

**LAW ENFORCEMENT  
IN THE SETTLEMENT OF HEALTH DISPUTES  
THROUGH MEDIATION EFFORTS**

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**Abstract**

The legal relationship between medical personnel and patients in carrying out their services as health workers is often passed by an incident where health workers ignore a patient's right until a problem or dispute arises. Mediation is one form of alternative dispute resolution (ADR) or alternative dispute resolution outside the court. This mediation is considered to be more beneficial for the parties because the mediator does not have the authority to decide, but only acts as an intermediary for an agreement made by the parties. The advantage of using mediation channels is that the procedure is simple, effective, inexpensive, the decision is still under the control (control) of the disputing parties. Regulations regarding medical malpractice dispute resolution through mediation are regulated in Law Number 36 Year 2009 Article 29 concerning Health "In the event that a health worker is suspected of negligence in carrying out his profession, the negligence must be resolved first through mediation".

**Keywords:** Law Enforcement, Health Dispute Resolution, Mediation.

## INTRODUCTION

The definition of mediation in terminology can be seen in the Supreme Court Regulation Number 01 of 2016 concerning Mediation Procedures in Courts, mediation is a way of resolving disputes through the negotiation process to obtain an agreement between the parties with the assistance of a mediator. The mediator is a neutral party who assists the parties in the negotiation process in seeking various possible dispute resolutions without using methods to decide and force a settlement.<sup>1</sup>

Mediation<sup>2</sup> is an alternative form of dispute resolution that is recognized by law and law enforcement agencies in Indonesia, even if any dispute that enters the court is required to be mediated first before entering the judicial process, this provision is regulated in Perma No.1 of 2008. In terms of dispute resolution health through mediation, Article 29 of Health Law Number 36 of 2009 concerning Health can be used as a legal basis for its implementation.

The development of mediation as an alternative to dispute resolution has a strong legal basis, namely Article 6 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Article 130 HIR / 154 Rbg and Supreme Court Regulation Number 2 of 2003 which is enhanced by Supreme Court Regulation Number 1 Year 2008 and lastly Perma No.1 of 2016 concerning Mediation Procedures in Courts. In resolving health disputes through the mediation process accommodated in the provisions issued by the Indonesian Medical Council as well as Article 29 of Law Number 36 Year 2009 concerning Health "In the event that a health worker is suspected of negligence in carrying out his profession, the negligence must be resolved first through mediation".<sup>3</sup>

According to a report by the Central Health Legal Aid Institute (LBH), there were approximately 405 cases of malpractice in Indonesia, of which 73 cases were reported to the police. Therefore it is necessary to resolve health disputes by mediating between patients and doctors, so as to provide a *win-win solution*.

According to Law Number 44 of 2009 concerning Hospitals, Hospital is a health service institution that provides complete individual health services that provide inpatient, outpatient and emergency services. Hospitals are not (*persoon*) which consists of humans as (*naturlijk persoon*) but hospitals are given a legal position as (*persoon*) which is (*rechtspersoon*) so that the hospital is given rights and obligations according to law.<sup>4</sup>

Doctors are health workers and patients are the ones who ask a doctor for help to treat a disease they suffer from. Legal relationship between patients and doctors / hospitals in principle consist of relationship health care (*medicalservice*) or other terms pelayananan medical action between health providers (health providers), and recipient of health services (*healthreceivers*). In the past, the relationship between the patient and the doctor, the patient was only considered an object because the doctor was thought to know everything best for the patient or (*knowsfatherbest*), so this relationship has a vertical pattern.<sup>5</sup>

Then the longer the relationship between the patient and the doctor shifts to a balanced relationship because the patient and the doctor have their respective rights and obligations that must be fulfilled. From a legal aspect, the doctor / hospital relationship and patient is the relationship between legal subjects and legal subjects.<sup>6</sup> The relationship between legal subjects and legal subjects is regulated by the principles of civil law. Civil law rules contain guidelines / measures of how the parties in a relationship exercise their rights and obligations.<sup>7</sup>

<sup>1</sup> Maskur Hidayat, *Strategi dan Taktik Mediasi Berdasarkan Perma Nomor 1 Tahun 2016 Tentang Prosedur Mediasi di Pengadilan*, Jakarta: PT. Kencana, 2016, hlm. 51.

