
Implementing Restorative Approaches in Medical Dispute Resolution Perspective of Legal Interest

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Abstract

The doctor-patient relationship is a therapeutic transaction in which agreements are made based on best efforts to heal the patient. This relationship is called the inspaning verb tennis, and although it is not obvious from the result, it puts more emphasis on the effort made. The intention to help a patient to cure an illness may not always work, and may even lead to patient disability or death as a result of medical intervention, leading to medical disputes, disputes between patients and physicians, and criminal proceedings. This research is legal research using only secondary data such as literature research and library materials, that is, research using a prescriptive legal approach. The paradigm of restorative justice legal approaches should be used in resolving medical disputes. This is the value of justice and happiness, or the elements of sanctions and how to deal with them. Restorative justice policies, as provided for in the 1945 Constitution, are more beneficial, dignified and socially just for all parties, both victims and society and the state, compared to litigation settlement. We provide comprehensive problem-solving solutions.

INTRODUCTION

A restorative approach to medical dispute resolution is an approach that proposes solutions to improve the relationship between patients and medical staff involved in medical disputes and to redress the losses suffered by patients as a result of inappropriate medical procedures.

The doctor-patient relationship always begins with a good relationship based on good faith on both sides. In this context, there are patients who require the expertise, knowledge and professionalism of their physicians to provide their medical services. Physicians, on the other hand, have an ethical obligation to provide medical services, taking into account professional ethics and existing regulations. This relationship is based on the patient's complete trust in the physician as a professionally qualified person to undertake healing efforts. The uniqueness of the patient-physician relationship is that risk factors are inherent in nearly every medical service a physician performs. These risks range from mild risks that are very unlikely to occur to risks that are very dangerous to the patient and are likely to occur. (Windayani & Adipradana, 2020).

The Health Act recognizes that when providing services, the medical practitioner or provider of medical services is only responsible for the processes or efforts made (Inspanning Verbintennis) Unlike legal relationships that generally apply to contracts that promise certain results (riskoverbentennis/resultatsverentennis), there are no guarantees of final results (Novianto, 2017).

Medical Practices Act No. 29 of 2004 and Health Practitioners Act No. 36 of 2014 stipulate that physicians and other health care professionals must provide health care services according to two standards: professional standards and standard operating procedures. Professional standards are limits on ability (knowledge, skill, and professional attitude) The minimum that an individual must master in order to be able to carry out professional activities in a society uniquely created by a professional organization. A standard operating procedure is a set of instructions or standardized procedures for completing a specific routine work process. Standard operating procedures, based on mutual consensus, provide precise and best procedures for performing various activities and service functions performed by health care organizations on a professional basis (Herisasono & Herawati, 2023; Triana et al., 2023; Tunny & Wabula, 2023).

Of course, no doctor intentionally or willfully injures or harms a patient in his quest for a cure. However, the practice of medical services as a curative effort by physicians for these patients often raises legal issues in both criminal, civil, and administrative law. This problem arises when a medical procedure performed by a doctor results in harm, bodily harm, or even death to the patient.

Doctors are ordinary people who can intentionally (*dolus*) or unintentionally (*culpa*). make mistakes in the practice of their profession. Therefore, the intention to help and cure the patient does not always work, and medical intervention can result in patient disability or even death. Many factors influence the outcome of a medical procedure, including: Patients, current conditions, doctors, drugs, environment. When this happens, people with high levels of intelligence become more critical. The general public is ignorant of medical services, so that failures in medical practice are the result of medical malpractice or medical negligence. (Novianto, 2017).

Patients dissatisfied with a malpractice allegation file a complaint or report through legal channels. Complaints are usually lodged with law enforcement authorities or the mass media. As a result, it is predictable that the media will punish health care workers in court and make them butts of health care workers, and will affect the health care workers' reputations and careers, as well as the health care facilities where these acts take place. In the meantime, complaints to the police are received at both the Polsek, Polres and Polda levels and are treated like regular criminal cases (Nasser, 2011).

Restorative justice is a form of response to the evolution of the criminal justice system, an approach to conflict resolution that focuses on the needs of community contributors and marginalized victims who influence the mechanisms of the criminal justice system. A new paradigm in criminal justice approaches (Irawan, 2021).

The main purpose of restorative justice is not to punish criminals, but to hold criminals accountable for their crimes. The application of the concept of restorative justice in the resolution of medical disputes is a legal, clear and firm mandate for prior mediation efforts under Article 29 of Act No. 36 of 2009 on Health. If health care workers are suspected of being negligent in the performance of their duties, the negligence must first be resolved through mediation. (Hafizah & Fitriasih, 2022).

