

The Development of Health Criminal Law in The Perspective of Dignified Justice: What and How?

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Abstract

Health criminal law in Indonesia has developed significantly since the colonial era until now, marked by the birth of various laws and regulations governing criminal aspects in the health sector. This research aims to analyze the development of health criminal law in Indonesia from the perspective of dignified justice, as well as identify challenges and formulate efforts needed in developing health criminal law in line with the principles of dignified justice. This research uses a normative legal research method with a statutory and conceptual approach, examining primary, secondary, and tertiary legal materials through literature studies. Data analysis was conducted qualitatively with a descriptive-analytical approach, involving the process of data reduction, data presentation, and conclusion drawing. The results of the study explain that the development of health criminal law in Indonesia shows a significant evolution, from limited arrangements in the Criminal Code of colonial heritage to comprehensive laws such as Law No. 36/2009 on Health. The perspective of dignified justice is reflected in efforts to balance the protection of patient rights, the professionalism of health workers, and the interests of society. Although there has been progress, there are still challenges such as the application of the ultimum remedium principle, the balance of rights protection, and adaptation to the development of health technology. Efforts to develop health criminal law in line with the principles of dignified justice require a thorough evaluation of criminal provisions, capacity building of law enforcement officers, development of regulations that are sensitive to the diversity of health practices, and collaboration between stakeholders to deal with the complexity of contemporary health issues.

Keyword: Health Criminal Law, Dignified Justice, Regulation, Rights, Protection

1. INTRODUCTION

Health criminal law is one of the most important branches of law in the Indonesian legal system. Along with the times and advances in the health sector, health criminal law also continues to develop to adapt to various challenges and new problems that arise. The development of health criminal law is inseparable from efforts to realize dignified justice for all Indonesian people.¹ Historically, the forerunner of health criminal law regulation in Indonesia dates back to the Dutch colonial era. The Criminal Code (KUHP) derived from the Wetboek van Strafrecht (WvS) already contains several articles related to health, such as Articles 267, 299, 304, 346-349, and 535 of the Criminal Code. However, the

¹ Fitri Wahyuni, *DASAR-DASAR HUKUM PIDANA DI INDONESIA* (Tangerang: PT Nusantara Persada Utama, 2017).

regulation is still very limited and does not comprehensively regulate various aspects of health criminal law.²

After Indonesia's independence, the development of health criminal law began to be seen with the promulgation of various laws and regulations in the health sector. Law No. 9/1960 on Health Principles is one of the early milestones of health law regulation in the independence era. Although this law did not specifically regulate health criminal law, it became the basis for the development of further health regulations.³ Significant developments in health criminal law began to be seen with the enactment of Law Number 23 Year 1992 on Health. This law contains several health-related criminal provisions, such as criminal sanctions for unlicensed medical practices, drug counterfeiting, and medical actions without patient consent. This shows an awareness of the importance of the criminal aspect in regulating and protecting public interests in the health sector.

Along with the development of science and technology in the health sector, as well as the emergence of various new issues such as cloning, organ transplantation, and genetic engineering, the need for a more comprehensive regulation of health criminal law is increasingly urgent. This prompted the enactment of Law No. 36/2009 on Health, which replaced Law No. 23/1992. Law No. 36/2009 contains more detailed criminal provisions and covers various new aspects in the world of health. In addition to Law No. 36/2009, the development of health criminal law is also evident with the enactment of various related laws, such as Law No. 29/2004 on Medical Practices, Law No. 44/2009 on Hospitals, Law No. 18/2012 on Food, and Law No. 35/2009 on Narcotics. Each of these laws contains criminal provisions that are relevant to their respective health fields.

The development of health criminal law in Indonesia is not only limited to the legislative aspect, but also reflected in the development of doctrine and jurisprudence. Court decisions in health-related cases, such as medical malpractice, organ trafficking, and illegal drug distribution, have helped shape and enrich the development of health criminal law in Indonesia.⁴ However, in the midst of these various developments, there are still several challenges and problems in the implementation of health criminal law in Indonesia. One issue that is often debated is the application of the *ultimum remedium* principle in health criminal law. This principle states that criminal law should be the last resort in solving legal problems, including in the health sector. However, in practice, criminal law is often the first choice in dealing with health cases.⁵

Another issue of concern is the balance between the protection of the rights of patients and health workers. On the one hand, health criminal law must be able to protect patients from various forms of crimes and violations in the health sector. On the other hand, the law must also provide adequate protection for health workers in

² Marcus Priyo Gunarto, "ASAS KESEIMBANGAN DALAM KONSEP RANCANGAN UNDANG-UNDANG KITAB UNDANG-UNDANG HUKUM PIDANA," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 24, no. 1 (July 27, 2012): 83, <https://doi.org/10.22146/jmh.16143>.

³ Tubagus Rismunandar Ruhijat et al., *Bunga Rampai: Memperkuat Peradaban Hukum Dan Ketatanegaraan Indonesia* (Jakarta: Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2019).

