

Mediation as an Alternative to Medical Dispute Settlement in Hospitals

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Abstract

Mediation is one way to try to solve a disagreement. In this process, both sides agree to bring in a neutral third party to act as a mediator. The purpose of this research is to examine the case of Deed of Peace No. 001/AP/III/2021, in which a lawsuit was filed against the doctor due to malpractice that resulted in the death of the patient. As for the method that researchers uses an empirical legal approach, and the type of legal study is a full analysis of primary, secondary, and tertiary legal materials. The research and talk about it have led to a scientific work that is complete, clear, detailed, and well organized. Empirical Legal Research is a legal research method that uses empirical facts derived from human behavior, including both verbal behavior obtained through interviews and direct observation of real behavior. Empirical research is also used to look at the results of people's actions by looking at physical remains and old records. The results of this study are the constraints on the implementation of malpractice settlements in Deed of Peace No. 001/AP/III/2020 that are internal and external. Obstacles from within (internal) in the form of a lack of commitment and intention on the parties' part to reconcile While the inhibiting factors from outside (external) are the inability of the mediator to reconcile, the existence of advocates who seek profit by choosing the court route, and the absence of a special institution that is domiciled as a legal institution in each hospital, such as hospital ethics and law committees.

Keywords

Mediation; Dispute; Hospital

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1. INTRODUCTION

Disputes can arise at any time in human life, unwanted and unexpected by anyone. Especially in cases of medical disputes in hospitals, where the prosecution often demands criminal action against doctors and hospitals, This will disturb the psychology of the doctor and also reduce the image of the hospital. Settlement is often carried out through legal channels, and what is best known by the public is the settlement of disputes through the courts. However, based on experience, settling disputes in court takes a long time and is expensive. This raises several alternative settlement options outside the lawsuit, one of which is mediation. Currently, mediation has begun to be developed in courts to resolve disputes, which has been strengthened by PERMA No. 1 of 2016 concerning Mediation Procedures in Courts.

Mediation is one of the efforts that can be made to resolve disputes, where the disputing parties



agree to present an independent third party to act as a mediator. The mediator must violate impartiality, be impartial toward one of the parties, and not intervene in the mediation process. Mediation in court must be carried out in accordance with PERMA No. 1 of 2016. Mediation can be used as an alternative in resolving disputes because the goals and benefits benefit the disputing parties, save time, money, effort, and thought (it is effective and efficient), and are easily controlled by the judiciary.

In several cases of lawsuits that have occurred, settlements were carried out through the courts, so what happened was dissatisfaction from one of the parties to the dispute. And it can also affect other parties. as an example in the allegation of malpractice by Dr. Ayu in Manado, who performed surgery on a patient giving birth, which resulted in the patient's death. This made the family angry and disappointed, so they demanded the doctor and the shooting go to court. This case also has an effect nationally, both on other doctors and the community. Many negative events occurred as a result of the consequences of this case.

In the case of Deed of Peace no.001/AP/III/2000, there was an alleged malpractice that was alleged by the patient's family against an obstetrician at a RSUD (Regional General Hospital) because the baby the patient was carrying died after giving birth. As a result, the patient's family suspects that there was a delay by the hospital's medical staff, and the patient's family wishes to seek justice by filing a police report. However, by conducting mediation, the case can be reconciled so that both parties can resolve the medical claims. This case is similar to that experienced by Dr. Ayu in Manado, where during surgery the patient died. This made the patient's family upset, and they reported this incident to the police on suspicion of malpractice by Dr. Come on. However, mediation was not immediately carried out in this case, so the case continued in court, which resulted in Doctor Ayu and her colleagues being sentenced to 1 year in prison. This is what makes the author want to examine the benefits and processes that occur in the settlement of alleged lawsuits..

2. METHOD

The author uses an empirical legal approach, and the type of legal study is a full analysis of primary, secondary, and tertiary legal materials. The research and talk about it have led to a scientific work that is complete, clear, detailed, and well-organized. Empirical Legal Research is a legal research method that employs empirical facts derived from human behavior, including both verbal behavior obtained through interviews and real behavior observed directly. Empirical research is also used to look at the results of people's actions by looking at physical remains and old records. (Achmad, 2010). As for the data source, the researcher uses library materials, which include official documents and library books of laws and regulations such as the 1945 Constitution of the Republic of Indonesia; Law Number 30 of 1999 concerning arbitration and alternative dispute resolution; Law Number 29 of 2004 concerning medical practice; Law Number 36 of 2009 concerning health; Law No. 48 of 2009 concerning justice; Law No. 44 of 2009 concerning hospitals; and Law No. 36 of 2014 concerning health workers. Permenkes No. 269/Menkes/Per/III/2008 concerning medical records; Permenkes No. 290/Menkes/Per/III/2008 concerning approval of medical actions; Permenkes No. 36 of 2012 concerning medical confidentiality; Perma No. 1 of 2016 concerning procedures for mediation in courts; and scientific papers, articles, and documents related to research materials (Maouji, 2011).

