

# The Position of Mediation in Resolving Medical Disputes in Hospital Health Services

Raden Roro Jenny Satyoputri<sup>1</sup>, Redyanto Sidi<sup>2</sup>

## Article Info

Page : 181-186

ISSN : 3026-5290

Vol 2 No 1 2024

## Corresponding Author

Raden Roro Jenny Satyoputri, Panca Budi Development University, Medan

Email: [jenny.satyo111@gmail.com](mailto:jenny.satyo111@gmail.com)

## Abstract

The legal relationship between medical personnel and patients in carrying out their services as health workers often results in incidents where health workers ignore a patient's rights until a problem or dispute arises. Mediation is a means of alternative dispute resolution outside of court. Medical malpractice is an action carried out by health workers regarding evil or bad practices in the case of failure to fulfill a standard that was initially determined by the profession. Regulations regarding the resolution of medical disputes through mediation are regulated in Article 29 of Law Number 36 of 2009, there are vague norms in it where the article regulates mediation but does not clearly explain what mediation is meant to be, more specifically it does not explain the penal mediation efforts involved. results in implicit in the settings, so it needs to be researched. The research method used in this research is a normative juridical research method where this is done by researching library materials or what is often said using secondary data in the form of positive law. The results of this discussion show that in the event of a medical dispute, mediation can be taken as an alternative solution to the problem. In fact, mediation is the first legal effort that must be carried out.

**Keyword:** Health Services, Medical Disputes, Mediation

## 1. INTRODUCTION

Health issues are the main issue for all countries, it is not surprising that every country has advanced medical facilities and is competing to develop various medical discoveries. Protecting and guaranteeing the health of every citizen is a very important thing that must be paid attention to by the government, this is implicitly contained in the preamble to the 1945 Constitution of the Republic of Indonesia that the aim of the Indonesian government is to protect the entire Indonesian nation and all of Indonesia's bloodshed, and to advance general welfare. In ensuring the welfare of its citizens in the health sector, the Indonesian government facilitates health insurance by creating a health guarantee card program called the Social Security Administering Body (BPJS) card. This was done in response to the constitutional mandate of Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia which clearly emphasizes that every person has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and has the right to obtain health services, then health as a basic human need is a right for every citizen and in Law of the Republic of Indonesia Number 36 of 2009 concerning Health article 4 that every person has the right to health, article 5 paragraph (1) everyone has the same rights In gaining access to resources in the health sector, article 6 also explains that everyone has the right to obtain safe, quality and affordable health services. In this case, the government has a role as a service provider to the community in terms of health and hospitals are a means of providing health. The growing awareness in society of the importance of their rights is a positive thing in increasing society's understanding of the importance of legal rules, from a negative thing in the increasing number of disputes caused by health workers or hospitals being served subpoenas, where patients complain or even to the point of suing health workers which results in the impact of the health services provided.

Usually medical disputes result from things or results provided by health workers that are inadequate or even unsatisfactory, such as a lack of information given to doctors or even negligence caused by health workers. The problem is that not all health services will always have good or satisfactory results for all patients or other parties, and in the end patients can easily say this is an act of malpractice. According to Dr. M. Nasser, Sp.KK., D.Law., the legal relationship between patients, hospitals and doctors in health services, namely the relationship because of a therapeutic contract and the relationship because of regulations. The

legal relationship that occurs in a therapeutic contract begins with an agreement (unwritten) so that both parties are assumed to be accommodated when an agreement is reached. Agreements that can be reached include approval for medical action or rejection of a medical action plan. Relationships due to legislation usually arise due to obligations imposed on doctors because of their profession without the need for patient consent. Doctors as health workers who work in the health care sector have working relationship with the hospital as a place to carry out his profession. Doctors who work in a hospital have an administrative relationship that can affect the rights and obligations between the two parties and responsibilities to third parties. The relationship between the patient and the hospital is that the patient is the recipient of health services at the hospital and the hospital is the provider of health services. Hospitals are obliged to provide health services in accordance with health care standards. Doctors, patients and hospitals in ancient times had a relationship based solely on trust, making the assumption that doctors could cure the disease suffered by the patient and would do the best for the patient.

