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Analysis of Indonesian state policy in resolving medical disputes with a restorative justice approach

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ABSTRACT

Medical disputes that are resolved through litigation often have negative impacts, such as the criminalization of medical personnel, waste of time and money, and the non-fulfillment of a sense of substantive justice for victims. In this context, the restorative justice approach has emerged as an alternative dispute resolution that is more humanist, oriented towards recovery and reconciliation. This study aims to analyze in depth the potential and urgency of applying the restorative justice approach in medical dispute resolution in Indonesia, as well as evaluate the legal, ethical and institutional obstacles faced. The method used is normative legal research with a conceptual approach and statute approach. The results of the study show that restorative justice can be a fairer, faster, and more efficient solution in resolving medical disputes if supported by appropriate regulations, professional mediation institutions, and active involvement of professional organizations and law enforcement officials. Therefore, policy reform is needed through the establishment of specific rules on RJ in medical disputes, the provision of mediator resources who understand medical ethics, and strengthening legal protection mechanisms for all parties. Thus, restorative justice in medical disputes is expected to be able to create a more humanist, responsive, and socially just health law system in Indonesia.

Keywords : Restorative Justice, Medical Disputes, Health Law Reform, Professional Ethics, Substantive Justice.

INTRODUCTION

Health care is a very complex sector and involves a close relationship between medical personnel and patients. In this relationship, doctors and other health workers have professional, ethical, and legal responsibilities in providing quality services in accordance with medical practice standards. However, in reality, not all interactions between patients and medical personnel go without problems. There are various possibilities for medical disputes, whether caused by alleged malpractice, procedural errors, lack of effective communication, or differences in perception between patients and medical personnel regarding the results of the actions provided.

Medical disputes are disputes arising from losses suffered by patients as a result of medical actions performed by doctors in practicing medicine.[1] Medical disputes in Indonesia are an issue that has received increasing attention along with the increasing legal literacy of the public and the demand for transparency and accountability of public services, including in the health sector. Along with increasing patient awareness of their rights, Law Number 36 of 2009 concerning Health and Law Number 44 of 2009 concerning Hospitals are important references that emphasize that everyone has the right to obtain safe, quality and humane health services. The obligation of doctors to provide services in accordance with professional standards and operational procedures is regulated in Law Number 29 of 2004 concerning Medical Practices, which also contains the rights and obligations of medical personnel.

[1] Ari Purwadi, "Prinsip Praduga Selalu Bertanggung-Gugat Dalam Sengketa Medik," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 4, no. 1 (2017), https://doi.org/10.22304/pjih.v4n1.a6.

When there is an alleged violation of the patient's rights or an error in medical action, the potential for a dispute arises.[2] In practice, medical dispute resolution in Indonesia is often done through litigation, whether criminal, civil, or ethical-disciplinary.[3] Settlement through criminal court is often done when the patient or his/her family feels harmed and considers that the medical action contains elements of negligence or intentional harm. On the other hand, the civil track allows victims to claim compensation for the losses incurred. In addition, ethical and disciplinary channels, such as through the Indonesian Medical Discipline Honor Council (MKDKI) or Medical Ethics Council (MEK), aim to assess whether the actions of medical personnel are in accordance with the professional code of ethics and competency standards.

However, the litigative approach to medical disputes has a number of fundamental flaws. The litigation process in court is often lengthy, costly, and can cause severe psychological distress for both patients and health workers.[4] In addition, the criminal justice system is adversarial, pitting disputants against each other as perpetrators and victims. This pattern has the potential to create tension, damage the reputation and careers of medical personnel, and does not always result in substantial recovery for victims. In fact, court settlements sometimes do not address the emotional and social needs of the victim, who would prefer an admission of guilt, an apology, and an assurance that similar mistakes will not be repeated.

In the midst of this situation, the restorative justice approach has begun to be seen as a more humane and equitable alternative to dispute resolution. Restorative justice is an approach that focuses on restoring the losses suffered by victims, taking responsibility by perpetrators, and involving all affected parties in the settlement process. The basic principles of restorative justice include dialogue, voluntary participation, reparations, and restoration of social relations damaged by conflict or violations.[5]

In restorative justice, the resolution of a criminal offense is carried out through a collaborative process that involves all relevant parties to jointly find solutions to the problems that arise.[6] Restorative justice is actually not a new concept. This approach has been applied in the criminal justice system in various countries, including Canada, New Zealand, and South Africa, especially in cases of minor to moderate offenses. In Indonesia, a concrete step to accommodate restorative justice in the legal system was taken through the Regulation of the National Police of the Republic of Indonesia Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice. This regulation provides a legal basis for the police to resolve certain criminal cases through a restorative approach, provided that there is an amicable agreement between the perpetrator and the victim, the perpetrator does not have repeated malicious intent, and there are no severe social impacts.

