

## THE ROLE OF A MEDICAL DOCTOR AS A HEALTH LAW SPECIALIST AS AN EXPERT WITNESS IN THE JUSTICE SYSTEM IN INDONESIA

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### *Abstract*

*The science of criminal law provides requirements to say that a person committing a crime must fulfill the elements of an act that legally violates the law or has a normative nature against the law. Provide expert testimony in a criminal case. The presence of a doctor who is an expert in health law as an expert witness can be requested by the prosecutor or the suspect's legal adviser with the approval of the judge. This paper aims to find out the role and position of a medical law expert as an expert witness in the criminal justice system. The research method in this paper uses a literature review by applying a qualitative research approach. The results of the discussion show that the role of doctors who are experts in health law as legal agents for law enforcement officials and in the criminal justice system is positioned as an expert in every stage of court proceedings. From the research, it was concluded that doctors who are experts in health law play a vital role in assisting law enforcement officials in proving criminal cases that have occurred as expert witnesses in court. As a suggestion, it is necessary to have strict rules governing the position of doctors who are experts in health law as expert witnesses. In addition, there is a need for coordination between law enforcement officials and doctors to make clear the crimes that have occurred.*

*Keywords: Criminal Law; Health Law Experts; Doctors; Expert Witnesses.*

### **1. INTRODUCTION**

The Indonesian Medical Discipline Honorary Council (MKDKI) received 193 complaints of alleged malpractice from 2011 to 2019. Of that number, 34 doctors were given written sanctions, 6 were required to take part in a re-education program, and, worst of all, 27 had their registration certificates automatically revoked. Invalidate the license to practice. Most recently, in July 2023, a district court indicted a doctor for four months in prison for injecting an empty vaccine into an elementary school child by violating Article 14, Paragraph 1 of Law No. 4 of 1984 concerning infectious disease outbreaks. The regional surveillance and immunization expert was presented as one of the expert witnesses in the law court trial. The

number of doctors with expertise and competence in health law has just been recorded. However, only in 2021 formed, the Association of Doctors of Indonesian Medicine and Health Law (PERDAHUKKI) in Indonesia. A witness is a person who can provide information for investigation, prosecution, and trial regarding a criminal case that he has heard, seen, and experienced himself (Article 1 of the Criminal Procedure Code, Point 26). An expert witness is someone who can draw conclusions based on his expertise about facts or data of an incident, either discovered by themselves or by other people, and able to express their opinion (Ingeten, 2008). An expert witness is a person who meets the requirements in terms of knowledge and experience to give an opinion on a particular issue to court (British Medical Association, 2007). Witness testimony is one of the means of evidence in a criminal case in the form of testimony from a witness regarding a criminal event that he heard, saw for himself, and experienced for himself by citing the reasons from his knowledge (Article 1 of the Criminal Procedure Code, Point 27). Expert testimony is information that given by a person who has particular expertise on matters needed to explain a criminal case for examination (Article 1 of the Criminal Procedure Code, point 28). Expert testimony is what an expert states in court (Article 186 of the Criminal Procedure Code). When providing expert testimony, doctors must adhere to the prevailing regulations in Indonesian court proceedings. Therefore, it is crucial for doctors to have specialized competence in health law to understand the procedures and attitudes required of them as expert witnesses and to follow guidelines for being expert witnesses in the medical field.

## **2. METHOD**

This study uses a literature review observation method to collect, filter and analyze data from various relevant literature sources regarding the role of doctors as expert witnesses in scope. This approach was chosen because it provides the opportunity to identify, combine and synthesize diverse research results, so as to provide a comprehensive and in-depth picture of the research topic.

The databases used in this research include trusted and relevant scientific databases such as PubMed, ScienceDirect, Google Scholar, and official databases of existing organizations. This basic data selection was carried out to ensure that the data used in this research had high quality and accuracy.

Inclusion and exclusion criteria were established to identify studies relevant to this research topic. Inclusion criteria include research that focuses on the role of doctors as expert witnesses at conferences, as well as research published in Indonesian or English. Meanwhile, exclusion criteria include studies that are not relevant to the research topic, do not have sufficient data, or focus on other specialist doctors.

The literature search process was carried out using relevant keywords, such as "doctors as expert witnesses", "expert witnesses at conferences", and so on. A literature search was carried out systematically and comprehensively to ensure that all relevant studies could be identified.

