MEDIATION AS AN ALTERNATIVE FOR MEDICAL DISPUTE RESOLUTION BETWEEN DOCTORS AND PATIENTS IN APPROVAL OF MEDICAL / MEDICAL ACTIONS

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ABSTRACT

Mediation as an alternative to resolving medical disputes between doctors and patients in the agreement of medical / medical treatment offers several possibilities and flexibility in dispute resolution and as control of the parties for better resolution. The benefit of mediation for medical dispute resolution, such as confidentiality that threatens the professional reputation of a doctor / dentist and / or hospital, where the professional reputation among peers and in the community who use health services in their environment can be protected. From the patient and / or his family, personal confidentiality is very important, what happened to him or his family is not to be published.

Keywords: Mediation, and Medical Disputes

INTRODUCTION

Welfare is one of the human rights, including the right of a person to get health services.[1] Every activity in an effort to maintain and improve the highest degree of public health is carried out based on the principles of non-discrimination, participation, and sustainability in the framework of forming Indonesia's human resources, as well as increasing the resilience and competitiveness of the nation for national development.

Health maintenance is a medical service involving doctors and patients. Like human relations, in the medical service relationship there are always advantages and disadvantages, in the sense that there are advantages and disadvantages during the implementation of medical services. This relationship is related to healing disease and even saving human lives, so it is very unique because there is a patient's dependence on doctors who in this case give confidence in the healing or saving process.

Relationships are influenced by the ethics of the medical profession, as a consequence of the professional obligations that impose limits or signs on the relationship. Obligations are contained in the moral principles of the profession, where the main principles are autonomy (respecting the rights of patients), beneficence (oriented to patient kindness), nonmaleficence (not harming patients), and justice (justice / eliminating discrimination) while the derivative principles are veracity (truth), truhtfull (trust), information, fidality (loyalty), privacy (confidentiality), and confidentiality (maintaining confidentiality).[2]

An agreement or contract is an event where one or one party promises to another person or party or where two people or two parties promise to do something, while therapeutic is defined as something that contains elements or medicinal value. Juridically, a therapeutic agreement is an agreement between a doctor and a patient which authorizes the doctor to carry out activities to provide health services to patients based on the doctor's expertise and skills.[3]

Recently, there have been frequent problems between patients and doctors and also patients with hospitals. The problems cannot be separated from other health workers, such as midwives, nurses, and others as far as the patient is concerned. In recent years the medical profession has faced many lawsuits in health services. Some conflicts involve health facilities, including health centers, medical centers, clinics and hospitals.

There are two things that can occur in everyday life, first is conflict, and second is dispute, the two terms are almost the same and what distinguishes a wider definition conflict and disputes that occur will last long and rarely arise, if disputes to come to the fore, it is said to be disputed. Conflict is usually, certain parties do not know or are aware of the dispute, and only the parties are aware of the dispute. Disputes begin to emerge where one of the parties or parties involved has taken actions that make the parties not involved know or realize there is a problem.[4]

For cases in the health sector, especially medical disputes, demands from patients / families after receiving the results of treatment by doctors that the patient hopes are inappropriate, namely the healing process. In a medical dispute, the action of one or the parties, in this case usually the patient takes a lawsuit to the hospital, makes a complaint to the police, or a lawsuit to the court, this is where it is said that there has been a problem between the doctor and the patient, it is said to be a medical dispute.

The public sees medical disputes as being equated with something bad so that it seems intentional, the community suspects that there is malpractice from this action, from the nature and cases that are often filed by patients is dissatisfaction with the services provided by doctors and / or hospitals which sometimes raise the suspicion of doctors. and / or the hospital is acting deliberately, therefore it is not yet a verdict from either the professional court, which in this case could be a violation of ethics and the one who will decide is the professional organization of doctors through the Ethics Council of Medicine / Dentistry, while the judiciary for

[1] Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that every person has the right to live in physical and mental well-being, residing and having a good and healthy living environment and the right to obtain health services. Health efforts are regulated in Article 1 point 2 of Law Number 36 Year 2009 concerning Health which reads: Health efforts are any activities to maintain and improve health carried out by the government and or the community.

[2] Safitri Hariyani, *Sengketa Medik : Alternative Penyelesaian Perselisihan antara Dokter dan Pasien*, Diadit Media,Jakarta, 2002, hlm 3.

[3] Veronica Komalawati, *Peranan Informed Consent Dalam Perjanjian Terapeutik*, Citra Aditya Bakti, Bandung, 2002, hlm 1.

[4] Adami Chazawi, *Malpraktik Kedokteran Tinjauan Norma dan Doktrin Hukum, Bayumedia Publishing*, Malang, 2007, hlm 23.

medical disciplines, which currently has existed since the enactment of Law Number 29 of 2004 concerning Medical Practice, is an autonomous body formed by order of this law, namely the Honorary Council of Indonesian Medical Disciplines which will decide slowly. independent of medical discipline decisions.[5]

When a malpractice event comes to the surface, the opinion of the perpetrator must be challenged or punished. This creates a proposition with the concept of being flattened without seeing and investigating the context of the incident in advance that malpractice occurs and doctors should be convicted for the negligence of the patient's death or that proposed by the Public Prosecutor At least doctors can be prosecuted for violating the law (onrechtmatige daad) according to the civil law system or known as unlawful act in tort law according to the common law system in the civil field because patients suffer losses or even disabilities to be used as a reason to file a lawsuit in court.

This opinion, as expressed by Kerry J. Breen, said that doctors who fail to adequately inform their patients about their conditions, treatment options or material risks of treatment may be sued on the grounds of negligence.[6] Michael G. Faure said the current development of many patients filed a lawsuit in court with the argument of negligence to get compensation or compensation, or also in some cases the responsibility of the insurance company was granted by the court.[7]

Medical disputes are usually characterized by a legal relationship [8] that exists between the doctor and the patient. From this relationship there is an agreement contained in the contractual relationship where the doctor receives counter-achievements from the patient and the doctor gives achievements in the form of health service efforts to the patient.[9] In the field of civil law, this legal relationship creates an agreement to do something or not to do something called default.[10]

Particularly in medical practice, an agreement requires or demands that both parties respect each other's contract based on trust and good faith. Trust demands characterized by honesty where the patient expresses various things that the doctor wants to know regarding the patient's care or treatment, including those related to the patient's personal matters, while the doctor is honest in helping his patient.[11] Good faith as in Article 1338 paragraph (3) of the Civil Code, namely the agreement must be carried out in good faith. good faith is an agreement carried out according to propriety and justice.[12]

The format of the doctor-patient engagement contained in the informed consent is the approval of medical action by the patient or the patient's family by the doctor. In essence, informed consent is done by competent and capable patients alone, but if the patient is in a state of ability (onder curatale), his / her family can be represented as well as competent and capable.[13] The basic idea of informed consent comes from ethics, law, and medicine regarding the nature of the doctor-patient relationship and provides an advantage when patients can find out about treatment and care. Ethical justification highlights two important poles in informed consent, namely the rights and obligations, as well as the consequences of actions taken by doctors; so that the difference in the perceptions of doctors and patients can approach the similarity of perceptions.[14]

After there is an agreement stated in the informed consent or even there has been no agreement, the doctor is obliged to examine and help patients who hope that the patient's disease can be cured. This hope is understood as a natural thing when people suffer from a disease, sure in their minds how to recover and people can heal medically is a doctor. On the one hand, a doctor is not a miracle worker ensuring the patient's recovery even though the doctor has a high ability in his duties (a man of the very highest skill in his calling).[15]

Usually if a minor dispute can be resolved in a peaceful manner by both parties without a continuous process, if the dispute starts to get large and difficult to resolve by each party, a process of achieving peace is needed, usually the disputing parties will choose the desired settlement path, for example through alternative dispute resolution.

