
SETTLEMENT OF MEDICAL DISPUTES THROUGH LITIGATION AND NON-LITIGATION

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Abstract

This study aims to analyse the settlement of medical disputes and legal protection for doctors in the event of a medical dispute based on Law No. 17 of 2023 concerning Health. This research uses normative juridical research with a statute approach and conceptual approach. The technique of collecting all legal materials used in this research is literature study and analysed using deductive logic data analysis techniques. Law enforcement officials are encouraged to prioritize restorative justice mechanisms to resolve disputes in accordance with Article 306 of the Health Law. Additionally, medical disputes that result in harm to patients should be prioritized for out-of-court settlement. The Health Law in Article 308 provides more specific provisions when the patient files a civil lawsuit and/or criminal charges; they must first obtain a recommendation issued by the council. Article 273 expressly accommodates aspects of legal protection for doctors and health workers, stating that medical and health workers, including doctors, in carrying out their practices are entitled to legal protection as long as they carry out their duties in accordance with professional standards, professional service standards, standard operational procedures, and professional ethics, as well as patient needs.

Keywords: Medical Dispute Resolution, Legal Protection of Doctors, Legal Liabilities of Doctors, Restorative Justice

INTRODUCTION

The preamble of the 1945 Constitution outlines the aspirations of the Indonesian nation and its national goals. The national goals of Indonesia are to protect all Indonesian people and the entire homeland, to advance general welfare, to educate the nation's life, and to participate in the establishment of a world order based on freedom, eternal peace, and social justice. Health is a human right, and this must be realized as part of the nation's aspirations. Every activity and effort aimed at improving the health status of the community is carried out based on non-discriminatory, participatory, protective, and sustainable principles (Bustreo & Doebbler, 2020; Puras, 2022; Scatigna et al., 2019)

The state, as an organization of power, has an essential role in safeguarding every aspect of its citizens' lives. The 1945 Constitution mandates that health is a human right. Article 28H paragraph (1) states, "Everyone has the right to live in physical and mental well-being, to reside in a good and healthy environment, and to receive healthcare services." Furthermore, Article 34 paragraph (3) states, "The state is responsible for providing adequate healthcare services and public service facilities." These two articles imply that the government is obliged to heal the sick and provide efforts to maintain public health.

In the provision of healthcare services, moral and ethical awareness is necessary when practicing medicine. Legal responsibility for medical personnel or doctors arises due to the authority inherent in their profession, both individually and collectively (Siregar et al., 2022). Medical disputes may arise due to patient dissatisfaction with received healthcare services, unexpected medical complications, or ethical violations in medical service practices (Firmansyah, 2022; Pandansari et al., 2023). Effective and fair resolution of medical disputes is essential to maintain public trust and ensure justice for all involved parties.

In 2023, the Indonesian government enacted Law No. 17 of 2023 concerning Health (hereinafter referred to as the Health Law), aimed at improving the quality of healthcare services and protecting patient rights. This law regulates various aspects related to the settlement of medical disputes, including dispute resolution procedures, the establishment of medical dispute resolution institutions, and sanctions for ethical violations in medical practice (Harrison et al., 2015; Liang, 1998).

Law No. 17 of 2023 consolidates, amends, repeals, and annuls previous regulations, including the Medical Practice Law, the old Health Law, the Hospital Law, and the Health Workers Law. Article 454 of Law No. 17 of 2023 emphasizes that eleven laws are repealed and declared invalid, including: Law No. 419 of 1949 concerning Drug Ordinance; Law No. 4 of 1984 concerning Infectious Disease Outbreaks; Law No. 29 of 2004 concerning Medical Practice; Law No. 36 of 2009 concerning Health; Law No. 44 of 2009 concerning Hospitals; Law No. 20 of 2013 concerning Medical Education; Law No. 18 of 2014 concerning Mental Health; Law No. 36 of 2014 concerning Health Workers; Law No. 38 of 2014 concerning Nursing; Law No. 6 of 2018 concerning Health Quarantine; and Law No. 4 of 2019 concerning Midwifery.

In recent times, medical personnel have often been reported in electronic and print media regarding alleged malpractice cases due to medical negligence that resulted in disability or death following medical procedures. Such issues frequently proceed to court (Yanto, 2023). Rapid developments in technology and science have raised awareness of the right to better care, also changing public perspectives and thinking, particularly in the medical service field.

