


## Juridical Analysis of Legal Protection of Medical Personnel Victims of Persecution in Providing Health Services (Analysis of Supreme Court Decision No. 779.PID. B/2014/PN. JKT. PST)

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Article Info	ABSTRACT
<b>Keywords:</b> Protection, Persecution, Medical Personnel, Doctor	This research aims to analyze legal protection for medical personnels who are victims of abuse in providing health services. This research method is normative by reviewing statutory regulations. The technical analysis of legal materials used is descriptive-qualitative. The research results show that (i) Law no. 17 of 2023 about Health includes a fairly comprehensive legal framework regarding legal protection for doctors who experience abuse while providing health services in Indonesia, but there are several challenges in its implementation, (ii) abuse of medical personnel is a crime and the causes of crime are problems. which are complex, especially influenced by emotional and environmental factors, (iii) doctors should receive legal protection if the doctors followed the standard operating procedures.
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### INTRODUCTION

Every human being has the right to health. According to the constitution of the World Health Organization (WHO), the definition of healthy is a state of complete physical, mental and social well-being and not simply free from disease or infirmity. In addition, the WHO constitution also states that the highest health standards that can be achieved are one of the basic rights of every human being regardless of race, religion, political beliefs, economic or social conditions. It added that the health of all people is fundamental to the attainment of peace and security and depends on the full cooperation of individuals and states, and the achievements of a country in the promotion and protection of health have value for all. According to the latest Health Law, namely Law No. 17 of 2023, health is a person's healthy state, both physically, mentally, and socially and not just free from disease to enable him to live productively.

From the two notions of health or health above, it can be understood that health has a very important meaning for each individual, because with excellent health, individuals can carry out an activity optimally and can think clearly and well, so that they can also produce various desired works. When an individual's health is compromised, he will try various

ways to get healthy again as soon as possible. One of these efforts is by seeking treatment with medical personnel (doctors and dentists) at available health care facilities. Of course, this healing effort needs to be supported by optimal service from a health service facility and health service criteria that are according to standards. According to Health Law No. 17 of 2023, health services are all forms of activities and/or a series of service activities provided directly to individuals or communities to maintain and improve the degree of public health in the form of promotive, preventive, curative, rehabilitative, and/or palliative.

In health service efforts, including medical services based on the basis of individual relationships between doctors and patients who need healing for their illnesses. Doctors are parties who have expertise in the medical field or medicine that is considered to have the ability and expertise to perform medical actions. While patients are sick people who entrust themselves to be treated by doctors. According to Health Law No. 17 of 2023, a patient is any person who obtains Health Services from Medical Personnel and/or Health Workers.

This relationship between doctors and patients makes each party a legal subject that has a contractual relationship called a therapeutic agreement. If a health facility is a hospital, hospitals, doctors and patients become the three legal subjects involved in the field of health maintenance. According to Bahder Johan Nasution, a therapeutic agreement (therapeutic transaction) is an agreement between a doctor and a patient, which is a legal relationship that then gives birth to rights and obligations for both. It is also mentioned that therapeutic transactions are looking for appropriate efforts made by doctors for the recovery of patients. The object is not healing but effort in healing the patient.

Judging from the legal relationship, the relationship between doctor and patient, the relationship between doctor and hospital, and the relationship between patients and hospitals, is a relationship that mutually agrees to bind themselves in carrying out therapy known as engagement (*verbintenis*). This relationship is generally an engagement of effort (*inspanningsverbintenis*) which is defined as the optimal possible effort to achieve health care for the treated patient, not as an engagement of results (*resultaatsverbintenis*). Therefore, doctors should not be prosecuted if the patient is not cured.

Doctors in medical practice are required to try their best in providing health services to their patients and every medical action must be in accordance with health professional standards. Doctors as legal subjects also have legal responsibility for every action they do and certainly cannot be separated from a lawsuit as well. Therefore, doctors (medical personnel) also need to understand the legal aspects of health services. Lawsuits or lawsuits against doctors can be sourced from the Civil Code (KUHPercivil), including article 1239 of the Civil Code concerning default (Engagement to Do Something or Not to Do Something) which reads, "every engagement to do something, or not to do something, must be resolved by providing compensation for costs, losses and interest, if the debtor does not fulfill his obligations."

