

## Alternative Dispute Resolution In Medical Dispute Resolution: Initiating The Establishment Of An Alternative Medical Dispute Resolution Institution In Indonesia

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| Article Info   | ABSTRACT  |
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| <b>Keywords:</b><br>Medical disputes,<br>alternative dispute resolution,<br>alternative medical dispute<br>resolution institutions | Medical disputes are disputes that occur between a patient or a patient's family and a doctor/health worker or between a patient and a health facility regarding matters related to patient services, treatment and care. Resolving medical disputes through the courts takes a long time, the cost of cases is expensive, decisions do not always solve problems, cause estrangement between the parties, judges' decisions are unpredictable, judges do not understand the ins and outs of medicine. In some countries, 67.8% of medical disputes can be resolved through mediation. For this, Alternative Dispute Resolution or alternative dispute resolution outside the judicial system is needed. Alternative Dispute Resolution can be done by negotiation, mediation, conciliation and arbitration. Medical dispute resolution with alternative dispute resolution in Indonesia has not been comprehensively regulated. There is no state institution that handles alternative medical dispute resolution in Indonesia. In this study, the researcher used a normative juridical research method. Normative qualitative research specifications with empirical, analytical descriptive, and analytical prescriptive. The conclusion reached is that medical problems are special and can be resolved by alternative dispute resolution. For this reason, an Alternative Medical Dispute Resolution Institution in Indonesia is needed. |
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### INTRODUCTION

One of the objectives of the Unitary State of the Republic of Indonesia as stated in the IV paragraph of the preamble to the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) is to advance public welfare. The parameters of general welfare progress include advancing welfare in the health sector for citizens. The need for a healthy life is a basic need. The recognition of the right to health services as a human right has been recognized globally and stated in article 25 of the Universal Declaration of Human Rights of 1948 (DUHAM). With the establishment of the right to health services as part of human rights, each country is obliged to ensure the fulfillment of these rights for all its citizens. The recognition of the right to health services as a human right has also been accommodated in the second amendment to the 1945 Constitution of the Republic of Indonesia. It is expressly stated in article 28H paragraph (1) of

the 1945 Constitution of the Republic of Indonesia that "Everyone has the right to live a prosperous life in birth and mind, to live, and to have a good and healthy living environment and to obtain health services."

Not only as a human right, the right to health services is also recognized as a constitutional right of citizens. This can be seen in article 34 paragraph 3 of the 1945 Constitution of the Republic of Indonesia (third amendment) which states that "The State is responsible for the provision of health service facilities and proper public service facilities." As a right protected by the constitution, the right to health services is very much required to be fulfilled by the government.

Everyone has the right to access safe, quality and affordable health services. This statement is affirmed in article 5 paragraph (2) of the Health Law. Based on these provisions, the state represented by the government is obliged to ensure the availability of safe, quality and affordable access to health services for all Indonesian citizens in order to improve social welfare.

The government's efforts to ensure the availability of access to health services for its citizens are by providing facilities and infrastructure in the health sector. This is also accompanied by the availability of legal instruments related to the implementation of health services. The availability of this legal instrument aims to provide certainty and protection for every citizen who consumes health services provided by doctors and hospitals.

In the implementation of medical practice, it can cause problems that lead to medical disputes. Usually, what is disputed is in the form of violations of medical ethics, violations of medical discipline, violations of the rights of others/patients or violations of public interest so that doctors and dentists are held accountable in terms of medical ethics, medical discipline and legal accountability both civilly, criminally and administratively. Doctors must work according to the patient's procedures and conditions. However, if the results of these efforts do not match the patient's expectations, resulting in the patient being disabled or dying, it will cause the patient to file a lawsuit with the doctor. This situation eventually led to a medical dispute between doctors and patients. In health law, it is recognized that health workers or health service implementers when providing services are only responsible for the process or efforts made and do not guarantee the final result. Patients or their families whose interests are harmed by the actions of Medical Personnel or Health Workers can complain to the Assembly in accordance with Law Number 17 of 2023 Article 305 paragraph (1) "Patients or their families whose interests are harmed by medical actions or health workers in providing health services may complain to the Assembly as referred to in article 304". The previous laws and regulations, Article 66 paragraph (1) of Law Number 29 of 2004 concerning Medical Practice stated "Any person who knows or has his interests harmed by the actions of doctors or dentists in carrying out medical practice may complain in writing to the chairman of the Indonesian Medical Discipline Honorary Council (*MKDKI*). In addition to *MKDKI*, before Law Number 17 of 2023 came into effect, it is emphasized in the provisions of Article 32 letter r of Law Number 44 of 2009 concerning Hospitals that the public can complain about hospital services that are not in accordance with service standards through print and electronic media, *"Every patient has the right to complain about hospital services that are not in accordance*

*with service standards through print media and electronic media in accordance with regulations legislation.*"The public can sue civilly or criminally in accordance with Article 32 letter q of Law Number 44 of 2009 concerning Hospitals which states "*Every patient has the right to sue and/or sue the Hospital if the Hospital is suspected of providing services that are not in accordance with standards both civil and criminal*".