Some examples of medical dispute cases include the 2022 case where the Medan District Court sentenced Dr. Tengku Gita Aisyaritha to three months in prison with a six-month probation period. The panel of judges found the defendant guilty of obstructing the handling of the Covid-19 pandemic by injecting an empty vaccine into an elementary school student. Another recent case in 2023 involved alleged malpractice at Kartika Husada Jatiasih Hospital,

resulting in a patient's death following a tonsillectomy, where the patient was declared brain dead after the surgery.

According to data from the Indonesian Medical Council (KKI), in the last three years from 2020 to July 2023, 200 cases of disciplinary complaints have been recorded, and decisions have been made for doctors and dentists. Lawsuits for alleged malpractice by patients are increasingly reported. The number of medical disputes tends to rise over time due to high expectations for proper healthcare services, doubts about malpractice actions, distrust of doctors, and the absence of rational measures to handle medical disputes.

From 2006 to 2012, 182 cases of medical negligence/malpractice were recorded in Indonesia. According to data from the Indonesian Medical Association (PB IDI), complaints and legal claims against doctors have increased every year. In 2015, there were 10 lawsuits against doctors, which rose to 30 cases in 2016, increased again to 38 cases in 2017, and reached 33 cases in the first half of 2018.

When doctors provide healthcare services, they often encounter legal disputes because every action taken by a doctor has the potential to violate the law regarding the procedures provided to patients. To prove allegations of actions that do not comply with standard operating procedures, Article 4 paragraph (1) of the Indonesian Medical Council Regulation No. 50 of 2017 on the Procedures for Handling Disciplinary Complaints Against Doctors and Dentists states that the Indonesian Medical Discipline Honorary Council (MKDKI) has the task of examining and deciding on cases of disciplinary violations by doctors and dentists. Therefore, the doctor's actions must be proven by MKDKI to determine whether the doctor made an error in applying medical discipline.

Medical disputes between patients/their families and hospitals/healthcare facilities often focus on the outcome of healthcare services without considering the process undergone. In therapeutic relationships (professional conduct), medical disputes can be triggered by adverse events and may develop into opinions that every adverse event is malpractice. If a doctor violates medical discipline and is reported to the police, the doctor must undergo the legal process, although it is not certain that the doctor violated medical discipline (Azzahra et al., 2024; Organization, 2000).

Article 306 paragraph (3) of the Health Law states that in case of disputes, law enforcement officials must prioritize dispute resolution through restorative justice mechanisms following the provisions of laws and regulations. Article 310 of the Health Law also states that "if medical or health workers are suspected of making mistakes in performing their profession that cause harm to patients, the dispute should be resolved through alternative dispute resolution outside of court."

According to Satjipto Rahardjo, law enforcement as a dispute resolution process through the judicial system resulting in court decisions is a long process. This is because law enforcement follows many stages, from police, prosecution, district court, high court, and even the Supreme Court, requiring a significant amount of time. Besides taking a long time, it also requires costs and complex thoughts, and the expected result through litigation may not necessarily reflect a sense of justice and may not necessarily resolve the problem. The approach tends to be oriented towards a lose-lose solution rather than a win-win solution.

RESEARCH METHOD

This research uses normative juridical methods based on applicable legal rules and norms, with systematic and legal synchronization approaches. The legal materials studied include primary, secondary, and tertiary legal materials systematically compiled to examine and conclude the research issues (Marzuki, 2021) This research uses a statutory approach to examine deficiencies or deviations in regulations and a conceptual approach to study views and doctrines in legal science to find relevant legal concepts and principles. Primary legal materials

focus on related laws, such as Law No. 17 of 2023 concerning Health and others. Secondary legal materials, such as legal opinions and literature, are used to explain and analyse primary legal materials. The collection of legal materials is conducted through literature study, and the research results are presented systematically to create a cohesive unity. The analysis of legal materials uses deductive methods where the major premise (general statement) and minor premise (specific statement) are correlated to draw conclusions.

RESULT AND DISCUSSION

Disputes frequently arise in the medical community due to dissatisfaction from patients regarding the performance of healthcare professionals and medical practitioners. This dissatisfaction often stems from unmet expectations or perceived failures, leading patients to seek explanations for their dissatisfaction. Violations committed by doctors can include ethical breaches, disciplinary infractions, administrative violations, or legal (criminal and civil) offenses.

