
Mediation as A Choice of Medical Dispute Settlements in Positive Law of Indonesia

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Abstract

The aims of this research to see how the pattern of mediation is seen as effective in resolving medical disputes in the review of Law No. 30 of 1999 concerning Arbitration and alternative resolutions of off-court disputes and Perma No. 1 of 2016 concerning Mediation in the court. The research methodology used is the Normative legal research methodology with a document study approach/literature study, by examining references related to the writing object. Based on the results of the study in the case of cases of medical disputes or disputes between patients and doctors/dentists and/or hospitals including those who feel disadvantaged by the actions of doctors/dentists in accordance with Article 66 of Law No. 29 of 2004 concerning Medical Practice, better resolved by mediation In mediation, the parties directly discuss what is the process of resolving disputes that are discussed and voluntary and provide information on what might offer a chronological and expected approach in overcoming demands, preferably mediation used as the main form in resolving medical disputes, because mediation is faster, cheaper, easier, and its nature does not cause long hostilities because no one is defeated.

Keywords: Mediation; Settlement; Dispute; Medical

I. INTRODUCTION

Lately there have been many problems that occur between patients with doctors/dentists and also patients with hospitals. But actually the problem is also inseparable from the problems that can occur to other health workers, such as midwives, nurses, and others as far as relating to patients. Basically, humans in the environment or day-to-day relationships have never escaped disputes, but how much. The dispute that occurred resulted in the emergence of a conflict that resulted in both parties to the dispute.

Usually if a mild dispute can be resolved by peaceful means of both parties without an ongoing process. if the dispute starts to be large and difficult to resolve by each party, then a process is needed to achieve peace, usually the two disputing parties will choose the desired settlement path, for example through alternative dispute resolution involving third parties in dispute resolution. the third party is called the Mediator.

Some scholars argue that there are two things that can occur in everyday life, the first is conflict (conflict), and the second is. dispute, but these two terms are almost the same and what distinguishes them is the conflict of understanding. wider and disputes that occur will be long and rarely arise, if the dispute becomes prominent, it is said to be a dispute. Conflicts, usually, certain parties do not yet know or are aware of a dispute, and are only realized by the conflicting parties. Disputes begin to emerge where one of the parties or parties involved has taken actions that make the parties not involved know or are aware of a problem .

In medical disputes where the action of one or the parties, in this case usually the person who takes the action is the patient making a claim to the hospital, making a complaint to the police, or a lawsuit to the court, this is where a problem occurs between the doctor/dentist and/or hospital with the patient, which is said to be a dispute between the patient and/or hospital (medical dispute).

The problem that arises most often from all cases of patient demands to doctors/dentists or hospitals

is generally a problem of miscommunication that occurs between patients and doctors/dentists and/or hospitals, so the topat term is "Medical Disputes", so accusations malpractice is not right for doctors/dentists, considering that until now there are still many doctors/dentists who practice on the basis of humanity.

The public sees (Ginting, 2017) that medical disputes that occur are often equated with something bad so it seems that this action is intentional, so that the community suspects malpractice from the action, from the nature and cases that are often filed by the patient is dissatisfaction services provided by doctors/dentists and/or hospital which sometimes raises suspicion that the act of the doctor/dentist and/or the hospital is solely doing an intentional act, therefore it is not yet a decision from either the professional court which in this case can be a violation of Ethics and that will decide is the professional organization of doctors/dentists through MKEK/MKEKG (Honorary Ethics Committee for Medicine/Dentistry), while the judiciary for medical disciplines that have existed since the enactment of Law No. 29 of 2004 concerning the Practice of Medicine, namely an autonomous body formed by order of the law, namely MKDKI (Indonesian Medical Disciplinary Board) which will decide on violations of medical discipline in which the institution is independent in its decision.

Based on the explanation above, this research attempts to examine the Mediation Path as an effective choice in resolving medical disputes in terms of positive Indonesian law.

II. METHOD

This research uses normative legal research methods (Zunnuraeni & Zuhairi, 2018). There are several methods of approach used in this research, namely the Statute Approach approach and the Conceptual approach. The Statute Approach is carried out by examining various types legislation related to environmental protection and management. The Conceptual Approach is used by moving on the views and doctrines that develop in legal science, especially in the fields of constitutional law and environmental law.

III. RESULT AND DISCUSSION

Mediation as an Option in Medical Dispute Resolution in terms of Indonesian positive law. In resolving medical dispute cases there must be a decision and consideration of medical logic and legal logic to determine whether the medical dispute is in the category of medical malpractice or not.