In fact, efforts to resolve disputes are often a frightening specter for doctors, patients often feel that they cannot be represented if they are carried out through bodies belonging to the medical profession (the Indonesian Medical Discipline Honorary Council or the Medical Ethics Council). Therefore, an ideal dispute resolution method is needed for both parties, in which case mediation can be used as a solution.[16]

If the two parties jointly resolve the negotiation process for a case where the parties are difficult to resolve the dispute, they need the presence of a third party to help the peace process reach an agreement between the parties, the third party is called a mediator. Medical dispute resolution does not only have to be included in the category of a criminal act. However, it should be

[5] Vera Polina Br Ginting, *Penanggulangan Malpraktek yang dilakukan oleh Tenaga Kesehatan*, Jurnal Online FH Unila, 2017, hlm 23

[6] J. K. Breen, *Good Medical Practice Professionalism, Ethics And Law*, Cambridge University Press, New York, 2010, hlm 49.

[7] G. M. Faure, *Accident Compensation*, dalam *Elgar Encyclopedia of Comparative Law*, Edited by Jan M. Smits, Cheltenham, Edward Elgar Publishing Limited, United Kingdom, 2006, hlm 11.

[8] A legal relationship or rechtsbetrekking in this case can be interpreted as a doctor having the position of a debtor and the patient as a creditor which results in an engagement or agreement (verbintenis) such as civil law, see P. J. P. Tak, *Rechtsvorming in Nederland*, Samson H. D. Tjeenk Willink, Aphenaan de Rijn, 1991, hlm 301.

[9] The contract is an agreement (usually between two persons) giving rise to obligations on the part of both persons who are enforced or recognized by law. Max Young, *Understanding Contract Law*, Routledge-Cavendish, New York, 2010, hlm 7.

[10] R. Setiawan, *Pokok-Pokok Hukum Perikatan*, Bina Cipta, Bandung, 2004, hlm 17.

[11] A. Yunanto, dan Helmi, *Hukum Pidana Malpraktek Medik Tinjauan dan Perspektif Medikolegal*, Penerbit Andi, Yogyakarta, 2010, hlm 13.

[12] A. Y. Hernoko, *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial*, Kencana Prenada Media Group, Jakarta, 2010, hlm 134. In the legal formulation, the term good faith can be traced through the Hoge Raad decision which provides the formula that: the agreement must be carried out volgens de eisen van redelijkheid en billijkheid. Redelijkheid and billijkheid, include everything that can be felt and can be accepted by reason properly, fairly and fairly, which is measured by written objective norms and does not come from the subjectivity of the parties. Justice borrows from the meaning of justice conceptualized by Ulpianus: Justitia est perpetua et constans voluntas jus suum cuique tribuendi (the constant and perpetual wish to give everyone that which they deserve) or justice is a constant and constant desire to give everyone what they receive. (due), see Raymod Wacks, *Philosophy of Law, A Very short Introduction*, Oxford University Press, New York, 2006, hlm 59.

[13] Adami Chazawi, *Op, Cit*, hlm 36.

[14] Jesica W. Berg, *Informed Consent Legal Theory and Clinical Practice*, Oxford University Press, New York, 2001, hlm 11.

[15] Mason dan McCall Smith, *Law and Medical Ethics*, Butterworths, London, 1993, hlm 131.

[16] Article 29 of Law Number 36 Year 2009 states: In the event that a health worker is suspected of negligence in carrying out his profession, the negligence must be resolved first through mediation.

resolved by mediation or providing appropriate compensation to the victim. For this reason, mediation is the right reason in resolving medical disputes between doctors and patients.

FORMULATION OF THE PROBLEM

1. What is the legal relationship between doctor and patient in a medical / medical treatment agreement?
2. How is mediation as an alternative to medical dispute resolution between doctors and patients in the approval of medical / medical action?

RESEARCH METHODS

Based on the identification of the problem, this research is included in normative legal research, for this reason this research uses normative research methods.[17] However, it will still use empirical research data,[18] as a support. Thus the subject matter is examined in a normative juridical manner. With the normative juridical method it is intended to explain various laws and regulations related to Mediation as an Alternative to Settlement of Medical Disputes between Doctors and Patients in Approval of Medical / Medical Actions.

This research also uses a socio-legal approach, with the intention of looking further than just a doctrinal approach, so that it has a broader perspective by looking at law in relation to the social, political and economic systems of society.

There are several approaches used in this research, namely the statute approach and the conceptual approach. The statute approach is carried out by examining various statutory regulations related to Mediation as an Alternative to Settlement of Medical Disputes between Doctors and Patients in Medical / Medical Action Approval. The conceptual approach is used by moving on the views and doctrines developed in the science of law, especially in the field of Mediation as an alternative to the resolution of medical disputes between doctors and patients in the approval of medical / medical action.

RESEARCH RESULTS AND DISCUSSION

Legal Relationship between Doctor and Patient in Approval of Medical / Medical Action

Agreement is termed in English with contract, in Dutch with verbintenis (agreement) or overeenkomst (agreement).[19] The word contract is narrower because it refers to an agreement which is also often linked to a cooperation agreement, meaning a reciprocal relationship between one party and another.

Achmad Sanusi mentioned this agreement as a source of law because the law (Article 1338 of the Civil Code) calls it a source of law.[20] On the other hand, if the law and agreement are viewed from the law of the engagement, according to R. Subekti, he has the same position as the source of the engagement.[21] The mention of a law as a source of contract law in addition to an agreement is in line with the characteristics of the continental system which considers law to be law. J. Satrio, quoting Pitlo's opinion, criticized the mention of this law, because it is more appropriate to mention a law whose scope is wider than the law.[22]

Agreement law is part of private law which historically and sociologically based on three different legal systems, namely Western law (KUHPerdata), customary law and Islamic law so that it gave birth to contract law regulated in Book III of the Civil Code, customary agreement law and contract law. Islam[23]. In this research, the agreement used is mainly the Agreement in Civil Law.

In a civil perspective, there is a known agreement.[24] Article 1320 of the Civil Code regulates the terms of the validity of the agreement, namely first, there is an agreement between the two parties. The purpose of the agreement is, the two parties who make the agreement agree on the main things in the contract. The agreement here is a sense of sincerity or mutual giving and receiving or voluntary between the parties making the agreement. The agreement does not exist if the contract is made on the basis of coercion, fraud or negligence. Second, the ability to take legal actions. The principle of being able to do legal actions is everyone who is mature and has a healthy mind. Third, the existence of an object or about a certain thing. Certain things mean that the object subject to the contract must be clear, at least it can be determined. So it shouldn't be vague. This is important to provide assurance or certainty to the parties and prevent the creation of a fictitious contract. Fourth, there is a halal clause. Meanwhile, the implementation of the agreement itself must be carried out in good faith in accordance with the provisions of Articles 1338 and 1339 of the Civil Code.