3. FINDINGS AND DISCUSSION

In the case of medical disputes, Deed of Peace No.001/AP/III/2020, the patient's family felt that the hospital, especially the medical staff who handled the patient, had committed negligence, which resulted in the death of the baby in the mother's womb, so that when the sectio operation was carried out, the baby was born in a state of death. Even though the hospital, through the doctor concerned and the director and management of the hospital, had given an explanation to the patient's family, the family was dissatisfied with the explanation given. As a result, the family reported this case to the party that provided it, in this case the police. On the initiative of the hospital, they try to solve this problem amicably by visiting the patient's family. However, the family still has a strong desire for this problem

to be resolved through legal channels. Then the hospital tried to mediate with the help of a certified mediator to solve this problem.

A few days later, the mediator contacted the family and explained the purpose of this mediation as well as the position of the mediator in mediation. so that the family agrees to be mediated at a predetermined time by the mediator. When the mediation was carried out, initially, the patient's family tried hard to continue this case through the legal route. However, after an explanation and mediation process were carried out, a peace agreement was made in the form of a peace deed. And the family, because they felt that the problem was over, withdrew a report to the police.

When viewed from the time the problem occurred until mediation was carried out, which took approximately 4 weeks, In comparison, the case in Manado, which involved allegations of malpractice, took more than a year. And the results are still the same: Dr. Ayu carried out legal procedures, was detained, and was finally released after being sanctioned according to medical ethics (Ayu, 2014). Cases that are in the spotlight between patients and doctors and/or hospitals include people who already feel aggrieved by their actions, as in Article 66 of Law No. 66/2004 regarding medical practice, namely, that ongoing problems are better resolved through mediation because this benefits both parties. In accordance with Article 29 of Law 36 of 2009 concerning Health, in the event that a health worker is suspected of making a mistake in carrying out his profession, the delay must be resolved first through mediation. Even if it has to be completed by an independent body for medical disciplines, it will take quite a long time, and the decision that has been taken may not necessarily be able to satisfy both parties related to the decision from the workers, which has been carried out by MKDKI members (Irfan, tt).

In practice, medical treatment of the human body by doctors or dentists sometimes creates problems that lead to medical disputes. Typically, what is disputed is a violation of medical ethics, a violation of medical discipline, a violation of other people's or patients' rights, or a violation of the community's interests, so that doctors and dentists are held accountable in medical ethics, medical discipline, and legal responsibility in civil, criminal, and state administration. As a result, the public's trust in doctors and/or dentists can decrease; even lawsuits filed by the community are currently rife. This can happen because of the failure of healing efforts by doctors and dentists. On the other hand, if the medical procedure is successful, it is considered excessive, even though doctors and dentists with their scientific and technological tools are only trying to heal, and failure to apply medical and dental science is not always synonymous with failure in action.

Apart from that, sometimes there are several conditions that result in the results of health services provided by doctors to patients not being appropriate or far from what had been expected by both parties, where this can be referred to as a medical risk, and some occur as a result of medical negligence. Doctors try to make maximum efforts to heal patients, so the possibility of medical occurrences is beyond the will of the doctor or patient, so the patient and/or family should have been informed in advance. There have been several cases of medical disputes between patients and doctors, including:

The first case was that of three obstetricians (dr. Dewa Ayu Sasiary Prawani, dr. Hendry Simanjuntak, and dr. Hendy Siagian) who were sentenced by a panel of judges at the District Court in 2011 to be acquitted, but at the Supreme Court level, these three doctors were found guilty of malpractice against Julia Fransiska Makatey (Mannas, 2018). The Manado District Court's decision acquitted them of charges. The Supreme Court of the Republic of Indonesia imposed a prison sentence of 10 (ten) months. The three doctors submitted a judicial review to the Supreme Court of the Republic of Indonesia, and in Judicial Review Decision No. 79 PK/Pid/2013 it stated that the three doctors were not proven guilty and handed down an acquittal (Yussi, 2017).