The implementation of medical practice, which is the core of various activities in the implementation of health efforts, must be carried out by doctors and dentists who have high ethics and morals, expertise and authority that must be continuously improved through education and continuous training, certification, registration, licensing, as well as coaching, supervision, and monitoring so that the implementation of medical practice is in accordance with the development of science and technology. Although this has been done, there are other factors beyond the doctor's ability that affect the outcome of the medical effort, such as the patient's physical condition, the patient's immunity, the stage of the disease, the efficacy of the drug, and the patient's attitude towards compliance with the doctor's recommendations. These factors can result in medical efforts in the patient's recovery process not achieving success. The efforts of doctors can be said to be the result of maximum medical efforts, colored by *uncertainty*. Thus, medical services that have an impact on the patient's disability or death are not necessarily cases of malpractice. Medical care is carried out according to standards and there is no intention to cause disability or even death to others. The results of medical research show that no method or diagnostic tool has 100% accuracy, and no therapy has 100% effectiveness, and no therapy does not have the possibility of side effects. In the enforcement of the diagnosis, *false positives* and *false negative*. Therapy results may not be as expected even if the doctor has acted professionally

The results of medical research show that no method or diagnostic tool has 100% accuracy, and no therapy has 100% effectiveness, and no therapy does not have the possibility of side effects. In the enforcement of diagnosis, false positives and false negatives can occur. Therapy results may not be as expected even if the doctor has acted professionally. Running the medical profession poorly can arise due to misconduct (intentional violation of ethical/discipline/legal, administrative/criminal/civil provisions), negligence (medical negligence, doing what should not be done (commission) and not doing what should be done (omission) as a health professional leader) and incompetence (lack of proficiency).

Criminal complaints or civil lawsuits to the court related to doctors or dentists as one of the parties must be synergized with medical discipline as a reference in identifying whether the actions of doctors or dentists are included in the legal realm or not. Law enforcement officials in interpreting legal regulations that regulate the actions of doctors or dentists use medical discipline as the main reference. The Medical Professional Discipline Council (MDP) can function as a filter whether it enters the legal realm, the discipline realm or the ethical realm.

The decision of the MKDKI (Indonesian Medical Discipline Honorary Council) although final and binding in accordance with Regulation No. 32 of 2015 can still be annulled by the Court, such as the following cases:

MKDKI Decision No. HK 01.02/03/KKI/III/0489/2018 was canceled by the Pekanbaru

District Court Decision Number 292/Pdt.G/2016/PN Pbr dated August 23, 2017.

Medical dispute resolution is different from civil dispute resolution in general and cannot be equated with other dispute resolution such as consumer disputes, commercial disputes, industrial relations disputes, or business competition disputes. In accordance with the noble values of the nation's culture, medical disputes should be resolved by the agreement of the parties that produce a win-win solution. Currently, there is no special body that plays a role in resolving medical disputes. In private mediation institutions in Indonesia today, there is no standardization of mediators and arbitrators in resolving medical disputes through alternative dispute resolution.

In some countries, medical disputes can be resolved through alternative dispute resolution. In Singapore, the resolution of medical disputes must go through a mediation process before litigation. Mediators have knowledge in the fields of health law and medical ethics. Mediation is the "first pass" in the resolution of medical disputes in Singapore. If mediation is unsuccessful, medical dispute resolution is carried out by medical arbitration. In China, 67.9% of medical dispute cases can be resolved by mediation. In the United Kingdom, 67.8% of medical dispute cases can be resolved through mediation. Based on the above background, it is interesting to study How medical disputes can be resolved out of court. What is the model for resolving medical disputes through *alternative dispute resolution* in Indonesia?. Why is there no non-litigation institution in Indonesia to resolve medical disputes through *alternative dispute resolution*?

## RESEARCH METHODS

In this study, the researcher used a normative juridical research method. This research is a literature research that examines documents, laws and regulations, court decisions, legal theories and expert opinions.

### a. Types of Research

This research is descriptive in nature which aims to describe or explain a problem by using theories as a reference in solving problems to provide a more directed picture and limit.

### b. Research Specification

This research is qualitative, normative, empirical, descriptive, analytical, and prescriptive, analytical, which describes the data obtained from observations, interviews, documents, and field notes and then analyzed.

### c. Research Location

With the form of normative juridical legal research, in this study no empirical study was carried out on certain research objects so that there is no special place in Indonesia that is used as a research location.

### d. Data Types and Sources

The method of data collection is carried out by looking for literature materials and various literature that are then read, studied, and researched which are primary legal sources, secondary legal sources and tertiary legal sources such as books, laws and regulations, articles, seminar or workshop papers, and so on.

e. Data Collection Techniques

The data collection method used in this study adjusts to the type of data used in obtaining secondary data, carried out by conducting library *research*. By blunting secondary materials such as laws and regulations, books and dictionaries.

f. Data Analysis Techniques

Data analysis is an elaboration of the process of utilizing the collected data to be subsequently used in solving research problems. The data obtained from the results of the research is analyzed qualitatively by describing or elaborating in sentences so that a systematic, understandable and accountable discussion is obtained.

