phenomenon is called the criminal cycle. Namely, prisons cannot make prisoners into good citizens; even in some cases, they become more skilled in committing crimes. Even for the victim, the concept does not have a good impact on the concept of restorative justice as much as possible. The concept of criminal law is to be avoided by prioritizing taking sides with the victim through efforts to restore the victim's crime condition.(Zhang et al., 2020) Restorative justice is the settlement of criminal cases involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state, not retaliation. Restorative justice is a subsystem of punishment in which other subsystems are interconnected and work to achieve benefits. The principle of restorative justice is that the victim gets compensation for the loss, peace and an agreement that can restore the victim's condition.(MacDonald et al., 2010)

Changing the paradigm of retributive justice to restorative justice is difficult and cannot be done without considering social conditions. The study of Indonesia's diverse political, economic and socio-cultural conditions must be considered in establishing the criminal law system.(Yuningsih et al., 2020) There is a need for material and formal laws that support law enforcement based on restorative justice so that the criminal system is oriented to the interests of perpetrators, victims, and the community. Restorative justice cannot be interpreted as abolishing imprisonment but as bringing cases outside the trial process, namely peace. Based on this, the problems that can be raised for further study and research in more detail in this study are a. why is restorative justice needed in settlement of medical crimes in the legal system in Indonesia and b. what the ideal legal construction concerning the use of restorative justice in settlement of medical crimes in the legal system in Indonesia is.

## **Research methods**

This paper is a normative legal research, where the concept used is "the law of positive norms in the statutory system".(Saputra et al., 2021) This study confirmed that "the appropriate approach used in this legal research is the statute approach, comparative approach and

conceptual approach".(Rian Saputra and Silaas Oghenemaro Emovwodo, 2022) The data collection technique used in this research is a document study equipped with interviews. Document studies are used to collect secondary data from various literature, including laws and regulations, international treaties, books, journals, articles, reports on previous researchers' results and other documents related to the problems studied.

## **Discussion**

### ***1. Restorative Justice's urgency in settling medical crimes in the legal system in Indonesia.***

In Indonesia, law enforcement in cases of medical crimes still uses the same rules as general crimes, namely using the Criminal Procedure Code (from now on abbreviated as KUHAP) and the Criminal Code (from now on referred to as the Criminal Code) so that the attached provisions are the same as the provisions for law enforcement in cases of other criminal acts such as theft and murder, even though medical or medicine is a special branch of science that is difficult to understand by ordinary people especially law enforcers who are not accompanied by complex medical knowledge.(Ansori, 2018) Even further, Indonesian health law normatively regulated in Law No. 36 of 2009 (from now on abbreviated as Law 36/2009) does not officially mention the term malpractice (medical crime).(Bahreisy & Saputra, 2021) However, only mentions errors or omissions in carrying out the profession (listed in Articles 54 and 55). Thus, malpractice is a legal term used in Articles 54 and 55. Errors or omissions in carrying out the profession, as stated in articles 54 and 55 of Law 36/ concerning health, reads as follows Article 54: a. Health workers who make mistakes or are negligent may be subject to disciplinary action, b. The determination of the presence or absence of errors or omissions, as referred to in paragraph (1), is determined by the disciplinary council of health workers, c. Provisions regarding the formation, duties, functions and work procedures of the Disciplinary Council for Health Workers are stipulated by a court decision. Then Article 55: a. Everyone has the right to compensation due to errors or omissions made by health workers, b. As referred to in paragraph (1), the compensation is carried out by the applicable laws and regulations.(Alam, 2020)

Based on the provisions of Law 36/2009 above, it is clear that there is still a legal vacuum regarding the regulation of medical crimes in Indonesia, even though when it comes to criminal law enforcement when viewed in a policy process, criminal law enforcement is essentially a policy enforcement that goes through three stages, The first is the formulation stage, namely the legislative stage, namely the stage of law enforcement in abstract by legislators. The second stage is the application or judicial stage, namely the stage of applying criminal law by law enforcement officials from the police to the courts, and the third, namely the concrete implementation of criminal law by criminal/executional officers to the perpetrators of criminal acts or crimes.(Sulolipu et al., 2019) breaking the law. In this second stage, there are also obstacles. At the same time, the author explained earlier at the beginning of the discussion that law enforcement for medical crimes generally still uses the same rules as general crimes, namely the Criminal Procedure Code and the Criminal Procedure Code. This problem makes the model of proving medical crimes the same as general crime, even though the two crimes, in reality, have quite significant differences, which also require differences in handling. An example is the burden of proof. As it is known that evidence in criminal cases is different from evidence in civil cases. Proof of criminal cases aims to seek material truth, namely the real truth, while proof of civil cases aims to seek formal truth, meaning that the judge must not exceed the limits proposed by the litigating parties. So if a criminal judge seeks the material truth of a case, then the incident must be proven or proven (beyond reasonable



doubt).(Tarigan et al., 2018)

