

Reconstruction of Law Enforcement Rule for Employers of Medical Practitioner without Practice Licenses Based on Restorative Justice

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Abstract

In Indonesia, current constructive law lacks clear regulation regarding the enforcement of laws against employers who hire medical practitioner without practice licenses. As a result, law enforcement often relies on general statutes such as the Penal Code or Civil Code, treating offenders similarly to criminals. This situation emphasizes the urgent need for specific rule that adhere to principles of restorative justice. This study aims to study the absences in current law enforcement rule pertaining to employers of unlicensed medical practitioner, explore these issues from a restorative justice perspective, and propose a reconstructed regulatory framework grounded in restorative justice principles. The research employs a constructivist paradigm with a descriptive-analytical approach, utilizing socio-legal methods within a qualitative research design. Data consist of primary, secondary, and tertiary legal materials gathered through literature review, observation, and interviews, and are studied qualitatively. The findings reveal that existing rule do not follow to principles of restorative justice. Enforcement lacks consistency, hindering the equitable access of the public to law enforcement, justice, and benefits. Weaknesses include the absence of specific legal provisions and insufficient knowledge among law enforcement officials regarding healthcare law, resulting in inconsistent enforcement practices. Illustration on international and national legal insights, the study proposes a reconstructed legal framework that ensures balanced protection for employers, medical practitioner, and patients, promoting dignified and high-quality healthcare services free from stigma, and showed with fairness and professionalism. Reconstructing legal norms such as Article 442 and healthcare legislation could create a balanced law enforcement regulation that upholds legal enforcement, legal utility, and societal justice perceptions.

Keywords: Enforcement, Healthcare, Indonesia, Justice, Reconstruction.

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1. INTRODUCTION

The introduction of the 1945 Constitution of the Republic of Indonesia clearly outlines the national goals and aspirations of the Indonesian people [1]. These goals include protecting all Indonesian citizens and their entire homeland, promoting general welfare, advancing the intellectual life of the nation, and contributing to global peace and social justice based on freedom, eternal peace, and social justice. To achieve these national goals, continuous and comprehensive development efforts are

carried out, including healthcare development, which is integral to improving the overall quality of life [2].

Healthcare is a fundamental human right, and every person has the right to a prosperous life, both physically and mentally, a healthcare living environment, and access to healthcare services, as mandated in Article 28H paragraph (1) of the 1945 Constitution [3]. Article 34 paragraph (1) further states that the government is responsible for providing adequate healthcare services and public facilities. This

¹ Tibaka, L., & Rosdian, R. (2017). The Protection of human rights in Indonesian constitutional law after the amendment of the 1945 constitution of the republic of Indonesia. *FIAT JUSTISIA: Jurnal Ilmu Hukum*, 11(3), 266-288.

² Mboi, N., Surbakti, I. M., Trihandini, I., Elyazar, I., Smith, K. H., Ali, P. B., ... & Hay, S. I. (2018). On the

road to universal health care in Indonesia, 1990–2016: a systematic analysis for the Global Burden of Disease Study 2016. *The Lancet*, 392(10147), 581-591.

³ Kusumaningrum, A. E. (2018). Human rights implementation health service. *Surakarta Law and Society Journal*, 1(1), 25-36.

highlights that healthcare is an essential component of welfare, as envisioned in the Constitution, and necessitates a robust healthcare system to support this vision [4].

The government plays a critical role in healthcare development. According to Articles 14-20 of Law No. 36 of 2009 on Healthcare, the government is responsible for planning, regulating, organizing, fostering, and supervising equitable and affordable healthcare efforts [5]. This includes ensuring the availability of a conducive environment, healthcare facilities, and social settings for achieving the highest healthcare standards. It also involves ensuring fair and equitable distribution of healthcare resources, providing access to healthcare information, education, and services, and empowering and encouraging active community participation in healthcare efforts [6].

Healthcare practitioners are central to improving service quality and public healthcare. Law No. 36 of 2014 defines healthcare practitioners as individuals dedicating themselves to healthcare, possessing knowledge and skills through healthcare education, and requiring authority for specific healthcare efforts [7]. Article 57 outlines healthcare practitioners' rights, including legal protection, complete and accurate information from healthcare service recipients, fair compensation, occupational safety, respectful treatment, professional development opportunities, and refusal of services contrary to professional standards [8]. Their obligations include maintaining patient confidentiality, providing quality care according to professional standards, and creating and storing medical records [9].

