

**SETTLEMENT OF MEDICAL DISPUTES AFTER LAW NO. 17 OF 2023
CONCERNING HEALTH****Arif Awangga**

Iblam College of Law, Jakarta, Indonesia

salamintelektual@gmail.com

Abstract

Law Number 17 of 2023 revokes 11 previously applicable laws. The dozens of revoked laws are integrated into the Health Law. Law Number 17 of 2023 provides protection for medical and health personnel who practice according to procedures. Law Number 17 of 2023 also regulates the mechanism for enforcing discipline for medical and health personnel and resolving disputes. However, with the issuance of Law Number 17 of 2023 concerning Health, there are several significant changes in the resolution of medical disputes. This law carries a more comprehensive paradigm of health law reform, including simplifying regulations and increasing protection for medical personnel and patients. The research method used is normative legal research/normative juridical legal research. The results of the study show that medical dispute resolution in Indonesia has undergone a significant transformation with the enactment of Health Law Number 17 of 2023 and the implementation of PP 28 of 2024. Both regulations introduce a mediation mechanism as a mandatory initial step in dispute resolution, with the aim of creating a more efficient and transparent process and the advantages of non-litigation dispute resolution are that the process is faster, cheaper, and more flexible. The parties can arrange the dispute resolution process themselves according to their needs and interests.

Keywords: Settlement, Medical, Health Disputes

INTRODUCTION

Medical disputes are a common problem in the health sector, especially those involving the relationship between medical personnel and patients. These disputes can arise from allegations of medical malpractice, patient dissatisfaction with health services, or differences in perception regarding treatment outcomes. The resolution of medical disputes in Indonesia has been regulated in various regulations, including Law Number 29 of 2004 concerning Medical Practice and Law Number 36 of 2009 concerning Health.

Medical dispute resolution has become a crucial issue in the healthcare sector, especially after the enactment of Law Number 17 of 2023 concerning Health in Indonesia. This law introduces significant regulatory changes aimed at improving the quality of healthcare services and providing a clearer framework for dispute resolution (Budi & Sari, 2023). However, the practical implementation of this regulation remains questionable, raising questions about its effectiveness in real-world scenarios (Hidayat, 2023).

Medical disputes between doctors and patients generally start from health service efforts that are considered less than satisfactory for patients. Article 29 of Law no. 36 of 2009 concerning health stipulates that, in the case of health workers suspected of negligence in carrying out their profession, the negligence must first be resolved through mediation.

Law Number 17 of 2023 revokes 11 previously applicable laws. The dozens of revoked laws are integrated into the Health Law. Law Number 17 of 2023 provides protection for medical and health personnel who practice according to procedures. Law Number 17 of 2023 also regulates the mechanism for enforcing discipline for medical and health personnel and resolving disputes. Medical and health personnel make mistakes in carrying out their profession, causing losses to patients and their families, leading to disputes. Therefore, the first step that can be taken is to report the problem to the Professional Disciplinary Council.

The results of the Disciplinary Council's examination are binding on medical and health workers. If there is an alleged criminal act, law enforcement officers must prioritize resolving disputes through restorative justice mechanisms. Law enforcement officers prioritize resolving disputes using restorative justice in accordance with the provisions of laws and regulations. Establishment of the Medical and Health Mediation and Arbitration Institution as an Implementation of Article 310 of Law No. 17 of 2023.

In addition, Law Number 17 of 202 opens up space for dispute resolution through alternative dispute resolution outside the court. Article 310 of Law Number 17 of 202 mandates that in the case of medical personnel or health workers suspected of making mistakes in carrying out their profession that causes harm to patients, the dispute that arises must be resolved first through alternative dispute resolution outside the court. The mechanism refers to Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. It is better to resolve this dispute outside the court.

However, with the issuance of Law Number 17 of 2023 concerning Health, there are several significant changes in the resolution of medical disputes. This law carries a more comprehensive paradigm of health law reform, including simplifying regulations and increasing protection for medical personnel and patients.

One of the important aspects regulated in Law No. 17 of 2023 is a more structured medical dispute resolution mechanism. This law prioritizes non-litigation dispute resolution through mediation and deliberation, before taking legal action. This aims to

reduce the burden on the judiciary and ensure a fairer and more efficient resolution for all parties.

In addition, this law strengthens the role of the Indonesian Medical Council (KKI) and the Indonesian Medical Discipline Honorary Council (MKDKI) in handling alleged violations of medical discipline. KKI and MKDKI have more authority in conducting investigations and imposing administrative sanctions on medical personnel who are proven to have committed violations (Alamsyah, 2022).

