Migration Letters

Volume: 20, No: 6, pp. 511-524

ISSN: 1741-8984 (Print) ISSN: 1741-8992 (Online)
www.migrationletters.com

Medical Dispute Resolution Model Through Hospital Mediation in Indonesia

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Abstract

This research aims to provide a concept of hospital mediation in medical dispute resolution in Indonesia. This research is a normative legal research using legislative approach, case approach and comparative legal approach. The comparative law approach is based on medical dispute resolution in Japan which has used hospital mediation as the basis for medical dispute resolution. The results showed that Hospital Mediation in hospitals whose members consist of health/non-health workers who work in the hospital. However, what needs to be observed is who can become a member and what/how the position of the appointed member is, because this concerns the existence and continuation of the institution itself. This is to avoid the impression that if the appointed members are internal hospital personnel, it is feared that they will still try to protect their colleagues and not fight for the interests of patients. Likewise, in appointing a mediator, it is necessary to pay attention to the requirements that must be met, because the position of the advisor/mediator has an important role in the successful resolution of disputes between patients and doctors/hospitals. A neutral advisor, specialised in health/medical law and legal procedure is appointed to assist the hearing and provide insights on how Hospital Mediation can work to balance the interests of the patient, doctor and hospital. Hospital Mediation has the further advantage and benefit of directly engaging the parties in the assessment of their disputed material through information provided in a concise presentation. Where the foresight and experience of an advisor is required to be able to explain the position or position of each party in a medical dispute between patients, doctors and hospitals. Hospital Mediation must have advantages, among others, it can be directly controlled/supervised by hospital management/Hospital Director, the procedure is easy, fast, short and the results can accommodate the aspirations and interests of patients and doctors.

Keywords: *Medical Dispute, Mediation, Hospital Mediation.*

1. Introduction

The term medical negligence in the World Medical Association cited by J. Guwandimen states: "Medical malpractice involves a doctor's failure to meet the standard of care for the treatment of a patient's condition, or lack of skill, or negligence in providing care to a patient, which is the direct cause of injury to the patient.(Jovita Irawati, 2019) The term medical negligence in the World Medical Association cited by J. Guwandimen states:

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"Medical malpractice involves a doctor's failure to meet the standard of care for the treatment of a patient's condition, or lack of skill, or negligence in providing care to a patient, which is the direct cause of injury to the patient.

In medical law, there is a universally accepted formulation of negligence as follows: "Negligence is reasonable care, not doing what another with reasonable care and prudence would have done, or doing what another with reasonable care would not have done". This means that negligence includes two things, namely for doing something that should not be done or for not doing something that should be done, in other words, negligence / negligence occurs when a person commits an act because he is negligent / negligent towards the obligations that according to the prevailing order of community life should not be done by him.(Ramadhani, 2022)

Defining negligence as performing medical acts below the standard of medical care. Negligence is not a violation of the law or a crime if it does not bring harm or injury to another person and that person can accept it. If the negligence causes material loss, harm and even takes the life of another person, then the negligence is gross negligence (culpa lata) and can be classified as a criminal offence. Negligence is a form of medical dispute, and the most common form of medical dispute. Basically, negligence occurs when a person unintentionally does something that should not be done or does not do something that should be done by a person who has the same qualifications in the same circumstances and situation.(Sudjana, 2017) Negligence can occur in 3 (three) forms, namely Malfeasance, namely performing unlawful actions or making policies / decisions or plans that are not appropriate / appropriate (unlawful / improper); Misfeasance, namely making the right choice of medical decisions or actions but carrying them out improperly (improper performance), performing medical actions by violating procedures; Nonfeasance, namely not performing medical actions that are an obligation for him.(Saputra, Zaid, et al., 2023)

Of the various cases of Medical Disputes that occurred in Indonesia, which received a lot of attention and became the subject of study among doctors and legal practitioners, and had obtained a definitive legal decision (inkracht) was the case of Dr. Setianingrum (1979). The chronology of the case began when a patient/victim named Rusmini (25 years old) came to the practice of Dr Setianingrum/the defendant for treatment. After an examination, the diagnosis was made that the patient was suffering from a cold and cough, resulting in inflammation of the upper airway. The doctor injected streptomycin after receiving information that the patient had received the injection before. After the injection, the patient felt nauseous, weak and pale, which was then anticipated by injecting cortizon, given coffee and injected again with delladryl. The patient went into anaphylactic shock and was given a fourth injection of adrenaline; her condition worsened, she became unconscious, stopped breathing, and had a small irregular pulse. The patient was transported to RSU Pati, and was treated/examined, and the results of the examination revealed abnormalities in the patient, namely unconsciousness, respiratory arrest, unmeasured blood pressure, irregular pulse, and so on.(Sarastri et al., 2021)