Approval of medical action / informed consent is a consent or statement of consent from a patient who is given freely, consciously and rationally after obtaining complete, valid, and accurate information that is understood from the doctor about the

[17] Soerjono Soekanto dan Sri Mamuji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Rajawali, Jakarta, 1990, hlm 13. Normative research is research that is carried out by examining library materials or mere secondary data. Normative thinking is based on research that includes: legal principles, legal systematic, vertical and horizontal synchronization levels, legal comparisons, and legal history. See also Soerjono Soekanto dan Sri Mamudji, *Peranan dan Penggunaan Perpustakaan Dalam Penelitian Hukum*, Pusat Dokumentasi Hukum Fakultas Hukum Universitas Indonesia, Jakarta, 1999, hlm 15.

[18] Empirical research is research conducted by examining primary data, namely data obtained directly from the public. This empirical thinking is also called sociological thinking. Soerjono Soekanto dan Sri Mamuji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, *Op, Cit*, hlm 15.

[19] Supraba Sekarwati, *Perancangan Kontrak*, Iblam, Bandung, 2001, hlm 23.

[20] Achmad Sanusi, *Pengantar Ilmu Hukum dan Pengantar Tata Hukum Indonesia*, Tarsito, Bandung, 1994, hlm 70.

[21] R. Subekti, *Pokok-Pokok Hukum Perdata*, Intermasa, Jakarta, 2005, hlm 123. Riduan Syahrani, *Seluk Beluk dan Asas-asas Hukum Perdata*, Alumni, Bandung, 1995, hlm 209, Mariam Darus Badrulzaman, *KUHPerdata Buku III Hukum Perikatan Dengan Penjelasan*, Citra Aditya Bhakti, Bandung, 1996, hlm 7. Abdul Kadir Muhammad, *Hukum Perdata Indonesia*, Citra Aditya Bakti, Bandung, 2003, hlm 201. J. Satrio, *Hukum Perikatan, Perikatan yang Lahir dari Perjanjian*, Citra Aditya Bhakti, Bandung, 2000, hlm 3.

[22] *Ibid*, hlm 4.

[23] Abdul Ghofur Anshori, *Pokok-pokok Hukum Perjanjian Islam di Indonesia*, Citra Media, Jakarta, 2006, hlm 157.

[24] Article 1313 of the Civil Code defines the agreement as an act whereby one or more people bind himself to one or more other people. Birth agreement is due to an agreement or consent of the will of the two or the parties. So the agreement is not one-sided.

condition of the disease and the medical action that will be obtained..[25] *Informed consent consists of the word informed meaning that information has been obtained and consent means consent (permission).*

In Article 1 letter a Permenkes Number 290 / Menkes / PER / III / 2008 concerning Approval for Medical Action states that informed consent is the consent given by a patient or immediate family after receiving a complete explanation of the medical or dental action taken. will be done to the patient. meanwhile, medical action according to Article 1 letter b is a medical action in the form of preventive, diagnostic, therapeutic or rehabilitative action performed by a doctor or dentist on a patient.

Elucidation of Article 7 paragraph (3) Permenkes Number 290 / Menkes / PER / III / 2008 concerning Approval of Medical Actions, concerning medical action at least includes:

1. Diagnosis and procedure of medical action;
2. The purpose of the medical action being carried out;
3. Other action alternatives, and their risks;
4. Risks and complications that may occur; and
5. Prognosis of the action taken.
6. Estimated financing.

The information that needs to be given and explained in simple words that the patient or family can understand includes:[26]

1. The risk that is inherent (inherent) in the action;
2. Possible side effects;
3. Other alternatives (if) exist other than the proposed action; and
4. The possibility that what would happen if the action was not taken.

Before giving consent for medical treatment, the patient should receive information about the necessary medical action, but it turns out to be a risk. Approval of medical action must be signed by the patient or his / her closest family and witnessed by at least one witness from the patient's side.[27] The information and explanations that need to be provided in the medical treatment agreement include the following:

1. Information must be provided whether requested or not;
2. Information is not given using medical terms that are not understood by ordinary people;
3. Information is given in accordance with the level of education, condition and situation of the patient;
4. Information is provided completely and honestly, unless the doctor considers that the information can be detrimental to the patient's health, or the patient refuses to be provided with the information. In this case information can be given to the closest family;
5. Information and explanation regarding the purpose and prospects for the success of the medical action to be performed;
6. Information and explanation of the procedure for medical action to be performed;
7. Information and explanation about the risks and complications that may occur;
8. Information and explanation of other available alternative medical treatments and their respective risks;
9. Information and explanation about the prognosis of the disease if the medical action is performed;
10. For surgery or other invasive procedures, the information must be provided by the doctor who performed the operation, or another doctor with the knowledge or instruction of the doctor in charge;
11. For non-surgical or other non-invasive procedures, information can be provided by other doctors or nurses with the knowledge or instructions of the doctor and responsible.

The obligation to provide information and explanation is on the screen of the doctor who will perform the medical action. It is the doctor who is primarily responsible for providing the necessary information and explanations. If the doctor who is going to perform the medical procedure is unable to provide information and explanation, he can be represented by another doctor with the knowledge of the doctor concerned.[28]

Article 2 paragraph (1) Permenkes Number 290 / Menkes / PER / III / 2008 concerning Approval of Medical Actions determines that all medical actions to be performed on patients must be approved. The form of consent itself can be given in writing or orally. In practice, consent to medical action can be given by patients in the following ways:

1. To be expressed orally or in writing. In this case, more than the usual examination procedures and actions that carry risks, such as surgery, are carried out.
2. Is considered given (implied or tacit consent), that is, in ordinary circumstances or in an emergency. Consent is given by the patient expressly without a firm statement that the doctor deduces from the patient's attitude and actions. For example, medical measures include giving injections, suturing wounds, and so on.

If the patient is in an emergency state unconscious and his family is not there, while the doctor needs immediate action, the doctor can take certain medical actions according to the doctor's best (his consent is called presumed consent, meaning that if the patient is conscious, then the patient is considered will agree to the action taken by the doctor).[29]

As a legal action, approval of medical action must be motivated by the juridical sector so that it can apply and comply with the applicable legal rules. In Indonesia, the legal basis for a medical treatment approval transaction is as follows:

[25] Interview with dr. Lusi Nasution at the Perbaungan General Hospital
[26] J. Guwandi, *Tindakan Medik dan Tanggung Jawab Produk Medik*, FK UI, Jakarta, 1993, hlm 37.
[27] Interview with dr. Lindawati at Perbaungan General Hospital
[28] Interview with dr. Laura Enika at the Bonding General Hospital
[29] Interview with dr. Lusi Nasution at the Perbaungan General Hospital

1. Civil Code;
2. Law Number 29 Year 2004 concerning Medical Practice;
3. Law Number 23 Year 1992 concerning Health;
4. Regulation of the Minister of Health Number 1419 / Menkes / Per / X / 2005 concerning the Implementation of Doctor and Dentist Practices;
5. Regulation of the Minister of Health Number 585 / Men.Kes / Per / IX / 1989 concerning Approval of Medical Actions;
6. Regulation of the Minister of Health Number 290 / Menkes / PER / III / 2008 concerning Approval of Medical Actions;
7. Regulation of the Minister of Health Number 749a / Men.Kes / Per / XII / 1989 concerning Medical Records / Medical Records;
8. Government Regulation Number 1 Year 1951 concerning Occupational Health;
9. Decree of the Director General of Medical Services Number HK.00.06.6.5.1866 of 1999 concerning Guidelines for Approval of Medical Actions.