Healthcare systems worldwide aim to improve public healthcare to the highest standards. Both developed and developing countries have unique strengths and weaknesses in their healthcare systems, which evolve over time [10]. Healthcare financing systems differ due to varying population characteristics, state revenues, economies, and geographies [11]. National healthcare development is crucial for achieving overall development goals, as accessible and quality healthcare care enhances outcomes in other sectors. However, quality healthcare care is becoming increasingly challenging and costly [12].

Countries like Malaysia, Costa Rica, and Thailand provide examples of effective healthcare systems [13]. Malaysia has attracted medical tourism due to its quality services and affordable costs, with top-trained doctors and JCI-accredited hospitals specializing in various medical fields [14]. Costa Rica offers low-cost, high-quality healthcare services, attracting Americans for medical and dental care. Thailand's healthcare system covers the entire population, ensuring equitable distribution of healthcare practitioners and incentivizing their service in rural areas. These countries' healthcare care successes can provide valuable lessons for improving healthcare systems in other regions.

Indonesia's National Healthcare System has made important strides in improving public healthcare status, but challenges remain. These challenges include healthcare practitioner shortages, unequal healthcare service access, inadequate healthcare financing, and insufficient facilities [15]. Addressing these issues requires learning from other countries' healthcare

⁴ Neelakantan, V. (2017). *Science, public health and nation-building in Soekarno-era Indonesia*. Cambridge Scholars Publishing.

⁵ Halabi, S. F. (2009). Participation and the right to health: lessons from Indonesia. *Health & Hum. Rts.*, 11, 49.

⁶ Macfarlane, S., Racelis, M., & Muli-Muslime, F. (2000). Public health in developing countries. *The Lancet*, 356(9232), 841-846.

⁷ World Health Organization. (2009). *Healthy settings: coordinator training: Report of a national workshopo, Yogyakarta, Indonesia, 25-27 February 2009* (No. SEA-EH-562). WHO Regional Office for South-East Asia.

⁸ Fuady, A. (2013). *Moving toward universal health coverage of Indonesia: where is the position?*. Erasmus Universiteit.

⁹ Sugiarti, I. (2020, June). Legal protection of patient rights to completeness and confidentiality in management of medical record documents. In *2nd Bakti Tunas Husada-Health Science International Conference (BTH-HSIC 2019)* (pp. 179-191). Atlantis Press.

¹⁰ World Health Organization. (2000). *The world health report 2000: health systems: improving performance*. World Health Organization. <https://books.google.com/books?hl=en&lr=&id=luggK>

[K2euxoC&oi=fnd&pg=PR7&dq=Health+systems+worldwide+aim+to+improve+public+health+to+the+highest+standards.+&ots=sOj45ebDQ8&sig=2zPB_yF8K7alh2nztO9zJyW_KA](https://books.google.com/books?hl=en&lr=&id=luggK)

¹¹ Agustina, R., Dartanto, T., Sitompul, R., Susiloretni, K. A., Achadi, E. L., Taher, A., ... & Khusun, H. (2019). Universal health coverage in Indonesia: concept, progress, and challenges. *The Lancet*, 393(10166), 75-102.

¹² Hill, H., Resosudarmo, B. P., & Vidyattama*, Y. (2008). Indonesia's changing economic geography. *Bulletin of Indonesian Economic Studies*, 44(3), 407-435.

¹³ Turner, L. (2007). 'First world health care at third world prices': globalization, bioethics and medical tourism. *BioSocieties*, 2(3), 303-325.

¹⁴ Putri, R. N. (2019). Perbandingan sistem kesehatan di negara berkembang dan negara maju. *Jurnal Ilmiah Universitas Batanghari Jambi*, 19(1), 139-146.

¹⁵ Tangcharoensathien, Viroj, Walaiporn Patcharanarumol, Por Ir, Syed Mohamed Aljunid, Ali Ghufuron Mukti, Kongsap Akkhavong, Eduardo Banzon, Dang Boi Huong, Hasbullah Thabrany, and Anne Mills. "Health-financing reforms in southeast Asia: challenges

systems and implementing best practices to optimize Indonesia's National Healthcare System and achieve the highest healthcare standards.