Restorative justice provisions are so far set out in Circular No. 1 of the Chief of Police. SE/8/VII/2018 of 2018 Concerning the Application of Restorative Justice in the Settlement of Criminal Matters; Decree of the President of the Supreme Court of the Republic of Indonesia No. 1691/DJU/SK/PS.00/12/2020 Implementation of Restorative Justice.

This study has a different focus than others. That is, to better understand what the concept of restorative justice approaches in resolving medical disputes is and the relationship between restorative justice approaches in resolving medical disputes and the interests of the law. It's a conflict for both victims. Criminals, Society and Law Enforcement in Indonesia.

Based on the contextual description, the question of how the implementation of restorative justice approaches in medical dispute resolution relates to legal services can be identified. It aims to explore the implementation of restorative justice approaches in resolving medical disputes related to statutory benefits.

METHODOLOGY

This study is a prescriptive legal approach, i.e. a legal study conducted using only secondary data, specifically data from literature surveys and library materials such as: Books, magazines, rules, laws, etc. After that, through the review of laws and regulations, the implementation of medical dispute resolution policy in Indonesia, and other administrative regulations, it will be implemented using a legal approach using deductive concepts and conclusions will be drawn.

RESULTS AND DISCUSSION

Restorative justice is seen as a new paradigm for dealing with reparable crimes. Perpetrators are encouraged to repair the loss they have caused to the victim, her family, and the community (Sahti, 2019). The restorative justice paradigm offers another solution. The process of resolving criminal cases takes place through mechanisms that involve both parties, the offender, the victim and even the community (Hadi, 2022). Community empowerment efforts are key words for implementing restorative justice paradigms. The pattern of resolving cases using the mediation model as a process of restoring justice allows parties to play a greater role in resolving their own problems. Courts, on the other hand, act as mediators and arbitrators in criminal cases involving disputes, with the aim of reconciliation between the parties. Court rulings can take the form of peace treaties, compensation for victims, punishment of perpetrators in the form of social work, etc. The goal of law enforcement, therefore, is not just to punish, but to restore harmony by repairing the perpetrator-victim relationship.

It should be understood that when crimes are committed, social relations, especially those of those involved, are damaged, and efforts are urgently needed to restore relations between them. This is because it is not uncommon for antagonism and resentment between perpetrators and victims, such as persecution and murder cases, to continue even after the previous judgment.

Restorative justice models are widely used in various developed countries around the

world, including the United States, Europe, Australia, Japan, and South Korea. One of the benefits of implementing this model is that prisons are relieved of the burden of housing inmates. In addition, efficiencies can be achieved in court by not hearing "small" cases (theft of cocoa, watermelon, cotton, flip-flops, etc.) that are of little value compared to the running cost of the process. Using restorative justice can also reduce Supreme Court justice backlogs. At the end of each year, he has 8,000 cases unsolved by 54 Supreme Court justices. As such, police and attorney generals can play a role in solving criminal problems, including interpersonal disputes.

However, it is not easy to implement a restorative justice approach based on the basic theory that criminal acts are acts that violate the rules established by the state in Indonesia's criminal system, where reprisal justice is still dominant. Therefore, a settlement proposal was submitted. The cases focus only on perpetrators and represent the rights of victims country by country. So far, the restorative justice model that is part of Progressive Law is still debated among legal professionals and has not been systematically implemented by law enforcement officers.

When applying restorative justice in Indonesia, we found that its application only applies in certain cases, such as cases involving children and traffic violations. In these cases, we find that compromises and compromises can be found between perpetrators and victims. If you can still advise, you should do so in view of the above beneficial things. Restorative justice can be implemented when there is a "middle ground" (Maulana & Agusta, 2021).

Obvious or not, the state's role in resolving criminal law issues is often ill-equipped with the interests, wishes and demands of those involved, particularly victims and perpetrators. In fact, victims are almost always given little attention, unless they are only heard through eyewitness statements (victim witnesses). A judge's testimony to the victim, which represents the impartiality and integrity of the judge, need not be used as a primary consideration in the court's decision-making process. As such, the judge's judgment and the victim's will are often seemingly unrelated. For this reason, the imprisonment of criminals is often seen as an outlet for state hatred, revenge and social disgrace. This imbalance in the situation gives rise to the idea of restorative justice as a smarter alternative to responding to victim, perpetrator, societal, and national senses of justice (Setyawan, 2019). Medical offenses are distinct from general offenses, and in some cases are inversely proportional to ordinary offenses. For example, the focus is on the consequences of ordinary crime (gevolg), but on the causes of medical crime (causa). Therefore, whatever a doctor does is judged by whether or not that medical practice complies with the norms of medical practice.