Lately we hear or read various news about lawsuits or expressions of dissatisfaction on the part of patients against health services from doctors and hospitals. This indicates

that people's legal awareness is increasing. In line with that, there are also increasing voices demanding that the law play a major role in the world of health. Patients also do not want to take for granted the treatment carried out by doctors (medical personnel) or hospitals. Public attention to health professions is a sign that at this time some people are not satisfied with health services. This feeling of dissatisfaction on the part of the patient can lead to medical disputes. Medical disputes arise because patients assume that doctors do not fulfill the achievements as promised, so the patient or his family looks for the cause of the dissatisfaction. The cause of disputes between doctors (or hospitals) and patients (or their families) is due to patient dissatisfaction with doctors in carrying out treatment efforts or carrying out medical actions.

In 2023, we heard news about the mistreatment of CTH doctors at the Fajar Bulan Health Center, Way Tenong District, West Lampung Regency. The occurrence of this persecution case was preceded by a medical dispute, namely a feeling of dissatisfaction from the patient and the patient's family who felt that the doctor did not fulfill the promised achievement. But the problem is, medical personnel are physically abused. This opens our eyes that legal protection for medical personnel on duty is very important. Doctors (medical personnel) in carrying out their duties need to be given a sense of security so that they can examine patients calmly and thoroughly. Perpetrators of persecution must be given appropriate laws.

In Law No. 29 of 2004 concerning Medical Practice article 50 letter a it is explained that doctors are entitled to legal protection as long as they carry out their duties in accordance with professional standards and standard operational procedures. Meanwhile, in Health Law No. 17 of 2023, it is contained in article 273 letter b that Medical Personnel and Health Workers in carrying out their practices are entitled to legal protection as long as they carry out their duties in accordance with professional standards, professional service standards, standard operational procedures, and professional ethics, as well as the needs of Patient Health. In general, in Health Law No. 17 of 2023 article 3 letter h also states that the implementation of Health aims to provide protection and legal certainty for patients, Health Human Resources, and the community. For doctors on duty in hospitals, it is also regulated in article 189 letter s that each hospital has the obligation to protect and provide legal assistance for all hospital officers in carrying out their duties.

Reflecting on this case, the author wants to raise the issue of legal protection for medical personnel who are victims of persecution due to medical disputes. The studies conducted are normative-empirical studies. The focus of this normative-empirical study is the implementation of normative legal provisions on certain events and the results achieved.

Given that the case of the CTH doctor has not yet reached a final decision, the author is looking for another case that has been decided by the Supreme Court, namely the case of doctor Fransisca Mochtar, Sp. OG (hereinafter abbreviated as FM doctor) who was a victim of persecution by a defendant named Harry Harianto (hereinafter abbreviated as HH) and there has been a Supreme Court decision with number 779PID. B/2014/PN. JKT. PST will

be a case study of this medical dispute. In this case, FM doctor conducted a medical examination on Dewiana Rusita (DWR) accompanied by HH. DWR patients experienced vaginal discharge and both DWR patients and defendant HH felt that FM doctors were unfriendly. Legal facts based on the results of the court stated that the FM doctor examined then told to go to the Lab and after the results were completed it was handed over to the FM doctor and the FM doctor said it was not sterile. With this, defendant HH became emotional and there was an argument between the defendant and the FM doctor. When the doctor took a cellphone wanted a photo of defendant HH and defendant HH objected so there was a tug-of-war between cellphones and that's when defendant HH held a cup of coffee, so it spilled on the body of doctor FM. With this, FM doctor reported to the Police and conducted Visum et repertum No.1021/TU. FK/XI/2013, dated November 19, 2013.