This pattern of thinking changes with the times, science and technology can influence the human mind. Conflicts in the relationship between doctors, hospitals and patients occur in a therapeutic transaction. Conflict usually occurs when the parties do not carry out their roles as expected by the other party. The patient as the party who needs help is in a weak position so that he often does not have a profitable bargaining position for himself. On the other hand, health service providers such as hospitals are often unable to establish good communication with patients and their families, as a result therapeutic transactions are not carried out well. From a legal aspect, the relationship between a doctor and a patient is a relationship between a legal subject and a legal subject regulated by civil law rules which is basically carried out based on a mutual agreement, so in this relationship there are rights and obligations that are reciprocal in nature. The doctor's rights are the patient's obligations and the patient's rights are the doctor's obligations. A doctor, in carrying out his obligations towards patients, is always not free from errors and mistakes which can have negative consequences for the patient. In this case, various things can arise, including, how a doctor is considered to have committed malpractice, which provisions are used as a reference, whether Law Number 44 of 2009 concerning Hospitals or Law Number 29 of 2004 concerning Medical Practice or Law No. Law Number 8 of 1999 concerning Consumer Protection or Civil Code. Based on Article 66 paragraph (1) of Law Number 29 of 2004 concerning Medical Practice, what is implicitly meant by medical dispute is a dispute that occurs because the patient's interests are harmed by the actions of a doctor or dentist who carries out medical practice, thus a medical dispute is a dispute that occurs between patients and doctors and health facilities. According to Dr. M. Nasser SpKK. D. Law., medical disputes are disputes that occur between patients or the patient's family and health workers or between patients and hospitals/health facilities. The problem in dispute is the result or end result of health services without paying attention to or ignoring the process. According to Safitri Hariyani, the characteristics of medical disputes that occur between doctors and patients are:

1. Disputes occur in the relationship between doctors and patients;
2. The object of the dispute is the healing efforts carried out by the doctor towards the patient.
3. The party who feels disadvantaged in a medical dispute is the patient, whether the loss is in the form of injury, disability or death;
4. The losses suffered by patients are caused by suspected medical abnormalities or errors from doctors, which is often called medical malpractice.

Resolving medical disputes can be done in 2 (two) ways, namely through court mechanisms (litigation) and outside court (non-litigation). Dispute resolution carried out using litigation requires a lot of costs, takes a long time and often results in one party being the winner and the other party being the loser which is considered too busy, slow and a waste of time. Based on this, an idea emerged to resolve the dispute in a win-win solution, one way of which was to use mediation. Based on Article 6 paragraph (1) of Law Number 30 of 1990 concerning Alternative Dispute Resolution, civil disputes or differences of opinion can be resolved by the parties through alternative dispute resolution based on good faith to the exclusion of litigation resolution. Settlement of cases by means of peace is a better and wiser method of resolution than being resolved by a court decision, both from the perspective of community law and from the perspective of time, costs and energy used. Article 29 of Law Number 36 of 2009 concerning Health, in the event that medical personnel are suspected of committing negligence in carrying out their profession, the negligence must be resolved first through mediation. For this reason, the author is interested in researching the position of mediation in resolving medical disputes regarding hospital health services. The specific discussion that the

author raises in this research is How are Medical Dispute Resolution Arrangements? How are Mediation Efforts to Resolve Medical Disputes?

## 2. RESEARCH METHODOLOGY

Normative juridical research, namely research that reveals a problem, situation or event by providing a comprehensive, broad and in-depth assessment from the perspective of legal science, namely by examining legal principles, legal rules and legal systematics. In collecting data, document study was used, namely by studying secondary materials, in the form of legislation, other regulations, court decisions regarding health cases as well as books, papers and journals related to what was studied. The data obtained was then analyzed qualitatively, namely a data analysis method that is not based on numbers or statistics, so that the data obtained in library research is then presented in logical sentences to obtain a description of the Position of Mediation in Resolving Medical Disputes Against Services. Hospital Health.

