



## THE ROLE OF MEDIATORS IN RESOLVING MEDICAL DISPUTES

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### ABSTRACT

A medical dispute is a dispute that occurs over a legal event involving medical personnel (doctors and dentists) or other health personnel (nurses, midwives, pharmacists or other health care professionals) as a result of the provision of medical services. In conventional settlement there are various things that are considered negative by the parties to the dispute. This research aims to analyze and diagnosis then produces a design for controlling the mediation process to guide the disputing parties towards a mutual agreement. This research uses a normative juridical approach and is descriptive analytical by reviewing and researching relevant legal materials. Medical disputes are problems that have the potential to arise in society. In resolving it, the parties to the dispute are asked to prioritize mediation as an alternative dispute resolution compared to general court. The legal basis for Mediation is Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Supreme Court Regulation no. 1 of 2016 concerning Mediation Procedures in Court and Law no. 17 of 2023 concerning Health. Mediation aims to obtain a valuable agreement win-win solution. The mediator as a mediator has the obligation and duty to carry out his role so that this can be done. Mediation has advantages in its implementation but also has several disadvantages. Mediation is an alternative dispute resolution in which a negotiation process is used to solve problems through an impartial and neutral external party who will work with the disputing parties to help find a solution to resolve the dispute in a satisfactory manner for both parties.

**Keywords:** medical dispute, mediation

### INTRODUCTION

Healing is what patients who seek health services want. The obligation of health workers is to provide services so that patients can recover and maintain their health. Unfortunately, this cannot always be realized; often the opposite is true. Not a few patients never get better, some even experience deterioration and even death.

Most of these incidents occur because of medical risks that cannot be avoided even though doctors have acted carefully and carefully in accordance with applicable standards. If any loss, injury, disability or death of a patient occurs due to medical risks, the doctor cannot be sued legally because this is considered a form of legal protection in carrying out medical practice.

Apart from medical risks, there are also terms medical malpractice and medical negligence. Even though they have different grounds, the results of these three incidents often give rise to dissatisfaction on the part of the patient and/or their family, which then gives rise to complaints, reports or even lawsuits for doctors and related health service institutions. We commonly know this as a medical dispute.

Medical disputes are a dispute that occurs over a legal incident involving medical personnel (doctors and dentists) or other health personnel (nurses, midwives, pharmacists or other health care professionals) as a result of the provision of medical services. The legal event in question is an event that can move the law or give rise to legal consequences. Loss, injury, disability or death of a patient resulting from the provision of medical services can move the law or give rise to legal consequences. Safitri Handayani stated that several causes of disputes were caused by several things (Hariyani, 2005):

- 1) Medical information (information about the disease suffered as well as the risks and alternative therapies chosen) is not provided completely.
- 2) Submission of medical information (time of delivery of information, usually before therapy is carried out and given by the doctor to the patient whether requested or not before therapy is carried out, especially if the information relates to possible complications or expansion of therapy).
- 3) The method of conveying information orally and completely and honestly and correctly, except if according to the doctor's assessment, conveying the information will have a negative impact on the patient.

- 4) Recipients of information are patients and their families or close friends who have the right according to applicable regulations; The patient may not immediately receive information if according to the doctor's assessment this will be detrimental to the patient
- 5) The provider of information is the treating doctor or other medical/health personnel with instructions from the treating doctor.

A matter of debate in medical disputes submitted by patients or legal advisors to court is whether the incident experienced by the patient was due to malpractice, medical negligence or medical risk; This arises from a lack of lay understanding of medical disciplines. The party who is considered to best understand whether an undesirable event is due to medical negligence or medical risk is the medical personnel themselves. The negative impact that arises even if the doctor is declared innocent is damage to the reputation of medical personnel, psychological burden on the family and loss of patient trust. This is very likely to happen, especially if the medical dispute case becomes public discussion through mass media or social media (Matippanna, 2023).

On the basis of the above paragraph, it is not surprising that medical personnel do not hope that medical disputes will be resolved by general courts. One way that is hoped for is the existence of a special court, which unfortunately is not yet available. Another method that is no less elegant and commonly used in Indonesia is through an alternative dispute resolution process in the form of mediation.

The definition of mediation is a method of resolving disputes through a negotiation process to obtain agreement

between the parties with the assistance of a mediator. A mediator is a neutral party who helps the parties in the negotiation process to look for various possibilities for resolving the dispute without resorting to deciding or forcing a resolution. Mediation itself is essentially an alternative form of non-litigation dispute resolution in law enforcement. The mediator must be a party that is accepted by both parties to the dispute, both doctors and patients, whose role is to help the parties in the dispute find a way out to solve the problem (MAS Nasution et al., 2021).

