

## **SETTLEMENT OF MEDICAL DISPUTES THROUGH RESTORATIVE JUSTICE ACCORDING TO LAW NO. 17 OF 2023 CONCERNING HEALTH**

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### **ABSTRACT**

*Settlement of Medical Disputes through litigation and non-litigation, a special institution which functions as a legal institution whose function is to resolve disputes, the Ethics Committee of the Indonesian Medical Discipline Honorary Council (MKDKI) was formed, the Medical Ethics Honorary Council (MKEK) Dispute Settlement through the Consumer Dispute Resolution Agency (BPSK) ). The Health Law Settlement contains various new provisions in the health sector, including procedures for resolving disputes in the medical and health sectors, prioritizing restorative justice as stated in Article 310 of Law no. 17 of 2023 Obstacles in restorative care that can arise are a lack of commitment from the parties involved in resolving a dispute peacefully, the patient insisting on defending his report/lawsuit, the process outside the court is deemed unable to realize the sense of justice that the victim desires. There is no special institution that acts as a legal institution whose function is to resolve medical disputes. to carry out settlements outside the court process.*

**Keywords:** *Medical Dispute, Litigation, Non-Litigation, Health Institutions And Restorative Justice*

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### **INTRODUCTION**

The development of activities between communities has caused various problems or disputes that usually occur on various fronts, including in the health sector. Disputes begin in situations where one party feels disadvantaged by the other, there are differences of opinion, and conflicts of interest. Law Number 17 of 2023 concerning Health regulates the mechanism for enforcing the discipline of medical and health personnel. Medical and health personnel made mistakes in carrying out their professions, leading to disputes. Therefore, the first step that can be taken is to complain about the problem to the Professional Discipline Council. It is binding for medical personnel and health workers, law enforcement must prioritize dispute resolution through the mechanism of restorative justice or restorative justice. Restorative justice is a form of response to the development of the criminal justice system that focuses on the needs of community contributions and marginalized victims who are integrated into the mechanism of the criminal justice system.

By looking at the above background, a formulation of the problem can be taken, including: first, how to Resolve Medical Disputes in Medical Providers through Restorative Justice, second, how are the obstacles in Resolving Medical Disputes in Medical Providers through Restorative Justice. This study aims to find out about Medical Dispute Resolution in Medical Providers through Restorati Justice and its obstacles.

### **METHOD**

The research method used in this study is a normative research method using various types of primary legal materials in the form of laws and regulations and secondary legal materials in the form of literature materials related to Medical Dispute Resolution in Medical

Servers through Restorati Justice as a source of research materials. Johnny Ibrahim argues that normative legal research is a form of scientific research aimed at finding the truth based on legal scientific logic reviewed from the normative part, or which is in the form of legal discovery efforts that are adjusted to a particular case (Ibrahim, 2006).

## **RESULTS AND DISCUSSION**

### **A. Resolution of Medical Disputes Through Restorative Justice According to Law No. 17 of 2023 concerning Health**

Medical disputes and health disputes are disputes that arise due to the legal relationship between Medical Personnel and Health Workers (TMTK) and patients in an effort to heal. The relationship between TMTK and patients in health sciences generally takes place as an active-passive biomedical relationship. (Wiradharma, 2006) In this relationship, the superiority of TMTK to patients in the field of biomedical sciences is clearly visible, that is, there are only active activities from TMTK while patients are passive. The passive attitude of the patient is of course based on a sense of trust in the ability of TMTK to carry out healing and treatment. However, in medical and health measures, malpractice can occur both administratively, civil and criminal. This is what causes a dispute between TMTK and patients which becomes a medical dispute and a health dispute.

J. Guwandi (Guwandi, 2019a) (Guwandi, 2019b) (Guwandi, 2009) to quote Black's Law Dictionary, "Malpractice is, any wrong attitude of action, a lack of skill in an unnatural measure of degree. This term is generally used for the attitude of doctors, lawyers and accountants. Failure to provide professional service and perform at a reasonable measure of skill and intelligence in the community by the average peer of the profession, resulting in injury, loss or loss to the recipient of the service who tends to place trust in them. This includes any wrong professional attitude, unreasonable lack of skill or lack of prudence or legal obligation, bad or illegal practices or immoral attitudes." Malpractice has the meaning of any medical action carried out by a doctor or a person under his supervision, or a health service provider carried out against his patient, either in terms of diagnosis, therapy and disease management that is carried out in an unlawful manner, propriety, decency and professional principles either done deliberately or due to lack of caution that causes mistreatment of pain, injury, disability, bodily damage, death and other losses that cause doctors or nurses to be responsible both administratively, civil and criminally (Situmorang, 2020).