The problem of proof is a very important and main thing, especially in the case of medical malpractice. In Indonesia, medical crimes are sometimes not resolved satisfactorily, even if it is very difficult for doctors to prove that they have committed medical crimes under criminal law.(Santoso et al., 2019) According to Darwan Prints, evidence is proof that a criminal event has occurred, and the defendant is guilty of doing so, so he must be held accountable for it. Evidence is carried out to provide certainty to the judge about an event or act committed by a person so that evidence can be used as the basis for deciding by the judge. The difficulty of proving malpractice cases causes malpractice cases that are difficult to be brought to court and only settle in police reports.(Bahreisy & Saputra, 2021)

Proof of malpractice cases in Indonesia uses the same method regulated by the Criminal Procedure Code. Evidence in the Criminal Procedure Code adheres to a system or theory of evidence based on the law in a negative way (negative wettelijk). Article 183 of the Criminal Procedure Code states that a judge may not impose a sentence on a person unless, with at least two valid pieces of evidence, he obtains the belief that a criminal act has occurred and that the defendant is guilty of committing it.(Kusumaningrum, 2016) According to Wirjono Prodjodikoro, negative evidence based on law should be maintained for two reasons, namely: a. Indeed, there should be a judge's belief about the defendant's guilt in order to be able to impose a criminal sentence, the judge should not be forced to convict someone while the judge is not sure of the defendant's guilt; b. It is useful if there are rules that bind judges in formulating their beliefs so that there are certain standards that judges must comply with in conducting trials.(Saputra et al., 2022)

As a state of law, the provisions in Article 184 Paragraph (1) of the Criminal Procedure Code must be adhered to. Thus, the principles and principles of the rule of law must be firmly adhered to and cannot be defeated by momentary needs, circumstances or thoughts at any time. A state of law that holds the highest power is law, universally called the 'Rule of Law' with one of its elements, namely the principle of presumption of innocence, as contained in Article 66 of the Criminal Procedure Code that the suspect or defendant is not burdened with the obligation of proof. However, according to J. Guwandi, medical malpractice is a special type of case where medical expertise or knowledge is very different from the legal science controlled by law enforcers, and many different and unpredictable situations can occur.(Purwadi, 2017)

In this section, it is important to apply restorative justice in settlement of medical crimes in Indonesia. Seeing the small space for medical crimes to be resolved through the usual procedures contained in the Criminal Procedure Code.(Wulandari et al., 2022) Restorative justice is intended to settle medical crimes by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state and not retaliation. Where it should be here that the utilization of the concept of restorative justice is a punishment subsystem where other subsystems are interconnected and work to achieve benefits. The principle of restorative justice is that the victim gets compensation for the loss, peace and an agreement that can restore the victim's condition.(Karjoko et al., 2021)

This is actually in line with the concept of Pancasila justice as stated in Article 2 of Law Number 12 of 2011, where it is said that Pancasila is the source of all sources of state law. The justice of Pancasila is still a matter of debate. However, at least there is a view that states, The characteristics of Pancasila justice when analyzed with John Rawls' Theory of Justice have

similarities with Aristotle's opinion. This commonality of opinion is that justice must be understood as equality. Humans, as social beings, must obtain equality in law or equality in obtaining justice. (Ningrum et al., 2016) Rawls's view positions the existence of a similar and equal situation between individuals in society. There is no difference in status, position or having a higher position between one another so that one party with another can make a balanced agreement. Rawls's view is convinced by Plato's teachings regarding the use of law as a means of justice, namely departing from his idealism of the 'ideal state' where everyone has the opportunity to enjoy justice in the sense that everyone has the same rights in obtaining justice. (Wicaksono & Saputra, 2021)

