



Implementation of restorative justice in medical dispute resolution

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ABSTRACT

In Indonesia, medical disputes can result in criminal prosecution, despite the private nature of the relationship between patients and medical personnel. This is to safeguard the public from non-standard medical practices. Infractions of the regulations governing standard medical treatment procedures and requirements for acquiring medical personnel can result in criminal penalties. Occasionally, however, criminal penalties are not applied and a restorative justice approach is used in trials. This study seeks to examine the application of restorative justice in the resolution of medical disputes. This is a normative legal study that investigates secondary data. The research findings indicate that the implementation of restorative justice in Indonesia is already a part of the nation's culture through the use of problem-solving discussions. Nonetheless, the essence of the justice system in Indonesia tends to be retributive, that is, it emphasizes retribution over justice. Generally, medical disputes can be avoided if the doctor-patient relationship is maintained correctly, informed consent is obtained, and standard procedures are followed. In Indonesia, medical disputes are typically resolved legally by filing reports with the Indonesian Medical Discipline Honorary Council (abbreviated MKDKI), filing civil lawsuits or pursuing compensation, and filing criminal reports. In this paper, the author argues that restorative justice is an effective method for resolving medical disputes due to its emphasis on recovery, the nature of medical disputes, which are generally not the result of deliberate actions, the nature of criminal law as an ultimatum remidium, and restorative justice's status as a paradigm of contemporary criminal law.

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ABSTRAK

Di Indonesia, sengketa medis dapat berujung pada tuntutan pidana, meskipun hubungan antara pasien dan tenaga medis bersifat privat. Hal ini untuk melindungi masyarakat dari praktik medis yang tidak standar. Pelanggaran peraturan yang mengatur standar prosedur perawatan medis dan persyaratan untuk memperoleh tenaga medis dapat mengakibatkan hukuman pidana. Namun, kadang-kadang, hukuman pidana tidak diterapkan dan pendekatan keadilan restoratif digunakan dalam persidangan. Penelitian ini berusaha mengkaji penerapan keadilan restoratif dalam penyelesaian sengketa medis. Ini adalah studi hukum normatif yang menyelidiki data sekunder. Hasil penelitian menunjukkan bahwa implementasi restorative justice di Indonesia sudah menjadi bagian dari budaya bangsa melalui penggunaan diskusi pemecahan masalah. Meskipun demikian, esensi sistem peradilan di Indonesia cenderung bersifat retributif, yaitu lebih mengutamakan retribusi di atas keadilan. Umumnya, perselisihan medis dapat dihindari jika hubungan dokter-pasien dipertahankan dengan benar, persetujuan diperoleh, dan prosedur standar diikuti. Di Indonesia, sengketa medis biasanya diselesaikan secara hukum dengan mengajukan laporan kepada Majelis Kehormatan Disiplin

Kedokteran Indonesia (disingkat MKDKI), mengajukan gugatan perdata atau mengejar ganti rugi, dan mengajukan laporan pidana. Dalam tulisan ini, penulis berpendapat bahwa keadilan restoratif merupakan metode yang efektif untuk menyelesaikan sengketa medis karena penekanannya pada pemulihan, sifat sengketa medis, yang pada umumnya bukan merupakan hasil dari tindakan kesengajaan, sifat hukum pidana sebagai ultimatum remidium, dan status keadilan restoratif sebagai paradigma hukum pidana kontemporer.

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INTRODUCTION

When a crime is committed in modern times, society typically follows the legal system to bring about what is, at least in theory, justice. It's important to keep in mind that when issues are settled through the courts, all parties can expect to walk away with something less than perfect. Given this reality, it's not surprising that many people experience "badness," dissatisfaction, unfairness, and even the desire for retribution once a case is settled through the traditional legal system (Flora, 2018).

Because of these things, the losing party will likely try to seek "justice" at a higher level of justice (by appealing the high court's ruling or even by appealing to the cassation court if necessary). As a natural consequence, this trend has increased the rate at which cases are being processed by the courts (at all three levels: District Court, High Court, and Supreme Court; Arief & Ambarsari, 2018).

