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MEDIATION AS A METHOD OF DISPUTE RESOLUTION BETWEEN DOCTORS AND PATIENTS IN THERAPEUTIC AGREEMENTS

[1]Landy Revey Manorek, [2] Triyanto Agung Praptono Wibowo,[3] Upik Ari Erlita,
[4] Erni Susanty Tahir
Email: [1]230413037@mhs.udb.ac.id

ABSTRACT

Therapeutic Agreement is an agreement made because of an agreement between the Doctor and the Patient. Before this agreement is made and agreed upon by both parties, the patient is legally entitled to obtain information about any medical action that will be carried out by the Doctor to the Patient. The emergence of disputes that occur between doctors and patients is more often due to weaknesses in building effective communication which results in conflict between doctors and patients. The emergence of a conflict that leads to a dispute does not need to occur if both parties understand their position and position both from a medical and legal perspective through a good communication network, mutual respect and mutual trust. And then if there is a medical dispute between the two parties, both doctors and patients, legal communication should be put forward such as mediation to resolve medical disputes that occur. Thus, mediation as legal communication in the resolution of medical disputes requires effective communication efforts by optimizing the value of a win-win solution between the disputing parties, both from the doctor and the patient, in achieving the goal of resolving medical disputes, especially outside the court (nonlitigation mediation).

Keywords: *Mediation; Doctor; Patient; Legal Communication; Medical Dispute*

ABSTRACT

Therapeutic Agreement is an agreement made with an agreement between the Doctor and the Patient. Before this agreement is made and approved by both parties, the patient is legally entitled to obtain information about what medical actions will be carried out by the Doctor to the Patient. The emergence of conflict between doctors and patients is more often due to weaknesses in communication which results in conflict between doctors and patients. The emergence of conflicts that lead to disputes does not need to occur if both parties understand each other's position and position both from the medical side and also from the legal side through good communication, mutual respect and mutual trust. And if a medical conflict arises between the two parties between the doctor and the patient, legal communication should be put forward such as mediation to resolve the medical dispute that occurs. Thus, mediation as legal communication in resolving medical disputes requires effective communication efforts by optimizing the value of win-win solutions between the disputing parties both from the doctor and the patient in achieving the goal of resolving medical disputes, especially outside the court (nonlitigation mediation).

Keywords: Legal Communication; Mediation; Doctor; Patient; Legal Communication; Medical Dispute.

INTRODUCTION

The interaction between doctors and patients is a relationship based on mutual trust given to patients who need help in the form of treatment or medical action. The interaction that occurs in the form of mutual trust given to the patient is contained in the therapeutic agreement/transaction. This therapeutic agreement/transaction is an agreement that occurs between a doctor and a patient that creates a legal relationship so that rights and obligations are formed on both sides (Supeno & Faradila, 2021).

The legal interaction between doctors and patients has changed over time. In the past, patients were not considered equal to doctors. The doctor is the one who knows the most about the patient's condition and vice versa, the patient is a minority figure who is very hopeful of the doctor. Along with the development of time, legally the relationship between doctors and patients has changed to become equal (Mustajab, 2013). What the doctor will do to his patient, both treatment and medical action, must be approved by the patient and this is commonly referred to as *informed consent*. Doctors who have obtained the patient's consent strive to make maximum efforts (*inspanning verbintenis*) in the medical services provided and not otherwise promise results (*hasilaatsverbintenis)* (Putra, 1999). Therefore, medical services with maximum results become the hopes and desires of both the patient and his family, but in practice it does not rule out the possibility that these hopes and desires are not as expected.

Medical problems that arise in patients will cause harm to patients and become medical disputes between doctors and patients. Generally, what causes the dispute is the final result that occurs to the patient by ignoring the doctor's efforts in making health efforts or providing medical services. Because it is very rare or even non-existent, the actions of doctors with the intention of harming and deliberately injuring and even increasing the suffering of their patients, so that if a medical violation is found by a doctor, it is very careful to determine whether there is a violation of elements and ethics. An act or attitude of a doctor or dentist is considered negligent if there is an element of deviation of obligations and everything that the patient feels as a loss from medical services. (Nurdin, 2015) For this reason, medical disputes that occur allegedly due to negligence are regulated in Article 310 of Law Number 17 of 2023 concerning Health, namely "In the event that medical personnel or health workers are suspected of making mistakes in carrying out their profession that cause harm to patients, disputes arising from these errors are resolved first through alternative dispute resolution outside the court."