Equitable healthcare service access is essential and follows vertical justice principles. This means that contributions to healthcare financing are based on the ability to pay, not healthcare status, ensuring that lower-income individuals pay less for the same quality services [16]. Indonesia has a mix of public and private hospitals, with class C hospitals dominating as primary care referral hospitals. Ensuring equitable and affordable healthcare services, a conducive environment, and fair distribution of resources is the government's responsibility.

Law No. 1 of 2023 on the Criminal Code and Law No. 17 of 2023 on healthcare outline the responsibilities and ethical obligations of healthcare practitioners. These laws mandate that healthcare practitioners must provide the best possible care, following service norms, standards, and professional needs [17]. They also prohibit practicing without proper licenses and set penalties for violations [18]. Article 313 mandates administrative sanctions for practicing without a license, while Article 442 imposes criminal penalties for employing unlicensed healthcare practitioners, highlighting the need for consistent legal norms to support effective healthcare service delivery.

The Constitutional Court's decision No. 4/PUU-VB/2007, which declared parts of Law No. 29 of 2004 on Medical Practice unconstitutional, removing penalties for practicing without proper licenses, emphasizes the need for consistency in rule [19]. This decision underscores the importance of supportive healthcare policies and rule in achieving national healthcare goals and improving public healthcare standards in Indonesia. By ensuring that laws and rule are consistent and supportive, Indonesia can better achieve its national

in achieving universal coverage." *The Lancet* 377, no. 9768 (2011): 863-873.

¹⁶ Asante, A., Cheng, Q., Susilo, D., Satrya, A., Haemmerli, M., Fattah, R. A., ... & Wiseman, V. (2023). The benefits and burden of health financing in Indonesia: analyses of nationally representative cross-sectional data. *The Lancet Global Health*, 11(5), e770-e780.

¹⁷ Handayani, P. W., Hidayanto, A. N., Sandhyadhita, P. I., & Ayuningtyas, D. (2015). Strategic hospital services quality analysis in Indonesia. *Expert Systems with Applications*, 42(6), 3067-3078.

¹⁸ Hasnida, A., Kok, M. O., & Pisani, E. (2021). Challenges in maintaining medicine quality while aiming for universal health coverage: a qualitative analysis from Indonesia. *BMJ global health*, 6(Suppl 3), e003663.

¹⁹ Purwaningrum, F. (2022). Medical Liability in Indonesia: Overview and Regulatory Trends. *Medical Liability in Asia and Australasia*, 83-96.

healthcare objectives and improve the overall healthcare and welfare of its citizens.

2. RESEARCH METHODS

This research is a type of qualitative research [20]. This study employs a case study research method, which involves deep, focused investigation of specific cases to develop understanding. The research is descriptive-analytical, meaning it not only describes the subjects and objects of study but also analyzes the issues, providing arguments and evaluations based on legal standards [21]. This approach is suitable for analyzing the reconstruction of law enforcement rule for employing medical practitioner without a practice license based on restorative justice. The research combines normative and empirical legal methods. Normative legal research examines written laws, while empirical legal research looks at law in practice within society. This combined approach helps understand the implementation of legal norms and their real-world impacts [22]. Primary data is gathered from field research, including interviews with relevant respondents, and secondary data comes from legal documents, literature, and academic works. Data collection involves literature studies, observations, and interviews. Primary legal materials include the 1945 Constitution, various laws on healthcare and medical practice, government rule, and ministerial decrees. Data is analyzed qualitatively using a statutory approach, focusing on legal norms and their application. This method ensures a comprehensive understanding of the legal and practical [23].

3. RESULTS AND DISCUSSION

3.1. Law Enforcement Rule for Employers of Medical Practitioner without Practice Licenses in Foreign Countries

Globalization is part of the global change especially in regulations [24]. It is important to understand these rules for comprehending how different countries manage the employment of unlicensed medical

²⁰ Yusuf, A. M. (2016). *Metode penelitian kuantitatif, kualitatif & penelitian gabungan*. Prenada Media.