Medical disputes are disagreements between doctors and patients/clients or their families during or after the doctor-patient/client relationship, manifesting in complaints against the doctor to healthcare facilities, professional organizations, the Honorary Medical Ethics Council (MKEK), or other disciplinary and judicial bodies (Lande & Gorda, 2023; Sutanto, 2024). The resolution of claims of alleged medical malpractice can be achieved through both litigation and non-litigation avenues. Litigation involves resolving the dispute in general courts, while non-litigation involves open dialogue, such as negotiation, mediation, or arbitration, to reach a mutual agreement.

Resolving medical disputes through mediation involves a neutral intermediary, an experienced mediator, with the goal of reaching an agreement between the parties without court intervention. Arbitration, on the other hand, is an out-of-court dispute resolution process where both parties engage an arbitrator who actively assists in making a binding decision. If non-litigation efforts fail, the dispute can be taken to court for a judicial decision. These resolutions are governed by several regulations applicable in Indonesia.

With the enactment of the Health Law, there have been several changes regarding the resolution of medical disputes. Prior to the new Health Law, the legal sources for resolving medical disputes included various regulations, the Law on Medical Practice, Law Number 36 of 2009 on Health, and the Penal Code. Medical dispute resolutions can be facilitated by professional and non-professional bodies. Dispute resolution by professional bodies is a form of out-of-court settlement, while resolution by non-professional bodies involves judicial proceedings. For instance, in cases of breach of contract by a doctor, patients may seek compensation for damages based on Article 58 of Law No. 36 of 2009 on Health, which states that "everyone has the right to claim compensation from health workers and/or healthcare providers who cause harm due to errors or negligence in the healthcare services they provide." In emergencies, claims against health workers cannot be pursued if the actions were necessary to save lives or prevent disability.

The role of the court in resolving disputes in criminal and civil matters is to serve as a neutral and independent institution (Bingham, 2008; Sari et al., 2023). Judges, representing the court, must possess integrity and legal competence to carefully evaluate and analyze all evidence and arguments presented by the disputing parties. Judicial decisions must be fair and in accordance with prevailing regulations.

The court, acting as an objective arbiter, resolves medical disputes by considering the facts and applicable laws, without bias towards either party. Therefore, court decisions have binding legal force and must be respected and adhered to by both parties involved in the dispute. During the court process, parties must conduct themselves professionally and with high integrity. Legal representatives for patients or doctors have a moral obligation to adhere

to professional ethics and uphold the principles of justice. Additionally, parties must present evidence and arguments objectively and honestly, without manipulating facts for personal gain.

The primary goal of formal court-based medical dispute resolution, grounded in legal principles, is to achieve a fair resolution. To ensure equality before the law, each party has the same opportunity to present their arguments and evidence. Consequently, the parties expect that the final court decision will be just. It is also hoped that litigation will demonstrate a commitment to the rule of law and maintain the integrity of the judicial system.

Various regulations govern the resolution of medical disputes in Indonesia, depending on the perspective of the dispute. These include the Civil Code for contractual matters, the Penal Code for criminal offenses, and the Health Law. In the civil law perspective, claims of medical negligence can be pursued using the following articles:

- a) Breach of contract, under Article 1239 of the Civil Code, applicable when the legal relationship between doctor and patient is based on a result-oriented agreement
- b) Negligence, under Article 1366 of the Civil Code, which states: "Everyone is responsible not only for damages caused by their actions but also for damages caused by their negligence or lack of caution."

Civil claims involve one party demanding compensation from another party deemed responsible for the damages incurred. In this context, patients may file a civil lawsuit to seek compensation for damages resulting from medical actions considered negligent or below the standard of care. Additionally, the legal basis for civil claims is found in Article 308 paragraph (2) of the Health Law, which stipulates that "Medical and Health Workers held accountable for actions related to healthcare services causing harm to patients in civil matters must seek recommendations from the council as referred to in Article 304." This recommendation process for civil matters is detailed in paragraph (4) of Article 308 of the Health Law.

Article 304 paragraph (2) of the Health Law states that "disciplinary enforcement is carried out by a council established permanently or ad hoc by the government, as further regulated by government regulations." "In enforcing medical discipline, patients or their families can file a complaint to the council for harm caused by medical actions," as specified in Article 305 paragraph (1) of the Health Law. In addition to civil claims, patients can also pursue criminal charges. The principle of equality before the law asserts that all citizens, including medical and health workers, are subject to the same legal standards. Consequently, doctors involved in criminal offenses can be prosecuted and tried within the criminal justice system.