From the case of FM doctors, please note that patients are actually required to provide complete and honest information to doctors. In Law No. 29 of 2004 concerning Medical Practice article 50 letter c it is explained that doctors have the right to obtain complete and honest information from patients or their families. Meanwhile, in Health Law No. 17 of 2023, legal protection for doctors is stated in article 273 letter b that Medical Personnel and Health Workers in carrying out their practices have the right to obtain complete and correct information from patients or their families. It is also added to article 277 which states that patients have the obligation to provide complete and honest information about their health problems.

Based on the description above, the author is interested in discussing medical disputes and legal protection of medical personnel in the form of a journal with the title "Juridical Analysis of Legal Protection of Medical Personnel Who Are Victims of Persecution in Providing Health Services (Analysis of Supreme Court Decision No. 779.PID. B/2014/PN. JKT. PST)."

Based on the description above, the main research problem is formulated as follows:

- a. What is the legal protection of medical personnel from acts of persecution when medical personnel carry out their duties in the Criminal Code and Health Law?
- b. Factors that lead to mistreatment of medical personnel?
- c. How is the criminal accountability for the perpetrators of medical abuse (based on the analysis of the Supreme Court's decision No. 779.PID. B/2014/PN. JKT. PST)?.

## METHODS

This research method is normative. According to Muhaimin, normative research is legal research that examines laws designed as norms or rules that apply in society, and become a reference for the behavior of each individual. This research method examines the laws and regulations both in terms of the legislative hierarchy (vertical), as well as the relationship between legislative harmony (horizontal).

## RESULTS AND DISCUSSION

### Legal Protection for Medical Personnel

Indonesia is a country based on law. The meaning is that all aspects of life in the territory of the Unitary State of the Republic of Indonesia (NKRI) are based on law. The highest source of law in the constitutional system of the Republic of Indonesia is the Constitution of the Republic of Indonesia Year 1945 (UUD 1945). So in the Fourth Amendment to the 1945 Constitution in 2002, Indonesia adheres to the concept of the State of Law or *rechtsstaat* which was previously only listed in the Explanation of the 1945 Constitution, formulated expressly in Article 1 paragraph (3) which states that, "The State of Indonesia is a State of Law."

Indonesia as a state of law should enforce laws that apply fairly and equitably to all citizens in the jurisdiction of the Republic of Indonesia. In realizing Indonesia as a good and true state of law, the government as the governing party, but the participation of citizens who will be the law is very important. Therefore, the law must be upheld by all citizens of the Republic of Indonesia.

According to the theory of the legal state, the legal conception of the *rechtstaat* recognizes two sets of judiciary, namely the general and administrative courts. On the other hand, the conception of the rule of law recognizes only a set of courts, namely those handled by ordinary courts based on *ultra vires*. Indonesia recognizes two sets of courts after Law number 5 of 1986 concerning the State Administrative Court. However, in its development, Indonesia adheres to the flow of the middle way "intermediate", namely adhering to the conception of *rechtstaat* and the rule of law which is required by recognition of a codified legal system and also jurisprudential law.

In addition to the theory of the rule of law, there is also a theory of legal protection. The theory of legal protection evolved from the concept of recognition and protection of human rights (HAM) in the 1800s. This concept has a direction on the recognition and protection of law against human rights which is a limitation and mapping of obligations to the community and government. In the theory of legal protection, it is argued that the purpose of law is to integrate and coordinate as interests in society by regulating the protection and restriction of these interests.

Legal protection is a protection of human rights that are harmed by others. So such protection is given to the people so that they can enjoy all the rights given by law. Therefore, legal protection can be defined as various legal remedies that must be provided by law enforcement officials to provide a sense of security, both mentally and physically from interference and various threats from any party.

Law No. 17 of 2023 concerning Health includes several articles on protection for medical personnel (doctors). Article 12 letter d states that the Central Government (Pempus) and Regional Government (Pemda) are responsible for the protection of Health Human Resources (HR). Article 1 states that Health Human Resources is someone who works actively in the health sector, whether they have formal health education or not. More details are further described in article 197 that Health Human Resources consist of:

Medical Personnel, Health Workers, and health support or support personnel. Furthermore, in article 198, Medical Personnel are grouped into doctors and dentists. So, it is clear that doctors are health human resources and are entitled to protection from the Central Government and Local Government.