⁴ Eko Pujiyono, "Restatement Kelalaian Dalam Malpraktik Medis," *Perspektif Hukum* 23, no. 1 (May 31, 2023): 127–52, <https://doi.org/10.30649/ph.v23i1.171>.

⁵ Daffa Ladro Kusworo, Maghfira Nur Khaliza Fauzi, and Zahwa Adifa Kusworo, "Paradigma *Ultimum Remedium*: Proporsionalitas Kebijakan Protokol Kesehatan Berdasarkan Zona Penyebaran Covid-19," *Jurnal Lex Renaissance* 6, no. 4 (October 1, 2021), <https://doi.org/10.20885/JLR.vol6.iss4.art14>.

carrying out their profession, including in the event of unavoidable medical risks.⁶ The development of health technology also brings new challenges to health criminal law. Issues such as telemedicine, the use of artificial intelligence in medical diagnosis, and genetic engineering require more responsive and adaptive legal arrangements. Health criminal law must be able to anticipate and regulate various potential misuses of health technology that can harm the public.⁷

In the midst of these challenges, an idea emerged about the need to develop health criminal law from the perspective of dignified justice. The concept of dignified justice refers to the understanding that health criminal law must be able to realize justice that is not only procedural, but also substantial and oriented towards the protection of human dignity.⁸ Dignified justice in the context of health criminal law contains several important aspects. First, health criminal law must be able to provide balanced protection between the interests of patients, health workers, and the wider community. Second, the application of criminal sanctions in health cases must consider humanitarian aspects and not merely be retributive. Third, health criminal law must be able to accommodate the development of health science and technology without sacrificing ethical and moral values.⁹

To realize dignified justice in health criminal law, concrete efforts are needed both in the aspects of legislation, law enforcement, and fostering public legal awareness. In the legislative aspect, it is necessary to evaluate and update the laws and regulations in the health sector to ensure that the criminal provisions are in line with the principles of dignified justice.¹⁰ One example of efforts to reform health criminal law is the inclusion of health-related provisions in the Draft Criminal Code (RKUHP). The RKUHP seeks to integrate various criminal offenses in the health sector that have been scattered in various laws into one codification of criminal law. This is expected to provide better legal certainty and facilitate the enforcement of health criminal law.

In the aspect of law enforcement, it is necessary to develop a more humanist and recovery-oriented approach (restorative justice) in handling health criminal cases. This approach does not only focus on punishing the perpetrators, but also on efforts to restore victims' losses and improve the health system as a whole. This is in line with the principle of dignified justice which requires a balance between retributive and rehabilitative aspects in the application of criminal law.¹¹ In addition, fostering public

6 Yudi Yasmin Wijaya, Edy Suyanto, and Fanny Tanuwijaya, "REKAM MEDIS: PENGGUNAAN INFORMASI MEDIS PASIEN DALAM PELAKSANAAN ASAS PERLINDUNGAN PUBLIK," *Veritas et Justitia* 6, no. 2 (December 25, 2020): 399–423, <https://doi.org/10.25123/vej.3717>.

7 Mudha'i Yunus, Hendra Saputra, and Prima Angkupi, "Tantangan Hukum Dalam Pengembangan Teknologi Kecerdasan Buatan (AI)," *Jurnal Renvoi: Jurnal Hukum Dan Syariah* 1, no. 2 (2024).

8 Fradhana Putra Disantara, "Perspektif Keadilan Bermartabat Dalam Paradoks Etika Dan Hukum," *Litigasi* 22, no. 2 (2021): 205–29, <https://doi.org/10.23969/litigasi.v22i2.4211>.

9 Sheryl Poluan, Max Sepang, and Herlyanty Y. A Bawole, "PEMBERLAKUAN TINDAK PIDANA BAGI TENAGA KESEHATAN APABILA MELAKUKAN KELALAIAN TERHADAP PENERIMA PELAYANAN KESEHATAN MENURUT UNDANG-UNDANG NOMOR 14 TAHUN 2014 TENTANG TENAGA KESEHATAN," *Lex Crimen X*, no. 3 (2021).

10 Sekjen KY RI, *Etika Dan Budaya Hukum Dalam Peradilan* (Jakarta: Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2017).

11 Yuni Priskila Ginting et al., "Upaya Penyelesaian Tindak Pidana Melalui Upaya Restorative Justice Dengan Melibatkan Keluarga Pelaku/ Keluarga Korban," *Jurnal Pengabdian West Science* 3, no. 04 (April 29, 2024): 410–28, <https://doi.org/10.58812/jpws.v3i04.1117>.

legal awareness is also an important aspect in developing a dignified health criminal law. The public needs to be educated about their rights and obligations in the context of health law, as well as equipped with sufficient understanding of the aspects of criminal law in health practice. This is important to prevent violations of health criminal law and build a healthy legal culture in the community.¹²

The development of health criminal law in the perspective of dignified justice cannot be separated from the global context. Indonesia as part of the international community needs to pay attention to the development of health criminal law at the international level, including various international conventions and agreements in the health sector. This is important to ensure that Indonesian health criminal law is in line with international standards and is able to face global health challenges.¹³ In this context, it is also necessary to consider aspects of international criminal law related to health, such as the regulation of crimes against humanity involving health aspects, cross-border organ trafficking, and the deliberate spread of infectious diseases. Indonesian health criminal law must be able to accommodate these global issues while maintaining the values and characteristics of national law.