Where the principles of justice, according to Rawls, can be determined by a kind of agreement process between community members by taking into account, among other things, human cooperation, minimal morality, a sense of justice, rational choice, and what are called primary goods. Everyone gets it. (Wahyudi, 2012) Based on this procedure, Rawls concludes that community members, namely: 1, will unanimously agree upon 2 (two) principles of justice. Everyone should have an equal right to the broadest comprehensive system of basic liberties. ), 2. Social and economic differences should be regulated so that: a. provide the greatest benefit to those in the most advantageous position. b. related to positions and positions that are open to all based on true equality of opportunity. (Gavrilova et al., 2015)

As the author explained above, using the evidentiary approach in a manner regulated by the Criminal Procedure Code in the enforcement of medical crimes makes it difficult for law enforcers to resolve medical malpractice cases, of course, can give injustice to the parties, both suspects and victims in the form of limited access, on justice itself. The limited knowledge of law enforcement officers regarding medical science makes medical and criminal cases difficult to resolve. (Badriyah, 2011) In Anglo-Saxon countries such as America, medical crime cases are unavoidable; many cases occur. In contrast to Indonesia, reported malpractice cases can be resolved in court because they use reverse evidence, making it easier for them to resolve the medical crime case. The author will further explain the evidence to handle medical crimes in America.

For example, in resolving cases of medical malpractice, America applies the principle of *res ipsa loquitur* (the thing speaks for itself); this doctrine is directly related to the burden of proof. It was explained that "*Res ipsa loquitur*" does not prove anything; it is a very limited possibility to transfer the burden of proof from the plaintiff to the defendant. This doctrine does not apply automatically, only in certain cases where a person's fault is so clear that his fault can be directly identified. This doctrine cannot be applied if the presence or absence of negligence still depends on something relative. (Nasution et al., 2022)

In certain cases, the negligence of the doctor is visible so that there is no need for further proof because even ordinary people can already know of negligence, so there is no need for evidence from expert witnesses; cases like this can use this doctrine, so the doctor is the one who charged with proving that he was not negligent, this is called reverse proof. In Anglo-Saxon countries, using the standard burden of proof, there are three: a. By a preponderance of the evidence, there must be evidence in such a way that, when measured, it has a greater power of truth (more than 50%), b by clear and convincing evidence, namely the level of the evidence size that will give the jury an impression of an exact measure of the truth of what is stated by the plaintiff, c. Beyond a reasonable doubt, namely that the evidence must be on the plaintiff's side, there is no doubt in assessing the defendant's defence. This standard measure is used in criminal cases. (Zhang et al., 2020)

From this, we can see that one of the successful ways the Anglo-Saxon countries resolve cases of medical malpractice is primarily in America. In America, the reverse proof is applied, whereas, in a country that adheres to the continental European system, such as Indonesia, it was initially said that reverse proof violates the presumption of innocence, even though the application of reverse proof itself can bring justice to both the suspect and the victim because after all, medicine is a special field that According to the author, the final result cannot be predicted so that a doctor who is considered to have committed malpractice can prove that he did not do it and this helps to solve medical malpractice cases which law enforcement officers have a difficult proof process for this case, so it cannot be resolved properly.(Said, 2017) In Anglo-Saxon countries, reverse evidence is applied to cases that even ordinary people know that it was the negligence of the doctor, for example in the case of Ybarra V. Spaniard in California in 1944, a patient underwent an appendectomy, after the operation, his shoulder became paralyzed, by a judge. Applied the doctrine of "Res Ipsa Loquitur", or by turning the burden of proof on those involved in the surgery, to find out whether they committed negligence or it was a medical risk.(Budi Saptano & Ayudia, 2020)

Now the reversal of the burden of proof is well known in the Corruption Crime Act and the Money Laundering Law in Indonesia, this can mean that the paradigm of reversed proof that violates the presumption of innocence has changed, that reverse evidence is used to combat injustice and is used for urgent matters where the government is powerless to cope. From the experiences that the United States has gone through in handling medical criminal cases, Indonesia can actually follow the application of reverse proof for medical criminal cases in Indonesia.