²¹ Ali, Z. (2021). *Metode penelitian hukum*. Sinar Grafika. See too See too Danialsyah et.al, (2020), Reconstruction Of Mediation In Environmental Disputes Settlement Based On Pancasila Justice, Journal Of Law And Political Sciences, Scientific Association For Research And Strategic Studies Faculty Of Law - Academy Of The Aalborg – Denmark, Valume 24. Issue 3, pp. 123-138.

²² Soekanto, S. (2007). Penelitian hukum normatif: Suatu tinjauan singkat.

²³ Braithwaite, J. (2003). Principles of restorative justice. *Restorative justice and criminal justice: Competing or reconcilable paradigms*, 360, 1-20.

²⁴ Anis Mashdurrohatun et.al (2018), The Urgency of Legal Protection to the Trademarks in the Global Era, Jurnal Pembaharuan Hukum, Volume 5 Issue 3, pp.259-275.

practitioner. This overview is particularly important in the context of Reconstruction of Law Enforcement Rule for Employers of Medical Practitioner without Practice Licenses Based on Restorative Justice as it offers insights into best practices and potential areas for reform in ensuring justice and compliance in the medical profession.

This table summarizes the legal rule governing the employment of medical practitioner without a practice license in Malaysia, Japan, and Thailand. It provides an overview of the relevant laws, key points of each regulation, and highlights the differences and similarities in the regulatory approaches of these countries.

Table 1: Overview of Foreign Legal Rule for Employing Medical Practitioner without a Practice License

Country	Rule	Key Points
Malaysia	<ol style="list-style-type: none"> 1. Medical Act 1971 2. Medical Regulation 1974 3. Regulation 1993 4. Malaysian Medical Council Rule 1986 5. Private Healthcare Facilities and Services Act 1998 	<ul style="list-style-type: none"> - The Medical Act 1971 contains seven sections and 44 articles. - Registration for gaining experience and full registration requirement. - Temporary registration for foreign practitioners, valid for three years. - Annual Practice Certificate must be renewed yearly. - Competency tests for certification. - Discipline jurisdiction by the Malaysian Medical Council. - Clear disciplinary procedures and appeal opportunities. - Registration fees formally established.
Japan	<ol style="list-style-type: none"> 1. Medical Practitioners Act 2. Patient Safety Measures Council 3. Medical Accident Investigation System 2015 	<ul style="list-style-type: none"> - Healthcare care is funded through mandatory social insurance. - Freedom of choice for patients in selecting providers. - No medical board or arbitration system for malpractice; relies on police reporting for unnatural deaths. - Disciplinary actions by Medical Ethics Council (MEC) under MHLW. - MEC reviews cases biennially. - Patient Safety Measures and Patient Safety Promotion Week. - Medical Support Safety Centers (MSSC) established for formal complaints. - Medical Accident Investigation System is non-punitive, avoiding direct police involvement.
Thailand	<ol style="list-style-type: none"> 1. National Healthcare Act BE 2550 (2007) 2. Universal Healthcare Coverage Scheme (THB 30 Scheme) 3. Social Security Scheme (SSS) 4. Civil Servant Medical Benefit Scheme (CSMBS) 	<ul style="list-style-type: none"> - National Healthcare Act defines critical healthcare rights and responsibilities. - 30 Thai Baht Scheme provides subsidized public hospital visits. - Three main healthcare schemes: Universal Healthcare Coverage, Social Security Scheme, and Civil Servant Medical Benefit Scheme. - Ministry of Healthcare manages public healthcare services and formulates policies. - Medical profession includes diagnosis, treatment, prevention, and surgery, regulated by specific laws and guidelines.

The contrast of legal procedures for employing medical practitioner without a practice license in Malaysia, Japan, and Thailand discloses a diverse approach to medical practice governance. Each country has established comprehensive laws and rule to ensure that medical professionals are properly registered, licensed, and disciplined. Malaysia's system highlights annual certification and competency testing, Japan's approach focuses on patient safety and non-punitive investigation systems, while Thailand's framework supports universal healthcare coverage with strict regulatory mistake. These differences focus on the importance of tailored legal frameworks that cater to the specific needs and challenges of each country's healthcare system. Such a comparative analysis can inform the reconstruction of rule to enforce justice for those employing unlicensed medical practitioner,

ensuring a balanced approach that upholds both legal standards and restorative justice principles.