The two cases of Doctor Setyaningrum occurred in early 1979. Doctor Setyaningrum was a doctor at the Wedarijaksa District Health Center, Pati Regency, Central Java, who received a patient, namely Mrs. Rusmini (28 years old), suffering from pharyngitis (sore throat). Doctor Setyaningrum immediately injects his patient (Mrs. Rusmini) with streptomycin, which is usually useful for treating tuberculosis (TB) and infections caused by certain bacteria. A few minutes later, Rusmini felt sick and then vomited. Doctor Setyaningrum realized that his patient was allergic to penicillin. He immediately injected Mrs.

Rusmini with cortisone. This action even rejected Mrs. Rusmini's condition. In a critical condition, Dr. Setyaningrum drank coffee for Mrs. Rusmini. However, there are still no positive changes. The doctor again gave me deladryl (also an allergy medicine). Mrs. Rusmini was getting weaker, and her blood pressure was getting lower. In this emergency, Dr. Setyaningrum rushed his patient to RSU RAA Soewondo in Pati. After fifteen minutes of arriving at Pati Hospital, the patient died. The Pati District Court, in Pati District Court Decision No.8/1980/Pid.B./Pn.Pt dated 2 September 1981, decided that Doctor Setyaningrum was guilty of committing the crime under Article 359 of the Criminal Code, namely because of his negligence causing another person to die, and sentenced him to imprisonment for three months with a 10-month trial period. The High Court in Semarang strengthened the decision of the Pati District Court, and then the Supreme Court annulled the decision of the Central Java High Court in Semarang dated May 19, 1982, No. 203/1981, No. 8/1980/Pid.B./PT. Semarang and stated that the mistake in the defense of Doctor Setyaningrum binti Siswoko for the charges against him was not proven, and he was acquitted of the charges. Regarding elements of negligence and elements of malpractice, one of the elements, namely the element of negligence desired by Article 359 of the Criminal Code, is not proven to have existed in the act of evil, so that assistance must be released from the charges against him.

From the several cases above, it can be seen that there are very clear differences in the settlement of judicial disputes carried out through litigation compared to the settlement of judicial disputes through mediation. where the completion of treatment through mediation does not take long and no party is harmed. This can be seen from the table below:

| CASE | Case settlement form | Length of Case Completion | Decision |
|------------------|----------------------|---------------------------|------------------|
| Peace Deed | Mediation | 1 day | Peace |
| dr. Ayu, et al | Litigation | 2 years | Prison 10 months |
| dr. Setyaningrum | Litigation | 3 years | Prison 3 months |

Mediation has differences from other techniques in dispute resolution, especially those through channels outside the court system, for example, arbitration. During mediation, the role of the mediator is to assist the parties involved in consulting on the problem, developing options, and then considering several alternatives that might be offered to the parties involved in order to reach an agreement . In addition, the mediator also has a role as someone who carries out his work to be able to provide suggestions or also decide on mediation by seeking a dispute resolution; not only that, but a mediator also has authority and plays a role in determining the relevance of the contents of the dispute and then maintaining that the process of mediation can run well (Kusumaningrum, 2016).

Besides being effective in resolving disputes between several parties, mediation is also effective in resolving disputes related to consumer protection, land hazards, environmental destruction, and labor. Disputed issues, namely through the industrial relations court, the commercial court, objections to the decision of the Business Competition Supervisory Commission, and objections upon the decision of the consumer dispute resolution agency, no longer require disputing parties who have used the services of a mediator to come to court in droves or themselves to resolve the issues that have been submitted. Non-litigation mediation provides more advantages than litigation mediation (Mulyana, 2019).

Fathillah Syukur will put forward the basic principles of resolving medical disputes by mediation: (i) the voluntary principle of the parties (voluntary principle), where mediation is a method based on the voluntary efforts of the parties to seek solutions for common interests without coercion, threats, or pressure from any party, (ii) the principle of self-determination, which is related to the principle of volunteerism; (iii) the principle of confidentiality, namely that the mediation process is confidential, where all information can only be known by the parties and the mediator; (iv) the principle of good faith (the good faith principle), namely the willingness of the parties to take part in the

mediation process not to buy time or take advantage of their own interests, (v) According to the principle of controlling the rules of the game (the ground rules principle), assisted by a mediator, the parties must agree to and abide by the rules of the game before starting the ME process to ensure that it can run constructively and achieve the desired results. (vi) principles or procedures for separate meetings (principles or procedures for private meetings), the mediator and the parties can and have the right to hold separate meetings with one of the parties when faced with certain situations, such as disputes that experience deadlock, relieve high emotions, or other related causes (Yudisial et al., 2012).