Restorative Justice is a handling of criminal acts that is not only seen from the perspective of the law, but is associated with moral, social, economic, religious, and local customs aspects, as well as various other considerations. Howard Zehr as a pioneer of restorative justice in the United States introduced a restorative lens, crime is seen as a violation of individuals and relationships between individuals, while justice is interpreted as a common search for solutions through healing and reconciliation (Ali, 2015).

The most ideal dispute resolution between doctors and patients can be seen from three sides, namely the patient side, the doctor's side, and the procedure side. From the patient's side, of course, dispute resolution through ethical channels is not a satisfactory option. Because not only is the material limited to professional ethics, but also from topics of discussion that are uncommon and difficult for ordinary people to understand. In addition,

it is possible that decisions taken through this route are administrative in nature and generally do not directly relate to the patient, so it can cause dissatisfaction for the patient.

Dispute resolution through the Consumer Dispute Resolution Agency (BPSK) is worth considering because the parties are directly involved, allowing for a win-win solution to be achieved. The BPSK audit process is carried out on the principle of fast, simple, cheap, and closed trials. The closed nature can maintain the confidentiality of the process for doctors in order to maintain their credibility and that of patients in terms of confidentiality of medical history. Finally, the final and binding nature of the decision makes legal certainty for the parties guaranteed and accelerates the implementation of the decision.

In principle, the mechanism for resolving medical disputes through the court and outside the court, the characteristics of dispute resolution through the court are relatively time-consuming and expensive. In contrast, out-of-court dispute resolution is a simpler process and takes place quickly and is less expensive. Dispute resolution is based on the spirit of peace and reconciliation with the final result of a win-win resolution. Article 310 of Law No. 17 of 2023 concerning Health opens up opportunities for resolving medical disputes through alternatives outside the court. The provision was welcomed by health observers who established the Indonesian Medical and Health Arbitration Mediation Institute (LMA-MKI) as a forum to provide services for parties in resolving medical disputes outside the court. Law No. 17 of 2023 recommends resolving disputes through mediation and arbitration. The mechanism is simpler, faster, and less costly than settlement through the courts, whether civil or criminal. Medical dispute resolution can be through professional and non-professional institutions. Non-professions can be resolved outside the court (non-litigation) and in court (litigation).

Medical Dispute Resolution in Indonesia based on this Supreme Court Regulation. (Article 4 (1) of Perma No. 1 of 2016 concerning Mediation Procedures in Court)... Settlement through mediation using Mediator. The goal is to find a win-win solution so that everyone accepts the solutions offered. Mediators are those who have medical and legal expertise. Because what is to be solved is related to medicolegal. Which means combining aspects of law and medical science. The 2023 Health Law clearly stipulates that law enforcement officials (police, prosecutors, judges and lawyers) in handling medical dispute cases are obliged to prioritize the restorative justice mechanism, in accordance with Article 322 paragraph (4) of the law.

The restorative justice mechanism is a way of resolving disputes or disputes outside through mediation efforts. The affirmation of medical dispute resolution through the restorative justice system in Law No. 17 of 2023 concerning Health provides legal certainty and binding for the parties to the dispute and law enforcement officials that no case of medical dispute can be heard before mediation efforts are carried out by competent or authorized parties. The restorative justice mechanism is a case settlement mechanism by involving the perpetrator (doctor), the victim (patient), the victim/perpetrator's family, and other related parties to jointly seek a fair settlement by prioritizing restoration to the original state, not retaliation or retribution for the mistakes committed by the doctor.

One form of the Restorative Justice mechanism is dialogue which is better known among the Indonesian people as "deliberation for consensus". So that through the concept of Restorative Justice it is a very important consideration in resolving criminal cases. (Suka

& Gunarto, 2018) The basic principle of restorative justice is the restoration or improvement of the parties. Thus, the involvement of the parties is very important as an effort to improve, reconcile, and ensure the continuity of the relationship. Currently, in law enforcement, there is a paradigm shift from retributive justice to restorative justice. Restorative justice tends to punish as retaliation. Dispute resolution is not only the end of the conflict, but the fulfillment of the interests of the parties in a fair and satisfactory manner.