According to Satjipto Raharjo (2003), the slow pace at which legal disputes are resolved through the courts ultimately leads to lax enforcement of the law. This is because the process of enforcing the law can take a very long time, including multiple departments and agencies all the way from the police to the attorney general to the district court to the high court to the supreme court. As a result, the administration of criminal justice is subpar. Furthermore, justice that is expected through formal channels does not always reflect a sense of justice because it is costly, time-consuming, exhausting, and does not resolve issues; furthermore, it is rife with practices of corruption, collusion, and nepotism (Wicaksono, 2008). What in Indonesian law causes many to say that it lacks a sense of fairness?

Today, both practitioners and legal theorists are highly critical of using the judicial system to resolve disputes, as the system is widely viewed as being overburdened, inefficient, and financially draining. too formal, too technical, and unresponsive to the public interest; furthermore, the existence of the "judicial mafia" seemed to indicate that judges' decisions could be bought. As Ariani (2012) points out, official channels of justice don't always represent a sense of justice; they're also time-consuming, draining, and ineffective; and they're rife with corruption, collusion, and nepotism.

As a solution to the aforementioned issues, restorative justice has emerged as a viable option in recent years. Restorative justice is an alternative to traditional legal systems in many countries since it provides a more all-encompassing and efficient way to address criminal behavior. Through education and discussion, those affected by crime—victims as well as offenders and their families and communities—are given the tools they need to restore harmony in their relationships and in their communities (Azhar, 2019). The legal relationship between patients and

health workers has both civil and criminal dimensions. The legal relationship contains rights and obligations for both parties. In the implementation of this legal relationship, it is possible for disputes to occur between patients and health workers. This is known as a medical dispute (Sinaga, 2021).

Medical disputes in Indonesia are complex issues because they involve rights and obligations that are both public and private. Standard policies for medical treatment procedures and requirements for procuring medical personnel that have been established aim to ensure that patients receive quality and safe medical care (Purwadi, 2017). Professional standards and standard operating procedures are spelled out for doctors and other health workers to follow under Law no. 29 of 2004 regarding Medical Practice and Law no. 36 of 2014 regarding Health Workers.

According to the definition provided by Murya and Sucipto (2019), professional organizations establish professional standards as the bare minimum of knowledge, skill, and professional attitude that an individual must possess in order to autonomously carry out professional activities in society. In contrast, SOPs are codified sets of procedures that should be followed whenever a specific type of routine task needs to be accomplished. When it comes to providing care to patients, health care institutions are required to adhere to a number of professional standards, all of which are outlined in standard operating procedures (Murya & Sucipto, 2019).

However, even though these standards exist, cases of medical negligence that harm patients are still common. Medical disputes caused by medical negligence can lead to criminal prosecution, but criminal penalties are not always imposed in every medical dispute case. This can create uncertainty for both parties involved. Therefore, an alternative medical dispute resolution is needed that is more just and can produce a satisfactory solution for both parties (Afandi, 2009).

One alternative medical dispute resolution that can be applied is restorative justice. Restorative justice is an approach that aims to create space for dialogue and empathy between patients, medical personnel and the patient's family, and produce solutions that are more just and acceptable to both parties. In its application, restorative justice can involve processes of mediation, restitution, or restoration of relationships (Andriyanti, 2020).

However, the application of restorative justice in resolving medical disputes is still rare in Indonesia and has not been studied systematically. Therefore, research on the application of restorative justice in medical dispute resolution needs to be carried out to provide a clearer picture of alternative medical dispute resolution that is more just and acceptable to both parties. This research can provide

benefits for patients, medical personnel, as well as the legal and health systems in Indonesia.

METHODS

This research falls within the category of normative legal research. This journal was generated using the library research method, which consisted of conducting research through the examination of various secondary data sources, such as books, journals, and other legal works linked to the research debate (Soekanto, 2007). In the process of conducting research, this journal was used. In addition to this, descriptive analysis is performed using normative approaches. Statutory approaches, conceptual approaches, and legal principles approaches are the types of approaches that can be utilized, which investigates and provides an explanation of the challenges involved in utilizing the principles of restorative justice in the process of mediating medical disagreements in Indonesia.