By implementing the principles of mediation carried out by a mediator as described above, the mediation process will run smoothly. The mediator in the Peace Deed case in this thesis is the researcher himself, who has carried out what Fatilah Gratitude said. so that the mediation process, which initially had many obstacles and was accompanied by emotion from the patient's family, can end with peace for both parties. According to the patient's family, they were very satisfied with the outcome of the peace agreement because they could express what had been bothering them and feel relieved.

On the part of the hospital, especially the doctors and midwives, they are grateful for this mediation mandate so that the case does not proceed to litigation. And also, they feel that thanks to this mediation, they get a lot of input from the patient's family for future improvement systems at the hospital. Based on Supreme Court Regulation Number 01 of 2008, Article 17 Paragraph 5, the parties can submit a peace agreement to the judge to be strengthened in the form of a peace deed; then, based on Supreme Court Regulation Number 01 of 2008, Article 17 Paragraph 6, if the parties do not agree to the agreement and reconciliation is strengthened in the form of a peace deed, the peace agreement must contain a claim withdrawal clause and/or a clause stating the problem has been resolved. Based on these two paragraphs, it states that a peace deed can be requested from the judge at the will of the disputing parties, which means that not every dispute resolved through mediation has a peace deed, depending on the wishes of the disputing parties (Witanto, 2012).

Binding means that the executor appointed by the court can carry out every word or item agreed upon and stated in the peace deed. Finally, it was upgraded to peace status, and the deed of peace terminated all other legal remedies for the parties to the dispute, in accordance with Civil Code Articles 1858 paragraphs 1 and 2, as well as Articles 130 HIR, 154 RBg paragraphs 2 and 3, and 1338 paragraph 1. Therefore, the mediator did not extend this Deed of Peace to the Court due to the parties' desire not to register this Deed of Peace with the Court. One of the reasons for resolving a dispute using a mediation mechanism is to reduce the problem of settlement in court. This reason was also considered by the Supreme Court in issuing Perma Number 2 of 2003, as the application of Article 130 HIR/154 RBg is to reduce the adjustment of cases in court. However, it seems that the Supreme Court's expectations have not been fully realized in practice, in connection with the existence of problems related to the existence of factors or things that become obstacles to mediation, so that mediation is not effective.

In carrying out mediation in the case of Peace Deed No.001/AP/III/2020, there was mainly initial resistance from the patient's family. This is due to a lack of information and knowledge about mediation. They thought that mediation would side with the hospital—in this case, the doctors and midwives. And this element of resistance is also supported because the mediator chosen in the mediation is a doctor whose patient's family suspects he will be more on the side of his colleagues. But after the mediator met with the victim's family and explained about mediation, including the process and purpose of the mediation as well as the role of the mediator in the process, the patient's family began to understand and want to participate in the mediation process.

4. CONCLUSION

The discussion about the problems in this research led to the conclusion that: legal settlement that occurs in alleged malpractice in Deed of Peace No.001/AP/III/2020 is the best option through mediation or non-litigation. Because conducting mediation to resolve court disputes has more advantages, the time spent conducting mediation is shorter than resolving disputes through litigation. The costs incurred in carrying out mediation are not large compared to resolving disputes through litigation. In carrying out

mediation, both parties contribute to solving existing problems and creating fraternal bonds. The result of mediation is that no party feels defeated, so there is no hostility between the two parties.

Obstacles to implementing the malpractice settlement in the peace deed No.001/AP/III/2020 are internal and external. Obstacles from within (internal) in the form of a lack of commitment and intention on the part of the parties to make peace: there is no intention of the parties to make peace outside the court process, and there is a wrong idea that the court is the main place to seek justice. While the inhibiting factors from outside (external) are in the form of mediators who are less able to reconcile, advocates who seek profit by choosing the court route, and the absence of special institutions that are domiciled as legal institutions in each hospital, such as hospital ethics and law committees,

benefits or advantages to completing the mediation process, among others; Relatively cheaper compared to other alternatives, There is a tendency for the disputing parties to accept and have a sense of ownership of the mediation decision. can be the basis for the disputing parties to negotiate their own disputes at a later date, opportunity to examine issues that are the basis of a dispute and opens the possibility of mutual trust between the parties to the dispute, so that feelings of hostility and revenge can be avoided.

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