The development of health criminal law in the perspective of dignified justice must also pay attention to aspects of legal pluralism that exist in Indonesia. The diversity of cultures and value systems that exist in Indonesian society must be taken into consideration in developing and implementing health criminal law. This is important to ensure that health criminal law is not only formally effective, but also acceptable and obeyed by all levels of society.¹⁴ In this context, it is necessary to develop an approach that is more sensitive to local cultural values in the application of health criminal law. For example, in handling cases involving traditional medicine practices, there needs to be a balance between efforts to uphold modern health standards and respect for local wisdom. This approach is in line with the principle of dignified justice which requires respect for the dignity and cultural identity of every individual and community.

In addition, the development of health criminal law must also pay attention to aspects of social justice. In the context of Indonesia as a developing country, there is still a considerable gap in access to health services. Health criminal law must be able to play a role in bridging these gaps, for example by providing special protection for vulnerable groups and providing more severe sanctions for health crimes that harm the wider community.¹⁵ Finally, the development of health criminal law in the perspective of dignified justice must be understood as a continuous process. Along with the development of science, technology, and social dynamics, health criminal law must be continuously evaluated and developed. Continuous research and assessment efforts are

12 Basri Mulyani, HAIRUL MAKSUM, and Johan, "PEMBANGUNAN KESADARAN HUKUM MASYARAKAT MELALUI DESA SADAR HUKUM DI KABUPATEN LEMBOK TIMUR," *JURIDICA : Jurnal Fakultas Hukum Universitas Gunung Rinjani* 2, no. 2 (May 12, 2021): 104–15, <https://doi.org/10.46601/juridica.v2i2.190>.

13 Sekjen KY RI, *Etika Dan Budaya Hukum Dalam Peradilan*.

14 Yaris Adhial Fajrin and Ach. Faisol Triwijaya, "Arah Pembaharuan Hukum Pidana Indonesia Di Tengah Pluralisme Hukum Indonesia," *Ekspose: Jurnal Penelitian Hukum Dan Pendidikan* 18, no. 1 (July 24, 2019): 734–40, <https://doi.org/10.30863/ekspose.v18i1.361>.

15 Poluan, Sepang, and Bawole, "PEMBERLAKUAN TINDAK PIDANA BAGI TENAGA KESEHATAN APABILA MELAKUKAN KELALAIAN TERHADAP PENERIMA PELAYANAN KESEHATAN MENURUT UNDANG-UNDANG NOMOR 14 TAHUN 2014 TENTANG TENAGA KESEHATAN."

needed to ensure that health criminal law remains relevant and effective in realizing dignified justice for all Indonesian people.

In this context, research on “The Development of Health Criminal Law in the Perspective of Dignified Justice: What and How?” becomes very important and relevant. The problem formulation used in this research is as follows: *first*, How is the development of health criminal law in Indonesia viewed from the perspective of dignified justice?., *Second*, What are the challenges and efforts needed to develop Indonesian health criminal law in line with the principles of dignified justice?

This research uses normative legal research methods. This method was chosen because this research focuses on the study of legal norms, legal principles, and legal doctrines relating to health criminal law and the concept of dignified justice. This normative legal research will examine written legal materials, analyze applicable laws and regulations, and examine legal principles and philosophical values that underlie the development of health criminal law in Indonesia.

In conducting this research, two main approaches will be used, namely a statutory approach and a conceptual approach. The statutory approach is carried out by examining all laws and regulations relating to health criminal law. This includes a study of the Criminal Code (KUHP), Law Number 36 of 2009 concerning Health, as well as various other related laws and regulations such as the Medical Practice Law, Hospital Law, and Narcotics Law. This approach is important to understand the hierarchy, consistency, and development of health criminal law regulation in Indonesia.

Meanwhile, a conceptual approach will be used to analyze and understand relevant legal concepts, particularly the concept of dignified justice in the context of health criminal law. This approach will involve a study of legal doctrines, expert opinions, and theoretical concepts related to health criminal law and dignified justice. Through this approach, researchers can develop strong legal arguments in analyzing the development of health criminal law from the perspective of dignified justice.

The sources of legal materials to be used in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations related to health criminal law, such as the Criminal Code, Health Law, and other relevant regulations. Secondary legal materials include legal textbooks, legal scientific journals, legal research results, and opinions of legal experts relevant to the research topic. Meanwhile, tertiary legal materials include legal dictionaries, legal encyclopedias, and other sources that can provide guidance or explanation of primary and secondary legal materials.