A patient who believes they have suffered harm due to a medical error or alleged negligence can file a criminal complaint with the authorities. This complaint aims to report the responsible doctor for the harm suffered, as regulated in the previous Law Number 29 of 2004 on Medical Practice (referred to as the Medical Practice Law) and the Health Law (Bakir & Rahmatullah, 2023; Nasution et al., 2023; Sari et al., 2023). Specifically, Article 66 Paragraph (3) of the Medical Practice Law states that patient complaints to the Indonesian Medical Discipline Honorary Council (MKDKI) do not negate the patient's right to report alleged criminal offenses to the authorities and/or file a civil lawsuit in court. Furthermore, the Health Law grants patients the right to file criminal charges, as stated in Article 308 paragraph (1): "medical or health workers suspected of committing unlawful acts in the provision of healthcare services that may result in criminal sanctions must first seek recommendations from the council as referred to in Article 304."

If a medical or health worker's actions are suspected of violating the law and causing harm or criminal actions, recommendations from the council must be obtained. To acquire these recommendations, investigators (both from the Indonesian National Police and Civil Service Investigators) must submit a written request. Upon receiving the request, the council will review or analyze the medical professional's actions to determine if they violate professional

ethics. Recommendations are provided within fourteen days of receiving the request. If the council does not provide recommendations within this period, it is deemed to have given implicit consent for the investigation to proceed, as outlined in Article 308 paragraphs (7) and (8) of the Health Law.

The outlined steps indicate the government's effort to enhance legal protection for healthcare workers by ensuring that medical actions resulting in patient harm are assessed against professional standards, service standards, and standard operating procedures. These steps are considered valid, as the investigation of health-related offenses is a specialized area requiring health experts to determine if a medical professional's actions meet the established standards. Generally, Indonesian National Police investigators or Civil Service Investigators lack sufficient knowledge to assess medical actions, necessitating competent health experts.

If a doctor makes an error during medical service that causes harm or death, the doctor can be criminally charged if negligence or intent is proven. The Penal Code does not explicitly define intent, but in this context, it refers to prohibited actions performed with awareness of the consequences. Negligence, differing from intent, is an unplanned and unintentional act. However, recklessness or negligence that endangers others is still subject to criminal prosecution under the Penal Code.

Doctors must practice in accordance with professional standards. A doctor who fails to adhere to these standards, resulting in fatal consequences, can be charged under Article 359 of the Penal Code for negligence or Article 360 of the Penal Code if their actions cause serious injury or death. Article 474 of the 2023 Penal Code categorizes three types of negligence: causing injury hindering daily activities, causing serious injury, and causing death. The Penal Code does not clearly define negligence, leaving it to judicial interpretation based on the case specifics. Professional standards are crucial in determining medical malpractice.

Negligence by doctors is measured against established benchmarks. The 2023 Penal Code outlines potential criminal charges for doctors' negligence as follows:

- 1) Any person whose negligence causes injury, resulting in temporary impairment of occupation or profession, faces imprisonment of up to one year or a fine of up to category II.
- 2) Any person whose negligence causes serious injury faces imprisonment of up to three years or a fine of up to category III.
- 3) Any person whose negligence causes death faces imprisonment of up to five years or a fine of up to category V.

Consequently, criminal sanctions will be imposed if negligence is linked to a position or profession. This is in accordance with paragraphs (1) and (2) of Article 475 of the 2023 Criminal Code, which states that "If the Criminal Act as referred to in Article 474 is committed in the performance of a job, livelihood, or profession, the penalty may be increased by one-third, the guilty party may be deprived of their livelihood, and the judge's decision may be disclosed." There are numerous modifications to the complaints and resolution of disputes or medical litigation for health workers as a result of the enactment of Law Number 17 of 2023 concerning Health. In the previous regulation, Article 46 of Law Number 44 of 2009 concerning Hospitals (hereinafter referred to as the Hospital Law) stipulated that hospitals are legally liable for all losses caused by negligence committed by health workers in hospitals. In the most recent Health Law, Article 193 stipulates that hospitals are legally accountable for all losses caused by the negligence of their health human resources. 'Negligence perpetrated by...' illustrates this distinction. The negligence in issue is exclusively caused by health workers in the Hospital Law. In the meantime, the Health Law stipulates that health human resources, including medical personnel, health workers, and health support or supporting personnel, may be responsible for this

negligence. Specialist physicians, subspecialist doctors, specialist dentists, and subspecialist dentists comprise the medical workforce. Health workers are classified into the following categories: clinical psychology personnel, nursing personnel, midwifery personnel, pharmacy personnel, public health personnel, environmental health personnel, nutrition personnel, physical therapy personnel, biomedical engineering personnel, traditional health personnel, and other health personnel as determined by the Minister. Health support or supporting personnel are employed in health facilities or other institutions within the health sector. Consequently, the extent of this posteriori regulation is more extensive than that of the previous regulation.