Restorative justice concepts should be encouraged when dealing with medical disputes, which are often criminalized as cases of medical malpractice. It is also very difficult to meet the four standards of malpractice disputed between physicians and patients, namely:

1. Duty;
2. Dereliction/Breach Of That Duty;
3. Damage;
4. Direct Causal Relationship.

Implementing a restorative justice paradigm has positive effects, as does the mediation process. This means that the doctor-patient relationship is always maintained. After all, in their respective circumstances and responsibilities, they both need the same benefits.

This pattern can be established when a doctor and patient (malpractice victim) sit together and mediate to resolve an existing case. This mediation can be done by bringing together all stakeholders, including the person responsible for the IDI, the patient's family, the physicians involved, community leaders, the police, and witnesses, to sit down and consider reaching an agreement. increase. If compensation is required, the amount of compensation can be discussed together and the amount can be realized proportionately. As a form of payment as compensation As a form of settlement as a remedy in case of error (Sulistiyanta et al., 2021).

The idea of using the concept of restorative justice in resolving medical disputes is a way of avoiding the accumulation of more and more cases and not bringing justice to victims of society and the environment. is a form of restorative justice practice such as recovery, resocialization, reparation, reparation, reparation, etc. in resolving cases of malpractice, considering a crime or crime is a matter only for the perpetrator of the crime (physician). not. Leave the state to represent the victims (patients) and leave the resolution process to the actors (doctors) and the state.

Court proceedings are also concerned with a person's professional reputation and/or dignity. It's also important to remember that treatment contracts are a "gray zone." Unless the doctor has committed a purely criminal offense such as forgery, rape, or criminal abortion (Sulistiyanta et al., 2021).

On the one hand, patient trust is confidential, doctors are bound by confidentiality, and attention must be paid to the patient's position in order to obtain balanced justice.

The effectiveness of restorative justice implementation also depends on:

1. The main concern is harm caused by crime, not just violation of law;
2. Equal attention and commitment to victims and perpetrators who need to be involved in the process;
3. Focus on recovery, empowerment and meeting the needs of victims;
4. Support stakeholders apart from encouraging them to understand, accept and implement commitments and to try to overcome difficulties that may arise;
5. Provide opportunities for dialogue, directly or indirectly, between victims and perpetrators, as appropriate;
6. Engage and empower affected communities through the judicial process and improve their capacity to recognize and respond to what has happened;
7. Promote cooperation and reintegration, not pressure.

In terms of case resolution, alternative restorative justice resolutions are considered more acceptable to both parties (a win-win solution). Making a claim for damages and/or criminal prosecution requires following court procedures, which can be significantly more time-consuming, labor-intensive and costly than going to court. Even after the verdict has been rendered, it goes without saying whether or not they have taken remedies in the form of

appeals to the Supreme Court or annulment. Another weakness is that the judicial process is dispute-based. The disputing parties take turns arguing and counter-arguing, and of course there is a feeling of mutual animosity, and the decisions made are in favor of one party and defeated by the other (win-loss situation) (Sulistiyanta et al., 2021).

In SE Kapolri No. 8 of 2018 on the Implementation of Restorative Justice in Resolving Criminal Cases, the regulation of restorative justice principles cannot be interpreted as a means of ending cases peacefully, but more broadly, in the sense of justice. can be interpreted as satisfying All those involved in criminal cases through initiatives involving victims, perpetrators, communities and investigators as mediators.

Due to the resolution of the case, which took place in the form of a peace agreement and revocation of the victim's right to sue, the SE police chief said it was necessary to request a judicial decision by the public prosecutor's office to stop the victim's prosecution. rice field. and the prosecutor's position. However, Sheriff's Order No. 6 of 2019 changed the sheriff's meaning of restorative justice in her SE, removing the community's involvement in case resolution.