Mediation is a step to resolve medical disputes through negotiations between various parties involved in medical disputes based on good faith to obtain mutual and mutually beneficial agreements. Suspected and negligence contained in Article 310 of Law Number 17 of 2023 has the understanding that suspected is a one-sided conclusion / assessment from the side of the patient who feels harmed by the violation committed by the doctor in carrying out medical practice against him. So the patient has not been able to prove whether there has been a violation of professional standards or not. Meanwhile, negligence means that all medical actions performed by doctors have no motive and there is no element of intentionality so that the negligence intended by the patient could be in the form of medical risks due to a disease that the patient has suffered for a long time. Another thing that can occur and is suspected of negligence, in the form of a doctor's lack of explanation of the patient's illness and lack of communication about medical actions to patients (Ratman, 2012).

Communication is a tool that can connect one individual with another. Communication is a persuasive approach. A persuasive approach to resolving medical disputes that have the potential to become legal issues is considered effective to resolve disputes that occur. Legal communication is needed such as mediation, especially nonlitigation mediation (mediation outside the court) before the patient sues through the court (because if it enters the litigation track, it automatically still has to undergo mediation first based on PERMA No.01/2008), then the right of doctors who commit negligence under this Law to get the opportunity from patients to open the door to

nonlitigation mediation (S. A. Nugroho, 2019) Therefore, mediation is needed as legal communication in terms as a solution to resolve disputes between doctors and patients.

RESEARCH METHODS

This research uses methods in the form of approaches and legal materials as normative research with deepening *Literature Review* (Diantha, 2017). The nature of the research is prescriptive, because it does not use hypotheses in this research and no data processing is carried out. Normative research is carried out by multiplying *Literature Review* from various references such as books and journals as an analysis knife on the subject matter raised. Several books and various journal references to provide arguments and analyze related to mediation as a legal method in resolving medical disputes between doctors and patients (Efendi & Ibrahim, 2018).

DISCUSSION

A. Legal Aspects of Medical Disputes

All aspects of human life are regulated by law, no aspect of human life is separated from the law. Law regulates the interests of life from birth to death. In medical terms, the importance of the law starts from the time the fetus (the forerunner of a human being) is in the womb of a mother. This is in accordance with the regulations stipulated in Law Number 17 of 2023 concerning Health, especially the prohibition of abortion in Articles 60 and 61.

To improve the quality of public health, efforts involving individuals, communities, and society are known as health services. According to Maclachlan, defining health services is an activity provided to individuals and communities by the government with the aim of preventing and curing individual and community illnesses. (Arifin.S. et al, 2022).

Similarly, medical services according to Prof. Dr. Soekidjo Notoatmojo are a sub-system of health services whose main objectives are preventive (prevention) and promotive (health improvement) services targeting the community. Joanna Glynn QC and David Gomez emphatically assert that "The medical regulatory system and the structures and processes for assuring and improving the quality of care and patient safety in health services have not been related to each other." From this statement, it is recognized that the legal system in healthcare does not yet provide adequate protection for healthcare users. Therefore, to ensure the right to safe healthcare in the future, it is necessary to enhance the role or intervention of law in healthcare (S. A. Nugroho, 2019).

Good medical quality can reduce conflicts between medical personnel, especially doctors, and patients. Patients' needs are increasingly important for healthcare, and technological and scientific advances can meet the challenges that arise with the times. Both good medical actions and good health services will give patients and the public hope for perfect health. As a result, medical conflicts between doctors and patients are reduced due to good medical actions and good health services.

From a legal perspective, the principle is the most fundamental basis of a legal regulation, which means that the regulation can ultimately be returned to the principle. The position of principles in law is a realm of thought behind the formation of legal norms; it can be referred to as the ratiolegis of legal regulations or the reason for the birth of legal regulations. Principles are symptoms that direct the morals of legal subjects to the law (Ratman, 2012).

These principles are evaluated as universal and critical. Legal principles are the initial principles that underlie how the law functions and binds every person or legal entity. Based on Article 279, Article 280, Article 281 of Law Number 17 Year 2023 on Health, the following principles apply in the relationship between doctors and dentists and patients:

1. Scientific value, that in practicing medicine, adding scientific insights and keeping up with technological developments is a must both in continuing education and experience as well as professional ethics.
2. Benefit, that the practice of medicine must be efficient and can provide the maximum possible benefit for humanity in order to protect and develop the degree of public health.
3. Justice, that in practicing medicine must be based on good morals with fair and equitable treatment to everyone for the realization of quality medical services.
4. Humanity, that in practicing medicine by not limiting and not distinguishing social status, race, ethnicity, nation.
5. Balance, that in practicing medicine still prioritizes equality, consistency and harmony between the interests of individuals and society.
6. Protection, that practicing medicine with due regard to the rights and obligations and safety of patients in order to improve the degree of health in health services.