Purpose and objectives of medical treatment approval, based on the Minister of Health Regulation Number 585 / Men.Kes / Per / IX / 1989 concerning Medical Action Approval:

1. All medical actions to be performed on a patient must be approved (Article 2 paragraph (1));
2. Approval can be given in writing or orally (Article 2 paragraph (2));
3. Agree is given after the patient has received adequate information about the need for the medical treatment concerned and the risks it may cause (Article 2 paragraph (3));
4. For medical actions that contain a high risk must be with a written consent signed by those intending to give consent (Article 3 paragraph (1));
5. Oral consent applies to medical actions that are not included in high risk medical actions (Article 3 paragraph (2));
6. Information about medical actions must be provided by the doctor, with complete information, unless the doctor considers that the information provided may be detrimental to the health interests of the patient or the patient refuses to be given information (Article 4 paragraphs (1) and (2));
7. In the event that the information cannot be given to the patient, with the patient's consent the doctor can provide the information to the immediate family accompanied by a nurse / paramedic as a witness (Article 4 paragraph (3)).

This is still in line with Permenkes Number 290 / Menkes / PER / III / 2008 concerning Approval of Medical Action. Because therapeutic transactions are a legal relationship between doctors and patients, there are several underlying legal principles in therapeutic transactions. According to Komalawati it was concluded as follows:[30]

1. The principle of legality;
2. The principle of balance;
3. The principle of being on time;
4. The Principle of Good Faith.

Somewhat different from Komalawati, Munir Fuady mentioned his opinion on several modern ethical principles from medical practice which he mentioned as follows:[31]

1. Principle of Autonomy;
2. The Principle of Generosity;
3. The principle of not hurting;
4. Principles of Justice;
5. The Principle of Loyalty;
6. Principles of Honesty.

Based on Law Number 29 of 2004 concerning Medical Practice which also includes the principles for the implementation of Medical Practice in Chapter II Article 2, the principles regarding medical practice already have binding force. However, the principles listed in Law Number 29 Year 2004 are slightly different from some of the principles described above.

As for Article 2 which regulates the principles of the implementation of Medical Practice, it reads: The implementation of medical practice is carried out on the basis of Pancasila and is based on scientific values, benefits, justice, humanity, balance, and patient protection and safety.

The meaning of these principles is contained in the elucidation of Article 2, as follows:

1. The principle of scientific value;
2. Principle of Benefits;
3. Principles of Justice;
4. Humanitarian Principles;
5. The principle of balance;
6. Principles of Patient Protection and Safety.

[30] Veronika Komalawati, *Op, Cit*, hlm 128
[31] Munir, Fuady, *Sumpah Hipocrates : Aspek Hukum Malpraktek Dokter*, Citra Aditya Bakti, Bandung, 2002, hlm 6

Although the law has stipulated 6 (six) principles listed in the law which specifically regulates medical practice as lex specialis which binds doctors in carrying out their profession, it would be wiser if doctors also obey all the principles mentioned above as recommended principles. by legal experts to comply with. Because the doctor's compliance in holding the principles as the basic principles of carrying out his profession will protect the doctor from the demands of the patient that might arise in his daily practice.

The legal relationship between doctors and patients has been going on since ancient times (ancient Greece), doctors as someone who provides treatment to people who need it. This relationship is a very personal relationship because it is based on the trust of the patient in the doctor which is called a therapeutic transaction.[32] This very personal relationship is described by Wilson as the relationship between the pastor and the congregation who is expressing his feelings.[33] Personal confession is very important for self-exploration, it requires conditions that are protected in the consultation room.

The legal relationship between doctors and patients originates from a paternalistic vertical relationship, such as between a father and a child, which is based on the principle of father knows best, which creates paternalistic relationships.[34] In this connection, the position of the doctor and the patient is not equal, that is, the position of the doctor is higher than the patient because the doctor is considered to know everything related to illness and its healing. Meanwhile, the patient does not know anything about it, so the patient leaves his fate completely in the hands of the doctor.

A legal relationship arises when a patient contacts a doctor because he feels that something he feels is endangering his health. His psychobiological state gives a warning that he feels sick, and in this case it is the doctor who he deems able to help him, and provide relief assistance. So, the position of the doctor is considered higher by the patient, and his role is more important than the patient. On the other hand, doctors based on the principle of father knows best in this paternatistic relationship will try to act as good fathers who carefully and carefully heal patients. In trying to cure this patient, the doctor is equipped with the Indonesian Oath Pronunciation and Code of Ethics.

The pattern of vertical relationships that gave birth to the paternalistic nature of doctors towards these patients had both positive and negative impacts. The positive impact of vertical patterns that gave birth to the concept of paternalistic relationships is very helpful for patients, in terms of lay patients to their disease. On the other hand, a negative impact can also arise, if the doctor's actions in the form of steps in trying to cure the patient are actions of doctors that limit the patient's autonomy, which in the history of cultural development and basic human rights have existed since birth. This paternalistic vertical relationship pattern shifts to the horizontal contractual pattern.

This relationship gives birth to horizontal contractual legal aspects that are inspiring acrossbintenis,[35] which constitutes a legal relationship between 2 (two) legal subjects (patient and doctor) having an equal position giving birth to the rights and obligations of the parties concerned. This legal relationship does not promise anything (cure or death), because the object of the legal relationship is a doctor's effort based on knowledge and experience (dealing with disease) to cure patients.

The contractual legal relationship that occurs between the patient and the doctor does not start from the moment the patient enters the doctor's office as many people suspect[36], but precisely since the doctor has stated his willingness which is expressed verbally (oral statement) or implied statement by showing an attitude or action that concludes willingness; such as receiving registration, providing serial numbers, providing and recording medical records and so on. In other words, the therapeutic relationship also requires the willingness of a doctor. This is in accordance with the consensual and contractual principles.

The rights and obligations of the party giving the medical treatment approval and the party receiving the medical treatment approval, namely:

1. Doctor's Rights and Obligations

   What is meant by the rights and obligations of a doctor is that which is aimed at the rights and obligations in carrying out a medical profession, namely in providing health services or medical assistance to patients.[37] The professional rights and obligations of a doctor are as follows:[38]

   a. Doctor's professional rights
      1) The right to work according to the standards of the medical profession;
      2) The right to refuse to carry out medical actions for which he cannot be accounted for professionally;
      3) The right to refuse a medical treatment which according to his conscience is not good;
      4) The right to terminate a relationship with a patient if he judges that cooperation between his patients is useless;
      5) The right to doctor's privacy;
      6) The right to good faith of the patient in performing the therapeutic contract;
      7) Right to remuneration;
      8) The right to be fair in dealing with patients who are not satisfied with it;
      9) Right to self-defense;
      10) The right to choose patients;
   b. Doctor's Professional Duties

      The obligations of doctors (de beroepsplichten van de arts) can be divided into five groups, namely:
      1) Obligations related to the social function of maintaining health;
      2) Obligations relating to medical standards;

[32] Al Purwohadiwardoyo, *Etika Medis*, Kanisius, Yogyakarta, 1999, hlm 13.
[33] Veronika Komalawati, *Op, Cit*, hlm 38.
[34] Hermien Hadiati Koeswadji, *Hukum Kedokteran (Studi Tentang Hubungan Hukum Dalam Mana Dokter Sebagai Salah Satu Pihak)*, Citra Aditya Bakti, Bandung, 1998, hlm 36.
[35] *Ibid,* hlm 37
[36] Sofwan Dahlan, *Hukum Kesehatan Rambu-Rambu Bagi Profesi Dokter*, Balai Penerbit UNDIP, Semarang, 2000, hlm 32.
[37] Soerjono Soekanto dan Herkunto, *Pengantar Hukum Kesehatan*, Remaja Karya, Bandung, 1997, hlm 101.
[38] *Ibid,* hlm 101.