## ***2. The ideal legal construction regarding the use of restorative justice in settlement of medical crimes in the legal system in Indonesia***

Based on the argument that the author builds related to the tendency of difficulty in enforcing medical crime law in Indonesia, which preceded it, there was still no regulation of medical crimes in Law 36/2009, which had implications for the inclusion of medical crimes as ordinary crimes which in the process of law enforcement are subject to the Criminal Procedure Code. Prevailing in Indonesia, the author tries to re-explain the importance of alternative medical crime enforcement based on Restorative Justice (Restorative Justice).(Saragih & Sahlepi, 2019) Restorative justice is a concept built as a victim-centred reaction to a crime that allows victims, perpetrators, families and communities to pay attention to losses resulting from criminal acts. Muladi said the same thing, which according to him, in the context of regulating the protection of victims of criminal acts, the first thing that must be considered is the essence of the loss suffered by the victim. The essence of the loss is not only material or physical suffering but also psychological.(Lee & Cho, 2013)

It must be admitted that the promotion and respect for human rights have penetrated the legal world, the approach that emerged in the 1970s in efforts to settle criminal cases. In contrast to the approach used in the conventional criminal justice system, this approach focuses on the direct participation of perpetrators, victims and the community in resolving criminal cases. Even though this approach is still theoretically debated, this view is evolving and influencing legal policy and practice in many countries.(Susanto, 2015) Restorative Justice is a popular alternative in various parts of the world for dealing with unlawful acts because it offers a comprehensive and effective solution. Restorative justice aims to empower victims, perpetrators, families and communities to correct an unlawful act by using awareness and conviction to improve community life. Settlement of criminal cases inside and outside the court process that focuses on deliberation and direct participation of perpetrators, victims and the community in the process of resolving criminal cases that return the situation to its original



state (recovery) is restorative justice. (Kartono & Mulyana, 2019)

Dispute resolution mechanisms based on restorative justice are based on consensus deliberation in which the parties are asked to compromise in order to reach an agreement. Each individual is asked to give in and put the community's interests above personal interests to maintain mutual harmony. The concept of deliberation has proven to be more effective in resolving disputes in society amidst the failure of the role of the state and courts in providing justice. (Dwisvimiari, 2011) Wright explains that the concept of restorative justice is simple. The measure of justice is no longer based on retribution from the victim to the perpetrator (either physically, psychologically, or punitively). However, the painful act is healed by supporting the victim and requiring the perpetrator to be held accountable with the help of the family and community when needed. The similarity of restorative justice with local (adat) mechanisms is advantageous because it is more acceptable and practised by the wider community. Apart from that, there are several other advantages in applying restorative justice: a. Restorative justice focuses on justice for victims according to personal desires and interests, not the state that determines; b. Offer remedies for all parties involved; c. Make the perpetrator responsible for the crime he committed. (Wulandari et al., 2022)

Simply put, restorative justice is concerned with rebuilding relationships after a crime has occurred rather than exacerbating the rift between perpetrators, victims and society, which is the character of today's modern criminal justice system. Restorative justice is a "victim-centred" reaction to a crime that allows victims, perpetrators, families and community representatives to pay attention to losses resulting from criminal acts. The focus is on reparations, restoration of damages, losses suffered by crimes and initiating and facilitating peace. (Subadi, 2018) This is to replace and avoid decisions on who wins or loses through the adversarial system (hostility). Restorative justice seeks to facilitate dialogue between the various parties involved or affected by crime, including victims, perpetrators, families, and society. (Riyanto et al., 2018)

In various principles and models of the restorative justice approach, the dialogue process between the perpetrator and the victim is the basic capital and the most important part of implementing this justice. Direct dialogue between the perpetrator and the victim allows the victim to express what she feels and hopes that the rights and desires of a criminal case will be fulfilled. Through dialogue, it is hoped that the perpetrator will be moved to correct himself, realize his mistake and accept responsibility as a consequence of the crime committed with full awareness. From this dialogue process, the community can also realise the agreement's results and monitor its implementation. Therefore, restorative justice is also known as settling cases through mediation (penal mediation). (Newman, 2017)

So through these considerations, apart from the consideration that it is quite difficult to enforce the law on medical crimes in Indonesia at this time because there are still no regulated medical crimes in Law 36/2009, which have implications for the inclusion of medical crimes as ordinary crimes which in the law enforcement process are subject to In the Indonesian Criminal Procedure Code, the restorative justice approach is important to consider in settlement of medical crimes, to minimize victim losses and provide access to justice for victims of medical crimes. (Wirawan, 2021) Consideration in the settlement through the approach to the concept of restorative justice is important given the victim's position, who is very disadvantaged in medical crimes but is also faced with difficulty accessing justice. Muladi defines victims as people who, individually or collectively, have suffered physical or mental harm, emotional, economic, or substantial impairment of their fundamental rights through acts that violate criminal laws in each country, including abuse of power. (MELENKO, 2021)