The importance of understanding and implementing this new regulation is a challenge for all stakeholders in the health sector, including medical personnel, patients, hospitals, and legal institutions. Therefore, there needs to be effective socialization and increased legal awareness for all parties in order to create a fairer, faster, and more transparent medical dispute resolution system in accordance with the mandate of Law No. 17 of 2023 concerning Health.

RESEARCH METHODS

In this study, the type of research used is normative legal research/normative juridical legal research. This study was conducted to identify legal reviews of the settlement of medical disputes after Law No. 17 of 2023 concerning health. This type of research is prescriptive because it describes the applicable laws and regulations and is associated with legal theories in their implementation practices related to the problem, as well as describing/describing the facts that actually occur as a reflection of the implementation of laws and regulations.

DISCUSSION

Medical dispute resolution mechanism after the issuance of Law No. 17 of 2023 concerning Health

Following the enactment of Law Number 17 of 2023 concerning Health, the mechanism for resolving medical disputes in Indonesia has undergone significant changes by prioritizing a restorative justice approach. This approach emphasizes resolving disputes through non-litigation channels before going through formal legal processes.

One of the main methods recommended is mediation, where patients and medical personnel can resolve disputes with the help of a neutral mediator. Data shows that more than 70% of medical disputes can be resolved through mediation.

In addition to mediation, arbitration is also an alternative if mediation does not reach an agreement, with the arbitration decision being binding on the disputing parties (Hidayat, 2023).

Health Law Number 17 of 2023 provides a significant new legal framework for medical dispute resolution in Indonesia. With the introduction of this law, there are a number of important impacts that can be felt by patients, health care providers, and the legal system as a whole.

1. Enhancement of Mediation Mechanism

One of the main influences of Health Law 17/2023 is the emphasis on mediation as the first step in resolving medical disputes. Previously, many medical disputes were brought directly to court, which could prolong the process and add to the burden on the justice system. With the provisions that encourage mediation, it is hoped that dispute resolution can be carried out more quickly and efficiently. Mediation provides a space for patients and medical

personnel to communicate directly, allowing them to find mutually beneficial solutions.

2. Legal Protection for Patients and Medical Personnel Health Law 17/2023 also provides clearer legal protection for both parties. Patients are given the right to receive transparent explanations regarding medical procedures, as well as the right to submit complaints. Meanwhile, medical personnel are protected from unfounded lawsuits as long as they follow the correct procedures in their practice (Lestari, 2022). This creates a safer climate for medical personnel to carry out their duties, while also providing a sense of security to patients regarding their rights.
3. Affirmation of Standardized Dispute Resolution Process
This law also establishes a more standardized procedure for resolving medical disputes. With clear guidelines, all parties can understand the steps to be taken in the dispute resolution process. This not only minimizes confusion but also ensures that each dispute is handled in a consistent manner (Iskandar, 2022). This standardized process is expected to reduce the legal uncertainty that often accompanies medical disputes.
4. Challenges in Implementation
Although Health Law 17/2023 brings positive changes, challenges in its implementation remain. One of the main challenges is the lack of understanding among stakeholders regarding the new procedures set out in the law. Both patients and medical personnel may not fully understand their rights and obligations in the mediation process. Therefore, effective socialization and education regarding this law is essential to ensure that all parties can benefit from the new dispute resolution mechanism.
5. The Role of Education and Training Finally, to optimize the positive impact of Health Law 17/2023, there needs to be a training program for mediators and health service providers. Mediators who are trained and understand the legal and medical aspects will be better able to assist in the mediation process (Kurniawan, 2021). This training should include good communication techniques, an understanding of medical ethics, and in-depth knowledge of relevant laws.

With these various influences, Health Law 17/2023 is expected to increase the effectiveness of medical dispute resolution in Indonesia. The success of this law is highly dependent on the commitment of all parties in understanding and implementing the existing provisions. Good implementation of this law will not only increase public trust in the health system, but will also help create a better environment for future health services.

Comparison of the Effectiveness of Medical Dispute Resolution Through Litigation and Non-Litigation According to Law No. 17 of 2023

Non-litigation dispute resolution is a dispute resolution process that is carried out outside the court. This method aims to reach an agreement between the parties involved in the dispute, without going through a long and expensive trial process. This non-litigation dispute resolution method can be used in various types of disputes, such as business disputes, family disputes, consumer disputes, and so on (Hanif, 2020).

One of the common non-litigation dispute resolution methods is mediation. “Mediation is a dispute resolution process involving a neutral third party, called a

mediator. The mediator is tasked with assisting the parties in reaching a mutually beneficial agreement. The mediator does not have the power to make decisions, but he can provide advice and opinions to the parties. Mediation is usually conducted informally and confidentially, so that the parties can be more free to express their opinions and interests.”