Furthermore, in Supreme Court Circular Letter (SEMA) No. 2 of 2023 and Attorney General Decree No. 15 of 2020, the concept of restorative justice has also begun to be adopted in the framework of alternative prosecution and punishment. However, until now, there is no specific regulation that explicitly regulates the application of restorative justice in the context of medical disputes, both criminal and civil in nature. In fact, the characteristics of medical disputes are very suitable for this approach, given the need for a dialogical approach that emphasizes empathy, clarification, and recovery.

In some cases, restorative justice-based medical dispute resolution efforts have been carried out informally by health service institutions, medical professional organizations, and law enforcement officials. For example, through mediation between doctors and patients facilitated by hospitals or

[2] Kastania Lintang and Bahrun Azmi Hasnati, "Kedudukan Majelis Kehormatan Disiplin Kedokteran Indonesia Dalam Penyelesaian Sengketa Medis," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 4, no. 2 (2021): 167–79, https://doi.org/10.24090/volksgeist.v4i2.5267.

[3] Habibah Zahra Mutiara and Devi Siti Hamzah Marpaung, "Penyelesaian Sengketa Medik Melalui Arternatif Penyelesaian Sengketa Mediasi," *JUSTITIA : Jurnal Ilmu Hukum Dan Humaniora* 9, no. 2 (2022).

[4] Hemestiana Matilda Sun and Hudi Yusuf, "Penyelesaian Sengketa Kelalaian Medik Melalui Mediasi Dan Majelis Kehormatan Disiplin Kedokteran Indonesia (MKDKI)," *Jurnal Intelek Insan Cendikia* 1, no. 9 (2024): 4958–67.

[5] Dewi Setyowati, "Memahami Konsep Restorative Justice Sebagai Upaya Sistem Peradilan Pidana Menggapai Keadilan," *Pandecta Research Law Journal* 15, no. 1 (June 27, 2020): 121–41, https://doi.org/10.15294/pandecta.v15i1.24689.

[6] Apong Herlina, "Restorative Justice," *Indonesian Journal of Criminology* 3, no. 3 (2004): 19–26.

Medical Committees, or in some cases, local police initiated a dialog process between the victim's family and medical personnel to reach an amicable agreement. However, this approach does not yet have strong legal legitimacy and has not been procedurally standardized.

This suggests an urgent need to examine in depth how the concept of restorative justice can be applied in medical dispute resolution.[7] This study is relevant because it presents an alternative conflict resolution that is more effective, efficient, and focuses on recovery, not just punishment. Moreover, the application of restorative justice in medical disputes will bring positive impacts not only for victims and perpetrators, but also for the health system as a whole, namely by reducing the burden of litigation, strengthening public trust in medical personnel, and encouraging improvements in a more transparent and accountable service system.

However, the application of restorative justice in medical disputes also faces serious challenges, especially regarding legal protection, certainty of victims' rights, and the framework of professional responsibility of medical personnel.[8] A careful and measured approach is needed so that the principle of restorative justice is not misused as a tool to avoid legal liability. Therefore, it is necessary to build a policy model that integrates the restorative approach into the Indonesian positive legal framework, by prioritizing the principles of justice, protection of human rights, and medical professionalism.

Thus, the study of Restorative Justice as an approach to medical dispute resolution is an important contribution to the development of the health law system in Indonesia. This study aims to answer crucial questions regarding the possibility of applying restorative justice in medical dispute resolution, what are the requirements and limitations, and how the institutional and regulatory design that needs to be developed to realize it effectively and sustainably.

RESEARCH METHOD

By using a normative legal research approach, this research aims to examine the quality of the legal norms themselves, which often classifies normative legal research as qualitative research.[9] This type of research was chosen because the main focus of this study is on the juridical analysis of the possibilities and limitations of applying the concept of restorative justice in medical dispute resolution in Indonesia, which is essentially the realm of written law studies (law in books), not law in action.

The normative law approach is very relevant to evaluate the suitability or legal vacuum related to the implementation of restorative justice in the medical context. In this case, the research analyzes regulations such as the Medical Practices Act, Criminal Code, Police Regulations, and Prosecutor's Regulations, to understand whether there is legal space that allows restorative resolution of medical disputes outside the formal litigation mechanism.