#### **B. Obstacles in Resolving Medical Disputes through Restorative Justice**

Law enforcement in English is called law enforcement, in Dutch rechtshandhaving. This term leads to the idea of always having the force to enforce the law and is only related to crime which is strengthened by the habit of calling law enforcers the police, judges, and prosecutors. Handhaving, according to Notitie Handhaving Milieurecht, is an effort to supervise and implement the use of administrative, criminal, or civil instruments, until laws and rules are reached that are organized for the public and individuals. (Hamzah, 2008) The function of the law is to protect human interests. There are three elements that are considered in law enforcement, namely: Legal certainty (Rechtssicherheit), Usefulness (Zweckmassigkeit) and Justice (Gerechtigkeit).

One of the reasons for resolving a dispute using the mediation mechanism is to reduce the accumulation of cases in court. However, this cannot be done perfectly in practice, because there are problems related to the existence of factors or things that hinder the occurrence of mediation, so that the mediation becomes ineffective. Obstacles in Restorative can be caused by the following: (1) lack of commitment from the parties in resolving a dispute peacefully (mediation). The absence of a commitment to reconciliation is one of the reasons why mediation does not work. Where each party feels right about what is in dispute. The parties to the dispute always feel right, do not want to give in to each other and both have evidence, then this will cause difficulties for the mediator to convince the parties to reconcile because the value of this proof itself can only be processed through trial, while the parties show the potential for conflict, so it will be difficult for the mediator to continue peace. (2) The absence of the intention of the parties to make peace outside the court process is one of the factors hindering mediation. Patients usually insist on maintaining their lawsuits, on the contrary, doctors still show a desire to reconcile even though it is not optimal. It is not easy to change one's stance, especially in terms of accommodating the interests of others, making peace means that one or both parties must be willing to give up or reduce certain rights for the benefit of others. It is unlikely for the mediator to persuade the parties where the condition of both parties who are already firm with a commitment to take the litigation route is considered by the parties as the right path to resolve the dispute they are facing. (3) There is a wrong thinking by the parties who consider the litigation process to be the only effort to obtain legal protection. The mediation process taken before filing a lawsuit to the Court is considered incapable of realizing the sense of justice desired by the parties. (4) There is no special institution that has the position of a legal institution that functions to resolve a medical dispute. Therefore, the hospital's Ethics and Legal Committee was formed.

The purpose of the establishment of the Ethics and Legal Committee is to assist the Director of the Hospital in the field of coaching and education of health workers related to ethics and law in health services, protect the rights and obligations of doctors, patients and

the Hospital, as well as respond to complaints and follow up on medical disputes that occur in the hospital, as well as assist the Director in drafting policies related to ethics and law in the Hospital. (5) The absence of the intention of the parties to make peace outside the court process is one of the factors hindering mediation. Patients usually insist on maintaining their lawsuits, on the contrary, doctors still show a desire to reconcile even though it is not optimal. It is not easy to change one's stance, especially in terms of accommodating the interests of others, making peace means that one or both parties must be willing to give up or reduce certain rights for the benefit of others. It is unlikely for the mediator to persuade the parties where the condition of both parties who are already firm with a commitment to take the litigation route is considered by the parties as the right path to resolve the dispute they are facing. (6) There is a wrong thinking by the parties who consider the litigation process to be the only effort to obtain legal protection. The mediation process taken before filing a lawsuit to the Court is considered incapable of realizing the sense of justice desired by the parties. (7) There is no special institution that has a position as a legal institution that functions to resolve a medical dispute. Therefore, the hospital's Ethics and Legal Committee was formed. The purpose of the establishment of the Ethics and Legal Committee is to assist the Director of the Hospital in the field of coaching and education of health workers related to ethics and law in health services, protect the rights and obligations of doctors, patients and the Hospital, as well as respond to complaints and follow up on medical disputes that occur in the hospital, as well as assist the Director in formulating policies related to ethics and law in the Hospital (The Nation, 2001) (R. Indonesia, 2004) (P. R. Indonesia, 2023) (Berkas et al., 2017).

## **CONCLUSION**

The Health Law contains various new provisions in the health sector, including procedures for resolving disputes in the medical and health sectors. One of the important points, health dispute resolution prioritizes restorative justice is listed in Article 310 of Law No. 17 of 2023. Obstacles in Restorative can be caused by the following things: Lack of commitment from the parties involved in resolving a dispute peacefully, Patients usually insist on maintaining their reports/lawsuits, Out-of-Court proceedings are considered incapable of realizing the sense of justice that the victim craves. There is no special institution that has a position as a legal institution that functions to resolve a medical dispute. to make peace outside of the court process.

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