3) Obligations relating to the objectives of medical science;
4) Obligations related to the principle of balance (proportionaliteits beginsel);
5) Obligations related to patient rights.

2. Patient Rights and Obligations
   a. Patient Rights
      The right to self-determination is the basis of the patient's rights. Patient rights are recognized as follows:[39]
      1) The right to medical services and care;
      2) Right to information and consent;
      3) Right to medical secrets;
      4) The right to choose doctors and hospitals;
      5) The right to refuse and stop treatment;
      6) The right not to be too restricted in freedom during the treatment process, the patient may do other things as long as it does not endanger his health;
      7) The right to complain and file a lawsuit;
      8) Right to compensation;
      9) Right to legal aid;
      10) The right to get advice to participate in experiments;
      11) The right to a reasonable calculation of medical and treatment costs and an explanation of these calculations.
   b. Patient Obligations
      The obligations of patients need to be obeyed, this is very much needed in therapeutic transactions because if it is not carried out by the patient the hope of recovery is not achieved. These obligations must be fulfilled by the patient, namely the cure of the illness he or she is suffering from. The obligations in question are:
      1) Provide information to doctors about the disease they are suffering from completely;
      2) Obey doctor's instructions;
      3) Obey doctor's privacy;
      4) Provide rewards / honoraria to doctors

Mediation as an Alternative to Settle Medical Disputes between Doctors and Patients in Approval of Medical / Medical Actions

In various literatures, a number of principles of mediation are found. The basic principle is the philosophical foundation for conducting mediation activities. This principle or philosophy is a framework that must be known by the mediator, so that in carrying out mediation, it does not go out of the direction of the philosophy that was the background for the birth of the mediation institution.[40]

David Spencer and Michael Brogan refer to Ruth Carlton's views on the five basic principles of mediation which are known as the five basic philosophies of mediation. The five principles are; the principle of confidentiality (confidentiality), the principle of voluntary empowerment (empowerment), the principle of neutrality (neutrality), and the principle of a unique solution (a unique solution).[41]

The first principle of mediation is confidentiality. This confidentiality means that only the parties and the mediator attend the mediation process, while other parties are not allowed to attend the mediation session.

This secrecy and secrecy also often attracts certain groups, especially businessmen who do not want their problems to be published in the mass media. On the other hand, if the dispute is brought to the litigation or court process, legally the court sessions are open to the public because such disclosure is an order in the provisions of law.[42]

The second principle, volunteer (voluntary). Each conflicting party comes to mediation on their own will and voluntarily and there is no coercion and pressure from other parties or outside parties. This principle of volunteerism is built on the basis that people will be willing to work together to find a way out of their disputes, if they come to the negotiating place of their own choice.

The third principle, empowerment or empowerment. This principle is based on the assumption that people who come to mediation actually have the ability to negotiate their problems and reach the agreements they want. Their ability in this regard must be recognized and appreciated, and therefore any solution or solution should not be imposed from without. Dispute resolution must arise from empowerment of each party, because it will make it more possible for the parties to accept the solution.

The fourth principle, neutrality (neutrality). In mediation, the role of a mediator is only to facilitate the process, and the content remains the property of the disputing parties. The mediator is only authorized to control the mediation process or not. In mediation, a mediator does not act. Like a judge or jury who decides whether one party is right or wrong or supports the opinion of one of them, or imposes its opinion and resolution on both parties.

The fifth principle, a unique solution. That the solution produced from the mediation process does not have to comply with legal standards, but can be generated from a creative process. Therefore, the results of the mediation may follow the wishes of the two parties, which is closely related to the concept of empowerment of each party.[43]

Guidelines or guidelines for proper behavior are known as rules or norms. A rule or norm is a measure or standard of behavior that will maintain human relations, or the relationship between humans and society can run well. The existence of norms or rules is to maintain a balance in people's lives.

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[39] *Ibid*, hlm 113.

[40].John Michael Hoynes, Cretchen L. Haynes dan Larry Sun Fang, *Mediattion:Positive Conflict Management, SUNY Press*, New York, 2004, hlm 16. As followed by Syahrizal, Abbas, *Mediasi Dalam Persfektif Hukum Syariah, Hukum Adat, dan Hukum Nasional*, Kencana Prenada Media Group, Jakarta, 2009, hlm 28.

[41] *Ibid*, hlm 2.

[42] Takdir Rahmadi, *Mediasi Penyelesaian Sengketa melalui Pendekatan Mufakat*, Raja Grafindo Persada, Jakarta, 2011, hlm 22.

[43]. Syahrizal Abbas, *Op, Cit*, hlm 29.

One of the legal awareness that comes from the values (norms) of community life in Indonesia, which is currently developing is the non-litigation dispute resolution model, among others, through mediation. Takdir Rahmadi, said that mediation is the process of resolving disputes between two or more parties through negotiation or by means of consensus with the help of neutral parties who do not have the authority to decide, according to Djoko Sarwoko, the definition of mediation is a process carried out by the parties assisted by a mediator or more who neutral in nature.[44]

As is generally known, legal dispute resolution can be pursued through 2 (two) channels, namely litigation (court) or non-litigation (outside the court), but usually dispute resolution (case) through litigation is often constrained by various factors, for example problems of evidence, costs. and other factors, and therefore according to the legal awareness of the community at the present time, the non-litigation route is the choice of the parties in settling disputes that occur.

Winarta said that each of the out-of-court dispute resolution institutions can be reached by:[45]

1. Consultation
   That is, a personal action between a certain party (client) and another party who is a consultant, where the consultant gives his opinion to the client according to the needs and needs of his client.
2. Negotiation
   An effort to resolve disputes between the parties without going through a court process with the aim of reaching a mutual agreement on the basis of more harmonious and creative cooperation.
3. Mediation
   The method of dispute resolution is through the negotiation process to obtain an agreement between the parties, assisted by a mediator.
4. Conciliation
   The mediator will act as conciliator with the agreement of the parties by working out an acceptable solution. Expert Assessment, namely the opinion of experts for a matter of a technical nature and in accordance with their field of expertise.

Regarding the term mediation, etymologically comes from Latin, namely mediare, which means being in the middle. This meaning shows the role played by the third party as a mediator in carrying out the task of mediating and resolving disputes between the parties. Being in the middle means that the mediator must be in a neutral position and not take sides in resolving disputes. The mediator must be able to maintain the interests of the disputing parties fairly and equally, thereby fostering the trust of the disputing parties.[46]

In the development of legal practice in Indonesia, the use of mediation legal instruments in the judiciary in Indonesia has only started since September 11, 2003 which is based on PerMA Number 2 sTahun 2003 concerning Mediation Procedures in Courts, then replaced by PerMA Number 1 of 2008 concerning Mediation Procedures in Courts. In further developments, PerMA No.1 / 2008 is revoked and replaced by PerMA No.1 / 2016 concerning Mediation Procedures in Courts, which provides the meaning of mediation as a way of resolving disputes through the negotiation process to obtain agreement between the parties with the assistance of a mediator.