3.2. Reconstruction of Law Enforcement Rule for Employers of Medical Practitioner without Practice Permits Based on Restorative Justice

The important element in Reconstruction of Rule for Law Enforcement on Employing Medical Practitioner Without a Practice License Based on Restorative Justice, focuses on two important scopes of study. Firstly, on the reconstruction of philosophies and values, and secondly is the reconstruction of the legal framework. The first part examines the foundational beliefs and values that underpin the need for regulatory changes, ensuring they align with principles of restorative justice. The second part outlines the necessary adjustments and updates to the legal structures and rule

to effectively implement and enforce these new philosophies and values. This approach aims to balance legal compliance with restorative practices that prioritize healing, accountability, and the well-being of all parties involved.

a) Reconstruction of Philosophies/Values

Gustav Radbruch identified three fundamental pillars in the application of law: justice, legal certainty, and utility [25]. These pillars must always be integrated, as prioritizing one over the others can lead to imbalance and discomfort. The utility value directs the law to consider the community's needs at a given time, ensuring it plays an important role for society. Medical professionals, similar to other high-status professions like judges, lawyers, journalists, lecturers, and pharmacists, require specific education and training. They must adhere to professional ethics, which serve as a set of behaviours governing their interactions with others. Medical professionals are also bound by medical discipline and legal rules, particularly healthcare and medical laws, which are crucial for maintaining patient safety and ensuring justice.

Ethics and discipline in the medical profession are outlined in rule such as the Indonesian Medical Council Regulation No. 4 of 2011 concerning Professional Discipline for Doctors and Dentists. This rule must be adhered to alongside legal norms, with violations resulting in different consequences but interconnected outcomes. According to Sudikno Mertokusumo, law and ethics are two sides of the same coin, with the law addressing individuals as social beings influenced by social ties, while ethics appeals to individual conscience. Medical professionals must prioritize patient safety (beneficence) and avoid actions that harm patients (non-maleficence) [26]. They must also act justly and fairly, upholding ethical values in their professional duties.

Soedikno Mertokusumo expanded on Radbruch's values, emphasizing the importance of prioritizing justice when conflicts arise between justice, utility, and legal certainty [27]. This prioritization aims to foster legal development in line with societal changes, ensuring fairness and utility are accessible to the general population rather than just the elite. Effective law enforcement requires understanding justice, appropriate

legal rule, professional law enforcement officers, and public legal awareness. Muladi suggests that criminal law enforcement must balance state, public, and individual interests, avoiding a purely liberal approach focused solely on "harming others" but also considering broader societal implications [28].

The Indonesian Law No. 17 of 2023 on healthcare highlights the state's commitment to ensuring the right to a good, healthcare, and prosperous life, supporting public healthcare development with principles of welfare, equity, non-discrimination, participation, and sustainability. However, certain provisions in this law require reconstruction to prevent medical professionals from fearing criminalization or legal issues, ensuring restorative justice principles are applied. Restorative justice emphasizes resolving criminal offenses through inclusive processes involving offenders, victims, and community members, aiming for restoration rather than retribution.

Mark S. Umbreit states that restorative justice views crimes as offenses against individuals, not the state, encouraging those affected to actively participate in conflict resolution. This approach seeks to repair harm, hold offenders accountable, and restore victims. Restorative justice processes consider the broader impact on victims, offenders, and the community, offering an alternative to traditional punitive measures. It involves all relevant parties in dialogue and mediation, focusing on restoring relationships and achieving fair outcomes for all involved.

This approach is beneficial in law enforcement, providing a humane and fair method for resolving minor criminal cases outside the formal judicial system, emphasizing the importance of reconciliation and preventing further hostility. By applying restorative justice, law enforcement can achieve justice and utility for medical professionals, employers, patients, and the community, ensuring balanced legal protection and societal well-being.

b) Reconstruction of Legal Framework

The case of Dr. Anny Isfandyarie and colleagues challenging Indonesian Law No. 29 of 2004 on Medical Practice highlights the need for legal reconstruction [29]. The Constitutional Court ruled that

²⁵ Radbruch, G. (1950). II. LEGAL PHILOSOPHY. In *The legal philosophies of Lask, Radbruch, and Dabin* (pp. 43-224). Harvard University Press.