<sup>2</sup> Moch. Basarah, *Prosedur Alternatif Penyelesaian Sengketa, Arbitrase Tradisional dan Modern (Online)*, Yogyakarta: Penerbit Genta Publishing, 2011, hlm. 115. Mediasi merupakan suatu penyelesaian sengketa berdasarkan perundingan yang melibatkan pihak ketiga atau dikenal dengan mediator, untuk membantu para pihak yang bersengketa untuk mencari penyelesaian sengketa yang mana mediator tidak mempunyai kewenangan untuk membuat keputusan selama proses perundingan berlangsung.

<sup>3</sup> Maskur Hidayat, *Op.Cit.*, hlm. 6.

<sup>4</sup> Hermien Haditati Koeswadji, *Hukum untuk Perumah Sakitan*, Bandung: Citra Aditya Bakti, 2002, hlm. 91.

<sup>5</sup> *Ibid.*, hlm. 36.

<sup>6</sup> Wila Chandrawila Supriadi, *Hukum Kedokteran*, Bandung: CV Mandar Maju, 2001, hlm. 7.

<sup>7</sup> Syahrul Machmud, *Penegakan Hukum dan Perlindungan Hukum Bagi Dokter yang Diduga Melakukan Medical Malpraktik*, Bandung: Mandar Maju, 2008, hlm. 30.

Talking about the law, there are reciprocal rights and obligations, where the doctor / hospital's right becomes the patient's obligation and the patient's right becomes the doctor / hospital's obligation. The legal relationship between doctors and patients places both of them as legal subjects, each party having rights and obligations that must be respected. Denial of the implementation of the obligations of each party will result in disharmony in the legal relationship which can lead to lawsuits or lawsuits by parties who feel their rights have been harmed by their interests.

Law Number 29 of 2004 concerning Medical Practice implicitly states that medical disputes are disputes that occur because the patient's interests are harmed by the actions of doctors who practice medicine. Thus medical disputes are disputes that occur between users of medical services and actors of medical services, in this case patients and doctors / hospitals. The problem that arises most often from all cases of patient claims to the hospital is generally a problem of miscommunication that occurs so that the correct term is "Medical Dispute".<sup>8</sup>

Settlement of cases of medical disputes that occur between doctors / hospitals and patients who feel harmed by the actions of doctors / hospitals in accordance with Article 66 of Law Number 29 of 2004 concerning Medical Practice which states "Everyone who knows or their interests is harmed by the actions of doctors or In carrying out medical practice, dentists may report in writing to the Chairperson of the Indonesian Medical Discipline Honorary Council. However, Law Number 36 of 2009 emphasizes the settlement of medical disputes first resolved through mediation as mandated in Article 29 of Law Number 36 Year 2009 concerning Health which states "In the event that health workers are suspected of negligence in carrying out their profession, the negligence must be resolved first through mediation".

The mediation process is one form of *alternative dispute resolution* (ADR) or alternative dispute resolution as stipulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The definition of mediation in terminology can be seen in the Supreme Court Regulation Number 01 of 2016 concerning Mediation Procedures in Courts, mediation is a way of resolving disputes through the negotiation process to obtain an agreement between the parties assisted by a mediator.<sup>9</sup>

The mediator is a neutral party who assists the parties in the negotiation process in seeking various possible dispute resolutions without using methods to decide and force a settlement. Mediation offers an integrated offer, the process does not require large costs and time, and does not emphasize who wins and loses, who is right or wrong, but with *awin-win solution*. In mediation, the disputing parties are pro-active and have full authority in decision making.<sup>10</sup>