The role of the mediator is to help the parties seek various possibilities for dispute resolution by not making decisions or imposing views or judgments on problems during the mediation process. Mediation is the process of resolving disputes between two or more parties through negotiation or by means of consensus with the help of a neutral party who does not have the authority to decide,[47] Mediation, as a process carried out by the parties assisted by a mediator or more which is neutral in nature.[48] Mediation contains the following elements:

1. Mediation is a process of dispute resolution based on negotiation;
2. The mediator is involved and accepted by the disputing parties in the negotiations;
3. The mediator is tasked with helping the disputing parties find a solution;
4. The mediator does not have the authority to make decisions during the negotiations; and
5. The purpose of mediation is to reach or produce an acceptable agreement between the disputing parties in order to end the dispute.

The legal basis for mediation which is one of the alternatives to dispute resolution is the basis of the Indonesian state, namely Pancasila, which in its philosophy implies that the principle of dispute resolution is deliberation and consensus. In particular, the written regulations governing mediation are Law Number 30 of 1999. In addition, Law Number 48 of 2009 concerning Judicial Powers includes, among others:

1. Article 58, stipulates that civil dispute resolution efforts can be carried out outside the state court through arbitration or alternative dispute resolution;
2. Article 60 paragraph (1) determines that alternative dispute resolution is a dispute resolution institution or difference of opinion through a procedure agreed by the parties, namely settlement outside the court by means of consultation, negotiation, mediation, conciliation, or expert judgment.

Initially the formal basis regarding the application of mediation in the judicial system basically started from the provisions of the Herzien Inlandsch Reglemen (HIR) and the provisions of the Rechtreglement voor de Buitengewesten (RBg), in particular

[44] Djoko Sarwoko, *Beberapa Model Alternatif Dispute Resolution*, Majalah Varia Peradilan, Tahun XI Nomor 124 Januari 1996, hlm 142.
[45] Frans Hendra Winarta, *Hukum Penyelesaian Sengketa*: *Arbitrase Nasional Indonesia dan Internasional*, Sinar Grafika, Jakarta, 2011, hlm7.
[46] Syahrizal Abbas, *Op, Cit*, hlm 2.
[47] Takdir Rahmadi, *Op. Cit.*, Hlm 12.
[48] Djoko Sarwoko, *Op. Cit.*, hlm 142.

Article 130 of the HIR jo. Article 154 Rbg, which is the source of the Civil Procedure Code that applies in Indonesia. This article calls for the settlement of cases with peace rather than the ordinary decision process. The form of settlement outlined in Article 130 HIR jo. Article 154 RBg, namely the parties beforehand conclude the agreement without interference from the judge. Furthermore, a peace agreement is requested to the judge to be stated in the form of a peace deed agreed by the parties in the case, the judge's intervention is very small, only in the form of making a peace deed as a court decision containing amar to punish the parties to obey and obey the contents of the peace in question.

Related to the application of the provisions of Article 130 HIR jo. Article 154 RBg, in court practice, that at the start of an examination of a civil case the law has obliged the court, with the intermediary of the Chair of the Assembly, to try to reconcile the two parties, but in practice these provisions have not been implemented seriously so that their implementation is merely fulfilling. sheer formality.[49]

The Supreme Court is of the opinion that the provisions of Article 130 HIR jo. Article 154 RBg needs to be further regulated regarding implementation procedures to make it more optimal, so that the issuance of PerMA Number 2 of 2003, which is subsequently replaced by PerMA Number 1 of 2008, and finally by PerMA Number 1 of 2016. In the dictum considering the considerations of PerMA, it is stated that:

1. Mediation is a method of peaceful dispute resolution that is appropriate, effective, and can open wider access to the parties to obtain a satisfactory and fair settlement;
2. In the framework of reforming the bureaucracy of the Supreme Court of the Republic of Indonesia which is oriented towards the vision of the realization of a great Indonesian judicial body, one of the supporting elements is mediation as an instrument to increase public access to justice as well as the implementation of the principles of simple, fast, and low cost judicial administration;
3. The provisions of the applicable Civil Procedural Law, Article 154 Reglemen of Procedural Law for Regions Outside Java and Madura (Reglement Tot Regeling van Het Rechtswezen in de Gewesten Buiten Java en Madura, Staatsblad 1927: 227) and Article 130 of the updated Indonesian Reglemen (Het Herziene Inlandsch Reglement, Staatsblad 1941: 44) encourages the parties to pursue a peace process that can be utilized through mediation by integrating it into court proceedings;
4. Mediation procedures in court as part of the Civil Procedure Code can strengthen and optimize the functions of the judiciary in dispute resolution;
5. PerMA Number 1 of 2008 concerning Mediation Procedures in Courts has not optimally fulfilled the need for more efficient mediation implementation and is able to increase the success of mediation in court;
6. Based on the considerations as referred to in letter a, letter b, letter c, letter d and letter e, it is necessary to improve the PerMA regarding Mediation Procedures in Courts.

Not all cases can be resolved by mediation, based on Article 4 paragraph (1) PerMA Number 1 of 2016, it is determined that several types of cases are obliged to undergo mediation, namely all civil disputes submitted to court including cases of resistance (verzet) over verstek decisions and resistance of litigants. (partij verzet) and third parties (derden verzet) on the implementation of decisions that have permanent legal force, while in Article 4 paragraph (2) PerMA Number 1 of 2016, it is also determined that disputes are exempted from the obligation to settle through mediation, namely:

1. Disputes whose examination at trial is determined by a grace period for settlement, include:
   a. Disputes resolved through Commercial Court procedures;
   b. Disputes that are resolved through the Industrial Relations Court procedure;
   c. Objections to the decision of the Business Competition Supervisory Commission;
   d. Objections to the decision of the Consumer Dispute Resolution Agency;
   e. Request for annulment of an arbitration award;
   f. Objections to the decision of the Information Commission;
   g. Political party dispute resolution;
   h. Disputes are resolved through a simple lawsuit procedure; and
   i. Other disputes whose examination at trial is determined by a grace period for settlement in the provisions of statutory regulations;
2. Disputes whose examination is carried out in the absence of the plaintiff or defendant who has been properly summoned;
3. Counter suit (reconvention) and the entry of a third party in a case (intervention);
4. Disputes regarding the prevention, rejection, cancellation and legalization of marriage;
5. Disputes submitted to the court after being resolved out of court through mediation with the help of a certified mediator who is registered at the local court but declared unsuccessful are based on a statement signed by the parties and the certified mediator.

The purpose of conducting mediation is to resolve disputes between the parties by involving neutral and impartial third parties. Mediation can lead third parties to the realization of a permanent and sustainable peace agreement, given that dispute resolution through mediation places both parties in the same position, neither party is won nor party is defeated (win win solution).

In mediation, the disputing parties are proactive and have full authority in decision making. The mediator does not have the authority to make decisions, only to assist the parties in maintaining the mediation process in order to bring about a peace agreement.[50] The purpose of mediation is not to judge right or wrong, but rather to provide opportunities for the parties to:

1. Finding a way out and renewing feelings;
2. Get rid of misunderstandings;

[49] *Ibid*, hlm 146.
[50] Handar Subhandi, *Tujuan dan Manfaat Mediasi*, http://handarsubhandi.blogspot.co.id.

3. Determine the main interests;
4. Find possible areas for approval; and
5. Unifying these fields into solutions compiled by the parties themselves.

