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Legal Reconstruction of Medical Dispute Settlement Based on Restorative Justice Value

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Abstract

The background of this research is what are the weaknesses of the application of restorative justice in cases of medical disputes and how to reconstruct the law based on Restorative Justice value as a means to find new legal breakthroughs that are useful for the medical world as well as fulfill aspects of victim protection. The method used is an empirical approach, namely Sociological Normative, in which the study used in this research is a Socio-legal research approach. The findings of this study show that the weaknesses of the application of restorative justice in cases of medical disputes settlement is that the handling of cases of suspected medical disputes by police investigators will of course use procedures or procedures that are it is in the Criminal Procedure Code as a reference, this is because the UUPK and the Health Law do not regulate how the proceedings should be carried out if there is an allegation that a doctor has violated the articles in the UUPK as Mediation has weaknesses, namely limited juridical support for the process and its results, including the execution of the resulting dispute settlement (peace) agreement. The process and the resulting decisions cannot simply be forced. Laws that regulate mediation have not yet been enacted to provide legal certainty, so it is necessary to carry out legal reconstruction in the Law on Health and the Law on Medical Practice.

Keywords: Legal Reconstruction, Medical Dispute, Restorative Justice.

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INTRODUCTION

Health services really need good quality and maximum service quality, with benefits that can be felt by both recipients of health services (patients) and providers of health services (doctors/health workers and hospitals). In this case, doctors and other health workers need to understand that there is a legal basis for therapeutic transactions between doctors and patients (therapeutic contracts), know and understand the rights and obligations of patients as well as the rights and obligations of doctors and the obligation to keep medical secrets and job secrets.

Having good knowledge of medical service standards and medical professional standards, understanding medical disputes, handling emergency patients, medical records, euthanasia, and others are current knowledge that needs to be studied professionally. So that medical action does not occur that causes errors and or negligence on the part of doctors/health workers and hospitals, which will cause harm to patients as recipients of health services.

The patient's right is to get compensation if the service received is not as it should be. The community as recipients of health services can submit their complaints to the hospital in an effort to improve the hospital's internal services.

When the patient feels disadvantaged, the patient is the recipient of health services and the hospital is the provider of health services in the field of health nursing. Legal protection is needed, legal protection for patients as recipients of health services. Hospitals are obliged to provide health services according to the size or standard of health care.

In fulfilling the rights of patients in hospitals, legal awareness is needed from health workers and also patients. According to Krabbe, in Baso (2014) legal awareness is actually an awareness or values contained within humans, about existing laws or about laws that are expected to exist. Krabbe's definition is sufficient to explain what is meant by awareness (Legal consciousness).

In achieving peace, the law regulates medical mediation, but in Article 29 of Law Number 36 of 2009 there is a blurring of norms in it where the word mediation in question does not explain clearly what mediation is meant for, more specifically it does not explain the penal mediation efforts resulting implicit in the setting, so it is necessary to further research on this matter so that it can be applied properly.

Settlement of disputes medical disputes can be resolved in two ways, namely through the courts and through channels outside the court. Legal arrangements through civil justice channels can be described in Article 32 letter q of Law Number 44 of 2009 concerning Hospitals, in this provision, there is a statement "*that the settlement of a medical case can be resolved through litigation either in civil or criminal channels*". As a result of the occurrence of civil medical disputes due to non-fulfillment of the contents of an agreement that has been approved (default) in therapeutic transactions by health workers, or patients suffer losses due to unlawful changes.

Penal mediation is a means intended for the settlement of criminal disputes, this penal mediation is not well known, because basically all of these criminal acts cannot be reconciled, except for criminal acts in the form of complaint offenses (Toebagus, 2022). Thus the problem of medical disputes or medical disputes will experience difficulties if the victim is disabled or even dies.

On the other hand, mediation regarding criminal medical disputes is not yet known, and can even be a coercive tool for patients to unscrupulous doctors who are suspected of carrying out medical disputes. Many of the cases that were mediated were actually brought into criminal cases by the Police so mediation in the settlement of medical disputes seemed to be ineffective in resolving these legal issues.

This is, of course, a complicated problem, even though penal Mediation is an embodiment of the existence of Restorative Justice, the outline of which is to create justice for victims and perpetrators of crimes so that their position can be restored. Penal mediation in cases of criminal medical disputes is currently only mitigating demands because there is no law that regulates the implementation of penal mediation along with the legal force of the deed of agreement resulting from the penal mediation (Widodo, 2018).

The main study is Article 66 paragraph (1) Complaints to MKDKI Law no. 29 of 2004 concerning Medical Practice, Article 66 paragraph (3) Claiming a civil and/or criminal case, Article 29 Mediation Law no. 36 of 2009 concerning Health, Article 58 Errors or omissions of Law no. 36 of 2009 concerning Health.