Data collection techniques in this research will be carried out through literature study or document study. Researchers will collect and inventory legal materials relevant to the research topic from various sources, including libraries, online legal databases, and other digital sources. This data collection process will involve reading, studying, recording, and quoting relevant information from various sources of legal materials that have been collected.

In analyzing the data, this research will use qualitative data analysis techniques with a descriptive-analytical approach. This technique involves the process of organizing and sorting data into patterns, categories, and basic description units so that themes can be found and working hypotheses can be formulated as suggested by the data. The analysis will begin by describing the development of health criminal law in Indonesia, then analyzing the development in the context of the concept of dignified justice.

The data analysis process will involve several stages. First, researchers will conduct data reduction by selecting, simplifying, and transforming rough data that emerges from written notes in the field. Second, the data will be presented in the form of brief descriptions, charts, relationships between categories, and the like. Finally, researchers will draw conclusions and verification based on the analysis that has been done. In the analysis process, researchers will use legal interpretation methods, including grammatical, systematic, and teleological interpretations, to understand the meaning and purpose of the legal provisions studied. In addition, legal construction methods will also be used to develop coherent legal arguments in analyzing the development of health criminal law from the perspective of dignified justice.

2. ANALYSIS AND DISCUSSION

2.1. The Development of Health Criminal Law in Indonesia Viewed from the Perspective of Dignified Justice

The development of health criminal law in Indonesia, when viewed from the perspective of dignified justice, shows a complex and dynamic trajectory. Dignified justice in this context can be understood as a concept that emphasizes the protection of human rights, respect for individual dignity, and a balance between the interests of individuals and society in the health sector.¹⁶

The origins of health criminal law in Indonesia can be traced back to the Dutch colonial period with the enactment of the *Wetboek van Strafrecht (WvS)* which later became the basis for the Indonesian Criminal Code. Although the Criminal Code does not specifically regulate health crimes, some of its articles can be related to health issues, such as Articles 346-349 on termination of pregnancy, Article 304 on neglect of persons in need of assistance, and Article 359 on negligence resulting in the death of another person. However, these arrangements are still very limited and do not reflect the complexity of modern health issues, especially when viewed from the perspective of dignified justice.¹⁷ After Indonesia's independence, significant developments in health law began to emerge with the enactment of Law No. 9/1960 on Health Principles. Although this law does not specifically regulate the criminal aspects of health, it is an important milestone in the recognition of the right to health as part of human rights.

¹⁶ Yunan Prasetyo Kurniawan et al., "PENERAPAN TEORI KEADILAN BERMARTABAT DALAM KASUS KORBAN PELECEHAN SEKSUAL YANG MELAKUKAN PENCEMARAN NAMA BAIK DI MEDIA SOSIAL," *Prosiding Seri Seminar Nasional (SERINA)* 2, no. 1 (2022), <https://doi.org/https://doi.org/10.24912/pserina.v2i1.18546>.

¹⁷ Wahyuni, *DASAR-DASAR HUKUM PIDANA DI INDONESIA*.

This is in line with the principle of dignified justice which emphasizes respect for human dignity.

Further developments were seen with the enactment of Law Number 23 Year 1992 on Health. This law began to contain more specific criminal provisions related to health, such as criminal sanctions for unlicensed medical practices (Article 80 paragraph 1), drug counterfeiting (Article 81 paragraph 1), and medical actions without patient consent (Article 82). These regulations reflect efforts to protect the public from irresponsible health practices, which is in line with the principle of dignified justice in protecting patients' rights. However, the development of science and technology in the health sector, as well as the emergence of various new issues such as cloning, organ transplantation, and genetic engineering, demand more comprehensive legal arrangements. This prompted the birth of Law No. 36/2009 on Health, which replaced Law No. 23/1992. Law No. 36/2009 contains more detailed criminal provisions and covers various new aspects in the world of health.¹⁸

Law No. 36 of 2009 reflects a significant development in efforts to realize dignified justice in the health sector. This law not only regulates criminal aspects, but also emphasizes preventive and promotive aspects in health services. Articles 190-200 of this law regulate various criminal acts in the health sector, including unlicensed health service practices, circulation of drugs and food that do not meet safety standards, and violations in research and development of health science and technology. In addition, Law No. 36/2009 also regulates controversial aspects such as abortion (Article 194), which attempts to balance the protection of fetal rights and women's rights to reproductive health. This regulation reflects an effort to realize dignified justice by considering the complexity of moral and ethical issues in health practice.¹⁹

The development of health criminal law can also be seen in other related laws, such as Law No. 29/2004 on Medical Practice. This law regulates criminal offenses related to medical practice, including practice without a registration certificate (Article 75), practice without a license to practice (Article 76), and the use of false identity as a doctor (Article 79). This regulation reflects an effort to protect the public from irresponsible medical practices, as well as to protect the medical profession itself.²⁰

Law No. 44/2009 on Hospitals also contains relevant criminal provisions, such as sanctions for hospitals operating without a license (Article 62) and not fulfilling the obligation to provide emergency services (Article 63). These arrangements reflect efforts to ensure public access to quality health services, which is an important aspect of dignified justice in the health sector.²¹ In the context of narcotics, Law No. 35/2009 on Narcotics contains comprehensive criminal provisions related to drug abuse and illicit

18 Jeffrey L. Platt and Marilia Cascalho, "New and Old Technologies for Organ Replacement," *Current Opinion in Organ Transplantation* 18, no. 2 (April 2013): 179–85, <https://doi.org/10.1097/MOT.0b013e32835f0887>.