In addition to the normative approach, this research also uses a conceptual approach, which aims to examine and develop the understanding and framework of thinking regarding basic concepts such as justice, restorative justice, professional responsibility, and patient rights. This approach is important because restorative justice is still a relatively new concept applied in the Indonesian legal system, especially in non-conventional contexts such as medical disputes. With a conceptual approach, the author attempts to compare various definitions, principles, and implementation models of restorative justice in international practice as well as in modern legal theory.

In addition, a comparative approach is also used, by comparing the application of restorative justice in medical conflict resolution in several other countries, such as New Zealand, Canada and the United Kingdom, which have been more advanced in integrating the principles of restorative justice in their health law systems. This approach aims to provide alternative perspectives and formulate the possibility of contextual and adaptive policy adoption for the Indonesian legal system.

With a combination of normative, conceptual, and comparative approaches, this research is expected to be able to provide legal analysis that is not only descriptive, but also critical and

[7] Sun and Yusuf, "Penyelesaian Sengketa Kelalaian Medik Melalui Mediasi Dan Majelis Kehormatan Disiplin Kedokteran Indonesia (MKDKI)."

[8] Didith Prahara, "Penyelesaian Dugaan Kelalaian Medik Melalui Mediasi (Studi Tentang Medasi Dalam Kelalaian Medik Menurut Pasal 29 Undang-Undang Nomor 36 Tahun 2009 Tetang Kesehatan)" (Universitas Islam Indonesia, 2014).

[9] Meray Hendrik Mezak, "Jenis, Metode Dan Pendekatan Dalam Penelitian Hukum," *Law Review* 5, no. 3 (2006).

recommendative, especially in offering a model of medical dispute resolution that is just, humanist, and constructive.

RESULT AND DISCUSSION

Characteristics of Medical Disputes and Constraints to Litigation Resolution in Indonesia

Medical disputes in Indonesia are legal conflicts that arise between patients or their families and medical personnel (doctors, nurses, or other health workers) due to alleged negligence or violations of medical standards that result in loss or suffering to the patient. These disputes can take the form of medical malpractice caused by medical actions that are not in accordance with medical standards or professional ethics, or violations of patient rights such as privacy or informed consent. The consent given by a patient after receiving sufficient information about the medical procedure to be performed, including its risks and benefits, is called informed consent. The patient's lack of clarity or ignorance about the medical procedure being performed can be one of the main causes of disputes in medical practice.[10] Therefore, in addition to medical errors, poor communication factors between medical personnel and patients also contribute to the emergence of medical disputes. These medical disputes can be categorized into various forms, namely malpractice disputes, violations of the medical code of ethics, and violations of patient rights.

Malpractice disputes occur when medical personnel do not follow proper procedures or perform actions that cause injury or harm to patients. Malpractice can take the form of misdiagnosis, negligence in providing treatment, or performing improper medical procedures. Meanwhile, in medical disputes arising from violations of the medical code of ethics, doctors or other medical personnel can be deemed to have violated the medical professional code of ethics if they act inconsistently with the moral and ethical values stipulated in the professional code of ethics, such as non-compliance with the principle of medical confidentiality or refusal to take medical actions that should be carried out in the patient's interest. Meanwhile, violations of patients' rights involve actions that harm the basic rights of patients, such as not providing sufficient information about the risks of a medical action or medical actions performed without the patient's consent.

Regulations governing medical disputes in Indonesia are quite diverse. Law No. 29/2004 on Medical Practice is one of the main bases that regulates the obligations of medical personnel in carrying out their profession. Articles in this law emphasize the importance of medical personnel competence as well as the obligation to comply with professional standards and ethics. On the other hand, Law No. 36/2009 on Health regulates the protection of patients' rights, such as the right to obtain adequate information about their health condition and the right to give consent or refuse medical treatment.

However, despite these regulations, the resolution of medical disputes through litigation in Indonesia faces a number of significant obstacles. One of the main obstacles is the lengthy legal process and high costs. Court proceedings for medical disputes, both in the criminal and civil realms, tend to be complicated and expensive. This makes it difficult for patients or their families to seek justice, especially those with financial limitations. In addition, the Indonesian legal system, which tends to focus more on retributive justice, sometimes fails to address the need to restore the relationship between victim and perpetrator, which may be more necessary in medical disputes.

In the context of criminal dispute resolution, as stipulated in the Criminal Code (KUHP), if a medical action is proven to result in the loss or death of a patient due to negligence, the medical personnel can be subject to criminal sanctions. However, this process often focuses on the punitive aspect, without taking into account the overall restoration of the relationship between the patient and the medical personnel, which can ultimately add trauma to both parties. In the health law, although there is room for mediation, the fact is that many medical disputes still end up in court and do not receive adequate resolution, both for patients and medical personnel.

