

Mediation as an Alternative to Medical Negligence Dispute Resolution

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Abstract

Medical negligence disputes are legal and ethical issues that increasingly arise in health services in Indonesia. The litigation process is often considered ineffective because it takes a long time, costs money, and has the potential to worsen the relationship between patients and medical personnel. Mediation as one of the methods of Alternative Dispute Resolution (ADR) offers a more humanist approach by emphasizing dialogue, relationship restore, and the achievement of mutually agreed solutions. This article uses a normative research method with a conceptual approach to analyze the position of mediation in medical negligence dispute resolution. The discussion focused on the legal basis of mediation in Law No. 30 of 1999, PERMA No. 1 of 2016, and Law No. 17 of 2023 concerning Health, as well as its relevance to the PERSI guidelines (2024) and the principles of medical ethics (KODEKI 2023). The findings show that mediation is effective in resolving disputes quickly, maintaining the confidentiality and reputation of the medical profession, and increasing patient trust. However, the implementation of mediation still faces challenges in the form of a lack of technical regulations, mediation competence, and legal literacy among health workers. Therefore, it is necessary to strengthen policies and develop special mediators in the health sector.

Keywords: Mediation; Medical Negligence; Dispute Resolution; ADR; Law 17/2023; Medical Ethics; Restorative Justice

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Introduction

Medical negligence disputes are an increasingly prominent issue in the health service system in Indonesia. Advances in medical technology, increased access to information, and increased public awareness of health rights have provided great benefits, but on the other hand, they have also raised new challenges in the form of increasing potential conflicts between patients and medical personnel. This conflict usually arises in the form of dissatisfaction with service results, alleged violations of professional standards, or the perception that health workers do not provide adequate explanations about procedures or the risks of medical procedures. In such situations, the emergence of disputes is often unavoidable. In practice, the settlement of medical negligence disputes in Indonesia has been largely pursued through litigation, both civil, criminal, and professional discipline. The courts, with all their formal procedures, are often considered the main route to seek justice. However, the reality shows that the litigation process in medical cases is often time-consuming, costly and creates an atmosphere of conflict that worsens the relationship between doctors and patients. Settlement through the courts also tends to be adversarial, placing one party as the winner and the other as the losing party, so it is not uncommon to leave social and emotional wounds greater than the dispute itself.

Some legal experts consider that the resolution of medical disputes requires a more humane and restorative mechanism, as stated by Satjipto Rahardjo that the law should "humanize" and function to realize substantive justice, not just procedural justice. This view is particularly relevant for medical disputes, because the doctor-patient relationship is not just a legal relationship, but an ethical and moral relationship that demands trust, communication, and empathy. When the relationship is disrupted, a restorative settlement will be much more beneficial than a punitive settlement. This is where the relevance of the Alternative Dispute Resolution (ADR) mechanism specifically mediation becomes very important. Mediation offers a faster, cheaper, non-confrontational, and focused approach to resolving disputes. In the mediation process, a neutral third party (mediator) helps patients and medical personnel to dialogue, understand each other, and reach a mutual agreement without having to determine the winner and the guilty party. According to Jimmy Joseph Sembiring, mediation is a means of settlement that not only emphasizes legal aspects, but also opens up space for the parties to reach an agreement through open communication and honest exchange of information.

In the context of health, the implementation of mediation has received strong support from various national legal instruments. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution provides a normative basis for out-of-court dispute resolution. Meanwhile, Supreme Court Regulation (PERMA) Number 1 of 2016 emphasizes the position of mediation in civil proceedings as a mandatory stage before the case continues to trial. This legal instrument indirectly opens up a wide space for mediation in medical disputes, both at the internal hospital level and outside the court. Strengthening the position of mediation in medical disputes is increasingly clear through Law Number 17 of 2023 concerning Health. Article 434 of this law states that health disputes between medical personnel and patients must be resolved first through internal and ethical mechanisms before taking formal legal routes. This provision indicates that the government sees mediation as the main mechanism for resolving health conflicts. Thus, mediation is not only an alternative, but an integral part of the dispute resolution system in health services.