19 Cindy Oeliga Yensi Afita, "PENGATURAN ABORSI DALAM PERSPEKTIF PERUNDANG-UNDANGAN INDOENESIA," *RIO LAW JURNAL* 1, no. 1 (February 29, 2020), <https://doi.org/10.36355/rlj.v1i1.329>.

20 Eliezer Sepang, "SANKSI PIDANA TERHADAP PRAKTIK KEDOKTERAN TANPA IZIN MENURUT UNDANG-UNDANG NOMOR 29 TAHUN 2004," *Lex Administratum* 4, no. 3 (2016).

21 Indah Maria Maddalena Simamora, "PERLINDUNGAN HUKUM ATAS HAK PRIVASI DAN KERAHASIAAN IDENTITAS PENYAKIT BAGI PASIEN COVID-19," *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 1, no. 7 (May 21, 2022): 1089–98, <https://doi.org/10.54443/sibatik.v1i7.126>.

trafficking. Interestingly, this law also contains provisions on rehabilitation for drug addicts (Article 54), which reflects a more humanist approach and is in line with the principles of dignified justice.²²

The development of health criminal law can also be seen in court jurisprudence. Several court decisions related to medical malpractice cases, for example, have helped clarify the boundaries between acceptable medical risks and punishable negligence. This is important in maintaining a balance between the protection of patients' rights and the protection of the medical profession, which is an important aspect of dignified justice.²³ However, despite significant progress, there are still several challenges in realizing dignified justice through health criminal law in Indonesia. One issue that is often debated is the application of the *ultimum remedium* principle in health criminal law. Although theoretically criminal law should be the last resort, in practice it is often the first choice in dealing with health cases. This can lead to injustice and is not in line with the principle of dignified justice which emphasizes a more humanist approach.²⁴

Another issue that needs to be considered is the balance between the protection of the rights of patients and health workers. On the one hand, health criminal law must be able to protect patients from various forms of crimes and violations in the health sector. On the other hand, the law must also provide adequate protection for health workers in carrying out their profession, including in the event of unavoidable medical risks. This balance is important to realize dignified justice for all parties involved in the health system.²⁵

The development of health technology also brings new challenges to health criminal law. Issues such as telemedicine, the use of artificial intelligence in medical diagnosis, and genetic engineering require more responsive and adaptive legal arrangements. Health criminal law must be able to anticipate and regulate various potential misuses of health technology that can harm society, while still encouraging innovations that are beneficial to public health.²⁶

In the context of legal pluralism in Indonesia, the development of health criminal law must also take into account the diversity of cultures and value systems that exist in society. For example, in handling cases involving traditional medicine practices, there needs to be a balance between efforts to uphold modern health standards and respect for local wisdom. This approach is in line with the principle of dignified justice, which requires respect for the dignity and cultural identity of every individual and community.²⁷

22 Widia Ulfa, "DEKRIMINALISASI TERHADAP PASAL 127 UNDANG-UNDANG NOMOR 35 TAHUN 2009 TENTANG NARKOTIKA," *RIO LAW JURNAL* 1, no. 1 (February 29, 2020), <https://doi.org/10.36355/rlj.v1i1.330>.

23 Albertus Soge, "TINJAUAN PENANGANAN KASUS MALPRAKTEK MEDIS DI PENGADILAN PIDANA DALAM PERSPEKTIF HUKUM KESEHATAN," *Justitia et Pax* 35, no. 1 (December 12, 2019), <https://doi.org/10.24002/jep.v35i1.2467>.

24 Rina Melati Sitompul and Andi Maysarah, "ULTIMUM REMEDIUM PRINCIPLES IN CRIMINAL DECISIONS IN CREATING RESTORATIVE JUSTICE," *JCH (Jurnal Cendekia Hukum)* 7, no. 1 (September 30, 2021): 32, <https://doi.org/10.33760/jch.v7i1.324>.

25 Wijaya, Suyanto, and Tanuwijaya, "REKAM MEDIS: PENGGUNAAN INFORMASI MEDIS PASIEN DALAM PELAKSANAAN ASAS PERLINDUNGAN PUBLIK."

26 Yunus, Saputra, and Angkupi, "Tantangan Hukum Dalam Pengembangan Teknologi Kecerdasan Buatan (AI)."

27 Anggerdi Adji Pratama, Jamiatur Robekha, and Musa Alam Mulya, "Pengaruh Budaya Lokal Terhadap Pelaksanaan Hukum Pidana Di Indonesia," *HUMANIORUM* 2, no. 1 (January 25, 2024): 66–71, <https://doi.org/10.33760/jch.v7i1.324>.

