

Restorative as an Approach to Medical Dispute Resolution Between Doctors and Patients

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Abstract

The legal relationship between doctors and patients is an important aspect of the health care system. This interaction not only includes the medical dimension, but also has implications for legal and ethical responsibilities. When a medical dispute occurs, for example due to patient dissatisfaction with the results of treatment, claims of negligence, or violations of patient rights, this problem often has a negative impact on all parties, including disrupting the doctor's reputation and public trust in health institutions. In this context, a dispute resolution approach is needed that does not only focus on punishment, but also on restoring relationships, trust, and a sense of justice. Law Number 17 of 2023 concerning Health, as part of the health law reform in Indonesia, brings a number of important updates that can support more effective resolution of medical disputes. The articles in this law, such as Article 457 which emphasizes the importance of patient rights-based health services and the professionalism of health workers, provide a legal basis for a dispute resolution approach that is more oriented towards restorative justice. This approach aims to create a constructive dialogue between doctors and patients, and ensure that the rights and obligations of each party are fulfilled fairly, which is the theory of *restorative justice*) is the basis. This study discusses How to apply the theory of restorative justice in resolving medical disputes between doctors and patients based on the Indonesian legal framework, especially Law Number 17 of 2023 concerning Health; What are the challenges and strategies that can be done to integrate the restorative justice approach in resolving medical disputes in order to improve justice and restore the relationship between doctors and patients. This study uses the Normative Juridical approach method. The results of the discussion in this study are the restorative justice approach, a medical dispute resolution system can provide a number of significant benefits, including: Restoring Relationships The mediation process that focuses on dialogue helps restore the relationship between doctors and patients, thereby creating better trust; Time and Cost Efficiency The mediation process is generally faster and cheaper than litigation, thereby reducing the financial burden on both parties.; Increasing trust in the health system a humanistic approach can increase public trust in health institutions and medical personnel; protection of patient and doctor rights through mediation, both patients and doctors can convey their aspirations and complaints in an equal and fair manner; Integrating a restorative justice approach in resolving medical disputes in Indonesia is a realistic and necessary step, especially within the framework of Law No. 17 of 2023 concerning health. Despite the challenges, a well-designed strategy including education, preparation of technical guidelines, and patient empowerment can ensure that this approach is effective. With restorative justice, not only can medical disputes be resolved more humanely, but also the relationship between doctors and patients can be restored, thereby improving the quality of the national health system. This study provides suggestions, namely: Intensive and comprehensive socialization is needed to face challenges such as lack of understanding, limited technical regulations, and dominant litigation culture, strategies such as education, preparation of technical guidelines, strengthening mediator capacity, and patient empowerment can support

the integration of restorative justice. If implemented optimally, this approach can not only resolve medical disputes efficiently and fairly, but also increase public trust in the national health system and maintain good relations between doctors and patients.

Keyword:

Restorative, Approach, Medical Dispute Resolution, Doctors and Patients

1. INTRODUCTION

The legal relationship between doctors and patients is an important aspect of the health care system. This interaction not only includes the medical dimension, but also has implications for legal and ethical responsibilities. When a medical dispute occurs, for example due to patient dissatisfaction with the results of treatment, claims of negligence, or violations of patient rights, this problem often has a negative impact on all parties, including disrupting the doctor's reputation and public trust in health institutions. In this context, a dispute resolution approach is needed that does not only focus on punishment, but also on restoring relationships, trust, and a sense of justice. Law Number 17 of 2023 on Health, as part of the health law reform in Indonesia, brings a number of important updates that can support more effective resolution of medical disputes. Articles in this law, such as Article 457 which emphasizes the importance of patient rights-based health services and the professionalism of health workers, provide a legal basis for a more restorative justice-oriented dispute resolution approach. This approach aims to create a constructive dialogue between doctors and patients, and ensure that the rights and obligations of each party are fulfilled fairly of restorative justice (*restorative justice*) is the basis of this approach, with a focus on reparation, shared responsibility, and reconciliation. In the context of medical disputes, this theory offers an alternative mechanism beyond traditional litigation which tends to be confrontational. By prioritizing direct dialogue between doctors and patients, the restorative approach provides space for both parties to understand each other's perspectives, explore specific needs, and seek solutions that include not only material compensation, but also the restoration of emotional relationships and trust. Restorative justice theory in medical disputes has several advantages. *First*, this approach is faster and more efficient than traditional litigation, which is often time-consuming and expensive. *Second*, this method allows doctors and patients to maintain professional relationships, which are important for the sustainability of health services. Third, this theory encourages proactive responsibility from doctors as professionals, as mandated by Article 443 of the 2023 Health Law, which regulates the obligations of medical personnel to maintain the quality of services according to professional standards. However, the implementation of this theory in Indonesia still faces several challenges. One of them is the limited understanding and readiness of doctors, patients, and health institutions in adopting constructive dialogue mechanisms. On the other hand, more specific regulations on the application of restorative justice in medical disputes are still limited. This is a challenge for strengthening the legal framework that better supports the implementation of this approach. Law Number 17 of 2023 also opens up opportunities for the restorative justice approach to develop further in resolving medical disputes. Article 473, for example, provides a legal basis for mediation as an initial step in resolving disputes. With the support of clear regulations and active participation from all parties involved, the restorative justice approach can be an effective solution to resolving medical disputes, strengthening the relationship between doctors and patients, and increasing public trust in the health care system. This study aims to explore how the theory of restorative justice can be applied in resolving medical disputes in Indonesia, especially within the latest legal framework regulated in the 2023 Health Law. With a critical analysis, this study is expected to contribute to the development of a more humane, efficient, and fair medical dispute resolution system.