In addition to the legal basis, mediation also gains ethical legitimacy through the Indonesian Medical Code of Ethics (KODEKI 2023). Medical ethics emphasizes the importance of a relationship of trust between physicians and patients, good communication, and moral responsibility for any medical action. When a dispute occurs, ethical principles require that the settlement be done deliberatively, honestly, and prioritizing the interests of the patient. Therefore, mediation is in line with the moral values and professionalism of medicine. Technical guidelines for the implementation of mediation in health services themselves have been detailed in the Guidebook for Handling Medical Service Cases with Potential Legal Disputes published by PERSI in 2024. The guidelines suggest the establishment of an internal mediation unit in each hospital, complaint handling procedures, the role of internal mediators, as well as a dispute resolution model that involves empathetic communication and clear documentation. PERSI emphasizes that peaceful dispute resolution is not only beneficial to patients, but also protects the reputation and mental health of medical personnel.

At the theoretical level, mediation is seen as a mechanism that reflects the principle of restorative justice, which is a model of justice oriented towards the recovery of losses, the healing of social relations, and the moral responsibility of the perpetrator. Barda Nawawi Arief emphasized that restorative justice is more appropriate in the context of human conflict, where the main goal is to restore social balance rather than formal punishment. In medical disputes, this approach provides space for doctors to convey sincere explanations and apologies, as well as for patients to get clarification, recovery, and a sense of justice without the stigma of criminal proceedings. However, the application of mediation in medical negligence disputes cannot be separated from various practical challenges. These challenges include the limited public understanding of the function of mediation, the lack of competent mediators in medical and ethical aspects, the lack of national standards for health mediation, and the often absence of independent internal mediation units in many health facilities. Another challenge is the public's distrust of the hospital's internal processes, as well as the knowledge imbalance between patients and medical personnel that can affect the dynamics of dialogue in the mediation process.

Seeing this complexity, the research in this journal is important to provide a comprehensive understanding of: (1) the position of mediation in the Indonesian health legal system; (2) how mediation is implemented in medical negligence disputes; (3) what are the main obstacles in its implementation; and (4) what policy recommendations need to be formulated to strengthen mediation as an instrument for resolving health disputes. Thus, this journal is expected to make a real contribution to the discourse on health law, assist the government, hospitals, medical personnel, and the public in understanding the importance of mediation, and encourage the implementation of more effective and equitable mechanisms in resolving medical negligence disputes.

Literature Review

The Concept of Mediation in the Context of Medical Disputes

Mediation is a form of alternative dispute resolution (ADR) that provides opportunities for the disputing parties in this case, patients and medical personnel to reach an agreement through the facilitation of a neutral party (mediator) without going through formal court procedures. In general, mediation is designed to be more communicative and non-confrontational, emphasizing dialogue, transparency, and cooperation in finding win-win solutions that are mutually agreed upon by the parties. In the realm of Indonesian law, medical

disputes such as medical malpractice or negligence are often rooted in patients' dissatisfaction with health services or mismanagement of medical standards. Mediation as a non-litigation settlement is becoming increasingly prominent in practice due to its faster mechanism, lower costs, and the potential to maintain a relationship between the patient and the medical personnel concerned. In the Advantages of Mediation over Litigation Several international empirical studies show that mediation can significantly reduce the need for litigation. For example, in the context of overseas malpractice disputes, mediation is reported to have a success rate of around 75–90% in avoiding litigation and resulting in a satisfaction rate of up to about 90% demonstrating its effectiveness compared to the court route. Theoretically, mediation is based on the principle of the free will of the parties and an emphasis on reconciliation rather than punishment. In medical disputes, this means that mediation not only addresses the compensation aspect but also provides space for the patient to get an explanation or apology from the medical personnel, so as to improve the relationship and reduce the emotional tension that is often the main driver of disputes. Implementation of Mediation in Cross-Border Policy International experience provides examples of the implementation of mediation as a first step before formal litigation. For example, in Singapore, any medical dispute must first go through mediation as a mandatory stage before accessing the legal pathway, with a mediator who has competence in health law and medical ethics. The resolution rate through mediation in some countries such as China and the United Kingdom even accounts for more than two-thirds of all medical dispute cases.