## DISCUSSION

### Medical Disputes in Indonesia

Medical Dispute is a dispute that occurs between a patient or the patient's family and medical personnel or between a patient and a hospital/health facility. What is usually disputed is the final result (not paying attention to or ignoring the process). Medical disputes can be in the form of violations of medical ethics, violations of medical discipline, violations of the rights of others/patients or violations of public interest. Medical disputes are characterized by the existence of a doctor-patient relationship, negligence/error, and an object in the form of an effort to cure the patient. The factors that cause medical disputes are due to

- a. Doing what the agreement says shouldn't be done;
  - b. Doing what the agreement says is obligatory but is late is not on time;
  - c. Doing what the agreement is obligatory but not perfect; lack of information;
  - d. Communication: Manner and quality, bad communication can cause problems, on the other hand, good communication can reduce problems; Differences in perceptions of the meaning of malpractice;
  - e. Differences in interests
  - f. Gap in expectations and results. This can happen because excessive trust can be triggering, forgetting that doctors are also human;
  - g. The party who feels aggrieved has expressed their dissatisfaction either directly to the party who is considered the cause of the loss or to other parties. The dissatisfaction cannot be solved properly or the response is slow (*slow response*), so if there is a problem or once there is a problem seed, immediately look for a solution, don't just wait. Sometimes if the patient feels that the response is slow and then tells someone else, and the person heats up the patient or his family, the problem becomes more complicated;
  - h. Developments in society can occur due to the influence of invalid information from Social Media;
  - i. Fading/neglecting of ethical values, this happens because various other obstacles can be due to *money oriented*, consumptive, forgetting the oath and Code of Ethics (Code)
  - j. Competition between peers, this is very likely to happen
  - k. Weak trust.
- B. Sonny Bal stated that "*medical malpractice is defined as any act or omission by a*

physician during treatment of a patient that deviates from accepted norms of practice in the medical community and causes an injury to the patient". Medical malpractice includes duty (liability to the patient, the relationship between the doctor and the patient already existed when the event occurred), *dereliction of duty* (violation of obligations: *omission*, *commission*, *deviation from norms*), *damage* (patient loss: injury, disability, death), *direct causation* (there is a causal relationship). Carrying out medical practice improperly can arise due to *misconduct* (intentional violation of ethical/discipline/legal provisions (administrative/criminal/civil), *negligence* (medical negligence, doing what should not be done (commission) and not doing what should be done (omission) as a health professional and *incompetence* (lack of proficiency). The level of negligence includes minor negligence (*culpa levis*) which is not doing something that is reasonably done / doing something that others are not reasonably doing in that situation and condition and gross negligence (*culpa lata*) which is consciously and deliberately doing something that should not be done. Medical negligence is not always a legal problem if it does not cause loss or injury to the patient or the patient can receive it.

Medical accidents (*mishaps*) are unexpected events, something unpleasant, unprofitable, and even harmful to the affected person. Medical accidents are different from negligence. Medical accidents are actions that can be understood and forgiven so that they cannot be blamed or prosecuted as long as preventive efforts have been made. There are two types of medical accidents, which are *foreseeable and unforeseeable*. *Foreseeable* if prevention is carried out, it cannot be accounted for, if prevention is not carried out, it can be accounted for. Medical risk is a situation that is not desired by both the patient and the doctor, after the doctor has tried his best and has met professional standards, medical service standards and operational procedure standards, but the accident still occurs.

The terminology of malpractice until now the restrictions are not clear/still vague. Malpractice is more accurately called medical negligence. Malpractice according to KBBI is wrong, inappropriate, illegal medical practice or code of ethics. The types of malpractice consist of: Pure medical malpractice, this is rare, for example performing surgery with the aim of killing or for money. Ethical malpractice, committing actions that are contrary to medical ethics, acting without *informed consent*. Moh. Hatta said that there are several categories of malpractice. Criminal malpractice (mistakes that occur in carrying out practices related to the Criminal Code). Civil (related to civil affairs, i.e. the existence of therapeutic contracts), Ethics (emphasizing the code of ethics that originates from ethical values), Medical (negligence that occurs due to certain actions not being performed)

To determine whether a doctor has committed medical negligence is if the health services provided to the patient meet the following elements: (1) The behavior of a doctor, dentist (2) The legal subject (perpetrator) is a doctor, a dentist (3) A doctor is someone who has the competencies specified in the Standards of Competency of the medical profession, both in the form of formal education competencies, education and training competencies, Competence, Authority and Ethical Competence (4) Between the doctor and the patient have been bound by a therapeutic agreement as referred to in article 39 of Law No. 24 of 2009 concerning Medical Practice. (5) The therapeutic agreement has been effective for the doctor and his patient so that the doctor is obliged to provide health services to the patient (6) *Actus*

*reus*, either in the form of commission acts (doing something that should not be done) and omissions (not doing what should be done) (7) Commission and omission behavior has directly resulted in the patient suffering injuries, both physical and psychological, or suffer death (8) *Mens rea* (a guilty attitude) for not complying with the Standard Operating Procedure, done intentionally, or due to negligence. With regard to *the element of mens rea*, it can be in the form of intentionality (*dolus*) or negligence (*culpa*). Intentionally or due to negligence in not carrying out the steps as specified in the *Medical Standard of Procedure (Medical Standard of Care)* in carrying out medical measures, unless there is a justifiable reason to commit a deviation from the *Medical Standard of Care*.