In fact, doctors who work in disadvantaged areas, borders, and islands as well as areas with health problems can get security guarantees as stated in article 235 of Health Law No. 17 of 2023. In the same article, it is also stated that doctors are entitled to special benefits or incentives, support for infrastructure and medical devices, extraordinary promotion, and protection in carrying out duties in accordance with the provisions of laws and regulations.

Article 273 paragraph (2) of Health Law No. 17 of 2023 explains the rights of doctors as part of Medical Personnel and Health Workers, namely (a) to obtain legal protection while carrying out their duties in accordance with professional standards, professional service standards, standard operational procedures (SOPs), and professional ethics, as well as the health needs of patients; (b) obtain complete and correct information from the patient or his family; (c) obtain adequate salaries/wages, service fees, and performance allowances in accordance with the provisions of laws and regulations; (d) obtain protection for safety, occupational health, and security; (e) obtain health insurance and employment security in accordance with the provisions of laws and regulations; (f) obtain protection against treatment that is not in accordance with human dignity and dignity, morals, decency, and socio-cultural values; (g) obtain awards in accordance with the provisions of laws and regulations; (h) get the opportunity to develop themselves through the development of competencies, knowledge, and careers in their professional fields; (i) reject the wishes of the Patient or other parties that are contrary to professional standards, service standards, standard operational procedures, codes of ethics, or provisions of laws and regulations; and (j) obtain other rights in accordance with the provisions of laws and regulations.

In the case of doctor Fransisca Mochtar, Sp. OG (hereinafter abbreviated as doctor FM) who was a victim of persecution by a defendant named Harry Harianto (hereinafter abbreviated as HH) as in the Supreme Court decision number 779PID. B/2014/PN. JKT.PS, FM doctors as medical personnel deserve legal protection. Doctor FM, in this case, conducted a medical examination on Dewiana Rusita (DWR) accompanied by HH. In Health Law No. 17 of 2023 article 273 letter a, it is explained that Medical Personnel and Health Workers in carrying out their practices are entitled to legal protection as long as they carry out their duties in accordance with professional standards, professional service standards, standard operational procedures, and professional ethics, as well as patient health needs.

Doctor FM has carried out his duties according to standards. For example, when asking patients, it means that this is an anamnesis that is part of establishing a diagnosis. The results of the history contain the main complaints and accompanying complaints submitted by the patient and the patient's family. The doctor traces the history of the patient's current illness, history of other diseases that are risk factors, family history, social

history, and allergy history are part of the history. Doctor FM asked HH what his relationship was with DWR's patient, but HH immediately got angry and said rude words and poured coffee on Doctor FM, according to Doctor FM's testimony at the trial. This FM doctor's question is important because he wants to know his partner's risk factors and family history. In the court decision, it was stated that defendant HH was a female friend of DWR patients. So FM doctors are up to standard when asking these questions.

In addition to history and physical examination, in establishing the diagnosis of several diseases, the results of supporting examinations (laboratory) are also needed because they have become standard diagnosis enforcement algorithms. The FM doctor asked the DWR patient to check into the laboratory. It was not explained in the trial, what laboratory examination is meant but theoretically for complaints of vaginal discharge can be done vaginal smear examination. In the trial it was stated that when the results of the Laboratory were explained by the FM doctor to the DWR patient and the accused HH and when the FM doctor asked what was the relationship between the accused HH and the DWR patient, there was mistreatment by the accused HH against the FM doctor.

General provisions regarding the crime of persecution are regulated in chapter XX of Article 351 of the Criminal Code. But this persecution rule applies generally, meaning that it is not limited to the abuse of medical personnel. Article 351 of the Criminal Code explains the punishment given to perpetrators of persecution, namely:

1. Persecution is punishable by imprisonment for a maximum of two years and eight months or a maximum fine of four thousand five hundred rupiah.
2. If the act results in serious injury, the guilty person is punished with imprisonment for not more than five years.
3. If it results in death, it is punishable by imprisonment for a maximum of seven years
4. With persecution equated deliberately damaging health
5. Attempts to commit this crime are not criminalized.