Mediation as a Specific Settlement Mechanism in Indonesia

In the Indonesian context, several journals state that institutions such as the Indonesian Medical and Health Arbitration Mediation Institute (LMAMKI) have adopted mediation as an alternative to resolving medical negligence disputes. Mediation at this institution offers a simpler, faster, low-cost process, and supports solutions that are communicative and respect the interests of all parties. And Implementation Challenges and Limitations, although mediation has significant advantages, a number of studies have also highlighted the challenges of its implementation, such as the weak legal rules governing specific mediation in the medical context, as well as the need for competent mediators both legally and medically. These limitations have an impact on the consistency of implementation and effectiveness of mediation in providing a sense of substantive justice for the aggrieved party, for the Theoretical and Practical Implications of Mediation in Medical Disputes conceptually, mediation can be seen as a form of restorative justice that provides space for relationship restoration and conflict resolution in an interest-oriented manner. The practice of mediation in medical disputes not only offers compensation solutions but also has the potential to improve the quality of communication between patients and healthcare providers and reduce the burden on the justice system, which is often delayed and expensive.

Research Methodology

This research was prepared through several stages as usual normative law research. The first stage begins by formulating the legal issues to be studied, namely how mediation is placed in the medical negligence dispute resolution system according to the latest laws and regulations and how effective it is in health practice. After the problem is formulated, the research is continued with the search for legal materials, both primary and secondary, then continues with

a systematic process of classification, interpretation, and analysis. All of these stages were closed with the drawing of deductive conclusions and the preparation of relevant recommendations for strengthening the health dispute resolution system.

a. Identify legal issue issues.

Problem identification is carried out by observing the phenomenon of medical disputes in Indonesia and examining the development of regulations governing health services and dispute resolution. From this identification process, several important legal issues emerged, such as the position of mediation in Law 17/2023, the relationship between mediation and the ethics of the medical profession, the effectiveness of internal hospital mediation, and the need to establish a more systematic and standardized health dispute resolution model. The identification of this problem allows the research to run in a directed direction and focus on the core of the legal problem to be solved.

b. Legal material collection.

The collection of legal materials is carried out systematically through library research. The primary legal materials include several important regulations, including Law No. 17 of 2023 concerning Health, Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, PERMA No. 1 of 2016 concerning Mediation in Court, and KODEKI 2023. In addition, the official guidelines from PERSI (2024) are also used to look at internal dispute resolution practices in health care facilities. Secondary legal materials are obtained from doctrine and literature such as Jimmy Joseph Sembiring's (2011) work on ADR, health law books, restorative justice theory from Barda Nawawi Arief, and other academic works relevant to research. Tertiary legal materials such as legal dictionaries, research articles, and encyclopedias also support the strengthening of conceptual and terminological understanding.

c. Legal material analysis.

The analysis of legal materials is carried out using a deductive method, which is to draw special conclusions from the general norms contained in laws and regulations and doctrines. Analysis is also carried out through grammatical interpretation to understand the text of the article, systematic interpretation to see the relationship between provisions in a regulation, and teleological interpretation to understand the purpose of lawmakers, especially in placing mediation as an initial settlement mechanism. Sociological interpretations are used to evaluate how the norm is applied in practice, especially in the context of hospitals, doctor-patient interactions, and the implementation of internal mediation. This analysis is then combined with comprehensive legal arguments to explain the relevance of mediation within the framework of modern health law.

d. Presentation of analytical results.