Success in resolving disputes through mediation is also due to the role of the mediator. A mediator must have personal skills that enable him to communicate pleasantly with the parties involved. The important abilities a mediator has are being non-judgmental, impartial, wise and able to analyze and diagnose existing disputes. The study aims to analyse and diagnosis then produces a design for controlling the mediation process to guide the disputing parties towards a mutual agreement.

## **RESEARCH METHODS**

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The research method used in this paper uses a normative juridical approach, namely a legal research method that prioritizes researching library materials or what is called secondary data material in the form of positive law, in this case which regulates Mediation Procedures in Court. The normative juridical approach method used in this research includes research on legal principles, legal systematics, and legal synchronization. This research is analytical descriptive, which describes the facts from the data obtained based on reality, in this

case mediation in resolving medical disputes. These facts are then analyzed with applicable law and conclusions are drawn. The research stage was carried out with library research which aimed to study and research relevant legal materials.

## **RESULTS AND DISCUSSION**

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Medical disputes are problems that have the potential to arise in society. Patients and families as parties who feel disadvantaged certainly feel that they have suffered enormous losses, while doctors as service providers feel that they have done nothing wrong, let alone intentional. This dispute should be resolved properly and promptly. In order to achieve a dispute resolution process that is fast and cheap, and can provide greater access for the parties to find a solution that is satisfactory and fulfills a sense of justice, the solution that can be used is to use alternative dispute resolution, including mediation. The statutory regulations governing alternative dispute resolution are Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and Supreme Court Regulation no. 1 of 2016 concerning Mediation Procedures in Court. Apart from that, there are also other laws which specifically regulate the resolution of medical disputes, namely Law no. 17 of 2023 concerning Health (Zahra & Marpaung, 2022).

Mediation as a form of legal communication in resolving medical disputes, it requires effective communication efforts by optimizing the value of a win-win solution between the disputing parties, both doctors and patients, in achieving the goal of resolving medical disputes, especially outside of court (non-litigation) (Junita & Sugama, 2020). To

achieve this, a mediator must play an effective role, including the ability to make preparations and the ability to make plans including knowledge of the disputed material, the ability to express thoughts verbally, the ability to think completely, clearly and quickly under conditions of pressure (time ) and uncertainty (limited information), the ability and skills to listen quickly, accurately, patiently and the ability to invite respect and trust from all parties (MAS Nasution et al., 2021).

Guidelines An important mediator's behavior that must be known by both the parties to the dispute and the mediator himself (Junaidi, 2011):

- a. Impartiality towards either party
- b. It is prohibited to influence or direct the parties to produce conditions for resolving the dispute
- c. The mediator has no personal interest in either party
- d. The mediator has an obligation to safeguard and maintain confidentiality revealed in the mediation process
- e. Mediators are prohibited from acting as mediators in a dispute where it is known that their involvement creates a conflict of interest.
- f. Mediators always improve their abilities or skills regarding mediation through education, training, seminars and conferences.
- g. Mediators are prohibited from receiving an honorarium based on the final results of the mediation process, so that a person and/or mediation institution must request an honorarium first before carrying out their function as a mediator.

During mediation, a mediator plays a role in helping related parties to identify problems, then develop options and consider several possible alternatives that can be offered in order to reach the desired

agreement. Apart from that, the mediator also acts as someone who carries out his duties to provide suggestions or opinions with the aim of resolving disputes. The mediator also has the authority and role in determining the relevance of the contents of the dispute and ensuring that the mediation process can run well (Ummah et al., 2019).

Etymologically, the word mediation comes from Latin "*mediare*" which means being in the middle. This understanding shows that the role played by the mediator as a third party is to mediate and resolve disputes between the parties; It can also be interpreted that the mediator must be in a neutral and impartial position in resolving disputes. The mediator must be able to safeguard the interests of the disputing parties fairly and equally so as to foster trust from the disputing parties. Dispute resolution using a non-litigation approach through mediation is a means whose effectiveness is to reach an agreement on disputes that arise based on good faith (Damayanti et al., 2022).

Dispute resolution through mediation has several advantages, but has several disadvantages, including (Sudiarto, 2015):

- a. Can take a long time.
- b. The execution mechanism is difficult because the way a decision is executed is only like the power of executing a contract
- c. It really depends on the good faith of the parties to resolve the dispute until it is resolved.
- d. Mediation will not bring good results, especially if insufficient information and authority are given to it.
- e. If a lawyer is not involved in the mediation process, it is possible that important legal facts are not conveyed to

the mediator so that the decision becomes biased.