RESULTS AND DISCUSSION

The Application of Restorative Justice in Indonesia

When it comes to internalized forms of justice, Indonesia's cultural heritage is unparalleled. Traditions have developed in Indonesia whereby choices are reached after amicable discussion and cooperation across the archipelago. In addition, local penal laws in Indonesia were drafted to supplement universal national laws, so the country's preexisting customary rules allow for variation.

The people of Indonesia have already incorporated restorative justice techniques into their culture as a means of problem solving. However, in reality, restorative justice is still practiced by select members of society's upper crust, leaving many locals without exposure to the approach.

Law enforcement in Indonesia is gradually adopting and implementing restorative justice practices. Restorative justice is a response to offenders with the goals of restitution and reconciliation, as stated by Minor & Morrison (1996) in "A Theoretical Study and Critique of Restorative Justice," published in *Restorative Justice: International Perspectives*, edited by Burt Galaway and Joe Hudson. Philosophically, restorative justice seeks to restore what has been damaged or lost as a result of a continuing conflict. The focus of criminal court proceedings is shifted from punishment to a process of communication and mediation in accordance with the restorative justice principle.

In restorative justice, dialogue and mediation involve multiple parties, including perpetrators, victims, families of perpetrators or victims, and other associated parties. In general, the purpose of the legal settlement is to establish a resolution for criminal cases. In addition, another objective of restorative justice is to reach a decision that is equitable and balanced for both victims and offenders. Restorative justice's guiding principle is law enforcement that always prioritizes restoring a situation to its original state and restoring patterns of good relations in society (Syahrin, 2018).

According to Reksodiputro (1997), restorative justice should be associated with victims of crime because this approach is a criticism of the current criminal justice system in Indonesia, which tends to lead to retributive goals, namely

emphasizing justice in retaliation and ignoring the victim's role in determining the process. The implementation of policies through Supreme Court Regulations and Supreme Court Circulars is one of the Supreme Court's pillars for the implementation of restorative justice. The Decree of the Director General of the General Courts Agency, dated December 22, 2020, establishes guidelines for restorative justice in the general justice system. The purpose of the Supreme Court's restorative justice guidelines is to encourage increased application of the concept and fulfillment of the principles of a quick, inexpensive, and fair trial.

(Articles 364, 373, 379, 384, 407, and 482) According to the Supreme Court, the concept of restorative justice can be applied in cases of minor crimes with a maximum detention sentence of three months and a fine of IDR 2,500,000. In addition, the principle of restorative justice is also applied to children and women in conflict with the law, as well as to children who are victims or witnesses of offenses, as well as to addicts and narcotics abusers.

In addition to the Supreme Court, the Attorney General's Office has issued a restorative justice policy through Attorney General's Regulation No. 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice. In accordance with Article 2 of Perja No. 15 of 2020, considerations for implementing the concept of restorative justice are based on the principles of justice, public interest, proportionality, punishment as a last resort, and the principles of swiftness, simplicity, and low cost. In accordance with Article 3 paragraph (2) letter e of Perja Number 15 of 2020, the Public Prosecutor has the authority to close cases for reasons of law, including the resolution of cases outside of the court/afdoening buiten process. There are provisions in the Attorney General's Regulation referred to in Article 3 paragraph 3 if you wish to settle a case out of court for certain offenses with a maximum fine paid voluntarily or if the original situation has been restored through restorative justice.

Also involved in implementing the concept of restorative justice is the National Police. On 19 February 2021, the Indonesian National Police Chief General of Police Listyo Sigit Prabowo issued a circular letter in which he urged investigators to adhere to the principle that criminal law is the last resort in law enforcement and to prioritize restorative justice when resolving cases. In applying the principles of restorative justice, Sigit focuses primarily on cases involving the Information and Electronic Transactions Law (ITE) of 2016. In the meantime, Listyo stated that crimes involving SARA, hatred of groups or religion, racial and ethnic discrimination, and the dissemination of fake news that causes disorder cannot be resolved through restorative justice. Since the promulgation of Law No. 11 of 2012 pertaining to the Juvenile Criminal Justice System (UU SPPA), the principles of restorative justice have also been implemented.

Medical Disputes in Indonesia.