Although Police Regulation No. 8 of 2021 on Handling Crimes Based on Restorative Justice opens up opportunities for more humane law enforcement and focuses on restoring relationships, its application in medical disputes is still very limited. The existence of Prosecutor's Regulation No. 15 of 2020, which regulates the termination of prosecution on the basis of restorative justice, shows a push to

[10] Elzan Syahza Stesia Ramadhani and Hudi Yusuf, "Analisis Hukum Sengketa Medis Dalam Kasus Etri Kartika Chandra: Implementasi Pasal 50 Dan 51 Uu Nomor 29 Tahun 2004 Tentang Praktik Kedokteran Serta Solusi Penyelesaian," *Jurnal Intelek Insan Cendikia* 2, no. 1 (2025): 1214–24.

see justice not only from the perspective of punishment, but also recovery for victims and perpetrators. However, this provision has not been clearly applied to medical disputes, leaving room for potential improvements in the Indonesian legal system. The Supreme Court Circular Letter (SEMA) No. 2 of 2023 on the use of restorative justice in minor criminal cases also does not take into account the type of cases such as medical disputes, which are more often processed in the criminal or civil realm with huge losses.

Public ignorance of existing legal procedures and the imbalance of knowledge between patients and medical personnel are also other hindering factors in dispute resolution. Patients who are unfamiliar with the medical world often find it difficult to prove that medical personnel have committed errors or negligence. Meanwhile, medical personnel who better understand the technical aspects of medicine and have greater access to legal representation, often have an advantage in court.

Thus, the system of resolving medical disputes through litigation in Indonesia requires a more comprehensive and equitable approach. The existence of regulations that support restorative justice, such as those contained in Police Regulation No. 8/2021 and Prosecutor's Regulation No. 15/2020, can be a model for resolving medical disputes that are more humane and prioritize restoring relationships, instead of just punishing the perpetrator or prioritizing long and expensive procedures. A multidisciplinary approach is also needed, involving medical personnel, legal experts, and competent mediators in resolving these disputes.

Principles and Legal Basis of Restorative Justice in Indonesia

Restorative justice (RJ) is an approach to dispute resolution that focuses on restoring harm to victims, repairing damaged relationships between disputants, and providing opportunities for perpetrators to take responsibility for their actions in ways that are acceptable to victims and society. The fundamental principle of RJ is restoration, not retaliation. In this context, RJ seeks to mitigate the negative effects of a retributive justice system, by promoting a settlement that is more based on reconciliation and the active participation of all parties involved, namely victims, perpetrators, and the community. This approach aims to repair the social damage caused by a crime or violation of the law, as well as provide psychological healing to victims.

In Indonesia, the concept of restorative justice has begun to be formally adopted in several laws and regulations, especially those governing the resolution of criminal cases. One important regulation that has become the legal basis for RJ in Indonesia is the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, which authorizes prosecutors to stop the prosecution process against perpetrators of criminal acts that meet certain conditions, such as minor crimes or losses that can be resolved amicably, provided that there is an agreement between the perpetrator and the victim. The decision to discontinue prosecution is not only made on the basis of legal considerations, but also on the basis of broader social benefits, with the hope that restorative resolution will be more beneficial for both parties and society as a whole.

In addition, the Indonesian National Police Regulation No. 8 of 2021 on Handling Crimes Based on Restorative Justice also plays an important role in introducing and strengthening the application of RJ during the investigation process. The regulation states that investigators have the authority to stop the investigation process or not continue the case to court if the perpetrator of the crime is willing to mediate with the victim and both parties reach an amicable agreement. In the Perpol, restorative justice is presented as a more humane and fair alternative, especially for less serious cases, where both perpetrators and victims can be brought together in a deliberative forum to reach a mutually beneficial settlement and restore damaged social relationships.

The application of RJ principles is also regulated in Supreme Court Circular Letter (SEMA) No. 2 of 2023, which encourages judges to consider restorative justice mechanisms in resolving minor and humanitarian cases. The SEMA provides guidance to judges to explore settlement options outside of formal litigation, such as mediation or peace between perpetrators and victims, before deciding cases in court. The SEMA illustrates the importance of restoring relationships damaged by violations of the law, rather than simply punishing perpetrators with retributive punishments. In line with this, the SEMA recognizes that RJ can provide greater benefits to society, by reducing the burden on the justice system, reducing the social costs of case resolution, and providing opportunities for offenders to improve themselves.