The aspect of social justice is also an important consideration in the development of health criminal law in Indonesia. Given that there is still a considerable gap in access to health services, health criminal law must be able to play a role in bridging the gap. For example, by providing special protection for vulnerable groups and providing more severe sanctions for health crimes that harm the wider community.

Recent developments in health criminal law in Indonesia are also reflected in efforts to reform the national criminal law. The Draft Criminal Code (RKUHP), which is currently under discussion, seeks to integrate various criminal offenses in the health sector that have been scattered in various laws into one codification of criminal law. This is expected to provide better legal certainty and facilitate the enforcement of health criminal law.²⁸

In the context of the COVID-19 pandemic, the development of health criminal law in Indonesia has also experienced new dynamics. Various regulations and policies issued to deal with the pandemic, such as Government Regulation in Lieu of Law Number 1 of 2020, contain provisions that have implications for health criminal aspects. This shows that health criminal law must continue to develop to respond to new challenges in the field of public health.²⁹

In conclusion, the development of health criminal law in Indonesia, when viewed from the perspective of dignified justice, shows a continuous effort to balance various interests in the health sector. Although there has been significant progress, there are still various challenges that need to be overcome to realize a health criminal law system that fully reflects the principles of dignified justice. Continuous efforts are needed to evaluate and develop health criminal law in order to keep up with the development of science and technology, as well as to respond to the social and cultural dynamics of Indonesian society.

2.2. Challenges and Efforts Needed to Develop Indonesian Health Criminal Law in Line with the Principles of Dignified Justice

The development of health criminal law in Indonesia that is in line with the principles of dignified justice faces various challenges and requires comprehensive efforts. One of the main challenges in developing health criminal law in line with the principles of dignified justice is the complexity and dynamics in the health sector itself. The rapid development of science and technology in the health sector often precedes the development of laws governing it.³⁰ This creates a gap between health practices in the field and existing regulations, including in the criminal law aspect. For example, developments in medical technology such as telemedicine, the use of artificial intelligence

org/10.37010/hmr.v2i1.43.

²⁸ Moh Hatta, "Prospek Pemberlakuan RKUHP Pasca Disahkan Menjadi Undang-Undang Dalam Perspektif Maqasid Syariah," *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 25, no. 2 (December 20, 2022): 248–62, <https://doi.org/10.15642/alqanun.2022.25.2.248-262>.

²⁹ Aras Firdaus and Rudy Hendra Pakpahan, "KEBIJAKAN HUKUM PIDANA SEBAGAI UPAYA PENANGGULANGAN KEDARURATAN COVID-19," *Majalah Hukum Nasional* 50, no. 2 (December 15, 2020): 201–19, <https://doi.org/10.33331/mhn.v50i2.61>.

³⁰ M. Chaerul Risal, "Analisis Kritis Terhadap Implementasi Restorative Justice Dalam Sistem Peradilan Pidana: Tantangan Dan Peluang," *Jurnal Al Tasyri'iyah* 3, no. 1 (2023), <https://doi.org/https://doi.org/10.24252/jat.vi.41238>.

in diagnosis, and gene therapy raise new questions regarding criminal liability in the event of error or misuse. Law No. 36/2009 on Health, although relatively new, has not comprehensively regulated aspects of the latest health technology. As a result, there is a potential legal vacuum that may hinder the realization of dignified justice in the context of health criminal law.

Another challenge faced is related to the application of the *ultimum remedium* principle in health criminal law. This principle states that criminal law should be the last resort in solving legal problems. However, in practice, criminal law is often the first choice in dealing with health cases. This can be seen from the tendency to immediately criminalize various actions in the health sector, as seen in several criminal articles in Law No. 36/2009 on Health.³¹

Untimely and disproportionate application of the criminal law can have negative impacts, such as decreasing interest in a career in health for fear of being caught by the law, or the emergence of defensive medical practices that harm patients. This challenge becomes even more complex given the unique characteristics of healthcare practice which often involves risk and uncertainty.³² The effort needed to overcome this challenge is to conduct a thorough evaluation of the criminal provisions in health legislation. There needs to be an in-depth study to ensure that criminalization is only carried out for acts that truly endanger the public interest and cannot be resolved through other legal mechanisms. In this regard, revisions to Law No. 36/2009 on Health may be needed to ensure a more consistent application of the *ultimum remedium* principle.