The relationship between doctors and patients is based on the principle of trust, it is this trust that requires doctors to make every effort to cure patients and requires doctors to keep patient secrets. The orientation of the doctor patient relationship is social humanitarian assistance and dedication, so whether paid or not, doctors continue to provide services with sincerity, nobility and for the honor of the profession. The times have caused this relationship to experience a change in the orientation of commercial relations and

business relations, even more extreme, Munir Fuady in his book "*Hippocratic Oath*" mentions the doctor-patient relationship as a contractual relationship which contains a business element (Fuady, 2005). As a result of changes in the doctor-patient relationship, which was originally built on trust, one day it may turn into a medical dispute that ends in a lawsuit for medical malpractice.

M. Nasser in his article "*Medical Disputes in Health Services*" states that the relationship between doctor and patient is grouped into 2 parts, namely: the relationship that occurs because of a therapeutic contract and the relationship that occurs because of laws and regulations. Both of these relationships will give birth to legal responsibility, professional responsibility and ethical responsibility for doctors. So that if a doctor commits a violation, be it a violation of ethics, discipline or law, he can be held accountable. Ethics violations have professional ethics courts, namely MKEK, disciplinary violations have professional discipline courts, namely MKDKI and even if there is a violation of law there are administrative courts, civil and even criminal cases (Nasser, 2011).

The Medical Practice Law places limitations, medical disputes occur because the patient's interests are harmed by the actions of doctors or dentists who carry out medical practices. Safitri Hariyani in the book *Medical Disputes: Alternative Dispute Resolution between Doctors and Patients* states that medical disputes are disputes that occur between doctors and patients in medical practice (Hariyani, 2005). And the MKEK Organizational and Work Management Guidelines also define medical disputes, namely disagreements between the doctor and the patient/client or their family in or after the doctor-patient/client relationship in the form of complaints of the doctor to health facilities, IDI, MKEK or disciplinary institutions (MKDKI) and other courts.

Medical disputes are a necessity in the relationship between doctors and patients, recently many cases of medical disputes have appeared in the mass media. The latest case happened to Warsinah at a public hospital in Majenang. From a juridical point of view, it is often debated whether medical actions can be included in acts of persecution, because in general medical actions are unpleasant and even painful for patients. Denny Wiradharma in the book "*Guide to Medical Law Lectures*", states that medical action is not against the law as long as it fulfills the following three conditions, namely (Wiradharma, 1996):

a) Every medical action must have an indication.

Medical action is a very important activity in the world of health. To maintain the quality of health services, every medical action must meet predetermined requirements. One of the important conditions that must be met is the existence of clear indications in every medical action. This means that medical action may only be performed if it is really necessary to treat a particular disease or medical condition. In this case, the indication is the medical reason underlying a medical action. If there is no clear indication, then the medical action can be considered unethical and against the law. For example, doing plastic surgery without a clear medical need, or giving certain medicines without a clear medical indication. In addition, medical procedures must also be carried out by medical personnel who have valid qualifications and licenses (Jadda, 2017).

However, the existence of a medical indication alone is not enough to make medical action a legal action. There are also other aspects that must be considered, such as patient

consent and the use of medical technology that complies with applicable standards. Therefore, every medical personnel must pay attention to all aspects related to medical action, including legal and ethical aspects, to maintain the quality and integrity of health services.

b) Medical action is carried out according to standard procedures.

Another requirement in carrying out medical actions that are not against the law is that medical actions are carried out in accordance with standard procedures. Standard procedure is a guideline that regulates how to carry out medical procedures with due observance of medical and ethical principles. This standard procedure is designed to ensure that medical procedures are carried out in accordance with patient needs and minimize the risk of complications or errors that can occur during medical procedures.

In the context of medical disputes, medical disputes often occur due to medical procedures that are not carried out according to standard procedures. This can result in harm to the patient and has the potential to cause disputes between the patient and the medical personnel involved. Therefore, it is very important for medical personnel to always pay attention to standard procedures in carrying out medical actions in order to provide quality services and minimize the possibility of medical disputes (Kusumaningrum, 2017).