The doctor concluded that the abnormalities were caused by the body's reaction to the medicine it was receiving and the patient was pronounced dead. As a result of the aforementioned incident, the public prosecutor charged the defendant with causing the death of another person in violation of Article 359 of the Indonesian Penal Code. In Pati District Court Decision No.8/1980/Pid/PN Pt, dated 2 September 1981, the defendant was found guilty of committing the crime of negligence causing the death of another person, etc. The legal considerations included that the defendant did not intend the prohibited consequence (death) but was negligent and did not make a reasonable expectation. The Semarang Court of Appeal Decision No.203/1981/Pid/PT Smg, dated 19 May 1982, upheld the decision of the Pati District Court, taking over the full consideration of the law on the same grounds. However, this judex factie decision was overturned by the Supreme Court in Supreme Court Decision No.600/Pid/1983, dated 27 June 1984 with the

following ruling: (1) Cancelling the decision of the Semarang High Court dated 19 May 1982 No. 203/1981/Pid/PT.Smg and the decision of the Pati District Court dated 2 September 1981 No.8/1980/Pi.B/PN.Pt (2) Declaring the guilt of the defendant Dr. Setianingrum on the charges against her not proven. (3) To acquit the defendant from the charges.

In this case, there is a significant difference of opinion in assessing the elements of fault/ negligence. In the Pati District Court Decision No. 8 / 1980/Pid/PN.PT. dated 2-9 1981, which in its verdict stated that the defendant (dr. Setianingrum) was "guilty of committing a crime due to his negligence causing the death of another person", and the defendant was sentenced to 3 (three) months imprisonment with a probation period of 10 (ten) months. This decision was later upheld by the Central Java Court of Appeal Number 203/1981/Pid/PT Smg dated 19 May 1982. There are two parts of legal considerations that support the verdict, namely: (1) the consideration of the doctor's negligence and (2) the consideration of the death caused by the doctor's negligence (causaal verband). The Supreme Court through its decision Number 600/K/1983 dated 27 June 1984, which in its ruling "cancels the decision of the Semarang District Court and the Decision of the Pati District Court and Declares that the guilt of the defendant charged to Dr. Setianingrum is not proven, and acquits the defendant from the charges". The legal reasoning was that "whether or not there is negligence depends on whether the doctor has tried his best to save the patient's life based on his reasonable ability and the tools available to him".

Where the Supreme Court Jurisprudence states that the Supreme Court has used 3 (three) sources in its decision with the following reasons: (1) the doctor has tried earnestly and carefully for the patient's recovery as befits the practice of the average doctor in the same conditions and abilities and environment; (2) certain medical actions performed by the doctor as an alternative therapy in seeking the patient's recovery have been approved by the patient (informed consent), namely the approval of medical actions regulated by the Regulation of the Minister of Health of the Republic of Indonesia Number 585/Menkes/Per/IX/ 1989; (3) the patient's treatment procedure has been carried out and recorded in the medical record in accordance with the Regulation of the Minister of Health of the Republic of Indonesia Number 7491/Menkes/Per/III/1979.

In Supreme Court Decision No. 600 /K/Pid/1983, there was a shift from the point of legal consideration, which was error / negligence towards the consequences before and during the doctor's actions. Where the Supreme Court Decision on "fault / negligence is on the avoidance of the consequences of death that already appear symptoms after the act is done by the doctor, not negligence on the consequences of the doctor's actions. From the Supreme Court's decision, it can be concluded that the Supreme Court used the objective culpa doctrine by considering a doctor with only 4 years of work experience, working in a health centre with limited facilities.