If all elements are not met, then the doctor cannot be convicted or sued civilly for having committed medical negligence, for example (1) Even if the medical action has been carried out by the doctor in accordance with the *Medical Standard of Care*, but if the patient's injury or death is not a direct result of the medical action, then the doctor cannot be considered to have committed medical negligence. (2) If the doctor performs a medical procedure but the patient does not suffer injury or death as a result of the medical procedure, the doctor concerned cannot be burdened with legal liability, both criminal and civil.

#### **Dispute Resolution in some countries**

##### **Medical Dispute Resolution Models in some countries**

###### **1. Singapore**

In Singapore, the resolution of medical disputes must go through a mediation process before litigation. *The Singapore Medical Council and the Ministry of Health* are two bodies that facilitate the resolution of medical disputes through mediation in Singapore. The Ministry of Health of Singapore established a Medical Mediation Scheme (MMS). In MMS, there are mediators who have knowledge in the field of health law and *medical ethics*. Mediators working at MMS are accredited by MMS. Not all mediators can mediate medical disputes. Mediators who have sufficient knowledge in the matter of medical disputes can become mediators in MMS.

In Singapore, malpractice cases went through the first portal at *the Singapore Mediation Centre (SMC)*, which is under the Singapore Ministry of Health. The SMC regulates doctors in Singapore. The SMC consists of the *Complaints Committee, the Medical Council Mediation Scheme, and the Healthcare Mediation Scheme*. *The Complaints Committee* regulates matters related to complaints against registered doctors in professional capacity, professional misconduct, complaints related to medical ethics and deviations from medical standards, information on doctors who are registered as medical practitioners, information on the physical and mental state of registered doctors.

The Complaints Committee conducts a preliminary investigation into any complaint received by *the Singapore Mediation Centre*. *The Complaints Committee* provides warning letters, provides *advice*, counseling to the doctor concerned, provides additional education during a certain period, evaluates medical records related to complaints and provides advice to doctors and patients.

If the patient is not satisfied with the *Complaints Committee's* decision, the patient may complain to the Singapore Ministry of Health within 30 days after the *Complaints*

Committee's decision is issued. *The Complaints Committee can then conduct mediation, formal inquiry and health inquiry. The Complaints Committee forwarded to the SMC – Medical Council Mediation Scheme to carry out the mediation process. If a formal inquiry is needed, a formal inquiry is carried out before disciplinary proceedings. Health inquiry (assessment of the health of doctors to practice medicine) is conducted by the Complaints Committee. In the SMC – Medical Council Mediation Scheme, mediation is carried out in secret with a selective mediator. The Healthcare Mediation Scheme (HMS) at SMC was established for mediation between patients and health institutions. HMS resolves complaints related to financial compensation, apologies, billing and financial disputes. Mediation at HMS is facilitated by two mediators, one mediator from a medical expert and one mediator from a legal expert. HMS mediators are very selective, have competencies in the fields of patient care, management, service quality and medical fees. If legal advice is needed, with a selected lawyer who has experience in similar cases and is resolved at the Primary Dispute Resolution Centre. For claims of less than 250,000 Singapore Dollars, it is settled through arbitration-mediation. For claims above 250,000 Singapore Dollars settled in the Supreme Court*

Mediation is the "first pass" in the resolution of medical disputes in Singapore. With mediation, medical disputes can be resolved quickly and cheaply. Mediation is the first step in resolving medical disputes, there is no need for lawyers in mediation because medical practitioners understand better in terms of the medical profession. Mediation can be conducted outside the court system. Through mediation, the parties can listen to each other so that the good name and relationship of the parties are maintained. If mediation is unsuccessful, medical dispute resolution is carried out by medical arbitration. In Singapore, mediators in medical dispute resolution are highly selective.

*Arbitration – the mediation model is carried out when mediation fails. In the arbitration – mediation model, the arbitrator also plays the role of a co-mediator. The arbitrator also acts as a co-mediator to remind the parties about BATNA (Best Alternative to a Negotiated Settlement) and WATNA (Worst Alternative to a Negotiated Settlement) and the potential for a lose-lose outcome in non-resolution cases. In the arbitration – mediation model, a lawyer is not required because legal arguments are made by the arbitrator. In the mediation – arbitration model, mediation is combined with arbitration for the settlement of cases. This model is carried out when mediation fails. The arbitrator concurrently serves as a co-mediator, not in the caucus conducted by the mediator. The selection of mediators and co-mediators is very important. Mediators must have excellent communication skills, empathy, problem-solving skills, experts in the mediation process, understand legal principles, understand health services, and medical practitioners who are experienced in the medical field and mediation.*

## 2. Chinese

In China, medical dispute cases are initially resolved through negotiations between patients or patients' families and health care providers. When negotiations failed, all information related to medical disputes such as drugs that had been administered, side effects, evidence of negligence was submitted to the Supreme Court of China. This electronic database can be published, known as *China Judgments online*. China's Ministry of Health categorizes severity of injury, death, severe disability, medium disability and minor disability.