The application of Restorative Justice (Restorative Justice) in the world of law today has come to the fore. On various lines, the application of restorative justice (restorative justice) can be applied, although it is limited. The application of Restorative Justice (Restorative Justice) is regulated in various legal bases such as Circular Letter Number: Se/8/VII/2018 Concerning the Application of Restorative Justice (Restorative Justice) in Settlement of Criminal Cases, Republic of Indonesia Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Justice Restorative and Decree of the Director General of the General Courts Number: 1691/DJU/SK/PS.00/12/2020. But unfortunately, whether the Application of Restorative Justice (Restorative Justice) can be applied to cases of medical disputes or not is still unclear. Therefore, based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Legal Reconstruction of Medical Dispute Settlement Based on Restorative Justice Value*" where the main problem discussed in this article is as follows:

1. What Are the Weaknesses of The Implementation of Medical Dispute Settlement in Indonesia Currently?
2. How is the Legal Reconstruction of Medical Dispute Settlement Based on Restorative Justice?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach).* The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of

Laws and regulations relating to the freedom to express opinions in public.

2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. Weaknesses of the Implementation of Medical Dispute Settlement in Indonesia Currently

Mediation has weaknesses, namely limited juridical support for the process and its results, including the execution of the resulting dispute settlement (peace) agreement. The process and the resulting decisions cannot simply be forced. Another weakness is the Perma itself, namely that according to the order of Indonesian legislation Perma is not mandatory; nor binding so this means that Perma can only be used as a guideline as there has not yet been a law that regulates mediation to provide legal certainty.

In achieving peace, the law regulates medical mediation, but in Article 29 of Law Number 36 of 2009 there is a blurring of norms in it where the word mediation in question does not explain clearly what mediation is meant for, more specifically it does not explain the penal mediation efforts resulting implicit in the setting, so it is necessary to further research on this matter so that it can be applied properly. Settlement of disputes medical disputes can be resolved in two ways, namely through the courts and through channels outside the court. Legal arrangements through civil justice channels can be described in Article 32 letter q of Law Number 44 of 2009 concerning Hospitals, in this provision; there is a meaning "*that the settlement of a medical case can be resolved through litigation either in civil or criminal channels*". As a result of the occurrence of civil medical disputes due to non-fulfillment of the contents of an agreement that has been approved (default) in therapeutic transactions by health workers, or patients suffer losses due to unlawful changes.

Alternative Dispute Resolution in general can only be carried out in the environment of civil cases, but cannot be applied in the environment of criminal cases. Law enforcement officials or also with deliberation or peace mechanisms or pardon institutions in society. Mediation is one of the methods used in resolving a dispute so that it is more effective and cost-effective in resolving cases.

Article 29 of Law 36 of 2009 concerning Health states that the settlement of medical disputes is carried out first through mediation. This needs to be changed to settlement, of medical disputes through a medical arbitration body which must be included in the informed consent so that it becomes the basis for an agreement between the two parties, namely the patient and the doctor.

The number of allegations of medical disputes and the provisions of Article 28 H Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, one of which states that all citizens are entitled to health services. In addition, the protection of health workers was enacted through various laws related to health, namely Medical Practice, Health, Hospitality, Nursing, Midwifery, and so on. Medical disputes are on the rise. Data from the Indonesian Medical Council noted that in the 2006-2016 range, there were 362 cases and in the following years the number of complaints from the public to MKDKI continued to grow.

The procedure for resolving medical disputes has been regulated in Article 29 of Law Number 36 of 2009 concerning Health. Here it is regulated that the settlement of medical disputes is carried out through mediation first (Karjoko, 2021). If the mediation process fails, it will definitely continue through litigation. Even if this mediation is successful, it does not have executorial power because it is not stated in a deed that it can be canceled. The success rate is very minimal, namely only 4-5% of medical cases that can be resolved through mediation (Dahwal, 2022). For this reason, come up with instruments or other methods that can answer these challenges, where mediation is ineffective because it does not have executive power.

On the other hand, mediation regarding criminal medical disputes is not yet known, and can even be a coercive tool for patients to unscrupulous doctors who are suspected of carrying out medical disputes. Many of the cases that were mediated were actually brought into criminal cases by the Police so mediation in the settlement of medical disputes seemed to be ineffective in resolving these legal issues. This is of course a complicated problem, even though penal Mediation is an embodiment of the existence of Restorative Justice, the outline of which is to create justice for victims and perpetrators of crimes so that their position can be restored.

Penal mediation is a means intended for the settlement of criminal disputes, this penal mediation is not well known, because basically all of these criminal acts cannot be reconciled, except for criminal acts in the form of complaint offenses (Widodo, 2019). Thus the problem of medical disputes or medical disputes will experience difficulties if the victim is disabled or even dies.