In the settlement of medical disputes there must be decisions and considerations of medical logic and legal logic to determine whether the medical dispute is categorized as medical malpractice or not.[51] A study should also be carried out that not all actions of doctors / dentists and / or hospitals are advers events, because not all bad events are the same as medical malpractice, then after a study is carried out a decision can be made whether it is included in the realm of criminal law. civil law, medical discipline, or violations of professional ethics.

In the case of a dispute between a patient and a doctor / dentist and / or hospital including those who feel aggrieved by the doctor / dentist's actions in accordance with Article 66 of Law Number 29 of 2004 concerning Medical Practice, it is better to resolve it through mediation because it benefits both. both sides. If it has to be completed by an independent body for medical discipline, it will take a long time and the decision will not necessarily give satisfaction to both parties because the decision was made by the decision maker, which was made by the members in the Honorary Council of Indonesian Medical Discipline. Judging from the existing experience that cases reported to the Honorary Council of the Indonesian Medicine Discipline have been resolved quite a long time and there has been a buildup of cases such as in court, therefore it is better if any matters relating to disputes with doctors / dentists are better resolved based on existing laws. first, that is, the mediation is carried out according to the mediation procedure.

According to Wila Chandrawila Supriadi, the relationship between doctor or dentist and patient, seen from a legal aspect, is the relationship between legal subjects and legal subjects. The relationship between legal subjects and legal subjects is regulated by the principles of civil law.[52]

Civil law rules contain guidelines / measures of how the parties in a relationship exercise their rights and obligations. Talking about the law, there are reciprocal rights and obligations, where the doctor / dentist's right becomes the patient's obligation and the patient's right becomes the doctor / dentist's obligation. In addition, these rules also contain guidelines on what to do and what not to do. For example, a patient must not ignore the advice of a doctor / dentist, in the sense that the patient's obligation to obey the doctor / dentist's advice and it is the doctor / dentist's right to obey his advice.[53]

Judging from the legal relationship, between doctors / dentists and patients there are what are known to be mutually agreeing to bind themselves in carrying out treatment for patients so that what is known as bonding (verbintenis) is formed. The doctrine of jurisprudence recognizes two types of engagement, namely the engagement of endeavors (inspanning verbintenfs) and the binding of results (resultaat verbintenis). In an endeavor engagement, the achievement that the doctor / dentist should give is the maximum possible effort, while in a result engagement, the achievement that must be given by the doctor / dentist is in the form of certain results.

The dispute originates from a feeling of dissatisfaction from one party because there is another party who does not fulfill the achievement as agreed, usually in the case of a medical dispute who is dissatisfied is the patient and / or his family in other words the doctor / dentist who is in default.

Medical disputes usually arise from the patient's or his / her family's dissatisfaction with the services provided by doctors and / or hospitals, so that the patient or his family looks for the cause of the dissatisfaction. Actions that can lead to disputes if they do not carry out their obligations or do not deliver their performance as agreed is called default.

Of the things that cause the patient or his family to be dissatisfied and are said to be default include:

1. Not doing what the agreement says must be done;
2. Doing what according to the agreement is obligatory but late in fulfilling it or not on time;
3. Doing what according to the agreement is obligatory but not perfect;
4. Doing what the consensus says should not be done.

Thus, the above responsibilities can be individual or corporate in nature and can also be transferred to other parties based on the principle of vicarius liability. Another thing that can cause many medical disputes is the hospital management policy factor. Hospital management policies can trigger medical disputes, including:

5. Lack of a place and time that is conducive to allowing dialogue or two-way communication between doctors / dentists / health workers and patients.
   This unfavorable spatial and temporal layout is prone to trigger miscommunication. Doctors / dentists / other health workers and patients are not free and do not have privacy in expressing all the problems experienced, including symptoms, causes, treatment plans, risk factors, and so on, because they are not accommodated in insufficient space and time. Inadequate information, which is the first legal basis for health services, is neglected or suboptimal, leading to miscommunication. Good communication will reduce disputes if the communication has been built from the start.
6. For any information that has been given to the patient, the hospital management must provide an informed consent sheet as proof of consent that the patient has been given the information and a refusal sheet as evidence that the patient refuses or cannot accept the information that has been given to him. All of this is needed as evidence that the consent or rejection of information has been given so that it is hoped that there will be no more objections or actions without written evidence.
7. The absence of risk management which always monitors and manages risks that will arise or those that have emerged. The risk is not well anticipated from the start, then it becomes wider and wider so that cases of medical disputes cannot be avoided.

[51] Anny Isfandyarie, *Malpraktik dan Resiko Medik Dalam Kajian Hukum Pidana*, Fokus Media, Jakarta, 2005, hlm 12.
[52] Anna Haroen, *Acuan Hukum Dalam Kedokteran*, Fakultas Kedokteran Universitas Airlangga, Surabaya, 1997, hlm 28.
[53] *Ibid,* hlm 29.

8. Management does not qualify for health responsibilities. Management must define and classify the types of responsibilities in the medical world, so that if a medical dispute occurs, the management will find it easy to know which party should be responsible.From a study in Kyoto, Japan divides the causes of patient claims, namely due to medical negligence and not due to medical errors, from the results of the study it was found that miscommunication reached 40 from the incidence of demands, patients to doctors or the hospital, compared to incidents due to medical negligence.

In modern society, where many understand and understand the issue of rights and obligations, in the field of public medicine, the community initially saw that all the actions of health care providers and hospitals were social and humanitarian efforts that were carried out solely to help one's life desires, if something went wrong. in the handling of patients carried out by the health care provider is something that cannot be avoided and the patient and / or his family just accept it with resignation.

In the current era of globalization, this is no longer a common thing, but people who are served by health service providers will look for causes by referring to the latest science and technology, if in this case there is a deviation, then there will be a dispute.

In general, if there is a dispute between a doctor / dentist and / or a hospital, the patient and / or his family will take legal action such as reporting to law enforcement. The community still feels that with the help of law enforcement agencies, disputes that occur between patients and / or their families and health service providers can be resolved, but they never think about the costs and time for the process, and the result is a disappointment.

In a transitional period that occurs when the current health services provided by the hospital are already leading to profit oriented, so people who use health services want to get their rights according to what was promised. In the case of a medical dispute, the writer considers that the resolution is better through an alternative dispute resolution process, because it is considered more beneficial for both parties, and the author puts forward through mediation because this method is known and recognized in the judiciary in Indonesia, so that it can be in the system. Justice.

Actually, other ways in alternative dispute resolution besides mediation, the community has done it a lot like deliberation, namely by means of dialogue assisted by other parties, in this case usually by professional organizations or from the hospital, another way is negotiation, namely the parties agree to resolve medical dispute problems through negotiations or failing discussions, where this process does not involve a third party as an intermediary, either not authorized to make decisions (mediator), or in authority (judge). However, when in negotiations there is a misunderstanding that results in no resolution of medical disputes, usually because the patient and / or his family are not satisfied with the explanation from the health service provider, or also the doctor / dentist and / or hospital feels the patient's demands and / or the family is not appropriate, then medical dispute resolution can be pursued by alternative dispute resolution through mediation.