The Supreme Court's consideration of the requirement of "negligence" on whether the doctor has tried his best to save the patient's life based on his reasonable ability and the tools / means available to him and in accordance with the medical professional standards (SPM) and standard operating procedures (SOP) The provisions of Article 44 of Law Number 29 of 2004 concerning Medical Practice which states: (1) doctors or dentists in organising medical practice are obliged to follow the standards of medical or dental services; (2) medical or dental service standards are differentiated according to the type and strata of health service facilities; (3) the health service standards are determined by the Minister of Health. The intended professional standard is the average ability of medical expertise adjusted to the place, facilities and infrastructure of health services. This average ability is not measured by the ability of specialist doctors with ordinary doctors, not measured / equated standardisation of health services in hospitals with services at health centres. The defendant is judged to be in accordance with the standards of the medical profession adjusted to the abilities of new doctors and health service places

with limited equipment.Standard Operating Procedure (SOP) is a set of instructions or steps that are standardised to complete a certain routine work process.(MELENKO, 2021)

The element of negligence in this case shifts from the "consequences" of the act of providing treatment to the act of eliminating symptoms after performing the act, whereas the attitude of "batin culpoos" is formed from the consequences of an act, and not after the act is performed. Actually, the measure of the presence or absence of a culpable attitude towards the consequences that rests on whether the doctor has tried his best based on his reasonable abilities and the tools / means available to him "cannot be used as a legal consideration of the existence of a culpable attitude towards the consequences of death that he has done".(Chintia & Kusumaningrum, 2020) In relation to the elimination of this punishment, Roeslan Saleh argues that the elimination of the punishment is possible because; (1) An act is in accordance with the formulation of a certain offence, but then the act is deemed not to be against the law (in the material sense), or in other words there are justification reasons. (2) An act has been in accordance with the formulation of a particular offence, but after consideration of the circumstances of the perpetrator of the offence, it is deemed that the person has no fault or in other words there are reasons for forgiveness. In addition, there are also things that can exempt doctors from medical dispute claims as a form of negligence / negligence in carrying out treatment.(Fitriono et al., 2016)

In relation to medical dispute cases, Edi Setiadi reminded the need for caution in determining a medical action as a medical dispute, or only a violation of the code of ethics. Therefore, judging cases of medical disputes that are carried out rashly is very detrimental and can disrupt development programmes that involve many professionals which can result in negative defensive professional practice that reduces professional creativity and dynamics.(Anggraeni, 2020) In the aspect of criminal law, the consequences of medical medical disputes that can become criminal offences (criminal medical disputes) must be in the form of consequences as specified in the Criminal Law, this is because in criminal medical disputes, it can only occur in material crimes, where the occurrence of consequences is a condition for the completion of the criminal act (death, serious injury, and others).(Toguan & Ricky, 2021) In practice, criminal charges against cases of alleged medical disputes have occurred so far, the provisions of Articles 359 of the Criminal Code and 360 of the Criminal Code are most often charged against errors / negligence of doctors that cause death and / or injury. where in the provisions of Articles 359 of the Criminal Code and 360 of the Criminal Code can accommodate all acts committed that result in death, even though death / injury is not intended or desired. There is a significant difference in the application of the elements of negligence, namely in ordinary criminal offences (KUHP) the focus is on the effect (gevolg), while in health/medical law criminal offences the important thing is not the effect but the cause.

In practice, criminal charges against cases of alleged medical disputes have occurred so far, the provisions of Articles 359 of the Criminal Code and 360 of the Criminal Code are most often charged against errors / negligence of doctors that cause death and / or injury. where in the provisions of Articles 359 of the Criminal Code and 360 of the Criminal Code can accommodate all acts committed that result in death, even though death / injury is not intended or desired. There is a significant difference in the application of the elements of negligence, namely in ordinary criminal offences (KUHP) the focus is on the effect (gevolg), while in health/medical law criminal offences the important thing is not the effect but the cause.(Suparman, 2020)

Regardless of the pros and cons in the case that the author presents above, but the end result is whether or not the doctor charged with a medical dispute has the potential to lose the honour and good name of the profession that he has been engaged in for years, even before there is a final and binding court decision public scorn has been received which erodes his credibility in the profession he is engaged in, which is certainly at odds with the concept of legal protection. So through legal writing in the form of this journal article,

the author aims to describe and conceptualise a model of medical dispute resolution in the frame of legal protection of the medical profession. The following is a model of medical dispute resolution through hospital mediation to achieve legal balance for doctors and patients in the future including.

2. Research Methods

This research is a normative legal research conducted through a statutory approach, case approach and comparative legal approach and conceptual approach.(Astuti, 2017) The statutory approach is carried out by examining all juridical aspects governing health crimes or more specifically discussing malpractice in Indonesia, a comparative legal approach is carried out with Japanese countries which in resolving medical disputes Japanese countries use the hospitaly mediation method which in the practice of medical disputes in Indonesia has never been done,(Vatikawa & Amnawaty, 2018) a conceptual approach is carried out by interpreting to find out whether the practice of hospitality mediation can be used in resolving medical disputes in Indonesia.