In the case of a dispute between the patient and the doctor/dentist and/or hospital including those who feel disadvantaged by the actions of the doctor/dentist in accordance with Article 66 of Law No. 29 of 2004 concerning Medical Practice, it is better to be resolved by mediation because it benefits both parties. If it must be completed by an independent body for the medical discipline, it takes a long time and also the decision is not necessarily able to give satisfaction to both parties because of the decision by the breaker, which was carried out by the members in MKDKI.

Wila Chandrawila Supriadi (Haroen, 1997; Isfandyarie, 2005) the relationship between doctors or dentists and patients seen from the legal aspect, is the relationship between legal subjects and legal subjects. The relationship between legal subjects and legal subjects is governed by the rules of civil law. The rules of civil law contain guidelines/measures of how the parties to the relationship carry out their rights and obligations. Speaking of the law, there are reciprocal rights and obligations, where the right of the doctor/dentist becomes the patient's obligation and the patient's right is the duty of the doctor/dentist.

Judging from the legal relationship, between doctors/dentists and patients there are what are known to mutually agree to bind themselves in carrying out treatment for patients so that what is known as bonding (*verbintenis*) is formed. The doctrine of law knows two types of engagement, namely engagement testing (*inspanning verbintenf*) and engagement results (*resultaat verbintenis*). In the commitment agreement, the achievement that must be given by the doctor/dentist is the maximum effort possible, while in the outcome agreement, the achievements that must be given by the doctor/dentist are in the form of certain results.

Actions that can cause disputes if they do not carry out their obligations or do not give their achievements as agreed upon are called defaults.

From the things that cause patients or their families to be dissatisfied and said defaults include:

1. Do not do what according to the mandatory agreement.
2. Do what according to the agreement must be done but it is too late to fulfill it or not on time.
3. Do what according to the agreement must be done but not perfect.
4. Do what according to the agreement should not be done.

Thus, the above accountability can be individual or corporate in nature and can also be transferred to other parties based on principle of vicarius liability.

Another thing that can cause a lot of medical dispute occurrences is the policy factor of hospital management. Policies from hospital management can trigger medical disputes, including:

1. Lack of conducive place and time to enable dialogue or two-way communication between doctors/dentists/health workers with patients. This non-conducive spatial and time system is very vulnerable to trigger miscommunication. Doctors/dentists/other health workers and patients are not free and do not have privacy in expressing all the problems experienced by symptoms, causes, treatment plans, risk factors, etc., because they are not accommodated in space and time that is not sufficient for sufficient information (inadequate information) which is the first legal basis for health services to be neglected or not optimal so as to trigger miscommunication. Good communication will reduce the dispute if the communication has been built from the beginning.
2. For every information that has been given to patients, hospital management must provide an informed consent form as proof that the patient has been given information and rejection sheets as evidence that the patient has refused or cannot receive the information that has been given to him. All of that is needed as proof that the approval or rejection of the information has been given so that no objections or actions are expected without written evidence.
3. The absence of risk management that always monitors and processes risks that will arise or that have emerged. Risk is not well anticipated from the start, so it becomes wider and wider so that medical dispute cases cannot be avoided.
4. Not qualified health responsibility by management. Management must classify and classify the types of responsibilities in the medical world, so that if a medical dispute occurs management will easily find out which party should be responsible.

In the case of medical disputes thnnnne author considers that the solution is better through the APS process (Alternative Dispute Resolution), because it is considered to be more beneficial for both parties, and the authors put forward through mediation because this method is known and recognized in Indonesian courts, so in the justice system. dispute through mediation.

1The advantages of mediation in modern medical dispute resolution have the following characteristics (Yunanto, 2010):

1. Voluntary

The decision to mediate is left to the agreement of the parties, so that a decision can be reached which is truly the will of the parties.

2. Informal flexible;

Unlike litigation (court), the mediation process is very flexible. It is even possible for the parties assisted by mediators to design their own mediation procedures.

3. Interest based

In mediation no one is right or wrong, but more to safeguard the interests of each party.

4. Future looking (looking forward)

Because it safeguards the interests of each party, mediation emphasizes more on maintaining the relations of the parties to the dispute going forward, not oriented to the past.

5. Parties oriented

With an informal procedure, stakeholders can actively control the mediation process and take solutions without relying too heavily on lawyers/lawyers/advocates

6. Parties control

Dispute resolution through mediation is the decision of each party. The mediator cannot force to reach an agreement; Lawyers/lawyers cannot delay time or take advantage of the client's ignorance in matters such as in court (litigation).

Litigation is a process in which a court collides a decision that binds the disputing parties in a legal process that is seen at what level of law and obligation. Losses that can occur from the litigation process, from the angle of the doctor/dentist and/or hospital, there will be an impact on the reputation of the hospital, doctor/dentist and the cost of the medical/dentist profession premium increases. Not only is reputation damaged, but also personal feelings that often cause psychological burdens unlike those experienced by the plaintiff.