The next challenge is related to the balance between the protection of the rights of patients and health workers. On the one hand, health criminal law must be able to protect patients from various forms of crimes and violations in the health sector. On the other hand, the law must also provide adequate protection for health workers in carrying out their profession, including in the event of unavoidable medical risks.³³ Law No. 29/2004 on Medical Practice has attempted to provide legal protection for health workers, but in practice there is still frequent criminalization of medical actions that are actually in accordance with professional standards and standard operating procedures. This raises concerns among health workers and can have a negative impact on the quality of health services.³⁴ Efforts are needed to address this challenge by developing more effective and equitable medical dispute resolution mechanisms. There needs to be a better understanding among law enforcers of the complexity of health practices and the risks inherent in them. In this regard, strengthening the role of the Indonesian Medical Discipline Honor Council (MKDKI) as stipulated in Law No. 29 of 2004 needs

31 Lidya Suryani Widayati, "ULTIMUM REMEDIUM DALAM BIDANG LINGKUNGAN HIDUP," *JURNAL HUKUMIUS QUIA IUSTUM* 22, no. 1 (January 2015): 1–24, <https://doi.org/10.20885/iustum.vol22.iss1.art1>.

32 Zaid Gharaibeh, "The Impacts of Applications of Criminal Law on Medical Practice," *Medical Archives* 76, no. 5 (2022): 377, <https://doi.org/10.5455/medarh.2022.76.377-382>.

33 Nan Liu and Shiyong Chen, "The Protection Mechanism of Personal Health Information in the Digital Economy Environment," ed. Ping Gao, *Journal of Environmental and Public Health* 2022 (June 13, 2022): 1–17, <https://doi.org/10.1155/2022/2314468>.

34 Andrew Kristianto Silalahi, Ika Dewi Sartika Saimima, and Dwi Atmoko, "PERTANGGUNGJAWABAN HUKUM DOKTER ATAS TINDAKAN MEDIS YANG MENYEBABKAN HILANGNYA NYAWA PASIEN," *Jurnal Cahaya Mandalika* 4, no. 1 (2023), <https://doi.org/https://doi.org/10.36312/jcm.v4i1.1946>.

to be enhanced as a more appropriate medical dispute resolution mechanism before cases are brought to the criminal domain.

Another challenge faced in developing a health criminal law that is in line with the principles of dignified justice is related to law enforcement. The complexity of health cases often requires in-depth technical understanding, which is not always possessed by law enforcement officials. As a result, mistakes are often made in the handling of health criminal cases, which actually distances them from the principle of dignified justice.³⁵ Efforts are needed to address this challenge by increasing the capacity and understanding of law enforcement officers on health issues. There needs to be special training and closer collaboration between law enforcement institutions and health institutions and health professional organizations. In addition, the establishment of specialized units dealing with health crimes in the police and prosecutor's office may also be a solution to improve the effectiveness of health criminal law enforcement.

The next challenge is related to legal pluralism and local wisdom in the context of health. Indonesia has cultural diversity which is also reflected in traditional health practices. Law No. 36/2014 on Health Workers has recognized the existence of traditional health workers, but the regulation of criminal aspects is still unclear and comprehensive.³⁶ Efforts are needed to develop regulations that are more sensitive to the diversity of health practices in Indonesia, while maintaining safety and quality standards of health services. There needs to be an in-depth study of traditional health practices and how to integrate them into the national health law system, including the criminal aspects.

Another challenge that needs to be considered is related to cross-border health crimes. Globalization has opened up opportunities for the emergence of transnational health crimes, such as illegal organ trafficking, drug counterfeiting, and smuggling of banned medical materials. Law No. 36/2009 on Health does not specifically regulate the transnational aspects of these health crimes.³⁷ Efforts are needed to strengthen international cooperation in health criminal law enforcement. Indonesia needs to be active in international forums that discuss transnational health crime issues and adopt international standards into national law. In addition, there is a need to strengthen the capacity of law enforcement institutions in handling cross-border health crime cases.

The next challenge is related to the protection of health data in the digital era. The development of information technology in the health sector, such as electronic medical records and big health data, brings new risks related to patient data privacy and security. Law No. 11/2008 on Electronic Information and Transactions has provided a general foundation, but the specific regulation on health data still needs to be strengthened.³⁸

35 Joko Sriwidodo, *Perkembangan Sistem Peradilan Pidana Di Indonesia*, Kepel Press, 2020.

36 Gede Yudi Krisnanda, I Nyoman Putu Budiarta, and Ni Made Puspasutari Ujjanti, "Bentuk Perlindungan Hukum Bagi Tenaga Kesehatan Tradisional Berbasis Pengobatan Usada Di Bali," *Jurnal Preferensi Hukum* 4, no. 1 (2023), <https://doi.org/https://doi.org/10.55637/jph.4.1.6730.11-17>.

37 Respati Triana Putri, Felix Ferdin Bakker, and Dhea Chairunnisa, "THE PROBLEMS OF HUMAN TRAFFICKING AS TRANSNATIONAL CRIMES IN THE PERSPECTIVE OF IMMIGRATION AND INTERNATIONAL LAW," *Journal of Law and Border Protection* 4, no. 1 (May 17, 2022): 79–88, <https://doi.org/10.52617/jlbp.v4i1.289>.