*Severe disability* e.g. *vegetative state, quadriplegia*. *Medium disabilities* include blindness, loss of kidney function, loss of lung function, gastric function, incontinence, loss of swallowing function. *Minor disabilities* include loss of liver function, loss of hearing function and thyroid hypofunction. This is a compensation consideration, 67.9% of medical dispute cases in China can be resolved with compensation

### 3. Malaysia

Malaysia offers mediation under *the court – annexed mediation system*. In the Malaysian Courts, there is a mediation centre, namely *the Kuala Lumpur Court Mediation Centre*. Mediators in Malaysian courts are divided into mediators from *the Malaysian Mediation Centre*, mediators from court staff, and mediators from *the Kuala Lumpur Regional Arbitration Centre (KLRCA)* known as *the Asia International Arbitration Centre (AIAC)*. In Malaysia and the United Kingdom, mediation is not required as a pre-litigation process. Mediation institutions in Malaysia and the United Kingdom stand alone, namely *the Dispute Resolution Centre* as an independent mediation institution. In the United Kingdom, mediation can be done at all stages but in Malaysia mediation is done before litigation. In Malaysia, the Top five (5) incidents that have an impact on patient health are *medication errors*, side effects of clinical procedures, catheter dislocation, injuries to neonates.

### 4. United Kingdom

In the United Kingdom, there is a *National Health Service (NHS)* to The settlement of medical disputes between patients, patients' families and medical personnel is mediated with the final result of the agreement in the peace deed so that there is no need for litigation settlement. In the United Kingdom, mediation is carried out at every stage of the court process. The NHS conducts mediation services to speed up the resolution of medical disputes. The NHS together with *the Centre for Dispute Resolution* offer discussions with the parties assisted by accredited mediators. Litigation can be carried out if an agreement is not reached with mediation. This medical dispute resolution scheme is independent. Mediators who assist in the resolution of medical disputes are mediators who are accredited, knowledgeable in *medical law* and *medical ethics*, and well trained. Medical dispute resolution mediator training is organised by the NHS. In the United Kingdom, mediation is also carried out in all cases other than medical disputes in litigation. In the United Kingdom's NHS, 67.8% of medical dispute cases can be resolved through mediation

## Medical Dispute Resolution in Indonesia

Medical dispute resolution can be done through professional and non-professional institutions. Non-professions can be resolved outside the court (*non-litigation*) and in court (*litigation*).

### Settlement Through Medical Professional Institutions

#### 1. Medical Ethics Honorary Council (MKEK)

The Honorary Council of Medical Ethics (MKEK) is a special assembly for medical personnel, so this applies to medical circles. The legal basis of the Honorary Council of Medical Ethics (MKEK) was established in 1979 based on Article 16 paragraph (1) of the Bylaws of the Indonesian Doctors Association (IDI). MKEK is an autonomous body in the IDI organization consisting of Central MKEK, Regional MKEK (at the provincial level) and Branch MKEK (at the

Regency/Municipality level). The composition of the members of the Constitutional Court consists of the Chairman, Vice Chairman, Secretary, Permanent Members of a maximum of 7 people and non-permanent Members. MKEK functions to coach, supervise and assess the implementation of medical ethics by doctors. The special task of MKEK is to handle violations (complaints) of medical ethics.

## 2. Professional Disciplinary Council (MDP) of Indonesian Medicine

The Medical Professional Discipline Council was established through Article 304 of Law No. 17 of 2023 concerning Health which states that in order to support the professionalism of Medical Personnel and Health Workers, it is necessary to implement the enforcement of professional discipline (1) In the context of the enforcement of professional discipline, the Minister establishes an Assembly that carries out duties in the field of professional discipline (2) The Assembly determines whether there is a violation of professional discipline committed by medical personnel and health workers (3) The Assembly can permanent or ad hoc (4) Further provisions regarding the duties and functions of the Assembly as intended in paragraph (2) are regulated by Government Regulations. Article 305 paragraph (1) Law No. 17 of 2023 states that Patients or their families whose interests are harmed by the actions of Medical Personnel or Health Workers in providing health services may complain to the assembly as intended in Article 304. Article 310 of Law No. 17 of 2023 states that in the event that medical personnel or health workers are suspected of making mistakes in carrying out their profession that cause losses to patients, disputes arising from the mistake are resolved first through alternative dispute resolution outside of court.