Court citing Decree No. 1691/DJU/SK/PS.00/12/2020 of the President of the Supreme Court of the Republic of Indonesia, December 22, 2020 on the implementation of guidelines for the application of restorative justice. The order, signed by Secretary General Badiram MA Purim Hariyadi, regulates the application of restorative justice only in the context of minor criminal cases, children's cases, women's cases in conflict with the law, and drug cases. The case does not specifically mention medical dispute cases related to alleged medical crimes.

Based on the discussion above, the concept or model of restorative justice, in which one form of implementation is mediation, is a reasonable option for resolving medical disputes between doctors and patients, except in purely criminal cases such as sexual acts. It is a concept that can be applied as an effort. Harassment, Disclosure of Medical Secrets, Abortion and Negligence, Weight, Misrepresentation, Fraud, etc. A litigation settlement hurts both sides. Essentially, the Police Commissioner's rule on handling crimes under restorative justice created an opportunity to settle criminal cases before moving to the prosecution stage. However, it seems that there are still some obstacles to its realization.

The lack of laws explicitly governing restorative justice is another obstacle, applicable only to offenders who admit to committing a crime. The law enforcement officers involved are the police, prosecutors, and judges. It is difficult to achieve restorative justice when most of them are still thinking about retribution (punishment). Of course, the level of legal competence in society Low is its own challenge and obstacle. It is therefore a major topic on which more outreach by law enforcement officers with various levels of stakeholders will be conducted.

Given that the doctor-patient relationship is a unique one, we must consider how criminal law can be adapted to the uniqueness of that relationship, thereby improving the health of patients and medical staff. Optimal use of criminal law can be achieved with fairness and legal certainty. each other. The benefits of criminal law can be achieved through the use of restorative justice in resolving medical negligence disputes.

Legal expediency is one of the purposes of law and is closely related to the principles of justice and legal certainty. Therefore, the principle of expediency must be taken into account when implementing the principle of legal certainty and the principle of impartiality. For this reason, restorative justice legal approaches to medical dispute resolution can be viewed on the basis of their usefulness. Are restorative justice approaches related to legal benefits in resolving medical disputes.

A restorative justice approach can be an option for resolving and ending medical disputes or conflicts between doctors and hospitals, between doctors and patients, and/or between patients' families. Because it is a profit-based legal problem-solving model between realization of the values of justice and care, or sanctions and remedial elements.

Restorative justice policies, as provided for in the 1945 Constitution, are more beneficial, dignified and socially just for all parties, both victims and society and the state, compared to litigation settlement. We provide comprehensive problem-solving solutions.

The legal advantages for the parties are:

1. For the patient and/or patient's family: Victim patients are empowered to receive moral and material compensation from perpetrators of criminal acts, and each party forgives each other. The general application of criminal justice to solve medical criminal cases always presents him with new problems, as he has never been involved in the problem-solving process in court proceedings other than as a witness. Punishment or imprisonment of perpetrators of crimes does not benefit the victim and/or the victim's family.
2. For physicians as perpetrators: Avoiding lengthy and complex court proceedings that require a lot of time, attention and thought, distracting the physician from his/her focus on the job. Also, doctors, who originally held a noble and honorable profession, are treated like thieves and murderers when the case is concluded, causing frustration due to intense psychological pressure during the trial. This does not occur when the resolution of medical crimes takes a restorative justice approach, as it is based on the results.
3. For communities: Perpetrators are given responsibility for rebuilding society, so damage to social order can be quickly repaired. However, the use of conventional criminal law to resolve medical criminal cases cannot remedy the damage to society's social order. A judge's verdict in the form of conviction or imprisonment apparently has no deterrent effect, and cases of a similar nature have occurred over and over again.
4. The states are: State financial burdens can be reduced to provide building availability and prison capacity, as well as human resources to manage prisons. In fact, in many countries that have adopted a restorative justice approach, prisons are empty and can be used for other purposes. On the other hand, prison sentences based on judge verdicts in criminal cases involving medical offenses lead to very high financial burdens related to building availability or prison space capacity limitations. Limited budget and limited human resources for prison management, both qualitatively and quantitatively.

Given the legislative advantage of resolving medical disputes through restorative

justice approaches, there is a need to further encourage efforts to resolve medical disputes through restorative justice approaches before judicial proceedings are initiated. Restorative justice efforts are made or applied at all stages of traditional criminal justice administration: investigation and prosecution, decision-making, even when out-of-court settlements are not successful and judicial proceedings are ongoing. Judicial proceedings and enforcement stages of criminal justice system detention of inmates.