In addition, standard procedures are also used as a reference in determining whether a medical procedure is carried out professionally or not. In the process of resolving medical disputes, procedural standards can be used as a reference to determine whether the medical personnel concerned violates the rules or not. If the medical action is carried out in accordance with standard procedures, it can be said that the medical staff has carried out the medical action in a professional manner and is not against the law.

c) Any action that will be carried out must have informed consent

The next requirement in the implementation of medical action is the existence of informed consent. Informed consent is patient consent given after being given clear and adequate information about the diagnosis, prognosis, and available treatment options. This means that the patient must be given a detailed explanation of his health condition, the type of medical procedure to be performed, the risks and benefits of the procedure, as well as the alternative treatment options available. In giving informed consent, the patient must give consent voluntarily and without coercion from other parties. Therefore, the doctor must provide clear and complete information so that the patient can make the right decision about the medical action to be performed. Informed consent is very important in guaranteeing the patient's right to obtain clear and complete information about his health condition, as well as ensuring that the medical action taken is a mutually agreed decision between the patient and the doctor.

The following are efforts that can be made to prevent medical disputes from occurring (Supeno, 2019), namely:

a) Doctor and Patient Relationship

The doctor-patient relationship is established on the basis of trust, the patient believes that the doctor will try his best for his recovery, the high expectations that are built up, if not fulfilled, will give birth to disappointment. This is the

forerunner to the occurrence of medical disputes. In general, the patient doctor's engagement is not an outcome engagement (Resultalte Verbintennis) but maximum effort (Inspanning Verbintennis). The difference is that in outcome engagements the doctor is charged with the obligation of proof, whereas in business engagements the burden of proof is the responsibility of the patient. So in this connection, the doctor must explain well the form of the engagement, even though in general the doctor's engagement with the patient is a maximum effort agreement for recovery, and does not promise results.

There are three types of doctor-patient relationships, namely activity-passivity, guidance-cooperation and mutual participation relationships. In patients who are unconscious, cases in the ED and mental disorders, the type of relationship is called activity-passivity relationship, for patients whose disease is not severe and Usually patients in polyclinics and practicing doctors can make their own decisions, the type of relationship is guidance-cooperation. Meanwhile, patients who want to maintain their health, for example in MCU or in patients with chronic diseases, the type of relationship is mutual participation. That is, the form of the relationship between doctors and patients is different - Varies depending on the needs of the patient.

b) Informed Consent

Every medical action must have informed consent, no medical action is carried out by a doctor without prior informed consent, except for emergency actions it is permissible to ignore the principle of informed consent with a note as soon as possible to explain to the patient or the patient's family after the emergency has been resolved.

Informed consent is consent given by a competent patient or next of kin after receiving a complete explanation regarding the medical action to be performed on the patient (Nijhhawan et al, 2013). In line with this, Safitri Hariyani in her book says that informed consent is the patient's right and the doctor's obligation is to explain everything about the patient's disease to obtain approval for medical action. This further emphasizes that approval is given after receiving an explanation (Hariyani, 2005).

Doctors who carry out medical procedures without informed consent can experience legal problems, both administrative, civil and even criminal law. Doctors who carry out medical procedures without the consent of patients and their families can be subject to administrative sanctions in the form of revocation of licenses to practice. Article 1365 of the Civil Code regarding onrechtmatige daad, every act that violates the law that causes harm, must pay compensation. Meanwhile, for criminal charges, you can use Article 351 of the Criminal Code regarding persecution. The patient also has the right to give or refuse to give permission for medical action to be taken against him. Therefore, before making a decision, the doctor is obliged to explain the importance of medical action for him and the risks that may occur if the medical action is carried out or not carried out, including the range of costs (Ujianto & Wijaya, 2020).

c) Standard Procedure

Doctors in carrying out medical procedures must always adhere to service standards, which consist of professional standards and standard operating procedures. Professional standards are made by collegiums that are mutually agreed upon. Meanwhile, standard operating procedures are made by health service facilities such as hospitals, health centers,

clinics in the form of regular procedures with the aim of maintaining service quality. Hospitals that do not have standard procedures can experience legal problems. If there is a medical dispute, while the hospital cannot show standard procedures. So, doctors and other paramedics have no legal protection (Taufani, 2011).