In addition to the aforementioned principles, doctors should learn, use and base some other principles when they conduct therapeutic agreements, such as:

1. First, the principle of legality. This principle is implied in the provisions of Article 260 paragraph (1). It states that every medical and health worker who will practice is required to have an STR. The purpose of STR is to provide legal certainty to the public that doctors who provide services have met the requirements of safety and are able to take responsibility.
2. Second, the principle of good faith. This principle is based on the belief and attitude to do good to everyone. In providing health services, the principle of helping others as long as it does not pose a risk to themselves can be applied. According to this principle, one should be considerate of others as long as others are trying to carry out their own plans. Since doctors have the expertise and skills as the bearers of the profession, patients give trust to doctors to help them. Therefore, doctors in good faith have the responsibility to provide medical services of high quality and noble value by promoting responsibility and sincere intentions. This basis is applied when doctors perform their duties by complying with the medical professional standards set out in the Code of Ethics for the Medical Profession (KODEKI).
3. Third, the principle of honesty. According to this principle of honesty, the relationship between doctors and patients must be open so that information about the medical procedures performed can be communicated in accordance with the doctor's professional standards. In addition, it is supported by the use of existing facilities and infrastructure that are tailored to the needs of patients in the medical services they receive.
4. Fourth, the principle of prudence. In medical ethics, the term *"primum non nocere"* means to do no harm. Therefore, the principle of prudence is legally aimed at not harming others.
5. Fifth, the principle of openness. This principle argues that open communication between doctors and patients will foster trust, which will reduce the patient's worry about the doctor's explanation and information. Through this principle, correct information about the

patient's health condition will also be obtained, so that doctors can make an appropriate and correct diagnosis based on their abilities and experience (Ratman, 2012).

If applied, the above principles will prevent conflicts between doctors and patients. However, sometimes there is still a feeling of dissatisfaction on the part of the patient who still feels wronged. This condition will lead to disputes related to medical treatment, better known as medical disputes. A medical dispute refers to the idea that both parties have different interests and thus conflicts may occur. As a result, this conflict leads to a situation where both parties face a difference of interest. This difference of interest will be the main issue to be resolved. In the evolving stages of conflict, the conflict will escalate or culminate.

Conflicts that arise between patients and doctors will develop into disputes and will go through several stages, namely:

1. Preconflict Stage

   In the early stages, patients begin to feel dissatisfied with the doctor. This dissatisfaction can stem from various sources, such as the doctor's time being too short, lack of communication about the effects of treatment and medical procedures performed by the doctor, and unsatisfactory service.

   At this stage, the party who is considered to be harming or who is complained about by the patient (doctor, hospital staff, or hospital management) should try to find the source of the problem and provide clarification on the inconvenience experienced by the patient. At this point, the complained party (doctor or hospital) must act carefully and wisely to provide the aggrieved party with an explanation of the situation. In addition, the likelihood of a dispute occurring can be reduced if the patient accepts what is explained well, understands the problem, and does not make mistakes. However, if communication at this stage is unsuccessful or does not provide satisfaction with the clarity of the problem situation, the complainant will seek justification for what they feel, namely from a third party (family, community, journalists, authorities or writing in the mass media), then it will begin to enter the dispute stage.

2. Dispute Stage

   At this point, the conflict has already emerged and may already be happening in a public or common area. This can happen because both parties continue to defend their arguments because they believe they are right about what is happening or how the other person feels. Since both parties are still adamant about their respective opinions, any dispute must be resolved immediately with the awareness of both parties if it is not to drag on. Except for the "selfish" party, who just wants their opponent to lose, even if it costs them more, including loss of time, money, and thought.

   In Law Number 17 of 2023 concerning Health, article 305 paragraph (1), which reads, "Patients or their families whose interests are harmed by the actions of medical personnel or health personnel in providing health services can complain to the assembly as referred to in Article 304", shows that medical disputes begin when the patient is not satisfied with the actions taken by the doctor. Therefore, to achieve peace between the two parties, there needs to be a third party who can communicate well as an intermediary (S. A. Nugroho, 2019).

B. Mediation as a Medical Dispute Resolution Method

Mediation, also known as "*Alternative Dispute Resolution*", can be conducted in or out of court. According to Article 310 of Law No. 17 of 2023 on Health,
"In the event that a Medical Personnel or Health Personnel is suspected of committing an error in carrying out their profession that causes harm to the Patient, disputes arising from the error shall be resolved first through alternative dispute resolution outside the court". One of the alternative out-of-court or non-litigation settlements is mediation for health workers including doctors. In this case, out-of-court mediation, or non-litigation mediation was conducted before the patient sued in court. Because, if the patient goes to litigation, they must automatically undergo mediation first in accordance with PERMA No.01/2008), so that the rights of doctors who commit negligence are protected by this law (H. P. Nugroho, 2021).