The results of the analysis are presented in a descriptive-analytical manner by describing the applicable legal provisions, explaining doctrines and theories related to ADR and medical ethics, then relating them to real situations in the field. The presentation was carried out systematically with a discussion structure that included: an overview of medical disputes in Indonesia, the national legal framework, the position of mediation in Law 17/2023, the influence of professional ethics and restorative justice, implementation challenges, and

recommendations for the ideal model of health mediation. The presentation was carried out in a structured manner to provide a complete understanding of the legal issues being studied.

d. Conclusion and recommendation.

The conclusion of the research is drawn based on the results of the analysis that has been carried out, using a deductive mindset to formulate the answer to the problem formulation. The conclusion is then complemented by recommendations that are prepared based on normative needs to improve regulations, improve the competence of mediators, strengthen the hospital's internal mediation unit, and encourage integration between mediation settlement, ethical mechanisms, and professional discipline systems. This recommendation is expected to be a guide to strengthen the effectiveness of the health dispute resolution system in Indonesia in the future.

Results

Introduction to the Medical Negligence Dispute Resolution Process

Resolving medical negligence disputes through the general court has been often considered to be time-consuming and expensive. This process not only affects the parties involved, but also burdens the justice system and prolongs the emotional tension between the parties to the dispute. Therefore, mediation as an alternative to dispute resolution is expected to offer a faster, more effective, and lower cost solution in handling medical negligence cases. A neutral mediator can help the disputing parties reach an agreement without the need to go through lengthy court proceedings. Legal Basis of Mediation in Medical Negligence Dispute Resolution Mediation as an alternative to dispute resolution is regulated in various legal regulations in Indonesia. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (APS) provides a strong legal basis for the use of mediation in resolving disputes, including those related to medical negligence. In addition, Supreme Court Regulation (Perma) No. 1 of 2016 concerning Mediation Procedures in the Court also provides technical guidelines in the implementation of mediation. Mediation in the context of medical disputes has a clear legal basis that allows for more consensual resolutions. Advantages of Mediation In Medical Malpractice Cases, mediation offers a variety of advantages compared to settlement through court. One of them is the speed of the process. In many cases, mediation can be completed in a shorter amount of time compared to litigation procedures that take months or even years. Additionally, mediation is more cost-effective because it does not involve attorney fees and high court fees. In addition, mediation also offers privacy for the parties involved, as the process is carried out behind closed doors and the outcome is known only to the parties involved.

Challenges in the Application of Mediation to Medical Malpractice Disputes

Although mediation has great potential in resolving medical negligence disputes, there are some challenges faced in its implementation. One of the main challenges is the skepticism of doctors or hospitals who feel that mediation can harm their position. Doctors and hospitals often feel more comfortable if the matter is resolved through legal channels, which can decide decisively who is wrong and who is right. This is an obstacle to achieving an effective mediation agreement. The Role of Mediators in Resolving Medical Negligence Disputes Mediators play a very important role in the mediation process of medical negligence disputes. An experienced

mediator can help the disputing parties to identify the key issues that need to be resolved and help steer the discussion towards a mutually beneficial resolution. A competent mediator not only needs skills in facilitating communication, but also a sufficient understanding of medical issues in order to understand the problems that arise in medical negligence disputes. Mediation as a Tool to Reduce the Burden of Justice, mediation can help reduce the burden on the judicial system. Lengthy court proceedings often slow down dispute resolution and add to the burden of judicial administration. By shifting some cases to mediation, the judiciary can focus more on cases that require more complex legal decisions. Therefore, mediation makes an important contribution to the judicial system in Indonesia by speeding up the resolution of disputes that are lighter or that do not require strict legal decisions. Satisfaction of the Parties Involved in the Mediation Process

From the side of the disputing party, mediation provides advantages in terms of satisfaction. In the mediation process, both parties can be more actively involved in the dispute resolution process. This gives a sense of control over the outcome achieved, which is rarely found in more formal justice systems. In many cases, patients feel more satisfied with the outcome of mediation because they feel that their rights are heard and valued. Similarly, doctors and hospitals are also more comfortable with agreements reached through mediation, as they are more based on deliberation rather than coercive third-party decisions.