This case occurred at a hospital, namely Husada Hospital, Central Jakarta. In general, in Health Law No. 17 of 2023 article 189 letter s that every hospital has the obligation to protect and provide legal assistance for all hospital officers in carrying out their duties. So a doctor who works in a hospital is also entitled to protection and legal assistance from the hospital.

As discussed earlier about the theory of legal protection, the purpose of law is to integrate and coordinate as interests in society by regulating the protection and restriction of these various interests. In this case it is the interests of medical personnel (doctors), hospitals and patients (and/or their families). Legal protection is the protection of human rights (HAM) that are harmed by others. In this case, such protection is provided to medical personnel so that they can enjoy all the rights provided by law. Therefore, legal protection is a legal remedy that must be provided by law enforcement officials to medical personnel to provide a sense of security, both mentally and physically from interference and various threats from any party.

## Factors Causing Mistreatment of Medical Personnel

Mistreatment of medical personnel is a crime. The problem of the causes of crime is a complex one. Various theories regarding the causes of crime have been proposed by experts from various disciplines, but there is still no satisfactory solution. Separovic suggests that there are two factors that cause crime, namely: 1) Personal factors, including biological (age, sex, mental state, etc.) and psychological (aggressiveness, carelessness, and alienation); 2) Situational factors, such as conflict situations, place and time factors. In line with the development of science and technology, theories about the causes of crime are increasingly developing as well. The theories of criminology are as follows:

### a. Biological Theory of Crime

This theory states that physiological factors and physical structure of a person are carried from birth through genes and heredity. The inheritance of abnormal types of tendencies results in deviant behavior and gives rise to sociopathic behavior. For example, congenital defects related to criminal traits as well as mental illness. In addition, evildoers have evil talents possessed from birth obtained from the inheritance of previous generations.

### b. Psychological Theory

This theory states that criminal behavior arises due to factors such as intelligence, personality, motivation, wrong attitudes, fantasies, rationalizations, false self-internalization, inner conflicts, controversial emotions and psychopathological tendencies. For example, it happens to families that are destroyed by divorce or wrong care because parents are too busy in their careers.

Perpetrators of crimes tend to have a psychological state that is in a state of pressure to meet the needs of life that never improves. Economic factors can be a factor that influences the occurrence of crime, because in order to meet the needs of life, people will tend to do whatever it is called a crime.

### c. Sociologist Theories

Sociological theory seeks to find causes within the social environment. This theory can be grouped into three general categories: strains, cultural deviance, and social control. The perspective of strains and cultural deviations focuses on the social forces that cause people to engage in criminal activity. Social control theory, on the other hand, has a different approach, which is to try to find answers to why people do not commit crimes.

Sociological theory explains that the cause of evil behavior is purely sociological or sociopsychological is the influence of deviative social structures, group pressures, social roles, social status, or false symbolic internalizations. Evil behavior is formed by a bad and evil environment, unattractive school conditions, and associations that are not directed with moral and religious values. This theory reveals that the cause of crime is influenced by factors of the surrounding environment, both family environment, economic, social, cultural, security defense and technological inventions. This theory leads us that people have a tendency to commit crimes because of the process of imitating their surroundings or better known as the process of imitation.

#### d. Substructural Theory of Deliquence

The substructural theory of deliberation states that evil behavior is a trait of social structures with cultural patterns typical of the environment and society experienced by criminal offenders. The causes include a dense population, low socio-economic status of its inhabitants, very poor physical condition of the village, or also due to many familiar and high-rise social disorganizations. In general, cities will be more prone to crime than in rural areas, because people who live in cities will think about social strata rather than their security, by having a consumptive lifestyle. Sociological factors also play an important role in the occurrence of crime, such as social inequalities, loosening social and family ties, conditions that make it difficult for people to emigrate to other cities or countries, damage to indigenous cultural identities arising from racism, and discrimination. In general, according to research by Muhammad R Ridwan et al, the factors causing the crime of mistreatment of health workers (including doctors) on duty are emotional factors and environmental factors.