## Medical Dispute Resolution Through Alternative Medical Dispute Resolution Institutions in Indonesia

### 1. Perspective Formation Institution Alternative Medical Dispute Resolution in Indonesia

The philosophical angle of the establishment of alternative institutions for the resolution of medical disputes in Indonesia based on the view of life of the Indonesian people in the nation and state, namely Pancasila and the 1945 Constitution, must ensure the realization of a just and prosperous, safe, peaceful, and orderly state and nation system and ensure the same legal position for the community. The sociological angle is that the emergence of doctor-patient medical disputes is due to the increased understanding of patients' rights, and these disputes need to be resolved fairly through fast, cheap and simple procedures and processes. The juridical angle of establishing an alternative institution for medical dispute resolution is based on Article 28D of the 1945 Constitution which states that "everyone has the right to fair legal recognition, guarantee, protection, and certainty and equal treatment before the law", Article 28H (paragraph) 1 of the 1945 Constitution, Law Number 29 of 2004 concerning Medical Practice, Law Number 17 of 2023 concerning Health, Article 1 Number 1 of Supreme Court Regulation No.1 of 2016 concerning Mediation Procedures in Court.

Allegations of medical malpractice to this day are very difficult to prove, because in Indonesia there are various Medical Professional Standards (SPM), Professional Standards and Operational Procedure Standards which are the basis for measures to determine whether or not medical malpractice has occurred, so law enforcers can only guess, but the issue that develops in the community about alleged medical malpractice is increasing.

Litigation in medical dispute resolution has not been proven to improve Patient Safety. Patient Safety is an effort made in health services to prevent injuries and actions that should not be taken on patients. Patient safety is an important element that needs to be considered in health services because it concerns human safety. Patient Safety is related to medical errors. Patient safety is the most important indicator in the health care system, which is expected to be a reference in producing optimal health services and reducing incidents for patients. Litigation costs a lot and is ineffective. Based on data from the Harvard Medical Practice Study of 1991, only 2% of patients suffered injuries due to medical negligence. Does litigation improve professional standards and patient safety? Litigation in medical dispute resolution in Indonesia is not accompanied by information sharing and learning from mistakes. Litigation in medical dispute resolution only provides compensation without any impact on patient safety. Litigation in the resolution of medical disputes contributes to improving *defensive medicine*. A strategy is needed in resolving medical disputes that can improve *patient safety*. *Patient safety* can be improved through a holistic approach, not just by identifying individual medical dispute cases. *Patient safety* can be improved by building a *Safer Health System*. A *Safer Health System* is needed to prevent disability and death. *Patient Safety* should be more focused than professional negligence. Systemic changes are needed to prevent medical negligence. *Medical error* is not caused by individual carelessness, not a "bad apple" problem, but medical negligence can be caused by poor systems, processes and conditions that cause negligence. *Medical error* is different from *medical negligence*.

Litigation does not contribute to improving *patient safety*. Litigation is designed to result in a win-lose, "war" based litigation model. *Alternative Dispute Resolution* can result in a win-win solution. The majority of medical disputes are caused by *poor communication*. In Singapore, one in five medical disputes is caused by *poor communication*. Litigation does not support communication improvement. *Alternative Dispute Resolution* can resolve disputes without litigation. In mediation, the parties can explain so that communication will be better, so that there is no *defense narrative*. The parties get the opportunity to explain and accept explanations, can forgive and apologize, communication and relationships will be better. With mediation, hostility can be avoided as in litigation. With a good relationship, doctors and patients can solve problems and improve patient safety.

Dispute resolution through litigation cannot foster *information sharing* and *learning from the mistakes*. In addition, it requires a lot of costs and is less effective. Does dispute resolution through litigation improve *patient safety* and *professional standards*? There is no evidence to suggest that dispute resolution through litigation can improve *patient safety* and *professional standards*. Dispute resolution through litigation does not have an impact on improving *patient safety*, but improves *defensive medicine*. Strategies are needed to improve patient safety and professional standards, as well as strategies for resolving medical disputes. Data from the 1991 Harvard Medical Practice Study showed that only 2% of patients were injured due to *medical negligence*. *Patient safety* can be improved through systemic interventions, not by identifying individual negligence. The majority of *medical errors* are not caused by individual negligence, not "bad apple" problems. Medical errors are often caused by unsupportive systems, processes and conditions that lead to mistakes or failures to

prevent medical errors. By increasing the reporting of medical errors, not blaming personally will improve patient safety, improve professional standards and prevent defensive medicine.

Patient safety requires a system approach that pays more attention to institutions, institutions, rather than individuals. Individual acting is related to institutional culture. Nonconfrontational medical dispute resolution will be easier to resolve. Systemic strategies to improve patient safety and personal strategies with alternative dispute resolution will foster good and transparent communication. It is important to identify risks to the healthcare system and maintain the relationship between doctors and patients. Health care professionals or health facilities can make mistakes, but that doesn't mean malpractice. *Medical treatment* below the standard *medical standard of care (substandard)* can harm the patient. If a *health care professional* performs *substandard care* but no injuries occur, this is not malpractice. *The medical standard of care* is the level and type of care provided by competent and skilled medical personnel, with the same background and within the same medical community. *Health care professionals* with the same skills do not always provide the same therapy (substandard treatment). *Medical standards of care* and doctors' deviations from these standards play a role in the occurrence of injuries to patients. *The medical liability system* is a *tort law* applied to healthcare providers. The negligence of the healthcare provider can cause harm to the patient.