2. Legal Reconstruction of Medical Dispute Settlement Based on Restorative Justice

Based on the weaknesses mentioned above, several regulations that must be reconstructed in resolving medical disputes based on restorative justice proposed by the author are:

a. Penal mediation in cases of criminal medical disputes is currently only mitigating demands because there is no law that regulates the implementation of penal mediation along with the legal force of the deed of agreement resulting from the penal mediation.
b. In achieving peace, the law regulates medical mediation, but in Article 29 of Law Number 36 of 2009 there is a blurring of norms in it where the word mediation in question does not explain clearly what mediation is meant for, more specifically it does not explain the penal mediation efforts resulting implicit in the setting, so it is necessary to further research on this matter so that it can be applied properly.
c. Even if this mediation is successful, it does not have executorial power because it is not stated in a deed so that it can be canceled. The success rate is very minimal, namely only 4-5% of medical cases that can be resolved through mediation.
d. Mediation regarding criminal medical disputes is not yet known, and can even be a coercive tool for patients to unscrupulous doctors who are suspected of carrying out medical disputes (Of, 2022). Many of the cases that were mediated were actually brought into criminal cases by the Police so mediation in the settlement of medical disputes seemed to be ineffective in resolving these legal issues.
e. Mediation has weaknesses, namely limited juridical support for the process and its results, including the execution of the resulting dispute settlement (peace) agreement. The process and the resulting decisions cannot simply be forced. Another weakness is the Perma itself, namely that according to the order of Indonesian legislation Perma is not mandatory; nor binding, so this means that Perma can only be used as a guideline. There has not yet been a law that regulates mediation to provide legal certainty.
f. Law Number 36 of 2009 concerning Health Article 29 namely in the event that a health worker is suspected of negligence in carrying out his profession, the negligence must first be resolved through mediation. Article 66 Paragraph (1) of Law Number 29 of 2004 concerning Medical Practice opens the option of making complaints to MKDKI which is not mandatory.

furthermore, the provisions of Article 66 Paragraph (3) of the Law which states that "*Anyone who knows or has an interest in being harmed by the actions of a doctor or dentist in carrying out medical practice can complain in writing to the Chairman of the Indonesian Medical Discipline Honorary Council*". this provision indicates complaints made as referred to in Article 66 Paragraphs (1) and (2) that do not eliminate the right of every person to report an alleged crime to a third party. Authorities and/or sue for losses civilly to court.

The aim of punishment is to collectively seek a fair solution by emphasizing restoration to its original state, and not retaliation. Regarding this preventive policy, it is also implemented in several countries other than Indonesia, namely: Japan and Poland. In the criminal justice system in Japan, not all cases in Japan are submitted by the police to or forwarded to the Prosecutor for prosecution as long as the case is (Haley, 2012):

a. Criminal acts against light property;
b. The suspect showed genuine remorse;
c. Compensation has been made by the suspect; and
d. The victim has forgiven the suspect.

Likewise, the Prosecutor has the authority to postpone prosecution even though the evidence is sufficient to carry out prosecution, while the consideration is if the suspect shows genuine remorse and shows good signs to become a law-abiding citizen as well as the crimes they have committed. Not so serious that the act is not criminal and will not disturb or offend the moral feelings of society in general.

From an analysis of health law policies that contain weaknesses, we agree with Satjipto Rahardjo's opinion that this law needs to be replaced with a new law that better meets the needs of society, called progressive law. Or in Sudarto's language, criminal law politics is needed that fulfills the requirements of justice and usability.

CONCLUSION

Based on the results of the research, the following conclusions can be drawn:

1. The weaknesses found by the author are in the health law policy as it cannot prevent and deal with medical disputes optimally, namely the incompleteness and lack of clarity regarding the formulation of medical disputes and their strict sanctions, as well as diversion towards acts against the law. Mediation has weaknesses, namely limited juridical support for the process and its results, including the execution of the resulting dispute settlement (peace) agreement. The process and the resulting decisions cannot simply be forced.

Another weakness is the Perma itself, namely that according to the order of Indonesian legislation Perma is not mandatory; nor binding which means that this Perma can only be used as a guideline as there has not yet been a law that regulates mediation to provide legal certainty.

2. It is necessary to carry out legal reconstruction in Law Number 36 of 2009 concerning Health Article 29, namely in the event that health workers are suspected of negligence in carrying out their profession, this negligence must first be resolved through mediation. Article 66 Paragraph (1) of Law Number 29 of 2004 concerning Medical Practice opens a non-compulsory complaint option to MKDKI "Anyone who knows or has his interests harmed by the actions of a doctor or dentist in carrying out medical practice can complain in writing to the Chairman of the Assembly Indonesian Medical Discipline Honor". Such optional provisions are re- indicated in the provisions of Article 66 Paragraph (3) of the Law which states that complaints made as referred to in Article 66 Paragraphs (1) and (2) do not eliminate the right of every person to report an alleged crime to a third party. Authorities and/or sue for losses civilly to court.

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