## 3. RESULT AND DISCUSSION

### *The Position of Mediation Institutions in Resolving Medical Disputes*

Communicating a dispute, where the parties to the dispute definitely have different views on the occurrence of the dispute, and we can understand that this mediation activity can create a peaceful agreement between the parties. Meanwhile, Takdir Rahmadi explained that mediation is a process in resolving disputes between or more parties through a negotiation path that produces consensus with the help of neutral parties who do not have the authority to decide, which is known as mediator. Rahmadi Usman also explained that mediation is a dispute resolution by mediating cases and the person who mediates the case is known as a mediator. Based on the expert opinion above, the author interprets that mediation is a process of negotiation in which a mediator has a mediator certificate that is recognized and issued by the Supreme Court or an institution that has obtained accreditation from the Supreme Court which states that the person has passed mediation training and is certified. The existence of a mediation institution is a form of Medical APS, which is strictly regulated in Article 29 of the Health Law which states that in relation to health workers who are suspected of committing negligence in carrying out a profession, the occurrence of this negligence must be resolved first. through mediation institutions. Which is related to the explanation of mediation, explaining the reasons and objectives of mediation, namely that mediation can be carried out if a dispute arises between the patient and the health worker. This mediation is carried out with the aim of resolving a dispute outside the realm of justice which is of course carried out by a mediator institution that has been certified and recognized by the Supreme Court. In the Hospital Law there is no concrete mention regarding institutions that resolve medical disputes, but in Article 60 it regulates the Provincial Hospital Supervisor (Provincial BPRS), where the role of this institution is to be able to make efforts to resolve disputes through other channels. mediation. So medical disputes that occur in hospitals must be pursued through mediation, this is based on the fact that some of the disputes relate to the hospital as an institution providing health services and the doctor who experiences the lawsuit.

Article 1 number 10 of the Consumer Protection Law also outlines that the APS is an institution that carries out settlement of procedures agreed upon by the parties, namely doing so outside of court through negotiation, mediation, consultation, conciliation and expert assessment. Article 5 paragraphs (1) and (2) of the AAPS Law provides an explanation that an arbitration institution is an institution which is designated as an institution that carries out a resolution of the occurrence of a case or the presence of a dispute and this mediator institution has a responsibility in a corridor that more broadly, which relates to all cases in a dispute, even relating to the occurrence of a difference of opinion in a civil law case, which is resolved based on the intention and intention of the parties regarding the efforts to resolve it. Through Perma Number 1 of 2016 concerning Procedural Mediation which explains that the court not only has the task and authority in terms of examining, adjudicating and resolving cases that it receives, but also has the authority to make peace between the disputing parties. So the existence of this Perma is related to the short time in mediation, which was originally 40 days to 30 days, starting from the stipulation of the order regarding mediation. Furthermore, there is an obligation for the parties (inperson) to be able to attend a mediation meeting directly without or accompanied by a legal representative, but if there are other reasons such as poor health and it is not possible to attend the mediation and accompanied by a certificate from a doctor, under guardianship, residence and stay abroad or carrying out a state duty and there is a professional responsibility or work that cannot be carried out. This Perma emphasizes that a mediator has an independent role so that he can play a

more active role in resolving cases and disputes outside the court, after which the results of the mediation are agreed and can be submitted for a decision to the court through a lawsuit mechanism. The issuance of this Perma is actually an institutionalization of the mediation process in a judicial system, where before a case is tried in a judicial body it must first go through a mediation process as an alternative dispute resolution effort for the parties.

#### *Mediation Efforts in Resolving Medical Disputes*

Medical malpractice disputes are a phenomenon that has been increasing recently. Because if a dispute is transferred to a litigation process it will take quite a lot of time and money, then an alternative dispute resolution process becomes an attractive solution. In fact, civil court procedural law regulates that before being tried in court, disputes must first be resolved through non-litigation efforts. This is in line with Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and Supreme Court Regulation Number 1 of 2008. Alternative Dispute Resolution can generally only be carried out in civil cases, but cannot be applied in criminal cases. However, judging from the facts in the field, criminal cases are often also resolved using an out-of-court process, namely with various discretions by the authorities. Law enforcement or also through deliberation or peace mechanisms or forgiveness institutions that exist in society. Mediation is one of the methods used to resolve a dispute, to make it more effective and cost-effective in resolving cases. Penal mediation is a means intended for resolving criminal disputes. Penal mediation is not yet well known, because basically all criminal acts cannot be reconciled, except for criminal acts in the form of complaint offenses. Penal mediation is a manifestation of restorative justice, the outline of which is to create justice for victims and perpetrators of criminal acts so that their positions can be restored. Penal mediation actually does not yet have a legal umbrella in the Indonesian criminal justice system. There are only some implied regulations, which open up the possibility of mediation.