Doctors are required to provide medical services in accordance with professional and procedural standards derived from the medical code of ethics, to keep all information confidential, and to expand their knowledge. In other words, physicians are required to exert their best efforts for the recovery of their patients, but they cannot be exempt from the patient's demands if the patient is unhappy with the doctor's performance. The presumption of innocence is a component of the rule of law in our nation, and Article 66 of the Criminal Procedure Code states that suspects or defendants are not required to establish their innocence. This is bolstered by Article 158 of the Criminal Procedure Code, which prohibits judges from expressing their convictions regarding the guilt or innocence of the accused in court or from displaying a corresponding attitude. Thus, the defendant, in this instance the doctor, does not bear the burden of proof; rather, the patient, as the plaintiff, is responsible for proving his or her case in court. It differs from civil litigation, in which the burden of proof may be placed on the doctor as the defendant. Due to the fact that the defendant and plaintiff are in an equal position.

In dealing with medical disputes, there are several efforts that patients can make, including:

a) Report to MKDKI

The Indonesian Medical Discipline Honorary Council, abbreviated MKDKI, is an institution with the authority to determine whether physicians and dentists committed errors in the application of medical and dental disciplines and to impose sanctions. MKDKI is an institution created by the Indonesian Medical Council (KKI) that operates autonomously. The report sent to this assembly must include the identity of the complainant, the name and address of the physician's office, the date the action was taken, and the complaint's grounds. This report does not interfere with the patient's right as a citizen to report suspected criminal acts to the authorities and to sue for damages in civil court (Wijaya & Oka, 2017).

b) Conduct mediation or sue civilly to ask for compensation

Mediation is a dispute resolution process by negotiating between the two disputing parties with the help of a neutral third party, in this case the mediator. The mediator's duty is to assist both parties in reaching an agreement that is acceptable to both parties. If the mediation is not successful, then the patient can file a civil lawsuit with the court by asking for compensation for the losses suffered due to medical negligence committed by medical personnel.

c) Make a criminal report if the doctor commits gross negligence which results in the recipient of health services being seriously injured.

The last effort that patients can make in dealing with medical disputes is to make a criminal report if the doctor or medical staff involved in the case commits gross negligence which results in the recipient of health services being seriously injured or even dead. This criminal report can be

submitted to the police to be followed up in accordance with applicable law. Criminal actions in medical disputes are usually related to cases of medical negligence that are very serious and show medical actions that are unethical, unprofessional, or violate standard medical procedures. Criminal actions can be taken after the police conduct an investigation and find sufficient evidence to follow up on the case.

Application of Restorative Justice in the settlement of Medical Disputes in Indonesia

In the context of medical negligence disputes, it is necessary to understand that currently Indonesia already has criminal provisions governing medical negligence contained in Article 84 of Law No. 36 of 2014 concerning Health Workers. The article states that any health worker who commits gross negligence and causes the recipient of health services to suffer serious injury shall be subject to imprisonment for a maximum of 3 years. Meanwhile, if it results in death, the health worker can be sentenced to a maximum of 5 years. In addition to the provisions in Law No. 34 of 2014 there is also Article 360 of the Criminal Code which is often used in solving criminal cases of medical negligence.

In criminal proceedings in medical disputes based on the results of the author's investigation, only medical negligence criminal case decisions were found which used Article 360 of the Criminal Code and led to punishment for health workers. On the other hand, the losses suffered by patients remain unrecoverable. In addition, of course, there is a criminal effect that is also experienced by health workers, even though in cases of medical negligence in accordance with the nature of the error which is called "negligence" which is in the criminal law, it means that morally the health worker actually has no intention to cause harm to the patient. .

Therefore, restorative justice is a better form of solution in resolving medical disputes. The reasons why restorative justice is needed in medical disputes are:

a) Prioritizing recovery of victims and not punishment.

One of the reasons why restorative justice is the right way to resolve medical disputes is because its approach prioritizes victim recovery and not just punishment. In cases of medical disputes, the main goal should be to obtain justice for the parties who feel aggrieved, including the patient and the patient's family. Restorative justice can help achieve this goal by focusing on victim recovery through a process of dialogue and negotiation between the two parties involved.