38 Cashtry Meher, Redyanto Sidi, and Irsyam Risdawati, "Penggunaan Data Kesehatan Pribadi Dalam Era Big Data: Tantangan Hukum Dan Kebijakan Di Indonesia," *Jurnal Ners* 7, no. 2 (July 5, 2023): 864–70, <https://doi.org/https://doi.org/10.30605/jurnalners.v7i2.12345>.

Efforts are needed to develop more comprehensive regulations on health data protection, including criminal aspects. There needs to be a balance between the need to facilitate innovation in digital health and the need to protect the privacy and security of patient data.

Another challenge that needs to be considered is related to access to health services and social justice. In the context of Indonesia as a developing country, there is still a considerable gap in access to health services. Health criminal law must be able to play a role in bridging these gaps and realizing social justice.³⁹ Efforts are needed to develop tougher criminal provisions against actions that impede people's access to health services. This could include strengthening sanctions against corrupt practices in the health sector, discrimination in the provision of health services, or refusal to provide emergency care.

The last challenge that needs to be considered is related to the development of science in the field of ethics and philosophy of health. The concept of dignified justice in the context of health continues to evolve along with the emergence of new ethical issues in modern health practice. Health criminal law must be able to accommodate this development of thought to remain relevant and just.⁴⁰ The necessary effort is to conduct an interdisciplinary study involving legal experts, health practitioners, philosophers, and ethicists to continue developing the concept of dignified justice in the context of health criminal law. The results of this study then need to be integrated into the legislative process and health criminal law enforcement.

In facing these challenges and implementing these efforts, close collaboration between various stakeholders is required, including policy makers, legal practitioners, health workers, academics, and civil society. The process of developing health criminal laws that are in line with the principles of dignified justice must be carried out in a participatory and inclusive manner, considering various perspectives and interests. In addition, there is also a need for continuous evaluation and updating of legislation in the health sector. Law No. 36/2009 on Health, for example, may need to be revised to accommodate the latest developments in the health sector and to ensure that its criminal provisions are in line with the principles of dignified justice.

Finally, the development of health criminal law in line with the principles of dignified justice also requires efforts to increase public legal awareness. Public education on rights and obligations in the health context, as well as an understanding of the aspects of criminal law in health practice, needs to be improved. This is important to create a better health ecosystem and to prevent violations of health criminal law. By facing various challenges and implementing these efforts in a comprehensive and sustainable manner, it is hoped that health criminal law in Indonesia can develop into a system that is more fair, effective, and in line with the principles of dignified justice. This will

org/10.31004/jn.v7i2.16088.

39 Andri Kurniawan, "Kebijakan Dan Isu Kesehatan Dalam Konteks Otonomi Daerah," *KANUN: Jurnal Ilmu Hukum* 12, no. 2 (2010).

40 Theodore H. Tulchinsky and Elena A. Varavikova, "Health Technology, Quality, Law, and Ethics," in *The New Public Health* (Elsevier, 2014), 771–819, <https://doi.org/10.1016/B978-0-12-415766-8.00015-X>.

ultimately contribute to improving the quality of health services and protecting people's rights in the health sector.

3. CONCLUSION

The development of health criminal law in Indonesia, viewed from the perspective of dignified justice, shows a complex and dynamic trajectory. Starting from limited arrangements in the colonial-era Criminal Code, health criminal law developed through a series of laws such as Law No. 9/1960, Law No. 23/1992, and culminating in Law No. 36/2009 on Health, which reflects efforts to balance the protection of patients' rights, the professionalism of health workers, and the interests of the wider community. This development is also evident in related laws such as the Medical Practice Act and the Hospital Act, as well as court jurisprudence. While there has been significant progress in realizing dignified justice - including the recognition of the right to health, protection from irresponsible health practices, and a more humane approach - there are still challenges such as the application of the *ultimum remedium* principle, balancing the protection of the rights of patients and health workers, and adapting to developments in health technology. These developments reflect ongoing efforts to create a health criminal law system that is fair, effective, and respectful of human dignity, while continuing to respond to the social, cultural, and technological dynamics in Indonesian society.

The development of health criminal law in Indonesia in line with the principles of dignified justice faces several major challenges and requires comprehensive efforts. These challenges include: the complexity and dynamics of the rapid development of health technology, the inconsistent application of the *ultimum remedium* principle, the need for a balance between the protection of the rights of patients and health workers, the lack of technical understanding of law enforcement officials, legal pluralism and local wisdom, cross-border health crimes, health data protection in the digital era, disparities in access to health services, and the development of health ethics and philosophy. Necessary measures include: comprehensive evaluation of criminal provisions in health regulations, development of more effective medical dispute resolution mechanisms, capacity building of law enforcement officers, development of regulations that are sensitive to the diversity of health practices, strengthening international cooperation in law enforcement, development of comprehensive health data protection regulations, strengthening criminal provisions related to access to health services, and conducting interdisciplinary studies to develop the concept of dignified justice in the context of health. All of this requires close collaboration between various stakeholders, continuous evaluation and updating of laws and regulations, and increased public legal awareness.

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