The sanctions for violations committed by medical personnel were adjusted in accordance with the nature of violation, whether it was classified as a violation of ethics, professional discipline, or criminal offenses, in the previous regulation, Law Number 36 of 2009 concerning Health. The MKEK is responsible for resolving any ethical violations. Professional discipline violations are resolved by the Indonesian Medical Discipline Honorary Council (hereinafter referred to as MKDI), while criminal violations are resolved through legal channels, including the judiciary and the Supreme Court (MA). Meanwhile, the council is responsible for resolving medical disputes when viewed in the context of the Health Law. The form of this council, its functions, and its authorities are not further explicated by derivative regulations. The Council established by the Minister of Health is responsible for the enforcement of medical and health personnel discipline, as outlined in Article 304 of the Health Law. The decisions of this council may be submitted to the Minister of Health for review, and it may be either permanent or ad hoc. Subsequently, derivative regulations, specifically Government Regulations, will govern the Council's obligations and functions.

The presence of ad hoc judges in the medical dispute trial procedure is in accordance with Article 32 of Law Number 48 of 2009 concerning Judicial Power, which states:

- 1) Special courts may appoint ad hoc judges to evaluate, litigate, and resolve cases that necessitate expertise and experience in specific disciplines within a specified timeframe.
- 2) The requirements and procedures for the appointment and dismissal of ad hoc justices, as mentioned in paragraph (1), are regulated by law.

Enforcement of professional discipline is necessary to ensure that medical personnel and/or health workers maintain their professionalism and are able to provide medical services to the community. A council is established by the Minister to enforce professional discipline and fulfill its responsibilities in this area. The council subsequently determines whether medical/health personnel have violated professional discipline. Disciplinary sanctions may be imposed on medical personnel or health workers who violate disciplinary regulations. These sanctions may include a written warning, an obligation to attend education or training at a health sector education provider or the nearest educational hospital with the necessary expertise to conduct such training, temporary deactivation of the Registration Certificate (hereinafter referred to as STR), and/or a recommendation to revoke the Practice License (hereinafter referred to as SIP). Currently, the previous regulations, which are enforced through the MKDKI, remain in effect, as the role, explication, and function of this professional discipline enforcement council have not yet been included in derivative regulations.

The Health Law regulations have undergone policy modifications in comparison to their predecessors. Lawsuits for violations of professional discipline are submitted to the MKDI in Law Number 36 of 2009 concerning Health, whereas the most recent regulations require submission through a council established by the Minister. Furthermore, the Health

Law emphasizes the use of restorative justice mechanisms to resolve disputes. The most recent Health Law is significantly influenced by the Assembly. The Assembly is involved in the resolution of medical disputes and any violations of professional discipline. Nevertheless, there has been no clarification of the assembly's definition, function, or authority. The derivative regulations of the assembly have not also been used to determine the scope of its authority.

CONCLUSION

There have been numerous modifications to the complaints process and the resolution of medical disputes or litigation for health workers as a result of the Health Law's implementation. In accordance with Article 306 of the Health Law, law enforcement officers are advised to prioritize restorative justice mechanisms as a means of resolving disputes. Furthermore, out-of-court settlements are prioritized in medical disputes that result in patient losses. In the event that efforts to resolve the dispute outside of the courts are ineffectual or the parties are unable to reach an agreement, the patient has the right to pursue the dispute through legal means in court. In Law No. 17 of 2023 concerning Health, particularly in Article 308, there are supplementary provisions that are more specific. The panel must first issue a recommendation before a patient can submit a civil lawsuit and/or criminal charges.

The Health Law explicitly mandates that medical personnel and health workers who are suspected of committing unlawful acts may be subjected to criminal sanctions upon requesting a recommendation from the panel. Additionally, they may be held accountable for patient losses in a civil manner. Civil Servant Investigators or investigators of the Republic of Indonesia National Police submit recommendations regarding criminal sanctions, while Medical Personnel or Health Personnel submit recommendations regarding civil cases. The government and health institutions must adjust to regulatory changes, ensure compliance with laws and regulations, and enhance their ability to resolve medical disputes. It is anticipated that this study will offer stakeholders in the health and legal sectors comprehensive insights to enhance the efficacy and fairness of resolving medical disputes following the implementation of Law Number 17 of 2023 concerning Health.

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