Article 310 of Law No. 17 of 2023 on Health relating to mediation is a major advance in health law, especially in the field of civil law, which has always directed the courts in every patient lawsuit against doctors. This may be due to the fact that the mediation article of Health Law No. 17 of 2023 is inspired by the out-of-court dispute resolution found in Law No. 30/1999 on Arbitration and Alternative Dispute Resolution and PERMA No. 01/2008 on Court Mediation Procedures. In the previous Health Laws, namely Law No. 23/1992 and Law No. 29/2004 on Medical Practice, there was no clear *win-win solution* approach. If a doctor was complained to MKDKI (Indonesian Medical Discipline Honor Council), the patient also had the right to file a lawsuit to the court (civil domain). This is clearly seen in article 66 of Law No.29/2004, paragraph (3), which states, "The complaint as referred to in paragraph (1) and paragraph (2) does not eliminate the right of all people to report alleged criminal acts to the competent authorities and/or sue for civil damages to the court". Because a patient's report or complaint to MKDKI about a doctor's negligence is not necessarily proven disciplinarily (Melenko, 2020). MKDKI's decision to conduct an examination of the complained doctor has not been completed, at the same time the patient will still report the case to the court. The sued doctor will surely face many difficulties, especially with publications in the media that are not necessarily the doctor's fault. If the doctor is found not to be at fault, character assassination may occur even though his reputation and career are already ruined in the eyes of the public. Therefore, in order to reach a favorable settlement for both parties to the dispute, i.e. the doctor and the patient, it is imperative to have a settlement method such as mediation.

According to Robert G. Heathfield, a resolution method is a structured and directed way to resolve a conflict or problem in a fair and effective manner. An alternative dispute resolution method in law enforcement is mediation. Mediation is a dispute resolution process based on negotiation. The doctor and the patient, both parties to the dispute, accept the role of a third party or mediator. In the communication delivered, the mediator is responsible for helping the disputing parties find a solution to their problem. During the mediation process, the mediator cannot make decisions. Mediation is conducted with the aim of reaching an agreement that is acceptable to both parties to end the dispute (Irwandi, 2017).

How intelligent and skillful a mediator is in creating communication will determine the success of the mediation process, as they will control the process with the best strategy to reach an agreement between both parties. To be an effective mediator, they must have the ability to prepare and plan, including knowledge of the disputed material, the ability to think quickly, fully, and clearly in situations of pressure (time) and uncertainty (limited information), the ability to listen quickly, precisely, patiently, and the ability to invite the respect and trust of the opponent (Jauhani

et al., 2020). A medical dispute mediator must be able to communicate well and understand both parties. To resolve medical disputes, a mediator must have the ability to communicate with others, have the ability to make approaches, and understand the evidence justifying giving orders to reconcile from the point of view of religious law, national law, and customary law. In addition, a mediator must have a choice of solutions. If there is no mediator who meets these requirements, medical dispute resolution can be led by a general mediator, but preferably a health worker should be the mediator. To achieve the goal of non-litigation medical dispute resolution, the mediation resolution method requires effective communication between the disputing parties.

CONCLUSIONS

Conflict always exists when two interests cannot be accommodated together and this conflict can occur in medical services which is called a medical dispute. Article 310 of Law No. 17 of 2023 concerning Health, provides an opportunity for dispute resolution between offending doctors and aggrieved patients to be maximally resolved outside of court channels in the form of mediation (nonlitigation mediation).

Medical disputes between doctors and patients need to be further communicated legally through mediation considering that the noble actions of doctors who are tasked with carrying out their profession to treat and cure patients do not end up in court. Likewise, patients should know that any negative results or deviations from the results of medical actions that are not in accordance with the expectations or the patient's family, are not necessarily absolute negligence of the doctor, given the many factors that affect the patient's condition outside the competence of the doctor. And what the patient needs to remember, that the agreement between the doctor and the patient, known as the therapeutic transaction, does not guarantee 100% recovery, but with maximum effort and caution (inspanning verbintenis).

A doctor based on professional standards or competence and authority seeks to overcome the problems faced by patients, so what is assessed is the process not the final result so that if the final result does not match the patient's expectations, but the process is appropriate, the doctor does not deserve to be sued. So, in this condition communication plays an important role to inform each other of all rights and both parties.

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