However, the application of restorative justice in the context of medical disputes in Indonesia does not yet have specific regulations governing it. Medical disputes that occur between patients and medical personnel often involve allegations of malpractice, professional negligence, or violations of patient rights.[11] Such disputes are generally resolved through litigation, either criminal or civil, which is not always able to provide satisfactory solutions for both parties. The lengthy judicial process, high costs, and potential criminalization of medical personnel often worsen the social and psychological conditions for all parties involved. Although not yet explicitly regulated in legislation, the application of RJ in medical disputes has great potential to offer a fairer and more humanitarian-oriented settlement.

In this case, the RJ principle can be adapted to resolve medical disputes by involving parties related to patients/patient families, medical personnel, and hospitals in a structured mediation forum facilitated by a neutral party. The concept of RJ in medical disputes does not only aim to seek compensation or damages, but also to restore damaged relationships between medical personnel and patients, as well as to provide education and learning to perpetrators regarding the impact of medical actions that are not in accordance with professional standards. Therefore, although the current regulations do not specifically regulate the resolution of medical disputes through RJ, the legal basis contained in Perpol No. 8 of 2021, Perja No. 15 of 2020, and SEMA No. 2 of 2023 can still be used as a basis for the development of RJ policies and practices in the medical sector, provided that there is collaboration between legal institutions, the medical profession, and patient protection institutions.

Thus, although there are no specific regulations governing the application of restorative justice in medical disputes, the basic principles of RJ enshrined in these regulations can be adapted to create a more humane and effective alternative solution for medical dispute resolution in Indonesia. This will require progressive interpretations from relevant institutions, as well as regulatory updates that allow for the implementation of RJ in the medical context.

Potential Application of Restorative Justice in Medical Disputes

Restorative justice (RJ) has significant potential in resolving medical disputes in Indonesia, especially since medical disputes have a complex and sensitive nature, involving not only legal aspects, but also emotional relationships between patients (or patients' families) and medical personnel. Basically, medical disputes often arise due to patient dissatisfaction with the outcome of medical services received, such as failure of diagnosis, negligence in medical actions, or even death caused by medical factors. In many cases, settlement through litigation (both criminal and civil) often worsens the relationship between the disputing parties and leads to lengthy, costly legal proceedings that do not always result in substantial satisfaction for both parties.

The restorative justice approach offers an alternative that is more oriented towards restoring relationships and more holistic justice.[12] One of the main aspects of RJ is to involve the victim (patient or patient's family) and the perpetrator (medical personnel) in a dialog process to reach a settlement that is acceptable to both parties. In the context of medical disputes, RJ can serve as a bridge to reduce tensions between patients and medical personnel, by encouraging the parties involved to listen to and understand each other's perspectives. This process provides an opportunity for medical personnel to acknowledge errors, if any, and provide a more transparent explanation of medical actions taken. Conversely, the patient or family can convey the emotional and physical impact they have experienced, and seek justice not only in the form of material damages, but also acknowledgment of the errors or omissions that occurred.

The potential application of RJ in medical disputes is also reinforced by a number of existing regulations in Indonesia, although most of these regulations do not directly regulate RJ in the medical context, but rather more broadly in the fields of criminal and civil law. One relevant regulation is Police

[11] Muhenri Sihotang and Zainal Arifin Hoesein, "Standar Profesionalisme Dokter Dan Hak Pasien Dalam Proses Penyelesaian Sengketa Medik Melalui Mediasi," *Jurnal Retentum* 7, no. 1 (2025): 205–15, https://doi.org/10.46930/retentum.v7i1.5283.

[12] Dwinanda Linchia Levi Heningdyah Nikolas Kusumawardhani, "Dinamika Implementasi Pendekatan Restorative Justice Dalam Penyelesaian Tindak Pidana," *UNES Law Review* 5, no. 4 (2023): 1908–18, https://doi.org/10.31933/unesrev.v5i4; Indi Nuroini, "Efektivitas Penerapan Restorative Justice Dalam Kasus Pidana Di Indonesia," *Jurnal Cahaya Mandalika ISSN 2721-4796 (Online)* 5, no. 2 (2024): 818–28, https://doi.org/10.36312/jcm.v5i2.3179.

Regulation No. 8 of 2021 on Criminal Case Resolution with Restorative Justice. This regulation provides a basis for law enforcement officials to end the investigation and prosecution of criminal cases involving victims and perpetrators who agree to settle the case amicably. Although this regulation is more directed towards general criminal cases, the basic principles of RJ, namely amicable agreements involving both parties, acknowledgment of guilt, and restoration of relationships, can be applied in medical disputes involving negligence or unintentional medical malpractice. The application of RJ in this context can prevent unnecessary criminalization of medical personnel, while providing avenues for redress for aggrieved victims.