3. Discussion

Mediation in Medical Dispute Resolution in Indonesia

From the various obstacles / barriers to the medical dispute resolution model used today, it is necessary to have a model of medical dispute resolution that is practical, fast and simple, low cost, and can represent the interests and legal protection for patients and the medical profession.(Hatta, 2018) This is considered very important because the need for protection of rights and obligations between parties related to health care efforts can be fulfilled so as not to cause negative impacts or prolonged conflicts. In addition, the existing medical dispute resolution model will not be able to reduce the malicious prosecution of people who deliberately want to humiliate the medical profession as a revenge for not being bound by the principle of ne bis in idem (the same case cannot be tried a second time), which will eventually lead to a malpractice crisis or defensive medicine for doctors.

Whereas seen from the nature of efforts to resolve medical dispute cases is so that the public is protected from exploitative medical practices and does not meet medical ethics which results in public distrust of the medical profession, and provides legal certainty and legal protection for the medical profession from excessive public immaterial claims that can result in excess medical practices that are detrimental to the image of the medical profession.(Anandarajan & Malik, 2018) Therefore, the values of morality and ethics of the medical profession must be placed in the frame of justice and balance for the benefit of the community or patient and the medical profession. The model of resolving medical disputes through court / litigation means risking the reputation that has been achieved with difficulty, and can cause loss of good name.(Saputra, Setiodjati, et al., 2023) The above shows that the current model of medical dispute resolution does not provide concrete legal protection for health service users (patients) and doctors in the construction of health legislation and in the settlement of medical disputes so far.(Sulolipu et al., 2019, Pujiyono, et al, 2021)

Philosophically, juridically and sociologically, the social control that has been carried out by the government as an institution for making and implementing public policies and professional organisations in the field of the medical profession has not been able to overcome problematic doctors and cause harm to patients and medical / health workers themselves.(Suwadi et al., 2022) In addition, such a model of medical dispute resolution will not be able to reduce the malicious prosecution of people who deliberately want to humiliate the medical profession as a revenge for not being bound by the principle of ne

bis in idem (the same case cannot be tried for the second time), which will ultimately lead to a malpractice crisis or defensive medicine for doctors.(Shin et al., 2014) In the development of the medical dispute resolution model between doctors and patients, an alternative dispute resolution through mediation has emerged. The legal basis for mediation in the health sector is regulated in the provisions of Article 29 of Law Number 36 of 2009 concerning Health, which states as follows "In the event that health workers are suspected of negligence in carrying out their profession, the negligence must first be resolved through Mediation".(Mulyadi et al., 2020)

Mediation comes from the English word mediator, meaning dispute resolution involving a third party as an arbiter. Mediation is the intervention in a dispute by a third party who is acceptable to the disputants, is not part of the parties and is neutral. A negotiated problem-solving process in which an impartial and neutral outsider works with the disputants to help them reach an agreed settlement. The mediator only helps to resolve the disputing parties' problems and has no authority to decide the dispute between them.(Karjoko et al., 2021) The advantages of using mediation in dispute resolution are that the procedure is simple, effective, inexpensive, the decision is still within the control of the disputing parties. There are 3 (three) aspects of mediation that need to be comprehensively understood, namely:

1. The Urgency/Motivation aspect is for the parties to reach an amicable settlement and not pursue the case in court. If there are any outstanding issues that have been a problem, they should be resolved amicably through consensus. The main objective of mediation is to achieve peace between the conflicting parties. It is usually very difficult for conflicting parties or litigants to reach an agreement when they meet by themselves. Common ground that has been frozen on disputed issues can usually become fluid if someone brings them together. Mediation is therefore a means of bringing together litigants facilitated by one or more mediators to filter the issues so that they become clear and the conflicting parties gain an awareness of the importance of peace between them.

2. Principle Aspect. Legally, mediation is listed in Article 2 paragraph (2) of Perma No. 01/2008 which obliges every judge, mediator and party to follow the procedure for resolving cases through mediation. Failure to follow the mediation procedure according to the Perma is a violation of Article 130 HIR and or Article 154 Rbg which results in a null and void decision. This means that all cases that come to the court of first instance cannot skip the mediation procedure. Because if that happens the risk will be fatal.

3. Mediation is a series of processes that must be followed in every civil case that comes before the court. The substance of mediation is a process that must be undertaken seriously to achieve peace. Therefore, a separate time is given to conduct mediation before the case is heard. Mediation is not merely to fulfil the requirements of formal legality, but is a serious effort that must be made by the parties concerned to achieve peace.(Danzon & Lillard, 1983) Mediation is an attempt by the parties to reconcile in their own interests, not the interests of the court or judge, nor the interests of the mediator. As such, all costs incurred as a result of the mediation process are borne by the parties.