2. RESEARCH METHODOLOGY

This study uses a normative legal method with a statutory and conceptual approach. Data were obtained from the analysis of Law Number 17 of 2023 concerning Health, legal literature, and restorative justice theory to examine the application, challenges, and strategies for resolving medical disputes.

3. RESULT AND DISCUSSION

Restorative Justice Theory in Medical Dispute Resolution Between Doctors and Patients Based on the Indonesian Legal Framework, Specifically Law Number 17 of 2023 concerning Health

Medical dispute resolution is often a complex issue because it involves legal, ethical, and trust aspects between doctors and patients. In the context of Indonesian law, medical disputes are usually resolved through litigation mechanisms in court, which often have a negative impact on the relationship between doctors and patients. This approach is considered less effective in repairing damaged relationships, so the restorative justice approach is starting to be seen as a more humane and inclusive alternative. Restorative justice theory emphasizes efforts to restore relationships between parties involved in a dispute. This approach focuses on dialogue, admitting mistakes, and providing solutions that satisfy both parties. In the context of medical disputes, restorative justice provides a space for doctors and patients to have direct dialogue, express feelings and hopes, and seek fair solutions without having to go through a long and tiring litigation process. Law Number 17 of 2023 concerning Health provides a legal framework that allows the restorative justice approach to be applied in resolving medical disputes. Several articles in this law reflect the spirit of restorative justice, especially those related to mediation, protection of patient rights, and the responsibilities of health workers. Law No. 17 of 2023 concerning Health comprehensively regulates various aspects of the provision of health services, including the resolution of medical disputes. Some provisions relevant to the implementation of restorative justice are:

1. Litigation alternatives such as mediation. This process allows doctors and patients to dialogue and seek joint solutions that prioritize the restoration of relationships.
2. Article 460: This article emphasizes the responsibility of health workers to provide services professionally and according to standards. This provision supports a restorative approach by ensuring that health workers act in good faith, so that disputes that occur can be resolved humanely.
3. Article 470: This article regulates the patient's right to obtain justice and compensation in the event of medical negligence. A restorative justice approach can be utilized to resolve these compensation claims through in-depth dialogue, without having to rely entirely on the courts.

Restorative justice approach in medical disputes has great potential to overcome some of the weaknesses of litigation mechanisms, such as lengthy processes, high costs, and detrimental psychological impacts. However, its implementation in Indonesia faces several challenges that require serious attention.

1. Lack of Understanding about Restorative Justice Most health workers, patients, and even law enforcers in Indonesia still do not understand the concept and benefits of restorative justice. This causes this approach to be rarely used, even though it has been regulated in the Health Law.
2. Cultural Barriers litigation that is still dominant in Indonesia often makes the parties prefer the court route, even though the results tend to be unsatisfactory. This culture needs to be changed with education about the benefits of restorative justice, especially in maintaining long-term relationships between doctors and patients.
3. Power Imbalance between Doctors and Patients In many cases, patients feel they are in a weak position compared to doctors or health institutions. This imbalance can hinder equal dialogue, so the implementation of restorative justice requires a competent facilitator or mediator to ensure the process is fair.