According to Sundeep Mirsha, the root of the problem of violence (including mistreatment) against medical personnel is the growing mistrust between the health sector and ordinary people due to poor communication between doctors and patients. Mirsha divided this problem into three groups, namely factors related to doctors, factors related to patients, and factors related to hospitals. Factors related to doctors, among others: misunderstanding (miscommunication related to the explanation of the cause of the disease, course of the disease, etiology prognosis, the need for supporting examinations to the choice of therapy), dissatisfaction with treatment, malpractice, criticism from other doctors. Factors related to patients or their families, for example: perceptions of lack of attention from doctors (especially government hospitals that lack doctors), impaired awareness of patients or their families (intoxication, mental disorders, anxiety or stress), and low literacy about health (although literacy in general is quite good, health-specific literacy is still lacking). Factors related to hospitals, among others: hospitals that are too crowded, queue times that are too long, lack of comfort in the hospital environment, and lack of security personnel.

In addition, the occurrence of mistreatment of medical personnel can also be preceded by a medical dispute. Medical disputes are initiated by feelings of dissatisfaction on the part of the patient because of the doctor who does not fulfill the performance as promised, so the patient or his family looks for the cause of the dissatisfaction. The cause of disputes between doctors (or hospitals) and patients (or their families) is due to patient dissatisfaction with doctors in carrying out treatment efforts or carrying out medical actions.

The occurrence of patient dissatisfaction with the services of doctors or hospitals and other health workers as a result of (1) higher public education so that they understand more about their rights; (2) greater public expectations for medical services due to the wide flow of information; (3) commercialization and high cost of health services, so that people are increasingly intolerant of imperfect services, and (4) provocations by legal experts and others who understand the law and the health system.

Medical disputes only arise when there is a lawsuit to the hospital (or doctor), a complaint to the police or a lawsuit to the court. When a person (patient) comes to a doctor to get medical services, there is a legal relationship between the doctor and the patient called *trankwitnes therapeutis*. Legal relationships that do not promise a cure are called *inspanningsverbintenis*, which is different from the usual legal relationship in agreements that promise a definite result (*riskverbintenis/resultaatsverbintenis*). Therefore, doctors should not be prosecuted if the patient is not cured. More about *Insaningsverbintenis* and *Resultaatsverbintenis*, according to Sarsintorini Putra (2001), these therapeutic transactions can be distinguished in two categories:

- a) *Resultaatsverbintenis*, which is an engagement based on merit or work. Doctors can promise the results of their work to patients, for example: dentists who make dentures, orthopedists who make foot prothesa, cosmetic surgeons who fix high noses or other body parts. Even in Europe operations that are considered easy for which the results can be agreed upon, are included in *resultaatsverbintenis*, while complicated and difficult operations include *inspanningsverbintenis*.
- b) *Insaningsverbintenis* or agreement of effort / effort / effort is an engagement based on maximum effort / effort / effort to achieve a result. The patient gives full confidence to the doctor that the doctor will be empowered, trying his best to cure the patient (fiduciary relationship). So doctors do not promise or do not guarantee patients will definitely recover. If the doctor can promise or guarantee the patient's recovery, then juridically *inspanningsverbintenis* switches to *resultaatsverbintenis*.

Sometimes, patients can misunderstand that doctors "should" be able to cure patients. Actually, it is not the "cure" promised by the doctor, but the maximum effort of the doctor in curing the patient, based on the Medical Professional Standards. Medical personnel in conducting medical practice are not allowed to give promises of success for every medical action carried out because medical science is uncertainty. There is a term, medicine is a science of the uncertainty, an art of the probability. This uncertainty is influenced by other factors, such as endurance, type and stage of disease, drug quality, patient compliance with the advice of doctors and nurses, and others.