After conducting the search, a selection process was carried out by looking at the title and abstract of the research to ensure that the study met the inclusion criteria. Studies that meet the inclusion criteria will then be completely retrieved for further evaluation.

The data analysis procedure is carried out by collecting data from relevant studies and presenting it in the form of tables or direct and indirect quotes. Data from multiple sources will be combined and synthesized to present consistent and comprehensive findings about the role of physicians as expert witnesses at conferences

By using a systematic literature observation method, it is hoped that this research can provide accurate, thorough and clear results regarding the role of doctors as expert witnesses in lighting. This method also ensures that all relevant research has been considered with the aim of providing a comprehensive picture of future health preservation issues at both local and national levels.

### **3. RESULT AND DISCUSSION**

The role of doctors who are experts in health law in proving criminal cases is to assist law enforcement officials at the trial stage of criminal acts related to medicolegal humans so as to make the crime case clear as an expert witness as stated in Article 1 point 28 of the Criminal Code, namely expert testimony is information given a person who has special expertise on matters required to explain a criminal case. In the case of crimes against the human body or soul, doctors have a very important role in accordance with their expertise in the field of the human body. If the judge is in doubt about a criminal act related to the human body or soul, the judge can present a person at trial as an expert witness so as to make clear the crime that occurred. In proving a criminal case related to the human body or soul, a health law expert doctor has a very important role to assist judges in uncovering criminal events, for this reason there must be strict provisions governing the position of a health law expert doctor as an expert witness, then the judge must also wisely evaluate the evidence submitted by the doctor both in writing and orally, thus it is hoped that material truth can be realized. Besides that, coordination between law enforcement officials and doctors must be improved, especially for criminal acts related to the human body or soul. In proving a criminal case related to the human body or soul, a health law expert doctor has a very important role to assist judges in uncovering criminal events, for this reason there must be strict provisions governing the position of a health law expert doctor as an expert witness, then the judge must also wisely evaluate the evidence submitted by the doctor both in writing and orally, thus it is hoped that material truth can be realized. Besides that, coordination between law enforcement officials and doctors must be improved, especially for criminal acts related to the human body or soul.

In proving criminal cases related to the human body or soul, health law specialist doctors have a very important role to assist judges in uncovering criminal events, for this reason there must be strict provisions governing the position of health law expert doctors as expert witnesses, then judges must also wisely evaluate the evidence submitted by the doctor both in writing and orally, thus it is hoped that material truth can be realized. Besides that, coordination between law enforcement officials and doctors must be improved, especially for criminal acts related to the human body or soul. For this reason, there must be strict provisions governing the position of doctors who are experts in health law as expert witnesses. Furthermore, judges must also be wise in assessing the evidence presented by doctors, both in writing and orally, thus it is expected that material truth can be realized. Besides that, coordination between law enforcement officials and doctors must be improved, especially for criminal acts related to the human body or soul. For this reason, there must be strict provisions governing the position of doctors who are experts in health law as expert witnesses. Furthermore, judges must also be wise in assessing the evidence presented by doctors, both in writing and orally, thus it is expected that material truth can be realized. Besides that, coordination between law enforcement officials and doctors must be improved, especially for criminal acts related to the human body or soul.

The obligation of doctors to provide expert testimony is regulated under Article 133 of the Criminal Procedure Code (KUHP). This expert testimony serves as valid evidence in court proceedings (Article 184 KUHP) and can be provided orally in front of the court (Article 186 KUHP). If a doctor or healthcare professional intentionally fails to fulfill the obligation when summoned as a witness or as an expert in a case related to a crime, they could be subject to a maximum of nine months' imprisonment in criminal cases or a maximum of six months' imprisonment in other cases (Article 224 KUHP). In cases involving violations, doctors or healthcare professionals may also be fined according to the appropriate standards as determined by the court (Article 522 KUHP).

Article 170 of the KUHP states that doctors, due to their profession, dignity, or position, can exercise the right to refuse to provide testimony as witnesses, specifically regarding medical secrets entrusted to them, by providing reasons to the judge. The judge will determine the validity of any reasons for such a request. However, Article 179 of the KUHP states that court assistance requests to doctors as experts, according to legal procedures, must be fulfilled. Thus, the request for expert testimony or the request for examination at the pre-trial stage cannot be dismissed by assuming that a doctor or healthcare professional has the right to refuse (Kristanto, 2008).