Mediation is a form of alternative dispute resolution (ADR) or alternative problem solving. Mediation is a way of resolving disputes through a negotiation process to obtain agreement between the parties with the assistance of a mediator. The mediator is a neutral party who assists the parties in the negotiation process to find various possible dispute resolutions without resorting to deciding or imposing a settlement..The principle of the mediator as mediator, that in a mediation process the mediator plays a role to mediate between the parties to the dispute.(Pujiyono, et al, 2017, Kasuma et al., 2018) This role is realised through the mediator's task of actively assisting the parties in providing a true understanding of the dispute they are facing and providing the best alternative solution for resolving the dispute. This principle, therefore, requires the mediator to be a person

who has considerable knowledge of the relevant areas disputed by the parties.(Riyanta, 2020, Saputra et al., 2021)

A negotiated problem-solving process in which an impartial and neutral outsider works with the disputants to help them reach an agreed settlement. The mediator only helps to resolve the disputing parties' problems and has no authority to decide the dispute between them.(Syaufi et al., 2021) The advantages of using mediation in dispute resolution are that the procedure is simple, effective, inexpensive, the decision is still within the control of the disputing parties. The result of mediation is an agreement between the parties that is a win-win solution.

In the dispute resolution process there are four (4) types of mediation or mediation models: (1) Settlement Model (Sttlement Model or Compromise), in the form of mediation intended to bring differences in bargaining value or an agreement closer, the mediator only focuses on the problems or positions stated by the parties, the mediator's function is to determine the "bottom-line" position of the parties and take various approaches to encourage the parties to reach a compromise point, usually the mediator is a person who has a high status and this model does not determine the expertise in the mediation process or technique. (2) Facilitative Model, in the form of providing facilities and directing litigants to resolve their own problems as much as possible, the mediator directs the parties from Positional negotiation to interest based negotiation which leads to a mutually beneficial settlement, the mediator directs the parties to be more creative in finding alternative solutions, the mediator needs to understand the process and techniques of mediation without having to be an expert in the chosen field, the advantage is that the parties when the dispute is resolved will feel satisfied because what is raised is their interest and not just the disputed matter, the disadvantage is that the time needed becomes long, and the process is more structured. (3) Therapeutic, focusing on comprehensive resolution not limited to dispute resolution but also reconciliation between the parties, what is expected is the resolution of the dispute and also the parties, actually become good or remain on good terms, the negotiation process that leads to decision-making will not begin before the emotional problems between the disputing parties are resolved, The mediator's function is to diagnose the cause of the conflict and mediate it based on psychological and emotional aspects so that the disputants can repair and improve their relationship, the mediator is expected to have skills in "counselling" as well as mediation processes and techniques, the emphasis is more on therapy either in the pre-mediation stage or continuation in the mediation process, usually used in family dispute. (4) Evaluative, in the form of court annexed focuses more on the evaluative model, the parties come and expect the mediator to provide some kind of understanding that if this case continues then who will win and who will lose, focuses more on rights and obligations, mediators are usually experts in their field or experts in the field of law because the approach is focused on rights, providing advice or solutions provided by the mediator, the disadvantage is that the parties will feel they do not own the results of the agreement signed together.(Syaufi et al., 2021)

But on the other hand, mediation as a means of dispute resolution also has several weaknesses that need to be recognised by parties using mediation as a means of dispute resolution, including: (1) mediation can only be carried out effectively if the parties have the will or desire to resolve the dispute by consensus, this is especially true if the use of mediation is voluntary (2) parties who are not in good faith can use the mediation process as a tactic to stall the resolution of the dispute, for example by not complying with the schedule of mediation sessions or negotiating just to obtain information about the opponent's weaknesses. (3) Some types of cases may not be amenable to mediation, particularly cases relating to ideological and value-based issues that do not allow the parties to make compromises. (4) Mediation is deemed inappropriate if the central issue in a dispute is the determination of rights because disputes over the determination of rights must be decided by a judge, whereas mediation is more appropriate for resolving

disputes relating to interests. (5) Normatively, mediation can only be pursued or used in the field of private law, not in the field of criminal law.(Hartanto et al., 2018)