Restorative Justice

1. Restorative Justice Restorative justice can repair relationships between doctors and patients, which are often damaged by disputes. This process provides an opportunity for doctors to apologize and for patients to receive adequate explanations.
2. Time and cost efficiency the mediation process within the framework of restorative justice is generally faster and less expensive than litigation in court. This benefits both parties, especially patients who often have financial constraints.
3. Increasing public trust this approach can increase public trust in the health system because it shows the commitment of health workers to be ethically and humanely responsible.

Challenges and Strategies that can be done to Integrate a Restorative Justice Approach in Resolving Medical Disputes to Improve Justice and Restoration of the Relationship Between Doctors and Patients

Restorative justice approach offers a more humane alternative to resolving medical disputes than traditional litigation. However, its implementation in the legal and health systems in Indonesia faces various challenges that need to be overcome in order to be effective. The following are the main challenges in integrating this approach:

1. Lack of Understanding and Socialization of the Restorative Concept Restorative justice is still a relatively new concept in resolving medical disputes. Many health workers, patients, and even law enforcement officers do not understand its principles, goals, and benefits. Lack of education has caused this approach to be rarely used, even though it is regulated in Law Number 17 of 2023 concerning Health.
2. Limitations of Technical Regulations Although Law No. 17 of 2023 provides a legal basis for non-litigation dispute resolution, such as mediation, detailed technical regulations regarding the implementation of restorative justice are still minimal. The absence of clear operational guidelines often hampers its implementation.
3. Dominant Litigation Culture In Indonesia, medical disputes are often resolved through the courts. This litigation culture makes the parties involved tend to rely on formal legal channels, even though the process tends to be long, expensive, and worsens the relationship between doctors and patients.
4. Power Imbalance between Doctors and Patients one of the main obstacles in restorative justice-based mediation is the power imbalance between doctors or health institutions and patients. This imbalance can make patients feel insecure in conveying their complaints or demands.
5. Lack of mediator capacity mediators who understand the medical and legal context are essential in the restorative justice process. However, the number of mediators who have specific competence in the field of medical disputes is still limited.
6. Infrastructure and system support limitations health facilities in indonesia, especially in remote areas, often lack the infrastructure or mechanisms to support the implementation of restorative justice approaches. The absence of dedicated mediation space or standard procedures can be a barrier.

To overcome these challenges, a number of strategies can be implemented to integrate a restorative justice approach into medical dispute resolution. The following are strategic steps that can be taken:

1. Socialization and education to stakeholders the government, health professional organizations, and educational institutions need to conduct socialization and education campaigns on the concept of restorative justice. This can be done through: (a) Seminars and training for doctors, patients and law enforcement; (b) Publication of a guidebook or module on restorative justice (c) Raising awareness through mass and digital media.
2. Preparation of clear operational guidelines the ministry of health and related institutions must prepare technical guidelines for the implementation of restorative justice in resolving medical disputes. These guidelines may include: (a) Specific mediation procedures for medical disputes (b) Criteria for competent and trained mediators (c) Monitoring and evaluation mechanisms for mediation results.
3. Establishment of an alternative dispute resolution institution (APS) Specifically for Health The government can establish an APS institution that focuses on medical disputes. This institution has the following duties: (a) Providing trained mediators who understand the medical and legal context (b) Providing friendly and safe mediation facilities for both parties (c) Supervise the implementation of mediation to ensure it is transparent and fair.
4. Improving Mediator Competence Mediators in medical disputes must have a thorough understanding of the relevant medical and legal issues. Certification of mediators specifically for medical disputes needs to be applied for through: (a) Training and certification conducted by health or legal professional associations (b) Establishment of special study programs or courses related to mediation in medical disputes.
5. Strengthening the legal framework revising and strengthening regulations, such as the Minister of Health Regulation (Permenkes), can provide a stronger legal basis for the implementation of restorative justice. This also includes legal protection for doctors and patients involved in the mediation process.