The Australian Medical Association's Ethical Guidelines for Doctors Acting as Medical Witnesses also express the ethical obligations of doctors to assist the court and alternative dispute resolution processes by providing expert evidence when called upon. Doctors must provide expert evidence to assist the court in an impartial, honest, objective manner, limiting their opinions to their area of expertise. Doctors also have a duty to protect the privacy and confidentiality of all relevant evidence they possess (AMA, 2011).

The field of Health Law studies the utilization of medical knowledge for the purpose of law enforcement and justice (Widiatmaka, 1997). The presence of health law doctors, who conduct examinations on crime victims or suspects, is essential because investigative processes must be supported by scientific investigation (Idries, 2009).

For effective law enforcement, health law experts are needed to assist with legal matters. This effort is aimed at seeking the truth to the extent possible (Idries, 2009). In this context, the assistance provided by doctors in the form of expert testimony as valid evidence (Article 185 KUHAP, Point 1) is crucial.

A medical practitioner can be considered a medical expert witness to provide evidence in court or as part of alternative dispute resolution processes. Medical evidence from an expert often plays a crucial role in legal proceedings involving health and medical issues. From a legal perspective, every doctor is an expert, whether they are experts in forensic medicine or not. Therefore, any doctor can be requested to assist in clarifying criminal cases by authorized parties. However, to ensure optimal assistance, requests should be made to doctors with expertise relevant to the subject of examination. For example<sup>5</sup>: For cases involving deceased victims, forensic medical experts should be consulted. For cases involving living victims with injuries, a surgical expert should be consulted. For cases involving victims of sexual offenses, an obstetrics and gynecology expert should be consulted. For cases related to dental matters (for identification purposes), a dental expert should be consulted. For cases involving defendants with or suspected of having mental illnesses, a psychiatry expert should be consulted. A doctor providing expert witness testimony can be linked to visum et repertum reports or hypothetical questions from the judge. Doctors may be called to court for two versions: as a "charge" witness or as a "de charge" witness. In the first version, the witness is brought to court by the Public Prosecutor, where their testimony may either benefit or incriminate the defendant. In the second version, the doctor acts as a witness called by the defendant or their legal counsel, providing testimony that either mitigates the defendant's situation or forms the basis of their defense. Therefore, during court proceedings, both the prosecutor and the defendant's legal counsel may present witnesses or experts with the judge's permission. A doctor can also be summoned to be heard and examined as a witness if deemed directly related to the case by investigators (Kristanto, 2008).

According to the Ethical Guidelines for Doctors Acting as Medical Witnesses, there are two types of medical witnesses. Thus, when a doctor is called to be a medical witness, it is important to differentiate the context of the evidence to be provided, whether as a factual witness (the treating doctor) or an opinion witness (independent expert). A factual witness is a doctor who examined, treated, or managed a medical case. This doctor will be asked to present medical evidence related to their management and provide factual information about the results (AMA, 2011).

An opinion witness is an independent expert witness asked to provide an independent opinion based on the existing facts of a particular case. In this case, the doctor will provide an opinion based on their relevant experience and expertise. As an independent expert witness, a health law expert can assist the court in two ways: by providing expert opinions based on

their knowledge and experience of the facts and informing the court about matters related to their specialized expertise (AMA, 2011).

Doctors are involved in court cases due to their expertise, knowledge, and specialized areas, which allow them to provide medical evidence. Doctors play a vital and inseparable role in legal proceedings. Therefore, doctors have the right to receive comprehensive information about the case, their role in it, and any other information that may be required to provide medical evidence in the form of relevant documents and clinical information about the case to investigators or lawyers who request their presence in court. If lawyers or investigators have further questions and doctors have difficulty answering them, there are Medical Defence Organizations (MDOs) available abroad for assistance. In Indonesia, the Indonesian Association of Medical and Health Law Experts (PERDAHUKKI) was established in 2021. If required to discuss with other independent expert witnesses or prepare reports with other expert witnesses, doctors must provide their independent assessment, identify agreed and disagreed points, and state their reasons. Doctors should avoid instructions or requests that aim to reach an agreement. Use a moderate and objective approach when providing evidence. Reject efforts designed to provoke doctors and avoid debates (AMA, 2011).