Medical disputes are related to professional medical actions whose application is only known and understood by the medical profession and the dentist themselves, so that the process of proving whether or not there is a doctor's or dentist's fault when performing medical actions is very difficult for law enforcers in the field of criminal law or civil law. Medical actions are professional medical actions whose application is only known by the doctor or dentist himself.

Medical failure is not always the result of the actions of a doctor or dentist, but it can be due to the medical risks inherent in any medical procedure. Proving the existence of alleged medical negligence committed by doctors is very difficult to do. The provisions of generally applicable legal regulations, both in civil, criminal and criminal procedure law, cannot be immediately applied to cases where one of the parties is a doctor or medical personnel. This is because proving alleged medical negligence must also use a medical science approach. The tendency of law enforcement in Indonesia to more often use articles 359 and 360 of the Criminal Code to ensnare doctors in criminal cases even though there is a *professional relationship*.

The case of the medical field is a special case. The current problem of death or disability or unsuccessful doctor is considered malpractice related to Article 359 and Article 360 of the Criminal Code. Medical cases can be unplanned (adverse) events. Article 359 of the Criminal Code deals with consequences, while in medicolegal cases what must be evaluated is the cause and process.

In a *common law country*, the idea of including *unintentional tort* as a criminal act (*medical manslaughter*) is considered irrational. To sort out the cause of injury/disability/death caused by the doctor's actions or the underlying disease and to find out whether the patient's injury/disability/death was caused by the doctor's actions, *scientific*

*evidence* is required. Physical evidence in medical dispute cases should be transferred to the formulation of expert opinions based on pathophysiology of the disease, experience and evidence-based. Causal analysis as a central issue in the majority of medicolegal cases is indispensable. Individual causal probabilities need to be determined to meet the needs of proof. Tracing the extent of damage caused by medical actions requires a scientific approach. It is necessary to take into account individual causal probabilities (causality analysis with a more *probabilistic* approach), then assess the highest probability of several potential causes. *Scientific evidence* will provide clues to determine liability and loss. Critical thinking is needed in determining the causality of doctors' actions. Determining causation requires reasonable consideration. Objective *and* reliable *scientific evidence* in explaining a medicolegal case. The scope of medical science includes many areas of specialization and sub-specialties, for which a team is needed in the scientific *evidence process*.

Article 2 letter a of the Law on Medical Practice states that medical practice must be based on science and technology obtained both in education, including continuing education and professional experience and ethics. If the medical practice carried out by doctors or dentists to patients must be based on science and technology obtained in education and experience and professional ethics, then it should be in

Proving the actions of doctors or dentists that are considered to cause losses to patients or doctors suspected of medical negligence must be based on medical science with scientific *evidence*. The author is of the view that mediators and arbitrators in the health sector in resolving medical dispute cases must have competency standards in the field of medical dispute resolution. The standards of mediators can be set jointly by the IDI (Indonesian Doctors Association), the Supreme Court (Supreme Court) and BNSP (National Professional Certification Agency).

## 2. Perspective on the Position of Alternative Medical Dispute Resolution Boards

*The outcome of litigation is a win and lose, while alternative dispute resolution is a win-win outcome.* An institutional model of medical dispute resolution in Indonesia that can ensure fairness for doctors and patients and improve *patient safety* and *professional standards* can involve several important elements. Some of the components that can be present in such an institutional model include:

- a) Independent Medical Dispute Resolution Agency  
A medical dispute resolution institution is needed that independent and autonomous. This institution must have the authority and capacity to handle medical disputes fairly and objectively. The institution can be in the form of a medical arbitration body, a medical court, or another medical dispute resolution institution.
- b) Clear professional standards  
An effective institutional model must ensure clear and detailed professional standards for doctors and healthcare workers. These standards should include ethics, safe medical practices, and quality of service to patients. Professional organizations and health regulatory bodies can play a role in drafting and overseeing the implementation of these standards.
- c) Fair and transparent dispute resolution process

The medical dispute resolution process must proceed with the principles of fairness and transparency. This includes providing opportunities for all parties involved to express their opinions and providing evidence in the dispute resolution process. The process must be open to the public, unless there are specific reasons that justify confidentiality.

d) Patient and community engagement

An effective institutional model must involve patients and society in the process of resolving medical disputes. Patients should be given adequate access to file complaints and file lawsuits if they feel aggrieved. In addition, through public education and awareness, medical dispute resolution can be improved by encouraging active community participation in strengthening *patient safety* and supervising medical practice.

e) Effective supervision and sanctions

The institutional model should have effective oversight mechanisms to monitor and evaluate medical practices. In the event of a violation of professional standards or the code of ethics, the institution must be able to provide appropriate sanctions as a form of responsibility and protection for patients.

f) Improved quality and patient safety

Institutional model of effective medical dispute resolution must actively promote quality improvement and patient safety. This can be done through continuous training and education for medical personnel, health service quality audits, reporting of medical incidents and errors.