Mediation is considered as a form of *alternative dispute resolution* (ADR) or alternative problem solving outside the court. Mediation is a method of resolving disputes through the negotiation process to obtain agreement from the parties with the assistance of a mediator. Mediation itself can be carried out through the court or outside the court by using a mediator who has a mediator certificate. In Indonesia, mediation has long been part of the problem-solving process. In the applicable procedural law, both Article 130 of the Revised Indonesian Reglemen (HIR) and *Staatsblaad* 1941 No. 44 and Article 154 of the Procedural Law Regulations for Regions Outside Java and Madura (RBg) *Staatsblaad* 1927 No. 227 encourages the parties to pursue a peace process that can be intensified by integrating the mediation process into litigation procedures at the court of first instance. With the enactment of Regulation of the Supreme Court of the Republic of Indonesia (Perma) Number 1 of 2016 concerning Mediation Procedures in Courts, which in the Preamble of Perma No.1 of 2016 states that mediation is one of the faster and cheaper dispute resolution processes and can provide greater access to the parties to find a satisfactory solution and fulfill a sense of justice.<sup>11</sup>

When compared to the litigation (court) process, mediation has the following advantages:<sup>12</sup>

<sup>8</sup> Eddi Junaidi, *Mediasi Dalam Penyelesaian Sengketa Medik*, Jakarta: Raja Grafindo Persada, 2011, hlm. 4.

<sup>9</sup> Susanti Adi Nugroho, *Penyelesaian Sengketa Arbitrase dan Penerapan Hukumnya*, Jakarta: PT. Kencana, 2017, hlm. 15.

<sup>10</sup> *Ibid.*, hlm. 44.

<sup>11</sup> Mahkamah Agung RI, *Naskah Akademik Mediasi*, Jakarta: Puslitbang Hukum dan Peradilan Badan Litbang, Diklat, Kumdil, Mahkamah Agung RI, 2007, hlm. 7.

<sup>12</sup> Mahkamah Agung RI, *Mediasi dan Perdamaian*, Jakarta: Proyek Pendidikan dan Pelatihan Teknis Fungsional Hakim dan Non Hakim Mahkamah Agung RI, 2003, hlm. 6.

- a. Be flexible, voluntary, cheap, fast, according to needs, neutral, confidential based on good relationships.
- b. Improve communication between the disputing parties.
- c. Helps to release anger against the opposing party
- d. Increases awareness of the strengths and weaknesses of each party's position.
- e. Knowing the hidden issues associated with disputes that were not previously realized.
- f. Get creative ideas for resolving disputes.

Meanwhile, the shortcomings of processing in the litigation path when compared to mediation are:

- a. The process is protracted or takes a long time to obtain a final and binding decision;
- b. Creating tension or hostility between the parties;
- c. Limited and general abilities and knowledge;
- d. Cannot be kept secret or open-ended;
- e. Not able to accommodate the interests of other parties;
- f. Weak administrative systems and judicial bureaucracy;
- g. A judge's decision may not be accepted by either party because it sided with one of the parties or was deemed unfair.

Thus it appears that the mediation process that takes place outside the court has its own advantages. Besides, according to Article 2 paragraph 1 Perma No. 1 of 2016 concerning Mediation Procedures in this Court, that all civil cases submitted to the court of first instance are obliged to be resolved first through reconciliation with the assistance of a mediator.

Based on the description above, the legal findings that must be carried out as a form of solution are to implement mediation efforts as part of the law enforcement process, because law enforcement is not always resolved through conventional law enforcement agencies such as the Indonesian National Police, the Attorney General's Office and the Supreme Court, but also can be resolved through a mediation mechanism. Considering these arguments, the writing of this journal is entitled **Law Enforcement in Health Dispute Resolution through Mediation Efforts.**

## RESEARCH METHOD

This research is basically a normative empirical legal research, which is basically a combination of the normative legal approach with the addition of various empirical elements.

The type of research that the author uses is the type of research with *astatute approach* and a *conceptual approach*, as well as *acase approach*.

The type of data used is primary data, namely data obtained from the source directly and secondary data is data obtained directly through literature searches or from official documents, namely books of health law, medical law and books of philosophy of law and law. .