Ending a medical dispute through mediation with a peace agreement that has been agreed to by the parties does not make the relationship with the parties involved in the dispute worse, a mediator who successfully mediates by providing an understanding that the disputing parties have ended their dispute by producing a peace agreement. After obtaining a peace agreement, the parties are required to express in writing their agreement to the agreement reached (Nasution, 2020).

The legal product of a mediation process is a form of agreement between the parties peace agreement. The agreement that is the product of mediation does not have the executorial power of a peace decision. The position of a peace decision according to law is:

- a. Characteristic in kraht van gewijsde
- b. Has executive power

A peace agreement that has been confirmed as a peace decision means from that moment on the peace deed has permanent legal force and the clauses in the peace deed will become the basis for the execution process like the execution of court decisions in general. The judge's decision in the peace deed contains the nature of an order or punishment that must be carried out by the parties (Witanto, 2012).

Out-of-court mediation results in the form of a contract (agreement), either a new contract or a revised one. If one party fails to fulfill its obligations as stated in the contract (agreement) that has been mutually agreed upon and made, then the other party must file a lawsuit to enforce the contract (Widnyana, 2009).

## CONCLUSION

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Mediation is an alternative dispute resolution in which a negotiation process is used to solve problems through an impartial and neutral external party who will work with the disputing parties to help find a solution to resolve the dispute in a satisfactory manner for both parties. The third party who helps resolve the dispute is called the mediator. The role of the mediator in medical dispute efforts is very effective, shown by the success of the role of the mediator who mediates with the disputing parties who are neutral and must not take sides with one party as well as the intelligence and skill of a mediator in creating communication because the mediator is in control of the process by optimal strategy to create agreement between both parties.

## BIBLIOGRAPHY

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- Damayanti, F. N., Santosa, B., & Irmawati, A. A. (2022). Literatur Review: Peran Mediator Dalam Efektivitas Upaya Mediasi Sengketa Medis. *Prosiding Seminar Nasional UNIMUS*.
- Hariyani, S. (2005). *Sengketa medik: alternatif penyelesaian perselisihan antara dokter dengan pasien*. Diadit Media.
- Junaidi, E. (2011). *Mediasi dalam Penyelesaian Sengketa Medik*. Rajawali Pers.
- Junita, N. M. M., & Sugama, I. (2020). Upaya Mediasi dalam Penyelesaian Sengketa Malpraktik Medis. *Journal Ilmu Hukum*, 8(11), 1–16.
- Matippanna, A. (2023). *Mekanisme Keadilan Restoratif Penyelesaian Sengketa Medis Menurut Undang – Undang No.23 Tahun 2023*. BPSDM

- Sulawesi Selatan.
- Nasution, M. A. S., Satria, B., & Tarigan, I. J. (2021). Mediasi Sebagai Komunikasi Hukum Dalam Penyelesaian Sengketa Medik Antara Dokter Dan Pasien. *Jurnal Hukum Kesehatan Indonesia*, 1(02), 86–96.
- Nasution, U. P. (2020). Efektivitas Mediasi dalam Penyelesaian Sengketa Medis (Studi Lapangan Rumah Sakit PKU Muhammadiyah Gamping Sleman). *Widya Pranata Hukum: Jurnal Kajian Dan Penelitian Hukum*, 2(2), 91–108.
- Sudiarto. (2015). *Negosiasi, mediasi, dan arbitrase: penyelesaian sengketa alternatif di Indonesia*. Pustaka Reka Cipta.
- Ummah, N., Wiryani, F., & Najih, M. (2019). Mediasi Dalam Penyelesaian Sengketa Medik Dokter Dengan Pasien (Analisis Putusan Pn No. 38/Pdt. G/2016/Pn. Bna Dan Putusan Mahkamah Agung No. 1550 K/Pdt/2016). *Legality: Jurnal Ilmiah Hukum*, 27(2), 205–221.
- Widnyana, I. M. (2009). *Alternatif Penyelesaian Sengketa (ADR)*. Fikahati Aneska bekerja sama dengan BANI (Badan Arbitrase Nasional Indonesia).
- Witanto. (2012). *Hukum Acara Mediasi*. Alfabeta.
- Zahra, H. M., & Marpaung, D. S. H. (2022). Penyelesaian Sengketa Medik Melalui Alternatif Penyelesaian Sengketa Mediasi. *Jurnal Justitia: Jurnal Ilmu Hukum Dan Humaniora*, 9(2), 889–897.

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