#### **Juridical Analysis of Legal Protection of Medical Personnel Victims of Persecution in Providing Health Services (Analysis of Supreme Court Decision No. 779.PID. B/2014/PN. JKT. PST)."**

In discussing legal protection, we can start from the highest source of law in the constitutional system of the Republic of Indonesia, namely the 1945 Constitution. In the fourth amendment to the 1945 Constitution in 2002, the legal protection is further explained in several articles, namely: (a) article 28D paragraph (1) which states that everyone has the right to recognition, guarantee, recognition and fair legal certainty and equal treatment before the law, and (b) article 28I paragraph (4) which states that protection, promotion, The enforcement and fulfillment of human rights is the responsibility of the state, especially the government.

The case of doctor Fransisca Mochtar, Sp. OG (hereinafter abbreviated as FM doctor) who was a victim of persecution by a defendant named Harry Harianto (hereinafter abbreviated as HH) has been a Supreme Court decision with number 779PID. B/2014/PN. JKT. PST is used as a case study of medical disputes in this final project. In this case, FM doctors conducted a medical examination on Dewiana Rusita (DWR) who had vaginal discharge. This DWR patient was accompanied by defendant HH. In court they both felt the FM doctor was unfriendly. The legal fact based on the results of the court states that the FM doctor examines the DWR patient then directs him to the Lab and after the results are completed is handed back to the FM doctor. On receiving the results, FM's doctor said it was not sterile. With this, defendant HH became emotional and there was an argument between the defendant and the FM doctor. When the doctor took the cellphone about to take a photo of defendant HH, defendant HH objected so there was a tug-of-war on the cellphone and that's when defendant HH held a cup of coffee, so spilled it on the body of the FM doctor. With this, FM doctor reported to the Police and conducted Visum et repertum No.1021/TU. FK/XI/2013, dated November 19, 2013.

The court heard that DWR suspects blatantly abused FM doctors. The defendant's actions have fulfilled the Public Prosecutor's charge, namely article 531 paragraph (1) of the Criminal Code and during the trial the Panel of Judges did not find a reason that could remove the crime or excuse so the defendant should be sentenced commensurate with his actions and also burdened with paying the costs of the case. Before the panel of judges handed down a verdict, mitigating matters and incriminating matters against the defendant were first considered. The aggravating things are: the actions of the accused disturb society, and cause suffering to others. Mitigating matters are that the defendant behaved politely in the trial, the defendant has never been convicted, the defendant promised not to repeat his actions, and the defendant has reconciled with the victim.

In the Court Decision, the Panel of Judges takes into account article 351 paragraph (1) of the Criminal Code (Criminal Code) and other relevant articles: (1) Declaring the defendant HH legally proven and convinced guilty of committing the crime of "molestation", (2) Sentencing the defendant HH therefore with imprisonment for: 6 (six) months; (3) Stipulate that the crime does not have to be served unless in the future there is another order in the judge's decision because the convict before the probation period for 1 (one) year committed an act that can be criminalized; (4) Establish evidence in the form of: 1 (one) strand of white doctor's clothes with brown coffee stains returned to witness dr. Fransisca Mochtar Sp OG; (5) Sentencing the defendant to pay the costs of the case in the amount of Rp.2,000,- (two thousand rupiah).

Article 351 of the Penal Code deals with persecution. In more detail, paragraph (1) reads "persecution shall be punished with imprisonment for a maximum of two years and eight months or a maximum fine of four thousand five hundred rupiah (Rp. 4500)," paragraph (2) reads "if the act results in serious injury, the guilty shall be punished with imprisonment for not more than five years," paragraph (3) reads "if it results in death, shall be punished with imprisonment for not more than seven years, And subsection (4) reads

"by maltreatment is equated with willful damage to health," and subsection (5) reads "Attempt to commit this crime is not punishable."