From the point of view of the community it causes a decrease in the quality of health services from the results of litigation decisions, where the doctor/dentist will not take a risk in carrying out his profession, thus causing high health costs. Litigation sometimes causes the costs incurred more than claims received by the plaintiff, and also the plaintiff must also find a lawyer to represent him, as well as the defendant. Litigation as a means of resolving medical disputes will place the continuity of bad relationships between doctors/dentists and/or hospitals with patients and/or their families. All of these reasons, for medical dispute resolution the best is through mediation.

If viewed from the contents of the Indonesian Supreme Court Regulation No. 1 In 2016, mediation is not only done after the case enters the court, but an agreement can also be made outside the court. Article 23 paragraph (1) of the Court Regulation, Republic of Indonesia No. 1 of 2016, the parties with the help of certified mediators who have successfully resolved disputes outside the treaty with a peace agreement can submit the peace agreement to the court that has the authority to obtain a peace deed by filing a lawsuit.

With the development of dispute resolution systems and mechanisms, it is formally regulated, in the form of a juridical mediation outside the court which is basically Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. In the law, it discusses the Alternative Dispute Resolution mentioned in 2 articles, namely Article 1 point 10 and Article

Based on the provisions of the Act, (Syahrani, 2006) mediation is an alternative dispute resolution. Means including medical disputes can be resolved by mediation. Before Law No. 30 of 1999 the mediation outside the court has no provisions. Exit RI Supreme Court Regulation No. 1 of 2016 as a substitute for Perma No. 1 of 2008 further encourages dispute resolution through outside court mediation which makes the agreement in accordance with Article 23 of the Supreme Court Regulation No. 1 of 2016.

Of all the desires to mediate, it is inseparable from the good will of the parties to resolve their problems peacefully with the help of a third party, the mediator, if there is no good faith among the parties, then the mediation process will not be carried out.

The mediation procedure in the court is governed by the Supreme Court Regulation No.: 1 of 2016. Article 4 of the Supreme Court Regulation states that all civil disputes submitted to the First Level Court must first be resolved through peace with the help of mediators (Hatta, 2013). It does not rule out the possibility of medical dispute cases and according to the contents of Law No. 36 of 2009 concerning Health. Except for cases resolved through the Procedure of the Commercial Court, Industrial Relations Court, Objection to the Decision of the Consumer Dispute Settlement Agency, and Objection to the Decision of the Commission for the Supervision of Business Competition

Compared to alternative methods of resolving other disputes that are often carried out by parties between doctors/dentists and/or hospitals with patients and/or their families, mediation offers an integrative offer which does not require a large amount of money and a long time and does not emphasize who wins and loses, who is right or wrong, but with the result of a win-win solution.

The author suggests mediation is used as the main form in completing medical dispute, because mediation is faster, cheaper, "easier" and its nature does not cause long hostilities because no one is defeated. In contrast to the litigation process (court) where one is defeated so that one party feels dissatisfied and a prolonged sense of hostility can occur.

For the benefit of patients and/or their families and doctors/dentists, in alternative medical dispute processes dispute resolution through a mediation process is better than through the litigation process (court). In a medical dispute case, mediation is said to be successful, depending on the role of the mediator that must be clearly defined, the mediator is not to make decisions, such as the function of judges or referees. The role of the mediator is only to create an atmosphere the parties to the negotiations for negotiations, benefits, losses from various approaches. More needed, the mediator must have good knowledge of the problem, this can be achieved by having adequate capabilities, the mediator can submit certain terms.

The level of compensation offered by the parties must be realistic, must be structured on medical dispute resolution and complaints must be informed and what assessment is adequate for the type of loss suffered by the patient and/or his family.

IV. CONCLUSION

In medical disputes mediation offers a number of possibilities and flexibility to resolve disputes and to control parties for better resolution. mediation is more likely to produce results that make parties happy with each other, in the sense of winning/winning parties. Results, achieved in resolving disputes are made based on the agreement of the parties and are mutually pleasing, then compliance with the agreed agreement is usually quite high. This causes low costs, because the parties do not need to seek assistance from other parties who are not mediators, agreements in mediation agreements can be recognized by the court mediated by certified mediators including outside the court, Article 23 paragraph (1) RI Supreme Court Regulation No. 1 of 2016.

Another reason for choosing mediation in resolving medical disputes is an effort made on the joint efforts of the parties. In some of the cases that occurred through the mediation process to get a good solution without leaving trauma and the parties were satisfied in just a few hours. From several other things that benefit mediation for medical dispute resolution such as confidentiality that threatens the reputation of professional doctors/dentists and/or hospitals, where a professional reputation among peers and in the community users of health services in their environment can be protected. From patients and/or their families, personal confidentiality is highly prioritized, what happened to him and his family is not to be published.

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