In practice, restorative justice provides an opportunity for parties who feel aggrieved to convey their complaints and needs directly to the party that made the mistake, in this case a doctor or hospital. This can speed up the recovery process and provide a sense of justice for victims. In addition, by avoiding excessive punishment, restorative justice can also help maintain a harmonious relationship between doctors or hospitals with patients and their families.

In the context of medical disputes, restorative justice can also help prevent future medical errors. By encouraging doctors or hospitals to take responsibility for their mistakes, restorative justice can help improve the quality of health services and encourage doctors or hospitals to improve their medical practices.

b) The emergence of medical disputes is not accidental for the most part

Disputes in medical practice and medical procedures often occur due to unintentional mistakes or negligence on the part of medical personnel. Complex medical conditions, imperfect equipment, and high time pressure are some of the factors that can cause errors in medical procedures. Even though medical personnel have tried their best, mistakes can still occur. This shows that most medical disputes are not caused by malicious intent or intention on the part of medical personnel, but rather by negligence or deficiencies in the decision-making process.

Apart from that, pure accidents can also be a factor in medical disputes. Pure accidents can occur due to system failure or unforeseen environmental factors, which are beyond the control of medical personnel. For example, the occurrence of a power outage during an operation or sudden damage to medical equipment, which can affect the medical action being carried out.

Therefore, understanding the fact that most medical disputes are caused by negligence or pure accidents, can help the parties concerned to handle these disputes more wisely and objectively. The application of a restorative justice approach can help create an open dialogue between the two parties, so as to speed up the recovery of victims and reduce conflict. Through a restorative justice approach, both parties can work together to reach a satisfactory solution, without having to focus on punishment or punishment of the party deemed guilty.

c) The nature of criminal law as an ultimatum remidium

The use of criminal law should be a last resort in resolving medical disputes, and should only be used when other methods are not possible or effective. This is because, even though criminal law can provide punishment for wrongdoers, in reality these punishments do not always provide justice and remedy for victims. On the other hand, the use of restorative justice can provide space for victims and perpetrators to dialogue and find joint solutions that are more satisfying and result in better recovery for victims.

The use of criminal law in resolving medical disputes also has broader impacts, such as creating fear and insecurity for medical practitioners in carrying out their duties. In addition, the criminal justice process also takes a long time and costs a lot, which in the end is ineffective in providing justice and recovery for victims.

In this case, restorative justice is a more appropriate and effective way of resolving medical disputes because it prioritizes recovery for victims rather than punishment for perpetrators. With a dialogical approach based on restorative justice, restorative justice can help restore public trust in medical practitioners and the health system as a whole.

d) Restorative *justice* is a paradigm of modern criminal law.

Restorative justice is an approach to criminal law enforcement that focuses more on recovery and reconciliation between perpetrators of crimes and victims or affected communities, not just on punishing perpetrators. This approach is considered a new paradigm in modern criminal law because it emphasizes justice and humanity in dispute resolution, not just prioritizing the interests of the state or the legal system.

In the context of medical dispute resolution, restorative justice is important because it focuses on recovery and reconciliation between patients and medical personnel, not only on punishing medical personnel who make mistakes. This can speed up the dispute resolution process and reduce the legal burden for both parties. In addition, the restorative justice approach also emphasizes the collaboration and participation of all parties involved in the dispute, so as to create justice that is more equitable and dignified for all affected parties.

CONCLUSIONS AND SUGGESTIONS

The use and application of the theory of restorative justice (restorative justice) is expected to be an alternative in order to resolve medical disputes which have so far been assessed for a lack of justice in their settlement either for victims or reporters who only function as objects that are not taken into account from other aspects being reported or the perpetrator only acts as a subject as a prisoner or a defendant without taking into account other considerations. To avoid medical disputes, doctors must always follow predetermined standard procedures and obtain informed consent from patients before taking medical action. If a dispute occurs, the patient can make several efforts, such as mediation, suing civilly, or making a criminal report if the doctor commits gross negligence. Restorative justice is the right way to resolve medical disputes because it prioritizes victim recovery rather than punishment. Restorative justice also considers factors such as intention, negligence, and the impact of medical treatment on victims. In addition, restorative justice also avoids the ultimatum remedium nature of traditional criminal law, which prioritizes punishment rather than recovery.

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