The author in this study uses 3 (three) legal materials as follows;

- a. Primary legal materials, namely binding legal materials, originating from: the 1945 Constitution of the Republic of Indonesia; Civil Code (KUH Perdata); 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 Number 44 of 2009 concerning Hospitals; Law Number 36 of 2014 concerning Health Workers.
- b. Secondary legal materials, legal materials that provide an explanation of primary legal materials, consisting of literatures, books related to the resolution of health disputes through mediation efforts. Secondary legal materials are obtained by means of document studies, studying problems from books, literature, legal papers and dictionaries and other related materials.
- c. Tertiary legal materials, namely legal materials that provide additional explanation or support for existing data on primary and secondary legal materials. The tertiary legal material used is to use secondary legal material supporting materials, in this case a legal dictionary and a legal encyclopedia.

The data collection uses 2 (two) ways, namely: a) (*library research/library research*). In this literature study, what is done is to collect data by reading, understanding, and quoting, summarizing, and making notes and analyzing laws and regulations, b) collecting data by conducting interviews with sources. The research resource is the High Court Judge at the Denpasar High Court, Bali, namely Mr. Sumpeno, who has served as Chairman of the West Jakarta District Court who has experience as a mediator.

All data obtained from the research results will be analyzed qualitatively. Qualitative analysis was carried out by classifying the data obtained, then sorted according to their relevance to the research topic. The data is then systematically compiled to be linked and analyzed with the relevant

regulations, so that further conclusions can be drawn to answer the problem. Data presentation is done descriptively by describing and explaining the results obtained in the field with existing data and theories, so as to answer the problem.

The form of research results is in accordance with the type of research that is descriptive-analytical<sup>13</sup>, namely a method that serves to describe or provide an overview of the object under study through data or samples that have been collected as they are without conducting analysis and making general conclusions.

## DISCUSSION

Mediation is an alternative form of dispute resolution that is recognized by law and law enforcement agencies in Indonesia, even every dispute that enters the court is required to be mediated first before entering the judicial process, this provision is regulated in Perma Number 1 of 2016 concerning Mediation Procedures in Court. In terms of resolving health disputes through mediation, Article 29 of Law Number 36 of 2009 concerning Health requires patients, doctors and hospitals to first resolve health disputes through mediation. This can be used as the legal basis for its implementation.

The end of the mediation process is that the mediation is declared failed or successful. mediation that succeeds in producing a peace note to be implemented by the parties, or before it is implemented, a court judge can request a decision from the court judge to become a final and binding deed of peace and can be executed. The peace deed resulting from the mediation process has permanent and binding legal force, the act is subject to ordinary legal remedies, therefore there is no appeal or cassation process. The peace deed gave birth to an agreement that was valid as law for the parties making it *vide* Article 1338 of the Civil Code.

The development of mediation as an alternative to dispute resolution has a strong legal basis, namely Article 6 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Article 130 HIR / 154 Rbg and Supreme Court Regulation Number 2 of 2003 which is enhanced by a Supreme Court Regulation No. 1 of 2008 and lastly Perma No. 1 of 2016 concerning Mediation Procedures in Courts.

In the settlement of health disputes through a mediation process accommodated in the provisions issued by the Indonesian medical council as well as in Law Number 36 of 2009 concerning Health Article 29 which reads: "In the event that a health worker is suspected of neglecting in carrying out his profession, the negligence must be resolved. first through mediation".

One of the reasons for resolving a dispute using a mediation mechanism is to reduce the buildup of cases in court. Obstacles in the process of resolving health disputes through mediation can be caused by two things, namely: 1) internal factors including: lack of commitment from the parties in settling a dispute peacefully (mediation); no intention of the parties to make peace outside the court process; parties who consider the litigation process as a last resort to obtain legal protection, 2) external factors include: The inability of the mediator to resolve a dispute; Regarding medical disputes, which use the services of an advocate, there will be obstacles if the Advocates of each party do not support peace (mediation); There is no special institution that is a legal institution that functions to resolve a medical malpractice dispute.