The advantages of mediation in modern medical dispute resolution have the following characteristics:[54]

9. Voluntary (voluntary)
   The decision to mediate is left to the agreement of the parties, so that a decision can be reached which is truly the will of the parties.
10. Informal flexible;
    Unlike (court) litigation, the mediation process is very flexible. It is even possible that the parties, assisted by a mediator, can design their own mediation procedure.
11. Interest based (interest basis)
    In mediation, it is not sought who is right or wrong, but rather to protect the interests of each party.
12. Future looking
    Because it is more safeguarding the interests of each party, mediation places more emphasis on maintaining future relations between the disputing parties, and is not oriented to the past.
13. Parties oriented
    With informal procedures, interested parties can actively control the mediation process and take settlement without being too dependent on lawyers / lawyers / advocates.
14. Parties control
    Settlement of disputes through mediation is the decision of each party. The mediator cannot force an agreement to be reached; The lawyer / attorney cannot delay time or take advantage of the client's ignorance in matters of proceedings such as in court (litigation).

Litigation is a process in which the court passes a decision that binds the disputing parties in a legal process that is visible in the level of law and obligation. The two processes of medical dispute resolution between mediation and litigation are completely different, but both methods are forms of medical dispute resolution.

Litigation is widely used for medical dispute resolution, but mediation is slowly becoming more recognized and effective in medical dispute resolution, and slowly these two processes also become interdependent, where in the court process for medical disputes it is an obligation to mediate first before sentence. What stands out the most in the litigation process is the high cost, long time, high psychological burden, not to mention the formality and complexity of the litigation process.

Losses that can occur from the litigation process, from the point of view of a doctor / dentist and / or hospital, will have an impact on the reputation of the hospital, doctor / dentist and the cost of insurance premiums for the doctor / dentist profession will increase. Not only was reputation damaged, but also personal feelings that often-caused psychological burdens unlike those of plaintiffs

From the public's point of view, it causes a decrease in the quality of health services from the results of litigation decisions, where doctors / dentists will not take a risk in carrying out their profession, thus causing high health costs. Litigation sometimes causes the costs incurred to be greater than the claims received by the plaintiff, and also the plaintiff also has to find a lawyer to

[54] Helmi Ari Yunanto, *Hukum Pidana Malpraktek Medik, Tinjauan dan Perspektif Medikolegal*, Andi Offset, Yogyakarta, 2010, hlm 34.

represent him, and vice versa the defendant. Litigation as a means of resolving medical disputes will place the continuity of a bad relationship between doctors / dentists and / or hospitals with patients and / or their families. All these reasons, for the best medical dispute resolution is through mediation.

Basically, dispute resolution has long been practiced by humans. In this process they solve the problem in a simple way. One of the methods taken is settlement of disputes in a peaceful manner. Then with the times it is known that there is a judicial institution that is tasked with resolving cases by litigation. The community's effort to resolve disputes is a practice of mediation, where in medical disputes, mediation is very helpful in resolving the dispute, assisted by a third party who acts as a mediator.

With the development of dispute resolution systems and mechanisms, it is formally regulated, in the form of a juridical basis for out-of-court mediation which is based on Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

Based on the provisions of the law, mediation is an alternative dispute resolution. This means that including medical disputes can be resolved by mediation. Prior to Law Number 30 of 1999, mediation outside the judiciary had no provisions. The issuance of Supreme Court Regulation Number 1 of 2008 further encourages dispute resolution through mediation outside the court which makes the agreement in accordance with Article 23 of the Supreme Court Regulation Number 1 of 2008.

Of all the wishes to carry out mediation, it is inseparable from the good faith of the parties to resolve their problems peacefully with the help of a third party, namely the mediator, if there is no good faith between the parties, the mediation process will not be carried out.

The mediation procedure in court is regulated based on the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2008. Article 4 of the Regulation of the Supreme Court states that all civil disputes submitted to the First Level Court must first seek settlement through reconciliation with the help of a mediator.[55] It does not rule out medical disputes and is also in accordance with the contents of Law Number 36 of 2009 concerning Health. Except for cases that are resolved through the Commercial Court Procedure, Industrial Relations Court, Objections to the Decision of the Consumer Dispute Resolution Board, and Objections to the Decision of the Business Competition Supervisory Commission

Compared to other alternative dispute resolution methods that are often carried out by the parties between doctors / dentists and / or hospitals and patients and / or their families, mediation offers an integrative offer, the process does not require large costs and takes a long time, and does not emphasize who wins and loses, who is right or wrong, but with a win-win solution. The good thing is that in medical dispute mediation, it is usually focused on the objectives of the disputing parties (patients and / or their families) which are the subject of the agreement.

In mediation, the parties directly discuss what is the process of resolving the dispute being discussed and voluntarily and provide what information might offer a chronological and expected approach in dealing with claims.

The author suggests that mediation be used as the main form of resolving medical disputes, because mediation is faster, cheaper, "easy," and does not cause long hostility because no one is defeated. It is different from the litigation process (court) where one of them is defeated so that one of the parties feels dissatisfied and a prolonged sense of hostility can occur.

For the benefit of patients and / or their families as well as doctors / dentists, in the medical dispute process alternative dispute resolution through the mediation process is better than through the litigation process (court). In medical dispute cases, mediation is said to be successful, depending on the role of the mediator which must be clearly defined, the mediator is not for making decisions, such as the function of a judge or referee.

The role of the mediator is only to create or create an atmosphere in which the parties try to organize the situation together. A good mediator provides the parties with practicality for negotiation, the advantages, and disadvantages of various approaches. What is more necessary, the mediator must have good knowledge of the matter, this can be achieved by having sufficient skills, the mediator can propose certain terms. The mediator by investigating the strengths and weaknesses of each side, so that the mediator can narrow down the issues being discussed, the strength of the evidence on one side can be brought to the attention of the other side at an early stage.

The level of compensation offered by the parties must be realistic, must be structured in the resolution of medical disputes and complaints must be notified and what assessment is adequate for the types of losses suffered by the patient and / or his family.

CONCLUSION

The legal relationship between doctors and patients in the agreement of medical / medical action is vertically paternalistic, such as between a father and a child, starting from the principle of father knows best, which creates a paternalistic relationship. In relation to the doctor's position is higher than the patient because the doctor is considered to know about everything related to disease and healing. The patient does not know about it so the patient leaves his fate completely in the hands of the doctor. However, in the current dynamics of development, the pattern of patient and doctor relationship tends to be horizontal contractual which is inspannings verbintenis which is a legal relationship between 2 (two) legal subjects (patient and doctor) having equal positions giving birth to rights and obligations for the parties concerned. This legal relationship does not promise anything (cure or death), because the object of the legal relationship is a doctor's effort based on knowledge and experience (dealing with disease) to cure patients.

Mediation as an alternative to resolving medical disputes between doctors and patients in a medical agreement offers several possibilities and flexibility to resolve disputes and as control of the parties for better resolution. The results, which are achieved in the settlement of the dispute are made based on the agreement of the parties and are mutually agreeable, then compliance with the agreed agreement is usually quite high. Another reason for choosing mediation in medical dispute resolution, is the effort made by the joint efforts of the parties. In some cases that occurred through the mediation process, it was resolved properly without leaving trauma and the parties were satisfied in just a few hours. From several other things that benefit mediation for medical dispute resolution, such as confidentiality that threatens the professional reputation of doctors / dentists and / or hospitals, where the professional reputation among peers and in the community who use health services in their environment can

[55] Mohammad Hatta, *Hukum Kesehatan dan Sengketa Medik*, Liberty, Yogyakarta, 2013, hlm 18.

be protected. From the patient and / or his family, personal confidentiality is very important, what happened to him or his family is not to be published.

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