²⁶ Ndori, A., Mashdurohaturun, A., Soponyono, E., & Mahmutarom, H. R. (2023). Reconstruction of Seafarer Certificate Ownership Regulations for Ship Crews Based on the Value of Justice. *JL Pol'y & Globalization*, 129, 1.

²⁷ Disyon, H., Gultom, E., & Rahmawati, E. (2023). The Establishment of State-Owned-Holding-Company: A

State's Controlling Rights Perspective Based on Radbruch's Theory. *Law Review*, 23(1), 68-91.

²⁸ Muladi, M., & Suparno, S. (2021, May). Policy Implementation of Community Policing in the Handling of Crime in Community. In *Proceedings of the 1st International Conference on Law, Social Science, Economics, and Education, ICLSSEE 2021, March 6th 2021, Jakarta, Indonesia*.

²⁹ Arinanda, D. N., Aurelia, M., & Bernadita, C. S. (2023). PENYELESAIAN SENGKETA MEDIS DI

certain punitive provisions in this law were disproportionate and did not align with humanistic criminal law perspectives, emphasizing the importance of ethical considerations and the protection of human rights.

The court's decision to partially grant the petitioners' request, declaring specific punitive clauses unconstitutional, reflects the need for a balanced approach to legal enforcement that considers professional ethics and human rights. Similarly, in the cases involving Dr. Harun Rosidi and Dr. Bambang Suprpto, the Supreme Court recognized the inconsistency of applying punitive measures that had been deemed unconstitutional by the Constitutional Court [30]. These cases underscore the necessity of aligning legal rule with broader principles of justice and fairness.

Given these precedents, the reconstruction of Indonesian Law No. 17 of 2023 on Healthcare, particularly Article 442, is imperative. This article mandates severe penalties for employing medical practitioner without a practice license, which may be disproportionate and not reflective of restorative justice principles. Reconstructing this regulation involves considering the Constitutional Court's rulings and ensuring that penalties are proportionate, humane, and aligned with the broader goals of justice and societal well-being. This approach aims to create a legal framework that balances legal compliance with restorative practices, fostering a more just and equitable legal system.

The table below provide an overview of the Reconstruction of Article 442, Law No. 17 of 2023 on Healthcare.

Table 2: Reconstruction of Article 442, Law No. 17 of 2023 on Healthcare

Before Reconstruction	Weaknesses	After Reconstruction
<p>Every person who employs medical practitioner and/or healthcare practitioners without a Practice License (SIP) as referred to in Article 312 letter c shall be punished with imprisonment for a maximum of 5 (five) years or a fine of up to Rp 500,000,000.00 (five hundred million rupiahs).</p>	<p>Article 442 before reconstruction states that anyone who employs medical practitioner and/or healthcare practitioners without a Practice License (SIP) as referred to in Article 312 letter c shall be punished with imprisonment for a maximum of 5 (five) years or a fine of up to Rp 500,000,000.00 (five hundred million rupiahs). However, the Constitutional Court Decision No. 4/PUU-V/2007 dated June 19, 2007, states that the threat of imprisonment and detention is inappropriate and disproportionate because criminal sanctions must consider a humanistic perspective and are closely related to the code of ethics. The threat of criminal penalties has also caused insecurity and fear due to the disproportionate nature of the violation with the threats stipulated in the Medical Practice Law. "The threat of imprisonment in the quo case is inconsistent with the philosophy of criminal law and does not align with the intention of Article 28 paragraph 1 of the 1945 Constitution of the Republic of Indonesia regarding the protection and the right to a sense of security and protection from the fear to act or not to act as a human right."</p>	<p>(1) Any person who employs medical practitioner and/or healthcare practitioners without a Practice License (SIP) as referred to in Article 312 letter c shall be subject to administrative sanctions. (2) The central government, provincial government, and district/city government according to their authorities shall impose administrative sanctions on individuals and medical practitioner and/or healthcare practitioners as referred to in paragraph (1). (3) The administrative sanctions referred to in paragraph (2) may include: a. Oral warning b. Written warning c. Administrative fines d. License revocation (4) Procedures for imposing administrative sanctions on individuals and medical practitioner and/or healthcare practitioners as referred to in paragraph (3) shall be regulated by Government Regulation based on Restorative Justice.</p>

INDONESIA. *Kultura: Jurnal Ilmu Hukum, Sosial, dan Humaniora*, 1(1), 188-197.