In addition, Perja No. 15/2020 on Termination of Prosecution Based on Restorative Justice also provides instructions to the prosecutor's office to stop the prosecution process if there is an amicable agreement between the victim and the perpetrator. Although this regulation is more specific to the termination of prosecution of criminal cases, the principles contained therein can be adapted in the context of medical disputes. In this case, the resolution of medical disputes through RJ can prevent the perpetrator from excessive criminal prosecution, which may damage the professional career of medical personnel and the reputation of the hospital, and maintain the quality of the relationship between patients and medical personnel.

However, the application of RJ in medical disputes still faces several obstacles, mainly related to the absence of regulations that explicitly regulate the use of RJ in medical cases. Most of the existing regulations still focus on the application of RJ in misdemeanors and general cases, without considering the special characteristics of medical disputes. Therefore, it is important for medical institutions, medical professional organizations, and law enforcement officials to develop joint guidelines that allow the application of RJ in medical disputes. One solution that can be implemented is to establish a hospital-based mediation unit that can function as a mediator in medical dispute cases. This unit can involve competent medical personnel, legal experts, and professional mediators who have an understanding of medical ethics.

In addition, in order to optimize the application of RJ in medical disputes, there needs to be an effort to strengthen regulations involving various parties. For example, developing specific regulations governing RJ in the medical context, which allow dispute resolution through mediation and reconciliation, both in criminal and civil cases. This could include provisions on how dispute resolution can be carried out with the termination of legal proceedings based on mutual agreement, as well as providing incentives for parties willing to resolve disputes through RJ channels, such as reduced penalties or transfer of cases to non-litigation channels.

RJ implementation can also be integrated with oversight mechanisms by professional organizations such as the Indonesian Doctors Association (IDI) or the Indonesian Hospital Association (PERSI), which have the capacity to facilitate discussions between medical parties and patients. Thus, RJ can be a more effective and fair alternative, which does not only focus on the legal aspects, but also on restoring the social relationship between patients and medical personnel.

Overall, the potential for the application of restorative justice in medical disputes is very large, given that this model prioritizes reconciliation, recovery, and justice that is more holistic. With clearer regulatory support and synergy between various parties, RJ can be a more humane approach to resolving medical disputes in Indonesia.

Legal, Ethical and Institutional Challenges

The application of restorative justice in the context of medical disputes in Indonesia has great potential to resolve disputes in a more humane manner and focuses on restoring the relationship between victim and perpetrator. However, in its implementation, there are a number of challenges that need to be overcome, both legal, ethical, and institutional in nature. These challenges relate not only to the existence of clear regulations, but also to the acceptance of the various parties involved in the medical dispute resolution process.

1. Legal Challenges

From a legal perspective, one of the biggest challenges faced in the application of restorative justice in medical disputes is the lack of clarity of regulations governing restorative medical dispute resolution. Although there are several regulations that cover the concept of restorative justice in the criminal context, such as the Regulation of the Indonesian National Police (Perpol) Number 8 of 2021

which provides a legal basis for resolving criminal cases through a restorative justice approach, and the Regulation of the Attorney General of the Republic of Indonesia (Perja) Number 15 of 2020 concerning the termination of prosecution based on restorative justice, both regulations do not specifically regulate the application of RJ in medical disputes.

In medical disputes, which often involve medical negligence or malpractice, existing legal procedures often lead to litigation settlements where the victim (patient or their family) would sue the medical personnel or hospital through criminal or civil cases.[13] The application of restorative justice in these cases, where there is often a significant element of fault or even death of the patient, is still not clearly regulated by the regulations. Whereas, restorative justice in the context of minor crimes (such as in the case of crimes that do not cause great harm) has been regulated in the Supreme Court Circular Letter (SEMA) Number 2 of 2023, however, these articles are not sufficient to cover more complex and severe cases of medical disputes. The absence of a lex specialist or regulation specifically governing RJ in the medical field creates legal uncertainty regarding the validity and status of RJ-based medical dispute resolution.

In addition, laws governing medical legal obligations, such as Law No. 29/2004 on Medical Practices and Law No. 36/2009 on Health, which require medical personnel to be accountable for their actions, potentially contradict the principle of restorative justice which emphasizes the restoration of relationships and settlement through agreement between the disputing parties, without prioritizing repressive sanctions. In this context, the application of restorative justice requires legal reforms that allow the application of RJ principles while maintaining the protection of patient rights and avoiding abuse by medical actors.