Misunderstandings or disagreements between doctors, hospitals and patients can lead to conflict. If the conflict has been declared by one party who feels aggrieved directly to the other party and is not resolved immediately, the conflict changes or develops into a dispute. Even though they have not been found guilty, or even the final verdict is declared not guilty, the good name of the doctor or health care facility has already seemed bad because it has been openly in the media and has become a bad stigma in the community. In the end, it can cause the level of public trust in the doctor or health care facility / hospital to drop.(Susila, 2021, Pujiyono, et al, 2017)

Therefore, before medical disputes between patients and doctors in hospitals emerge and the involvement of other parties that lead to the Court, one of the alternatives offered is a medical dispute resolution model through Hospital Mediation which is formed in each Hospital, whose task is specifically to resolve medical disputes arising in health services in hospitals. The procedures and mechanisms used are fast, precise and do not require expensive costs. Hospital Mediation is one of the efforts in solving specific medical dispute problems and is the answer to resolving medical disputes that have been felt unsatisfactory by both patients and doctors.

Model Hospital Mediation

The dispute resolution model arising in this hospital through a facilitative mediation approach as an initial step after a dispute where both parties (patient and doctor/hospital) recognise and evaluate the situation in different ways. In this approach it is useful to reduce emotional confusion, feelings of anger, anxiety and guilt by disclosing various information from the perspective of both parties The purpose of this approach is not only to solve the problem directly but also to rebuild the right relationship between the patient and the doctor/hospital through effective communication.(Chen et al., 2017) Hospital Mediation developed in the hospital is not like a typical model in mediation that is solving problems in a win-win solution that is prioritised, nor does it deal with legal issues and discuss compensation, but rather prioritises effective communication by understanding the needs of patients and social phenomena regarding emotional understanding of grief and needs of patients and their families. This settlement through Hospital Mediation does not only concern legal issues but is more oriented towards a humanism / humanitarian approach by paying attention to the needs and social suffering of patients / their families.(Lee & Cho, 2013)

The Hospital Mediation model developed has characteristics that favour social deconstruction between the interests of patients and doctors/hospitals, as follows: (1) redefining the concept of interests, integrating both parties' perceptions, emotions, factual information and the process of the emergence of complaints; (2) placing a lot of value on the process gradually, changing subjective narratives and both parties' perceptions, positions and interests through dialogue; (3) making both parties to the dispute reconstruct the reality of adverse medical events through dialogue; (4) rebuilding relationships and cooperation; (5) providing compensation for emotional distress and unintentional ethical acts.(Li et al., 2019)

Hospital Mediation in Hospitals whose members consist of health/non-health personnel working in the Hospital. Even so, what needs to be observed is who can become members and what / how the position of the appointed members is, because this concerns the issue of the existence and continuation of the institution itself. This is to avoid the impression that if the appointed members are internal hospital personnel, it is feared that they will still try to protect their colleagues and not fight for the interests of patients. Likewise, in the appointment of a mediator, it is necessary to pay attention to the requirements that must be met, because the position of the advisor / mediator has an important role in the

successful resolution of disputes between patients and doctors / hospitals.(Junita & Sugama, 2019)

A neutral advisor, specialised in health/medical law and legal procedure is appointed to assist the hearing and provide insight into how Hospital Mediation can balance the interests of the patient, doctor and hospital. Hospital Mediation has the further advantage and benefit of directly involving the parties in the assessment of their dispute material through the information provided in the brief presentation. Where the foresight and experience of an advisor is needed to be able to explain the position or position of each party in a medical dispute between patients, doctors and hospitals. Hospital Mediation must have advantages, among others, can be controlled/supervised directly by hospital management/Hospital Director, the procedure is easy, fast, short and the results can accommodate the aspirations and interests of patients and doctors. .

If the settlement of medical disputes between doctors and patients is carried out through Hospital Mediation, the steps that must be taken by the hospital for the establishment and procedures/mechanisms as an examination system in the settlement of medical disputes, among others:

1. Establish a Legal and Mediation Committee

This committee is one of the bodies that regulates the settlement of disputes between doctors, and/or hospitals with patients This committee is a non-structural body is a special body that handles medical disputes. Due to the special nature of this committee, the mechanism/procedure for reports/complaints is regulated separately in accordance with the aims and objectives of the establishment of this Committee. This examination procedure is carried out as follows: If there is a patient complaint / report regarding an alleged violation by a doctor and / or hospital, the patient / family submits an application to the Legal and Mediation Commission of the Hospital concerned. After receiving the report/complaint of the patient/family, then this commission examines and scrutinises the incoming complaint/ report file.(Shenoy et al., 2022)