An expert witness should possess the following qualities (British Medical Association, 2011):

1. Knowledge and practical experience of the subject matter discussed in the case.
2. The ability to communicate findings or opinions clearly, concisely, and comprehensibly to all relevant parties in the proceedings.
3. Flexibility of thought and confidence to modify opinions based on new evidence or opposing arguments.
4. The ability to think from different perspectives to handle any situation that may arise in court.
5. A convincing attitude and appearance in court.

The duties and responsibilities of an expert witness in civil cases include:

1. Expert evidence presented must be considered an independent product unaffected in form or content by any circumstances.
2. Expert witnesses must provide independent assistance to the court by offering objective opinions related to their expertise.
3. Expert witnesses must state facts or assumptions based on clear foundations.
4. Expert witnesses must provide explanations when faced with questions or issues beyond their expertise.
5. If an expert opinion is not based on research but rather on available data, an explanation should be included that this opinion is provisional.

The summons or notification by the authorities to the expert witness, in this case the doctor, is submitted no later than three days before the date of attendance determined by the judge at the expert witness' residence and delivered in person. Then the officer makes a note that the summons has been received by the person concerned by affixing the date and signature of the officer and the expert witness along with the reasons if the expert witness does not want

to sign the note. This summons letter can also be delivered through the village head if the person concerned is not at his place of residence and through the representative of the Republic of Indonesia where he is when he is abroad (article 227 of the Criminal Procedure Code).

The doctor who was summoned to act as an expert witness then examines the summons and may contact the competent prosecutor in this case to ask for an explanation regarding the case and the victim that will be discussed at trial. The doctor is then advised to estimate the questions that will be asked so that they are better prepared to answer them (British Medical Association, 2007). In a criminal case that causes a victim, the doctor is expected to be able to find abnormalities that occur in the victim's body, how these abnormalities arise, what causes them and the consequences that arise on the victim's health. In the case of a deceased victim, doctors are expected to be able to explain the cause of death in question, how the mechanism of death occurred and assist in estimating the time of death and the estimated method of death (Widiatmaka, 1997). A doctor, as an expert witness, provides an assessment or evaluation of the final outcome, not the process. Therefore, it is important to remember that a doctor acts as an expert witness, not an eyewitness (Idries, 2009).

As a witness who will be presented at trial, you must first submit a curriculum vitae to the court clerk before the trial. Examination of experts in the same field of expertise proposed by the parties is carried out at the same time (AMA, 2011). A legal expert doctor, as an expert witness in court, is required to dress neatly and appropriately. The doctor must maintain an appearance that does not demean themselves or their counterpart. They should arrive punctually, dress professionally, exhibit courteous behavior, prepare their case data, demonstrate firm and confident demeanor, express truthful and objective statements comprehensively (Sampurna, 2008).

A doctor as an expert witness attending a trial is obligated to complete an attendance register, occupy the designated seating, sit in an orderly and respectful manner throughout the trial, and demonstrate respect towards the Panel of Judges.<sup>9</sup> The presiding judge inquires the witness about their full name, place of birth, age or date of birth, gender, nationality, residence, religion, and occupation. Furthermore, the judge asks whether the witness is acquainted with the defendant before the defendant committed the alleged act and whether they are blood relatives or in-laws to the defendant, up to what degree, or whether they are the spouse of the defendant even if separated or still maintain a working relationship with them (Article 160 Criminal Procedure Code, paragraph 2). In this regard, the witness or expert must bring their Identification Card (KTP), Family Card (Kartu Keluarga), Marriage Certificate (Surat Nikah), Diploma, and other documents related to their personal data as the judge might request the witness or expert to present them at the beginning of the trial. Before providing testimony, the witness or expert is required to take an oath or make an affirmation according to their respective religion, declaring that they will provide truthful testimony and nothing but the truth (Article 160 Criminal Procedure Code, paragraph 3).

In various legal foundations, it is stated that everything known to a doctor in the course of their work is considered medical confidentiality, and every doctor, especially when practicing

medicine, is legally obligated to maintain medical secrecy (Article 1 of Government Regulation No. 10 of 1966, Article 170 of the Indonesian Criminal Procedure Code, Article 53 of Law No. 23 of 1992, Article 48 of Law No. 29 of 2004). However, medical confidentiality is not absolute and can be disclosed without being considered unethical or illegal, especially in situations where it fulfills the request of law enforcement authorities for the purpose of upholding the law. In such cases, doctors are compelled to disclose confidential information without patient consent due to the basis of excluding criminal liability (*strafuitsluitingsgrond*) as regulated in Article 48, Article 50, and Article 51 of the Indonesian Criminal Code. The disclosure of this confidential information can occur during court proceedings, in front of a judge (Kristanto, 2008).