2. Ethic Challenges

The ethical challenges in applying restorative justice to medical disputes are closely related to issues of substantial justice and protection of patients' rights. Although RJ approaches aim to resolve disputes in a more peaceful and humane manner, there is the potential that the process can be used to reduce the liability of the guilty party, especially the medical personnel or hospital. For example, in some cases, hospitals or doctors may use the RJ route to avoid more severe lawsuits, and lead patients or their families to accept settlements that do not necessarily meet their moral or equitable needs.

This of course raises ethical questions about the extent to which justice for the victim (patient or patient's family) can be achieved in the OPD process, especially if the stronger party (hospital or medical personnel) pressures the weaker party (patient or family) to accept an amicable settlement without taking into account their wishes or without providing a proper remedy. In many cases, victims may feel forced to accept a compromise that does not fully fulfill their right to compensation or full accountability for the harm suffered.

In addition, in the medical profession, the medical profession's code of ethics stipulated in the Decree of the Minister of Health of the Republic of Indonesia No.434/Men.Kes./SK/X/1983, on the Applicability of the Indonesian Code of Medical Ethics requires doctors and medical personnel to maintain professional integrity, which can sometimes clash with more flexible RJ mechanisms. In this case, there is a risk that doctors or hospitals that commit medical errors may choose the RJ route as an alternative to avoid ethical sanctions or other professional actions, even though it does not always pay optimal attention to patient welfare. Therefore, strict supervision of the application of RJ is needed so that no party feels disadvantaged or forced to accept an unfair agreement.

3. Institutional Challenges

On the institutional side, the biggest challenge in implementing restorative justice is the limited infrastructure and supporting mechanisms. In Indonesia, there is no institution or unit that specifically handles medical disputes with a restorative justice approach in hospitals or other medical institutions. RJ practices in developed countries, such as Canada and New Zealand, already include hospital mediation and the use of mediators with legal and medical competencies. However, in Indonesia, hospitals generally still rely on dispute resolution through formal legal channels or internal settlements that are not well structured.

[13] Jovita Irawati, "Inkonsistensi Regulasi Di Bidang Kesehatan Dan Implikasi Hukumnya Terhadap Penyelesaian Perkara Medik Di Indonesia," *Law Review* 19, no. 1 (July 31, 2019): 54, https://doi.org/10.19166/lr.v19i1.1551.

In addition, the quality of mediators who understand both the law and medical practice in Indonesia is limited.[14] Mediators who are competent in the field of medicine and can understand the technical differences in medical treatment are crucial to ensure that the RJ process is fair and effective. For example, in a medical malpractice case, the mediator must have an in-depth understanding of medical practice to be able to provide an objective assessment of whether or not the medical action taken was in accordance with professional standards.[15] Currently, there is no structured training system to produce mediators with this cross-disciplinary understanding.

There is also a lack of socialization of restorative justice among medical personnel, lawyers, and judges. Without adequate understanding of RJ concepts and practices, law enforcement and other relevant parties may be reluctant or unable to apply RJ effectively in medical dispute resolution. The application of RJ in the medical context requires the involvement of various parties, such as medical professional organizations, hospitals, and mediation institutions that have the authority to assess whether a dispute settlement reflects true justice.

In order for the implementation of OPD to work well, it is necessary to establish specialized institutions or OPD units in hospitals and clinics, as well as specialized training for mediators focusing on medical dispute resolution. Reforms in hospital policies that prioritize mediation and amicable resolution processes are also necessary to create a more transparent, fair and effective system.

Restorative Justice-Based Medical Dispute Resolution Policy Model

The need for a renewed approach to medical dispute resolution in Indonesia has become an increasingly urgent strategic discourse, especially in the midst of the complexity of the relationship between medical personnel and patients, which involves ethical, professional, social, and legal dimensions. The litigative resolution model that is currently commonly used, whether through civil, criminal, or professional ethics, has not been able to accommodate the needs of substantive justice and restoration of relations between the disputing parties. In this context, the application of the concept of restorative justice offers a more humanist, dialogical, and solutive alternative to resolve medical conflicts without having to go through a long and tense legal process.

The restorative justice-based medical dispute resolution policy model that can be proposed must depart from the main principles of restorative justice, namely: active participation of victims and perpetrators, acknowledgment of responsibility, apology, restoration of losses, and fair and voluntary reconciliation efforts. To be legally and effectively implemented, this model needs to have a strong legal basis and clear institutional mechanisms. A number of regulations that have been issued by the government can be used as an initial step in building a legal framework for this model. For example, the Regulation of the Attorney General of the Republic of Indonesia (Perja) No. 15/2020 on Discontinuation of Prosecution Based on Restorative Justice authorizes prosecutors to discontinue criminal prosecution if peace has been reached between the perpetrator and the victim, with certain conditions, such as criminal threats under 5 years, the perpetrator is not a recidivist, and there is a genuine peace agreement. Similarly, the Indonesian National Police Regulation (Perpol) Number 8 of 2021 on Handling Crimes Based on Restorative Justice authorizes investigators to stop the investigation if restorative conditions have been met.