## CONCLUSIONS

position of patients as consumers of health services and doctors and hospitals as health service providers can be accommodated in health mediation which is mandatory based on the provisions of Article 29 of Law Number 36 Year 2009 concerning Health. The result of mediation in the form of a peace deed is a legal form because it is in the form of an agreement. Meanwhile, according to Article 1338 of the Civil Code, the agreement is valid as law for the parties making it. An agreement that is the result of mediation must be in writing to ensure legal certainty and law enforcement against the health dispute itself which has been resolved through mediation.

The process of resolving health disputes through mediation efforts has several obstacles, namely internal and external obstacles. Internal obstacles include a lack of commitment and intention from the parties to make peace, the absence of the parties' intention to make peace outside the court process, the wrong thinking that the court is the main place to seek justice. Meanwhile, external

<sup>13</sup> Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif dan R&D*, Bandung: Alfabeta, 2009, hlm. 29.

(external) inhibiting factors include the inability of the mediator to reconcile, and the existence of mediators who seek profit by choosing court routes, and the absence of a special institution that serves as a mediation institution in each hospital, such as the health mediator committee and the Health Mediation Institution in hospitals. .

Based on the above conclusions, the author suggests that in the future an Indonesian Health Mediator Committee consisting of doctors and health workers as well as health law experts can be formed or form a Health Mediation Institute in each hospital to carry out the mandate of Law Number 36 of 2009 about health.

## REFERENCES

- Arfin dan Leonarda Sambas, *Teori-Teori Hukum Klasik dan Kontemporer*, Bogor: Ghalia Indonesia, 2016.
- Budiono Kusumohamidjojo, *Teori Hukum, Dilema antara Hukum dan Kekuasaan*, Bandung: Penerbit Yrama Widya, 2016.
- Dellyana, *Konsep Penegakan Hukum*, Yogyakarta: Liberty, 1988.
- Eddi Junaidi, *Mediasi Dalam Penyelesaian Sengketa Medik*, Jakarta: Raja Grafindo Persada, 2011.
- Hermien Haditati Koeswadji, *Hukum untuk Perumah Sakitan*, Bandung: Citra Aditya Bakti, 2002.
- Mahkamah Agung RI, *Naskah Akademik Mediasi*, Jakarta: Puslitbang Hukum dan Peradilan Badan Litbang, Diklat, Kumdil, Mahkamah Agung RI, 2007.
- \_\_\_\_\_, *Mediasi dan Perdamaian*, Jakarta: Proyek Pendidikan dan Pelatihan Teknis Fungsional Hakim dan Non Hakim Mahkamah Agung RI, 2003.
- Maskur Hidayat, *Strategi dan Taktik Mediasi Berdasarkan Perma Nomor 1 Tahun 2016 Tentang Prosedur Mediasi di Pengadilan*, Jakarta: PT. Kencana, 2016.
- Moch. Basarah, *Prosedur Alternatif Penyelesaian Sengketa, Arbitrase Tradisional dan Modern (Online)*, Yogyakarta: Penerbit Genta Publishing, 2011.
- Sudikno Mertokusumo & Pitlo, *Bab-Bab Penemuan Hukum*, Bandung: Citra Aditya Bakti, 1993.
- Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif dan R&D*, Bandung: Alfabeta, 2009.
- Susanti Adi Nugroho, *Penyelesaian Sengketa Arbitrase dan Penerapan Hukumnya*, Jakarta: PT. Kencana, 2017.
- Susilawetty, *Arbitrase dan Alternatif Penyelesaian Sengketa di Tinjau Dalam Perspektif Peraturan perundang-undangan*, Jakarta: Gramata Publishing, 2013.
- Syahrul Machmud, *Penegakan Hukum dan Perlindungan Hukum Bagi Dokter yang Diduga Melakukan Medical Malpraktik*, Bandung: Mandar Maju, 2008.
- Wila Chandrawila Supriadi, *Hukum Kedokteran*, Bandung: CV Mandar Maju, 2001.