The author opens up about the specifics of penal mediation, in Article 82 of the Criminal Code, this article does not clearly describe the possibility of a peaceful resolution between the criminal perpetrator and the victim. However, in practice, judges have often applied it. Penal mediation in handling medical malpractice disputes is only intended to mitigate charges where the perpetrator will still be punished as before, but through the application of penal mediation it is possible that the sentence will be reduced. Penal mediation in medical malpractice criminal cases currently only serves to mitigate claims, because there is no law that regulates the implementation of penal mediation and the legal force of the deed of agreement resulting from the penal mediation. So, the perpetrator is still punished but the sentence is reduced. In the case of malpractice complaints, the investigation process of which is based on the victim's complaint, namely the patient or his family, is found to be resolved through penal mediation, either before the complaint is made so that the victim (patient) or his family does not file a complaint, or if the complaint has already been made by the victim. Here the role of the police is not as a mediator, but only as a witness who witnesses the resolution of the criminal case through a peace agreement. Apart from the offense of complaints in malpractice cases, usually the doctor and patient resolve the case themselves through mediation.

Meanwhile, at the prosecution stage, researchers found that penal mediation was carried out before prosecution. In this mediation, the victim asks for compensation from the perpetrator, namely the doctor, however, even though there has been an agreement between the victim and the perpetrator to compensate for the loss, the agreement does not eliminate the prosecution, so that the judicial process continues as it should, and the agreement on compensation is only a consideration. Prosecutor in carrying out a prosecution, the decision remains in the hands of the judge. For example, a case where the victim's family asks for compensation from the doctor as the perpetrator with a deed of agreement that compensation has been paid to the victim's family. However, even though an agreement has been made to compensate the victim's family, the process of prosecuting the perpetrators of criminal acts is still being carried out, on the grounds that the Prosecutor's Office works based on its normative rules, as long as there are no rules regulating the position of penal mediation in prosecution, it means that the case is still being processed, but because payment has been made. compensation, this reason is only one of the reasons for consideration by the Prosecutor to reduce the maximum demands. Likewise, regarding the formulation of acts of malpractice and medical negligence through the Criminal Code, the formulation of negligence is not very clear about the elements of negligence for medical crimes.

#### 4. CONCLUSION

Efforts to resolve disputes to uphold justice in the health sector can be seen from dispute resolution as regulated in Article 29 of Law Number 36 of 2009 concerning Health, namely "before a dispute is transferred to court (litigation), it is best for the dispute to first take a non-litigation route (outside of court). Namely mediation". So, mediation of medical disputes in this case, according to the author, is one of the stages in the process of resolving medical disputes. Mediation is the main effort in resolving medical dispute cases. With the mediation process, it is hoped that the doctor-patient relationship will be maintained and a peace agreement can be reached that is a win-win solution.