In addition to these considerations, international considerations are also important. Where the importance of protecting victims of crime has received serious attention can be seen in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power by the United Nations as a result of The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which took place in Milan, Italy, September 1985. One of its recommendations stated: "Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependents. Such restitution should include the return of property or payment for the harm or loss, reimbursement of expenses incurred due to the victimization, the provision of services and the restoration of rights".(Pradityo, 2016) "Which means more or less that "the perpetrators or those responsible for an unlawful act must provide restitution to the victim, the victim's family or guardian. The restitution is in the form of returning property rights or compensating for the losses suffered by the victim, loss of costs for the negligence he has committed, causing the victim, which is a stipulation of law as a form of service and fulfilment of rights.(Koo et al., 2013)

In the context of victims of medical crimes, the concept of restorative justice in terms of suffering or material loss (read lightly) experienced by the victim as a result of a crime committed by another person, it is appropriate that the perpetrator of the crime (the other person) provides the compensation. . However, if it causes a loss that results in the loss of another person's life, in my opinion, this concept must be set aside, although in reality it is very difficult to enforce the law or prove it because medical crimes are not the same as ordinary crimes which are subject to the provisions of the Criminal Procedure Code. Therefore, at this point the enforcement of medical crimes is important to consider the basis of the concept of restorative justice in its enforcement, considering that it is quite difficult to enforce medical crimes which in terms of proof are still subject to the provisions of the Criminal Procedure Code and in Law 36/2009 has not explicitly stated the meaning of the crime. medical crime itself, besides that in the Indonesian context there are only 2 (two) cases that purely try medical crimes.

If a medical crime proceeds not subject to the Criminal Procedure Code, for example, the investigation process or investigation is carried out by people who are experts in the field of health, the restorative justice room can be set aside to provide legal certainty, and if the concept of restorative justice wants to continue to be used, then it depends on both parties. Parties (read: victims and perpetrators).(JoksImoVIc et al., 2020) If a medical crime in the future is not subject to the Criminal Procedure Code, that is, if the investigation process or medical crime investigation is carried out by people who are experts in the health sector, it will provide at least 2 (two) benefits, namely: a. provide access to adequate justice for victims of medical crimes and b. make the medical profession more careful in providing handling of medical services in order to prevent the occurrence of malpractice opportunities which can also be said to be a legal protection space for the health or medical profession in the future. As Satjipto Rahardjo's view, legal protection is to protect human rights that others have harmed. This protection is given to the community so they can enjoy all the rights granted by law .(Appludnopsanji & Purwanti, 2021)

Likewise, if it is juxtaposed with the views of Sudikno Mertokusumo, who said that legal protection is: "In its function as the protection of human interests, the law has a purpose. The law's main purpose is to create an orderly social order, order, and balance. Human interests are hoped to be protected by achieving order in society. In achieving its goals, the law is tasked with dividing rights and obligations between individuals in society, dividing authority and regulating how to solve legal problems and maintaining legal certainty. However, the author reiterates that this is done if there is no related legal product (the process of enforcing medical

crimes is still subject to the procedural KUHAP). It is better for the concept of restorative justice always to be considered to provide justice for victims, where the space or opportunity for the perpetrators is very small to punished as in the current regulation regarding the enforcement of medical crimes.

## Conclusion

Based on the author's search, it is known that: a. The urgency of the use of restorative justice in law enforcement of medical crimes, due to the unclear provisions of medical crimes in Law 36/2009 concerning health resulted in the enforcement of medical crimes being subject to the provisions of the Criminal Procedure Code so that it can be said that the paradigm of medical crimes and ordinary crimes in the context of Indonesians are still considered the same even though the reality is that medicine or medicine is a special branch of science that is difficult for ordinary people to understand, especially if law enforcers are not accompanied by complex medical knowledge. b. Ideally, alternative medical crime enforcement based on restorative justice is important to consider in terms of suffering or material loss (read lightly and not resulting in loss of life or permanent disability) experienced by the victim as a result of a crime committed by another person. However, in the opinion of the author, if the loss results in the loss of another person's life, in my opinion, this concept should be set aside, although in reality it is very difficult to enforce the law or prove it because medical crimes are not the same as ordinary crimes which are subject to the provisions of the Criminal Procedure Code.

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