The incident of torture on November 18, 2013 and visum et repertum was carried out on November 19, 2013, but the District Court decision was only decided on September 3, 2014 by the Panel of Judges. The court process that is quite long, which is almost 10 months, certainly takes up the time and mind of doctors during the trial process. The defendant only pays the case in the amount of Rp. 2000 and does not need to serve a prison sentence (unless in the future there is another order in the judge's decision because the convict before the probation period for 1 (one) year committed a criminal act). Such a light sentence is felt to have not fulfilled justice for the doctor who has experienced persecution even though the defendant has reconciled with the victim (FM doctor).

According to the Supreme Court Regulation of the Republic of Indonesia No. 2 of 2012 concerning the Adjustment of the Limitation of Minor Crimes and the Amount of Fines in article 3 of the Criminal Code, each maximum amount of fine threatened in the Criminal Code except articles 303 paragraph 1 and paragraph 2, 303 bis paragraph 1 and paragraph 2, is doubled to 1000 (one thousand) times. So in this case, a maximum fine of Rp. 4500 can be doubled 1000 times to Rp. 4,500,000 (four million five hundred thousand rupiah). This court ruling was decided in 2013 and the Supreme Court Regulation (Perma) issued in 2012, should have been enforceable.

In performing his job duties, a doctor performs a noble duty by making efforts for the recovery of the patient from his illness. So it is appropriate for doctors to get legal protection if it is proven that all procedures that should be done as a doctor have been carried out by doctors. This case of doctor persecution that led to the law can be a lesson for the community as conveyed by the Director of Health Worker Development and Supervision of the Ministry of Health (Kemenkes) Zubaidah Elvia in the case of doctor persecution in Lampung. The Ministry of Health is ready to testify to the police for legal justice. Zubaidah Elvia said, "What cannot be tolerated is the occurrence of violence against health workers. If there is no due process, there is no learning for the community."

However, if a doctor is proven to have committed a violation, criminal punishment can be considered in enforcing the law against doctors who have been proven to have committed mistakes in their job duties so that doctors are more careful in carrying out their profession. The government is tasked with regulating the implementation of the duties of doctors in hospitals, so that doctors are more careful and careful in carrying out their practice.

## CONCLUSION

Based on the results of the discussion of the research issues that have been described, it can be concluded: That Law No. 17 of 2023 concerning Health has included a fairly comprehensive legal framework related to legal protection for doctors who experience abuse when providing health services in Indonesia, but there are several challenges in its implementation. That the general provisions regarding the crime of persecution are

provided for in chapter XX of Article 351 of the Criminal Code. But this persecution rule applies generally, meaning that it is not limited to the abuse of medical personnel. In some mass media news, there have been reports of support from the Ministry of Health and local government for doctors who are victims of persecution. In this case, where there was a final ruling from the Supreme Court, the doctor won and the persecutor was punished. However, the trial process was quite long and the defendant was only given a very light sentence. That mistreatment of medical personnel is a crime. The problem of the causes of crime is a complex one. Separovic suggests that there are two factors that cause crime, namely: 1) Personal factors, including biological (age, sex, mental state, etc.) and psychological (aggressiveness, carelessness, and alienation); 2) Situational factors, such as conflict situations, place and time factors. In general, the factors that cause the crime of mistreatment of doctors on duty are emotional factors and environmental factors. That in performing his noble duties, a doctor should get legal protection if it is proven that all procedures that should be performed as a doctor have been carried out by the doctor. Referring to these conclusions, the following points are recommended: In order for the government to always provide legal protection and defense for doctors who are victims of persecution and the courts need to provide tougher laws for perpetrators to provide a deterrent effect and others who want to persecute doctors to think repeatedly before acting. In order for the court in deciding the fine to follow the Supreme Court Regulation of the Republic of Indonesia No. 2 of 2012 concerning the Adjustment of the Limitation of Minor Crimes and the Amount of Fines in article 3 of the Criminal Code, each maximum amount of fine threatened in the Criminal Code except article 303 paragraph 1 and paragraph 2, 303 bis paragraph 1 and paragraph 2, can be doubled to 1000 (one thousand) times. The amount of fines doubled 1000 times is expected to have a deterrent effect on perpetrators of persecution.

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