#### REFERENCE

- Ahmad Muchsin, Legal Protection for Patients as Consumers of Health Services in Therapeutic Transactions, Journal, <https://media.neliti.com/media/publications/37042-ID>.
- Ahmadi Usman, Dispute Resolution Options Outside the Court, PT. Citra Aditya Bakti, Bandung, 2013.
- Arif Dian Santoso, Settlement of Medical Disputes Through Mediation by the Indonesian Medical Discipline Honorary Council to Guarantee Justice in Doctor and Patient Relations, Postgraduate Law Journal, Faculty of Law, Sebelas Maret University, Vol. 07, No. 01, 2019.
- Barda Nawawi Arief, Penal Mediation for Settlement of Cases Outside of Court, Semarang: Pustaka Merdeka, 2008.
- Diah Ratna Sari Hariyanto, 2018, Construction of Penal Mediation in Resolving Minor Crimes in Indonesia, Dissertation at Udayana University, Denpasar.
- Evalina Alissa, Sasmiar, Existence of Mediation Institutions as a Means of Resolving Medical Disputes, Volume 5(1), April 2021.
- Health, Psychotropics, Narcotics. Pustaka Achievement, Jakarta 2011, Print 1.
- Hj. Ukilah Supriyanti, Legal Relationship Between Patients and Medical Personnel (Doctors) in Health Services, [www.jurnal.unigal.ac.id](http://www.jurnal.unigal.ac.id).
- Hj. Ukilah Supriyanti, Legal Relationship Between Patients and Medical Personnel (Doctors) in Health Services, [www.jurnal.unigal.ac.id](http://www.jurnal.unigal.ac.id).
- I Wayan Wiryawan and I Ketut Artadi, 2017. Dispute Resolution Outside of Court: Non-litigation Skills of Legal Officials, Udayana Press, Denpasar.
- Irfan Iqbal Muthahhari, Collection of Laws concerning Medical Practices, Hospitals,
- Keyzha Natakharisma, I Nengah Suantra, Mediation in Resolving Criminal Cases in Indonesia, Kertha Wicara Journal, Faculty of Law, Udayana University, Vol. 01, No. 05, 2013.
- Law of the Republic of Indonesia Number 36 of 2009 concerning Health .
- Law of the Republic of Indonesia Number 36 of 2014 concerning Health Workers.
- Law of the Republic of Indonesia Number 44 of 2009 concerning Homes Sick
- Minister of Health Regulation No.2052/Menkes/Per/X/2011 concerning Practice Permits and Implementation of Medical Practice Article 24
- Ni Made Mira Junita, I Dewa Gede Dana Sugama, Mediation Efforts in Resolving Medical Malpractice Disputes.
- Regulation of the Minister of Health of the Republic of Indonesia Number 83 of 2019 concerning Registration of Health Personnel
- Ridwan Syahrani, 2000, Basic Material Book for Civil Procedure Law, Bandung: PT. Aditya Baktim's image.
- Risma Situmorang, Settlement of medical disputes between patients and hospitals, Omnium Salute Aegri Journal Vol. 1, No. August 1, 2021.
- Roni Sulistyanto Luhukay, Hartanto, Urgency of Implementing Local Lockdown to Prevent the Spread of Covid 19 Reviewed from the Perspective of the Unitary State, Adil Indonesia Journal, Volume 2 Number 2 July 2020, Ngudi Waluyo University.
- S.Tri Herlianto, Penal Mediation as an Alternative for Resolving Crime Cases in Medical Practice", Faculty of Law, Diponegoro University, Vol. 43, no. 02, 2014.
- Safitri Hariyani, 2005, Medical Disputes (Alternative Resolution of Disputes Between Doctors and Patients), Jakarta: Didit Media.
- Satria, beni. Redyanto Sidi, Hospital Criminal Liability for negligence committed by medical personnel, Dewa Publishing, Nganjuk. 2022

- Satria, beni. Redyanto Sidi, Medical Criminal Law and Malpractice (Aspects of Criminal Liability for Doctors in Health Services, CV. Cattleya Darmaya Fortuna, Medan. 2022.
- Sidi, Redyanto, Human Rights in the Perspective of Health Law in Indonesia, Perdana Publishing, Medan. 2021.
- Sopiyudin Dahlan, Negligence in Medicine, Jakarta: Salemba Medika, 2008.
- Sri Siswati, 2013, Ethics and Health Law in the Perspective of Health Law, Rajawali Pers, Jakarta.
- Takdir Rahmadi, Dispute Resolution Mediation Using a Consensus Approach, Rajawali Pers, Jakarta, 2015.
- Trini Handayani, Settlement of Medical Disputes Through Mediation Linked to Supreme Court Regulation Number I of 2008 Concerning Mediation Procedures in Court, Mimbar Justicia Law Journal, Faculty of Law, Suryakencana University, Vol. 06, No. 02, 2014.
- Uly Purnama Nasution, Effectiveness of Mediation in Resolving Medical Disputes (Field Study of PKU Muhammadiyah Gamping Sleman Hospital), Widya Pranata Hukum Journal, Volume 2, Number 2, September 2020.