Comparison of Mediation with Litigation Process

A comparison between mediation and litigation in medical malpractice disputes shows that mediation is much more effective in terms of quick resolution and low cost. Although litigation provides a final and binding decision, the process is often longer and more expensive. In the case of medical negligence, mediation provides an opportunity for the parties to reach a more humane settlement and avoid the further tension that usually occurs in the litigation process. Several case studies on mediation in medical negligence show that dispute resolution by mediation successfully results in a satisfactory agreement for both parties. In one of the cases analyzed, a patient who felt aggrieved by a medical error in the immunization procedure was able to reach an agreement with the hospital through mediation. The hospital agreed to provide financial compensation and publicly apologize for the negligence that occurred, which helped restore the relationship between the patient and the hospital. Mediation not only plays a role in resolving disputes, but also has the potential to improve the quality of health services. With mediation, the hospital can be more open to criticism and input from patients. It can be used as an evaluation material to improve health service procedures, including in medical measures such as immunization. Mediation is a communication channel that allows hospitals and doctors to improve existing policies and processes.

The Development of Mediation in Health Law in Indonesia

In the development of health law in Indonesia, mediation is increasingly accepted as a legitimate alternative to medical negligence dispute resolution. Along with the increasing awareness of the importance of peaceful dispute resolution, various judicial institutions in Indonesia have begun to develop mediation services, especially in disputes involving medical malpractice. This opens up opportunities for mediation to become a more widely used mechanism in resolving medical disputes in the future. In addition to being an alternative to dispute resolution, mediation also has a positive impact on the relationship between patients and doctors. In many cases of medical negligence, the relationship between the patient and the

doctor can be injured due to the mistrust and tension that arises after the event of negligence. Mediation allows both parties to talk directly and openly about the issues at hand, which can help ease emotions and restore a healthier relationship. Patients who feel heard and valued in the mediation process tend to find it easier to forgive medical errors that occurred, while doctors can explain any misunderstandings or shortcomings that exist in medical procedures. This helps to rebuild mutual understanding and improve communication between doctors and patients, which is important to improve the quality of medical services in the future.

Conclusion

Mediation has a very strategic position in resolving medical negligence disputes in Indonesia. Various legal instruments, such as Law Number 30 of 1999, PERMA Number 1 of 2016, and Law Number 17 of 2023 concerning Health, provide a strong normative foundation for mediation as a dispute resolution mechanism that must be taken before submitting a case to the formal legal realm. This shows that the state has shifted the paradigm of health dispute resolution from a retributive model to a restorative model, which emphasizes dialogue, relationship restore, and the achievement of meaningful solutions for both parties. Mediation is very much in keeping with the characteristics of medical disputes, which often involve emotional conflicts, differences in perceptions, and information gaps between healthcare workers and patients. In medical disputes, the patient's primary goal is often not simply to seek punishment, but to clarify, restore, and justice. Meanwhile, health workers need space to provide professional explanations without disproportionate criminalization pressure. Mediation bridges these interests through a process of dialogue that is safe, confidential, neutral, and restorative. Ethically, mediation is also very much in line with the principles of the Indonesian Medical Code of Ethics (KODEKI), which prioritizes open communication, honesty, professionalism, and deliberation in dispute resolution. This confirms that mediation is not only a legal obligation, but also a moral and professional obligation. Despite this, the implementation of mediation still faces various challenges. These challenges include the absence of national standards for health mediation, the limited number of certified mediators who understand the medical context, low legal and ethical literacy among the public and health workers, and variations in hospital institutional capacity. Other challenges are public distrust of the hospital's internal mechanisms and lack of integration between ethical settlements, professional discipline, and mediation channels. To address these challenges, comprehensive national policies and cross-sectoral coordination between governments, professional organizations, hospitals, and law enforcement agencies are needed. With the support of clear technical regulations, Indonesia's health mediation system can develop into a reliable, effective, and equitable mechanism.

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