If the patient/family agrees to seek resolution through this Legal and Mediation Committee, then there are 5 (five) steps in a quick and simple manner as follows: 1. Consent of the patient/family and doctor to submit the dispute resolution through this committee; 2. Case preparation, limited to a period of 1 week. . The purpose of case preparation is to provide an opportunity for the parties to collect various documents that are considered important to be submitted in connection with the dispute in question; 3. Information hearing, at this stage the mediation process begins in a closed meeting attended by the parties. At this stage the patient and doctor/hospital are brought together directly led/guided by the advisor/mediator. In this process the advisor/mediator acts neutrally by giving the patient/family the opportunity to express what they want to know about the problem. 4. The mediator/advisor helps each party to express their needs by asking questions to the doctor/hospital. At this stage the disclosure of information is delivered directly by the doctor/hospital which is not limited to medical records but also emotional information of the doctor's feelings when treating his/her patients. At this stage the patient/family listens not only to the medical services the doctor has performed but also expresses the doctor's sincere attitude in providing services to the patient. It is expected that in this stage the patient/family and the doctor/hospital can get to know the situation and conditions of each party; 5. Advisor/mediator gives an opinion, at this stage the patient/family and the doctor/hospital must be present themselves. The content of the opinion explains the fundamental conclusions through the exchange of information and opinions / ideas of both parties to be understood. The mediator / advisor understands and shows sensitivity in explaining the causes of medical accidents. Finally, the advisor / mediator also explains by describing the strengths, and weaknesses of each party, and what if the case is submitted to the court in litigation. 6. Discuss settlement, the parties hold a meeting and are not attended by the mediator / advisor, because since he expressed

his opinion, his role and function ended by himself. Whether or not an agreement to settle the dispute is reached is left to the will and desire of the parties concerned. In this process, the patient/family makes a brief presentation of their side of the case before a panel consisting of the parties to the dispute the patient/family, the doctor/hospital, the mediator authorised to negotiate and resolve the case/dispute. A neutral mediator is appointed who is an expert in the field of health/medical law and legal procedures to assist the proceedings and provide insight into how Hospitol Mediation can balance the interests of all parties. 7. Hospitol Mediation Proceedings.(Santoso et al., 2019)

2. Fair Hospital Mediation Procedure

From the description of the stages that must be passed in resolving medical disputes through Hospital Mediation, the flow / procedure that must be followed in the examination hearing is as follows:

In the Hospital Madiation Examination Procedure, what is meant by :

a. Hospitol Mediation is a system of checking reports / complaints that occur in the hospital environment between patients and doctors / hospitals

b. Mediation Committee is a body / organ appointed by the Board of Directors of the Hospital to be in charge of carrying out the examination.

c. The composition of the members of this Committee consists of the Chairman, Secretary and Members

d. Complaint / report is a notification / complaint against medical services in the hospital.

e. Complainant / Complainant is a patient / family related to health services / medical services performed on him / her family.

f. Preliminary Examination is an action taken to examine and examine the medical file / record complained of by the complainant.

g. Mediator / Advisor is an expert (medicine - Psychology) appointed to lead / guide the course of the examination.

h. The result of the examination is the conclusion/result of the agreement reached in the hearing.

Submission of Report/Complaint

(1) Any patient whose interests have been harmed by an alleged violation by a doctor and/or hospital in providing health services may complain in writing to the Chairperson of the Hospital's Madiasi Committee.

(2) The complaint shall be filed only within 7 (seven) days from the occurrence of the alleged violation.

(3) Complaints may be made by the patient and/or his/her family and signed.

(4) Complaints on alleged violations in the provision of health services at the hospital.

Complaint/Report Material

1. The material of the report/complaint concerns matters concerning the provision of health services in the hospital; 2. The violation causes harm to the patient both physically and non-physically.

Completeness of Complaint/Report File

1. Complaints/Reports as referred to in Article 2 must contain, among others: a. The identity of the complainant (patient/family); b. The identity of the doctor c. The

reason/matter of the complaint (accompanied by evidence); 2. Complaints that do not meet the provisions in paragraph (1) of this article are not accepted.