6. Patient Empowerment to address power imbalances, patients must be empowered through: (a) Education about their rights in health services (b) Provision of a companion or advocate during the mediation process (c) Improving access to information on dispute resolution mechanisms.
7. Use of Information Technology In the digital era, information technology can be utilized to support restorative justice processes, such as: (a) Provision of an online platform for mediation (b) Electronic reporting of medical incidents (c) database to record and monitor dispute resolution outcomes.
8. Incentives for health institutions the government can provide incentives to hospitals or clinics that implement a restorative justice approach, for example through public recognition, awards, or subsidies.

By integrating a restorative justice approach, a medical dispute resolution system can provide a number of significant benefits, including:

1. Relationship Restoration The mediation process that focuses on dialogue helps restore the relationship between doctor and patient, thereby creating greater trust.
2. Time and Cost Efficiency The mediation process is generally quicker and cheaper than litigation , thereby reducing the financial burden on both parties.
3. Increasing Trust in the Health System A humanistic approach can increase public trust in health institutions and medical personnel.
4. Protection of Patient and Doctor Rights Through mediation, both patients and doctors can convey their aspirations and complaints in an equal and fair manner.

Integrating a restorative justice approach into resolving medical disputes in Indonesia is a realistic and necessary step, especially within the framework of Law No. 17 of 2023 on Health. Despite the challenges, a well-designed strategy including education, technical guidelines, and patient empowerment can ensure that this approach is effective. With restorative justice, not only can medical disputes be resolved in a more humane manner, but also the relationship between doctors and patients can be restored, thereby improving the quality of the national health system.

4. CONCLUSION

Restorative justice approach in resolving medical disputes between doctors and patients provides a more humane solution, focusing on restoring relationships and justice for both parties. In the context of Law Number 17 of 2023 concerning health, restorative justice can be a more effective alternative resolution than litigation, by emphasizing dialogue, transparency, and equality. Despite challenges such as lack of understanding, limited technical regulations, and a dominant litigation culture, strategies such as education, technical guidelines, mediator capacity building, and patient empowerment can support the integration of restorative justice. If implemented optimally, this approach can not only resolve medical disputes efficiently and fairly, but also increase public trust in the national health system and maintain good relationships between doctors and patients.

REFERENCES

- Anggraeni, Happy Yulia, et al. "Application of ADR and Potential of Arbitration in Medical Dispute Resolution in Indonesia." *ACADEMIC: Humanist Student Journal* 5.1 (2025): 500-514.
- Anggraeni, Happy Yulia, et al. "Application of ADR and Potential of Arbitration in Medical Dispute Resolution in Indonesia." *ACADEMIC: Humanist Student Journal* 5.1 (2025): 500-514.
- Anggraeni, Rooza Meilia. "Agrarian Conflict of Bener Purworejo Dam Construction: Normative Legal Perspective." *El- Dusturie* 1.1 (2022).
- Hames , Joanne Banker , and Yvonne Ekern . *Introduction to Law from an American Perspective* . Nuansa Cendekia, 2023.
- Indonesia, President of the Republic. "Law Number 17 of 2023 Concerning Health." *Law Number 17* (2023).
- Kesuma, Satria Indra. "Socialization of the Review of Law No. 17 of 2023 Concerning Health." *Bureaucracy: Journal of Law and Constitutional Studies* 1.4 (2023): 143-156.
- Muntaha, H. *Criminal Law on Malpractice: Accountability and Penalties* .
- Putri, Sekar Balqis Safitra Rizki Wahyudia . "Analysis of Gustav Radbruch's Legal Purpose Theory in the Position of the Medical Dispute Resolution Council in Law Number 17 of 2023 Concerning Health." *SANGAJI: Journal of Sharia and Legal Thought* 8.2 (2024): 315-326.

- Setiyanta , Pentadi Teguh. *Reconstruction of Medical Dispute Resolution Regulation Based on Restorative Justice Values* . Diss . Sultan Agung Islamic University, 2023.
- Setyowati, Dewi. "Understanding the Concept of Restorative Justice as an Effort of the Criminal Justice System to Achieve Justice." *Pandecta research law journal* 15.1 (2020): 121-141.
- Sinar Grafika, 2022.
- Sugihardana , Danang, and Wardah Yuspin. "Legal Review of Hospital Responsibility for Healthcare Incidents Associated Infections ." *Media of Law and Sharia* 5.4 (2024).
- Zein, HM Harry Mulya, and Sisca Septiani. *Digitalization of Local Government: A Catalyst for Integration and Optimization of Good Governance* . Sada Kurnia Library, 2024.