The author is of the view that the institutional dispute resolution must at least have essential values, namely the value of certainty, the value of justice, the value of truth, and the value of utility. This is based on the author's view that the law is actually to bring together the will of the ideals of the law with justice, the will of society with benefits, the will of morality values with the truth and the will of law enforcers, including the community with legal certainty. Based on these values, according to the author, it is necessary to have an independent medical dispute resolution institution, and free from the influence of parties outside the medical profession that prioritize the application of the value of justice, the value of certainty, the value of truth and the value of utility. In addition, this institution must be able to prioritize the value of independence, the value of integrity, the value of impartiality, the value of competence, the value of *propriety (propriety)* and the value of diligent (prudence and meticulousness) so that this institution has high accountability that has an impact on the level of public trust, including members of the health profession.

### 3. Human Resources Alternative Medical Dispute Resolution Institutions in Indonesia

Mediators and arbitrators in the health sector in medical dispute resolution should have competency standards in the field of medical dispute resolution. The standards of mediators can be set jointly by the IDI (Indonesian Doctors Association), the Supreme Court (Supreme Court) and BNSP (National Professional Certification Agency).

According to Article 1 number 1 of Law No. 30 of 1999, arbitration is a means of resolving civil disputes outside of the general court based on an arbitration agreement, made

in writing by the disputing party. Arbitration is similar to a litigation dispute resolution system, in that the procedure is governed by a formal and rigid procedural law. The final result is in the form of a verdict containing a statement of victory and loss. At Arbitration The parties may choose their own arbitrator for the settlement of the dispute, based on the agreement of the parties. Referring to Chapter II Alternative Dispute Resolution Article 6 of Law of the Republic of Indonesia No. 30 of 1999, disputes or differences of opinion can be resolved through alternative dispute resolution based on good faith, by ruling out litigation settlement in the District Court. Strengthening IT-Based Management at Medical Dispute Resolution Institutions

The development and advancement of communication and information technology makes it easier for the community, including in terms of seeking justice. Electronic mediation can be developed at medical dispute resolution institutions. In conventional mediation, the parties are required to be present in person in the mediation room to get an agreement.

The Supreme Court of the Republic of Indonesia has regulated the implementation of electronic mediation as stipulated in the Regulation of the Supreme Court of the Republic of Indonesia Number 3 of 2002 concerning Electronic Mediation in Court. The Regulation stipulates that electronic mediation is a way of resolving civil disputes through a negotiation process to obtain an agreement between the parties and the assisted by a mediator with the support of information and communication technology. The technology in question is not only technology that brings together the parties but also in the administration of electronic mediation such as the submission of summonses, the submission of case resumes, from the parties and so on. The main thing regulated in this electronic mediation is that the meeting of the parties is held online. Meetings are conducted using applications that are able to provide online meeting services and electronic document delivery. The online meeting can be held after obtaining approval from the parties.

In an effort to realize *an accessible*, effective, efficient and low-cost judiciary, the Supreme Court has presented an electronic-based court or *e-court* in 2018. The regulation regarding *e-court* was initially stipulated in the Supreme Court Regulation of the Republic of Indonesia No.3 of 2018 concerning Electronic Court Case Administration. A year later, the Supreme Court issued Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2019 concerning Case Administration and Trials in Electronic Courts (PERMA No.1/2019) to replace the previous Perma as well as improve the implementation of e-court by adding e-litigation features or electronic courts. E-court itself is a court instrument as a form of service to the community in terms of online case registration (e-filing), electronic cost estimation (e-SKUM), online fee payment (e-payment), online summons (e-summons) and online trials (*e-litigations*). This electronic dispute resolution can be applied to the Medical Dispute Resolution Agency.

## CONCLUSION

The procedure for resolving medical disputes in Indonesia has not been regulated in detail in laws and regulations. An Alternative Medical Dispute Resolution Institution is needed which includes negotiation, mediation, conciliation and arbitration in MKDKI with

mediators and arbitrators are standardized with standards set jointly between IDI (Indonesian Doctors Association), MA (Supreme Court) and BNSP (National Professional Certification Agency). Medical dispute resolution with alternative dispute resolution at Alternative Medical Dispute Resolution Institutions is expected to improve patient *safety* and professional *standards* in Indonesia. Suggestion, Harmonization of laws and regulations is needed in the resolution of medical disputes. Harmonization of laws and regulations related to medical dispute resolution is necessary so that medical dispute resolution decisions are mutually reinforcing, not contradictory, and differences in interpretation of legal interpretation by parties involved in medical dispute resolution can be avoided. Alternative dispute resolution can be carried out at the Alternative Medical Dispute Resolution Institution with standardized mediators and arbitrators, where the institution has its own alternative dispute resolution governance with standardized mediators and arbitrators.

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