File check

1. The complaint/report file that has been entered/received is carried out an initial examination, namely clarifying/matching the data of the patient and the doctor who performed the medical service. 2. The day / date of examination is set no later than 1 (one) week to give the parties the opportunity to make / compile a brief description of the complaint / report material. 3. The Chairperson of the Committee determines the Advisor / Mediator, with expert criteria in the field of Medical Psychology. 4. Notification / Summons of examination to the parties concerned

Stages of Inspection

1. The Chairman of the Commission opened the commencement of the examination which was attended by the patient/family, doctor/hospital, mediator/advisor briefly and handed over to the Mediator/Advisor to lead the examination process; 2. The Mediator/Advisor gave an opportunity to the patient/family to convey matters relating to the material of the complaint. 3. Next, the doctor/hospital is given the opportunity to explain the medical services provided to the patient; 4. The mediator/advisor provides an explanation of the understanding of the things that cause medical accidents and expresses a sincere and empathetic attitude towards the patient/family; 5. The mediator/advisor provides an opportunity for both parties to communicate directly with each other; 6. The results of the communication are made into a joint agreement in writing, signed by both parties and the chairman of the commission; 7. If no agreement has been reached, the chairman of the Commission postpones the examination and sets the next examination schedule.

Explanation of the stages that must be passed in the settlement of medical disputes through Hospitol Mediation as follows: If there is a report / complaint of the patient / his family about the alleged medical violations by doctors / hospitals / health workers against patients to the Chairman of the Committee. The report/complaint contains, among others, the identity of the complainant / complainant, the identity of the doctor, the material of the complaint /report in writing. Furthermore, the Chairman of the Committee determines the Mediator/Advisor and the day and date of the examination by summoning both parties (patient/family and doctor/hospital) through a written summons no later than 7 (seven) working days from the report/complaint.

On the first day of the commencement of the examination, the Chairman of the Commission explained the purpose and objectives of the meeting which was attended by the Mediator / Advisor, patient / family, doctor / hospital. then the chairman of the commission fully submitted to the Mediator / Advisor appointed to lead the course of this examination. The Mediator/Advisor gives an opportunity to the patient/family to convey the material of the complaint/report and the purpose/objective desired by the patient/family, Furthermore, an opportunity is given to the doctor/hospital to explain the things that have been done during the treatment of the patient both related to clinical/medical care as well as the situation and conditions until the occurrence of the event.

The mediator / advisor gives an opinion by explaining the understanding of the occurrence of things that cause the event to occur by expressing a sincere and empathetic attitude towards the patient / family in achieving a settlement between the two parties. Mediator / Advisor in delivering must be neutral / careful by considering the psychological factors of both parties. The mediator does not make an evaluation of the problem but expresses in his opinion because there is a belief that the parties can evaluate each other in managing the conflict for themselves. At this stage the Mediator / Advisor

prioritises and builds a good communication process between the two to find a resolution that can adopt the interests of both parties.

The Mediator / Advisor provides an opportunity for both parties to conduct direct communication in private without the presence of the mediator. If at this first meeting there is no agreement between the two parties, then the Mediator / Advisor closes the meeting and gives the two parties the opportunity to hold a second meeting no later than 2 (two) days after the first meeting. At the second meeting, the mediator gives each party the opportunity to express their desire to resolve the conflict. If there is / is not an agreement, then the examination is made minutes of examination / meeting signed by both parties and known by the Chairman of the Commission. This model of settlement through Hospitol Mediation does not concern legal issues but is more oriented towards a humanism / humanitarian approach by paying attention to the needs and social suffering of patients, including understanding and sensitivity in explaining the causes of medical accidents.

4. Conclusion

Hospital Mediation in a Hospital whose members consist of health/non-health workers who work in the Hospital. Even so, what needs to be observed is who can become members and what / how the position of the appointed members is, because this concerns the existence and continuation of the institution itself. This is to avoid the impression that if the appointed members are internal hospital personnel, it is feared that they will still try to protect their colleagues and not fight for the interests of patients. Likewise, in the appointment of a mediator, it is necessary to pay attention to the requirements that must be met, because the position of the advisor/mediator has an important role in the successful resolution of disputes between patients and doctors/hospitals. The appointment of a neutral advisor, an expert in the field of health/medical law and legal procedures in charge of assisting the course of the examination and providing a view of how Hospital Mediation can run in balance between the interests of patients, doctors and hospitals. Hospital Mediation has the further advantage and benefit of directly involving the parties in the assessment of their dispute material through the information provided in the brief presentation. Where the foresight and experience of an advisor is needed to be able to explain the position or position of each party in a medical dispute between patients, doctors and hospitals. Hospital Mediation must have advantages, among others, can be controlled / supervised directly by hospital management / Hospital Director, the procedure is easy, fast, short and the results can accommodate the aspirations and interests of patients and doctors.

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