However, these two regulations do not explicitly regulate medical dispute cases, which in practice can be quite complex. Medical cases often do not only involve one form of legal violation, but can include criminal (negligence or gross negligence), civil (compensation), and ethical (violation of the professional code of ethics) aspects. Therefore, it is necessary to design a special policy model that is oriented towards integrating the principles of restorative justice in the medical dispute handling system in Indonesia.

First, this policy model can begin with the establishment of a restorative justice-based mediation unit in every hospital, both public and private. This unit serves as an initial forum for conflict resolution between patients and health workers, before entering the realm of law enforcement. Members of the mediation unit can consist of hospital elements (medical committee, ethics committee), professional

[14] Hudi Yusuf, "Perkembangan Hukum Kesehatan Dan Mekanisme Penyelesaian Sengketa Medik," *Jurnal Intelek Insan Cendikia* 1, no. 9 (2024): 5234–41.
[15] Muhammad Afiful Jauhani, *Dilema Kapabilitas Dan Imparsialitas Dokter Sebagai Mediator Sengketa Medis* (Scopindo Media Pustaka, 2020).

organizations (IDI, PPNI), patient or family representatives, and professional mediators who understand the principles of restorative justice and aspects of health law. The mediation process must be guaranteed confidentiality, impartiality, and voluntary.

Second, peaceful agreements resulting from mediation need to be legally recognized, both by law enforcement officials (police and prosecutors) and by the courts. For this reason, it is necessary to issue a Minister of Health Regulation or a Joint Regulation between the Ministry of Health, the Attorney General's Office, and the Indonesian Police, which explicitly regulates that the results of restorative justice-based mediation in medical disputes can be used as a basis for terminating the legal process (non-litigative). This regulation should also establish criteria for cases that can be resolved restoratively, such as: there is no element of intent, the patient/family is willing to reconcile, and there is recognition and good faith from medical personnel to restore the conditions caused.

Third, to ensure the quality and objectivity of the mediation process, it is necessary to standardize the training and certification of restorative justice-based medical mediators. These mediators must master both legal, psychological, and professional ethical aspects in health services. Training can be conducted by competent institutions such as the Witness and Victim Protection Agency (LPSK), the National Human Rights Commission, or independent mediation institutions in collaboration with health professional associations.

Fourth, this model must also be supported by a monitoring and evaluation system, to avoid the potential misuse of restorative justice as a means of avoiding legal responsibility by medical personnel or hospitals. Therefore, it is necessary to establish an independent supervisory board consisting of elements from the government, academics, professional organizations, and health NGOs, to audit the reported mediation process and ensure that the principles of justice, voluntariness, and transparency are truly upheld.

In addition, it is also important to encourage a paradigm shift in law enforcement, especially among investigators and prosecutors, so as not to immediately process medical personnel as suspects without first ascertaining whether adequate restorative efforts have been made. In this context, SEMA No. 2 of 2023 can be used as a basis for judges' consideration to accept the results of out-of-court peaceful settlements, as long as the process is legal, fair, and does not violate legal principles.

Thus, the restorative justice-based medical dispute resolution policy model is a form of integration between existing regulations and legal needs that are more just and recovery-oriented. This model is expected to not only reduce the burden of cases in court and avoid criminalization of medical personnel, but also provide more meaningful relational justice for patients and their families. In the long run, this model has the potential to form a more civilized, accommodating medical dispute resolution system that is in line with the spirit of national criminal justice system reform.

CONCLUSION

The resolution of medical disputes through litigation in Indonesia is still unable to provide substantive justice for patients and medical personnel. The lengthy, formalistic, and high-cost legal process often leads to uncertainty and the risk of criminalization of health workers, especially in cases without intentional elements. In this case, the restorative justice approach offers an alternative solution that is more humanistic and dialogical, with a focus on restoring relationships and participatory peace agreements.

However, until now there is no specific legal framework that regulates the application of restorative justice in the context of medical disputes. Therefore, more specific regulations are needed, strengthening the role of mediation institutions in hospitals, as well as training for legal officers and health workers to fully understand the principles of restorative justice. Legal education to the public and integration of this approach in the legal and health education curriculum are also important. Thus, the medical dispute resolution system in Indonesia can become more fair, efficient, and recovery-oriented.

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