The presentation of opinions by witnesses and experts must first request and/or obtain permission from the Chief Judge, and after being granted the opportunity by the Chief Judge. A doctor may only provide a statement and opinion that has been verified for its accuracy (Article 7 of the Code of Medical Ethics). An expert witness must exhibit qualities of honesty, objectivity, comprehensiveness, scientific rigor, and impartiality. They are also expected to avoid speaking excessively, speaking prematurely, and discussing matters with unauthorized individuals.<sup>12</sup> The submission of evidence or case documents is conducted through a deputy clerk or a designated court official responsible for such tasks. During the course of the trial, a doctor has the right to decline to answer questions posed to them if they deem the question to be irrelevant or beyond the scope (jurisdiction) of medical knowledge. Responses to such unsuitable questions should be conveyed in a polite and firm manner. For example: "I apologize, Your Honor, I am not unable to answer, but that question pertains to an eyewitness, not a doctor" (Idries, 2009). After providing testimony, a witness must remain present in the courtroom unless granted permission to leave by the presiding judge (Article 167 of the Criminal Procedure Code, paragraph 1). As a witness or expert who has attended the summons to provide testimony at all levels of examination, a doctor is entitled to receive compensation as stipulated by the prevailing laws and regulations. This right is conveyed by the official who issued the summons to the doctor (Article 229 of the Criminal Procedure Code). Because expert witnesses operate under ethical codes and confidentiality, a clear understanding of judicial protection needs to be established to ensure it is provided to expert witnesses and to prevent potential breaches of ethical codes that may arise during testimony.

#### **4. SUMMARY**

The role of doctors who are experts in health law in proving criminal cases is to assist law enforcement officials at the trial stage of criminal acts related to medicolegal humans so as to make the crime case clear as an expert witness as stated in Article 1 point 28 of the Criminal Code, namely expert testimony is information given a person who has special expertise on matters required to explain a criminal case. In the case of crimes against the human body or



soul, doctors have a very important role in accordance with their expertise in the field of the human body. If the judge is in doubt about a criminal act related to the human body or soul, the judge can present a person at trial as an expert witness so as to make clear the crime that occurred. In proving a criminal case related to the human body or soul, a health law expert doctor has a very important role to assist judges in uncovering criminal events, for this reason there must be strict provisions governing the position of a health law expert doctor as an expert witness, then the judge must also wisely evaluate the evidence submitted by the doctor both in writing and orally, thus it is hoped that material truth can be realized. Besides that, coordination between law enforcement officials and doctors must be improved, especially for criminal acts related to the human body or soul. In proving a criminal case related to the human body or soul, a health law expert doctor has a very important role to assist judges in uncovering criminal events, for this reason there must be strict provisions governing the position of a health law expert doctor as an expert witness, then the judge must also wisely evaluate the evidence submitted by the doctor both in writing and orally, thus it is hoped that material truth can be realized. Besides that, coordination between law enforcement officials and doctors must be improved, especially for criminal acts related to the human body or soul. In proving criminal cases related to the human body or soul, health law specialist doctors have a very important role to assist judges in uncovering criminal events, for this reason there must be strict provisions governing the position of health law expert doctors as expert witnesses, then judges must also wisely evaluate the evidence submitted by the doctor both in writing and orally, thus it is hoped that material truth can be realized. Besides that, coordination between law enforcement officials and doctors must be improved, especially for criminal acts related to the human body or soul. For this reason, there must be strict provisions governing the position of doctors who are experts in health law as expert witnesses. Furthermore, judges must also be wise in assessing the evidence presented by doctors, both in writing and orally, thus it is expected that material truth can be realized. Besides that, coordination between law enforcement officials and doctors must be improved, especially for criminal acts related to the human body or soul. For this reason, there must be strict provisions governing the position of doctors who are experts in health law as expert witnesses. Furthermore, judges must also be wise in assessing the evidence presented by doctors, both in writing and orally, thus it is expected that material truth can be realized. Besides that, coordination between law enforcement officials and doctors must be improved, especially for criminal acts related to the human body or soul.

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