Nevertheless, mediation has its weaknesses. This means limited legal support for the process and its results, including the implementation of the resulting dispute resolution (peace) agreement. The process and resulting decisions simply cannot be enforced. Another weak point is the perm itself. In other words, according to Indonesian law, a perm is not mandatory. The perma can only be used as a guide as it will be closed.

Additionally, restorative justice settlements are viewed as dissatisfying to patients due to the potential for compensation for losses that do not meet patient expectations. However, resolving medical disputes based on restorative justice principles is important for all types of medical disputes. Because the number of medical disputes has increased significantly over the years, and the complexity of medical cases is not easy to understand for law enforcement agencies such as investigators (POLRI), law enforcement prosecutors, and the judge.

If this is resolved through litigation, litigation at all levels could require lengthy court proceedings. On the one hand, not all parties benefit from litigation. Restorative justice as a solution to win justice without letting each other down. Mediation, which embodies restorative justice, is the best way to resolve medical disputes between patients and physicians.

In fact, restorative justice approach theory seeks to get the application of criminal law back on track, acting as a last resort and as a remedy when society's criminal proceedings falter. Acts as a last resort. Restorative Justice - An approach in criminal justice, such as administrative jurisdiction, that does not consider the interests of the victim. Restorative justice therefore exists as a response to dissatisfaction or failure of the criminal justice system.

Criminal law is the last resort, the last resort to solve the case. This is in accordance with Article 29 of the act the Republic of Indonesia, Number 36 of 2009, which stipulates that if a health care worker is suspected of being negligent in the performance of his or her duties, the negligence must first be rectified. through an intermediary. Thus, when a medical dispute arises between a health care professional and a patient, the first course of action is mediation based on the cornerstone of Pancasila's Fourth Principle, which is prior consultation in decision-making.

For this reason, legislation regulating arbitration must be enacted to create legal certainty. In addition, in connection with the treatment or resolution of medical disputes through compensation trials, this must be expressly regulated by law, in particular the Medical Practice Act, Supreme Court Orders, Police Orders and their derivatives. Especially about retributive justice in children, women and drug cases.

If implemented, they should have institutions that introduce some form of crime

resolution through restorative justice programs, especially when dealing with medical disputes. Mediation can be conducted through referrals from police, prosecutors, and judicial agencies to facilitate dialogue between victims and perpetrators and serious victims and perpetrators. If there are signs of misconduct, you can first apply for a restorative judicial settlement. Restorative justice can be built by holding meetings of all stakeholders, including: Hospital directors, IDI leaders, patient families, affected physicians, community leaders, police officers, witnesses, etc. sit down and consider to reach consensus. If compensation is required, the amount of compensation can be discussed directly and realized proportionally. In the form of payment of compensation as a form of settlement for recovery work at the time of failure.

To meet the urgent need to implement restorative justice in resolving medical disputes, a joint program between the Indonesian Medical Association (IDI), Office of the Attorney General should be established prior to the passage of the Medical Practices Act update, the Chief of National Police him self agrees to a system for resolving medical disputes through restorative justice, as specified in his MoU of Mutual Agreement. When restorative justice efforts fail, next attempts are administrative, civil approaches, and, as a last resort, punishment. Although restorative justice resolution of medical disputes does not eliminate the element of criminal conduct, restorative justice resolution does restore forms of punishment through imprisonment for the erroneous or negligent treatment of a patient by a physician.

CONCLUSION AND SUGGESTION

The implementation of restorative justice in Indonesia is limited to certain cases. This applies to children or women in conflict with the law, children who are victims or witnesses to crimes, drug addicts or addicts. However, legal approaches with restorative justice mechanisms to resolve medical disputes have not been implemented. It should be introduced and promoted as an alternative solution to medical criminal cases. The sentencing-focused mechanisms of the criminal justice process are transformed into a process of dialogue and mediation involving the offender, the victim, the offender/victim's family, and other stakeholders, collectively into a fair agreement. and achieve a balanced solution in criminal proceedings between victims Prioritize restoration and restoration of good social relations. Restorative justice approaches are seen as a new paradigm for addressing recoverable crimes that can be an option for resolving and ending medical disputes or disputes between physicians and patients and/or their families. increase. Because it is a profit-based legal problem-solving model between realization of the values of justice and care, or sanctions and remedial elements. A restorative justice policy, as required by the 1945 Constitution, is a more beneficial, dignified, socially just and inclusive policy for all parties – victims, communities and states – than litigation settlement. provide problem-solving solutions.

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