³⁰ Karjoko, L., Handayani, I. G. A. K. R., Jaelani, A. K., Barkhuizen, J., & Hayat, M. J. (2021). The Urgency of

Restorative Justice on Medical Dispute Resolution in Indonesia. *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, 16(2), 362-392.

The reconstruction of Article 442 of Law No. 17 of 2023 on Healthcare represents an important shift in legal approach, moving from punitive measures to a more balanced and fair system of administrative sanctions. This change addresses the disproportionate nature of the original penalties and aligns with the principles of Restorative Justice, emphasizing rehabilitation and reconciliation over punishment. By implementing warnings, fines, and license revocations, the revised regulation aims to foster a more just and secure environment for medical practitioners, patients, and the wider community, ensuring that the enforcement of medical licensing laws serves the broader goal of societal well-being.

4. CONCLUSION

The current legal framework in Indonesia addressing the employment of medical practitioner without practice licenses is primarily governed by laws such as Law No. 36 of 2014 on Healthcare Practitioners and Law No. 17 of 2023 on healthcare. These rule aim to ensure the proper licensing of medical professionals to maintain standards and safeguard public healthcare. However, they do not fully align with Restorative Justice principles, which aim to repair harm through collaborative processes involving all stakeholders. This misalignment has led to inconsistent implementation, highlighted by cases involving Dr. Anny Isfandyarie, Dr. Harun Rosidi Sp OT (K) Spine, and Dr. Bambang Suprpto, underscoring legal ambiguities and varying judicial interpretations. Weaknesses in the current rule stem from several factors. Firstly, there is a lack of specific laws directly addressing enforcement against employing unlicensed medical practitioner, complicating legal clarity. Secondly, law enforcement entities have limited understanding of healthcare law, resulting in ineffective enforcement. Thirdly, Indonesia's legal culture lacks strong support for justice and legal awareness, hindering the pursuit of fair outcomes. Public understanding of healthcare law is also insufficient, further impeding legal development. To improve, Indonesia can draw lessons from international practices, such as those in Malaysia, Thailand, and Japan, which offer effective regulatory frameworks. By reconstructing legal norms, particularly through amendments like those proposed in Article 442 of Law No. 17 of 2023 on Healthcare, Indonesia can establish balanced rule that promote law enforcement, legal benefits, and societal justice. This approach aims to provide equitable protection for employers, medical practitioner, patients, and the broader community, ensuring the delivery of professional, stigma-free healthcare services.

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Regulation

- Constitution of the Republic of Indonesia 1945
- Government Regulation Number 49 of 2013 concerning Home Supervisory Bodies
- Health.
- Hospital Patient Safety;
- Hospital;
- Japan Medical Accident Investigation System 2015
- Japan Medical Practitioners Act
- Japan Patient Safety Measures Council
- Law of the Republic of Indonesia Number 11 of 2009 concerning Welfare
- Law of the Republic of Indonesia Number 17 of 2023 concerning Health.
- Law of the Republic of Indonesia Number 24 of 2011 concerning Bodies
- Law of the Republic of Indonesia Number 29 of 2004 concerning Practices
- Law of the Republic of Indonesia Number 36 of 2009 concerning Health
- Law of the Republic of Indonesia Number 36 of 2014 concerning Energy
- Law of the Republic of Indonesia Number 40 of 2004 concerning Systems
- Law of the Republic of Indonesia Number 44 of 2009 concerning Hospitals
- Malaysian Medical Act 1971
- Malaysian Medical Council Rule 1986
- Malaysian Medical Regulation 1974, Regulation 1993
- Malaysian Private Healthcare Facilities and Services Act 1998
- Medical;
- Medical;
- Minimum hospital;

- Minister of Health Decree Number 129/Menkes/SK/II/2008 concerning Service Standards
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