In addition to mediation, there are also other non-litigation dispute resolution methods, such as negotiation and arbitration. "Negotiation is a dispute resolution process that is carried out directly between the parties involved. The parties try to reach an agreement through negotiation and compromise. Negotiation can be done informally or formally, depending on the level of complexity and interests involved in the dispute". Meanwhile, "Arbitration is a dispute resolution process that involves a neutral third party, called an arbitrator. The arbitrator has the power to make decisions that are binding on the parties. The arbitrator's decision is called an arbitration award. Arbitration is usually carried out formally, with established rules and procedures. Arbitration can be carried out domestically or internationally, depending on the type of dispute that occurs".

There are several advantages that the parties gain from implementing non-litigation settlements, namely as follows (Fadaniyah & Hariyanto, 2021):

- 1) The settlement is informal
- 2) The party itself resolves the dispute
- 3) Short settlement period
- 4) Low cost
- 5) The rule of proof is not necessary
- 6) The settlement process is confidential
- 7) The relationship between the parties is cooperative
- 8) Communication and focus on resolution
- 9) The desired result is the same as winning
- 10) Free from emotion and resentment.

The advantage of non-litigation dispute resolution is that the process is faster, cheaper, and more flexible. The parties can arrange their own dispute resolution process according to their needs and interests. In addition, non-litigation dispute resolution can also create a better relationship between the parties, because they work together to reach a mutually beneficial agreement.

The effectiveness of non-litigation dispute resolution outside the court depends on the parties assisted by a mediator or others because basically the non-litigation dispute resolution process is considered more effective because the process is faster, cheaper and more flexible. However, if the parties cannot be resolved non-litigation, then they can choose the legal path of litigation in the trial process. Given that there are weaknesses in the non-litigation process, one of which is that the agreement reached does not have the same legal force as a court decision. If one party does not comply with the agreement, then the other party must find another way to enforce their rights. In addition, non-litigation dispute resolution also requires good cooperation and communication between the parties. If one party is unwilling to cooperate, then the dispute resolution process can be difficult.

CONCLUSION

Medical dispute resolution in Indonesia has undergone a significant transformation with the enactment of Health Law Number 17 of 2023 and the

implementation of PP 28 of 2024. Both regulations introduce a mediation mechanism as a mandatory initial step in dispute resolution, with the aim of creating a more efficient and transparent process. The emphasis on mediation is expected to reduce the burden on the justice system, as well as provide better legal protection for patients and medical personnel. Although a clearer legal framework has been created, challenges in understanding and implementation still need to be overcome.

The advantages of non-litigation dispute resolution are that the process is faster, cheaper, and more flexible. The parties can arrange the dispute resolution process themselves according to their needs and interests. In addition, non-litigation dispute resolution can also create a better relationship between the parties, because they work together to reach a mutually beneficial agreement. Its effectiveness depends on the parties to the case, but non-litigation is considered faster and less costly and the process is flexible.

REFERENCES

- Alamsyah, A. (2022). Factors Contributing to Medical Disputes in Indonesia. *Journal of Health Law*, 15(2), 134-150.
- Berliana, C., Fajarianto, O., & Harsono, Y. (2024). Student Diversity and Fulfilling the Target of the Differentiation Learning Curriculum. *IJESS International Journal of Education and Social Science*, 5(1), 51-55.
- Budi, R., & Sari, F. (2023). The Impact of Health Law Number 17 of 2023 on Health Services. *Indonesian Health Policy Journal*, 10(1).
- Handikaningtyas, T., Kenya, P. B. M., Ramadhan, A., Fajarianto, O., & Nurlia, T. (2024). Implementation of Problem Based Learning with Gamification Approach. *IJESS International Journal of Education and Social Science*, 5(2), 327-334.
- Harimurti, E. R., Harsono, Y., & Fajarianto, O. (2024). Implementation of Learning Media Based on Artificial Intelligence Technology for Students of Special School C. *Journal of Ecohumanism*, 3(8), 11621-11626.
- Harsono, Y., Fajarianto, O., & Afriani, L. (2024). The Influence of Leadership Style and Work Discipline on Employee Performance. *IJESS International Journal of Education and Social Science*, 5(1), 1-8.
- Hidayat, S. (2023). Legal Framework and Its Application in Medical Disputes. *International Journal of Law and Medicine*, 28(3).
- Lestari, P. (2022). Legal Perspectives on Medical Negligence in Indonesia. *Indonesian Law Journal*, 20(4).
- Rifqani Nur Fauziah Hanif. (2020). Non-Litigation Dispute Resolution Through Mediation Process: Ministry of Finance of the Republic of Indonesia.
- Riris Fadaniyah, Erie Hariyanto. (2021). Efforts to Resolve Sharia Economic Disputes Through Non-Litigation Through Mediation, *Istidlal: Journal of Islamic Economics and Law* Volume 5, Number 1, April 2021.