



ADVANTAGES AND DISADVANTAGES OF RESTORATIVE JUSTICE APPROACH IN MEDICAL DISPUTE RESOLUTION

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Abstract: The legal system in Indonesia has experienced significant progress, especially in the health sector, following the enactment of Law 17/2023 concerning Health. One of the innovations introduced in this regulation is a restorative justice approach as an alternative in resolving medical disputes. Medical disputes are complex problems involving various parties, including patients, health workers and related institutions. Previously, medical dispute resolution only prioritized the litigation process in court, but this often took time, was expensive, did not prioritize the rights of victims, punishments tended to retaliate against the perpetrators, the process was protracted, and there was a lack of recovery from the impact of crimes on victims. So the restorative justice approach provides an alternative solution that focuses on agreement, trust, openness, and without any coercion from the parties involved because this approach tries to achieve a balance between the professional duties of medical personnel and providing attention to victims. This approach prioritizes reconciliation and communication between related parties to achieve a fair, satisfactory resolution and requires active cooperation from all parties, including patients and health workers in its implementation and requires legal rules and procedures to ensure justice is realized in the process. This research uses a legal approach and a conceptual approach and uses library sources as secondary data in the research process.

Keywords: restorative justice, resolution, medical disputes.

I. INTRODUCTION

Law is an inseparable element of social life so that every society has its own legal system, along with legal norms (*ubi societas ibi ius*).¹ Indonesia is a rule of law country which aims to create a prosperous, just and prosperous society in accordance with the principles stated in the Constitution. One important commitment is to fulfill human rights in the health sector by providing quality health services that can be accessed by all levels of society. This aims to improve the level

¹ Shidarta, *Moralitas Profesi Hukum Suatu Tawaran Kerangka Berfikir*, Bandung: PT Refika Aditama, 2006.

of health as an integral part of general welfare, in accordance with the vision of the Indonesian nation as depicted in the 1945 Constitution of the Republic of Indonesia and Pancasila.²

As stipulated in the law which has guaranteed everyone the opportunity to receive medical care contained in the law of the Republic of Indonesia in Article 28 A which reads: "Everyone has the right to life and the right to defend his life and his life", Article 28 H paragraph (1) says that "everyone has the right to get health services" and Article 34 paragraph (3) states that "the state is responsible for the provision of health care facilities and proper services. In the practice of health provision, many parties are involved and various facilities are used." so it can be interpreted that the purpose of the medical profession is to improve the degree of Public Health and make it Noble. Medical professionals are morally obligated to base their patient care on the standards of care accepted in the medical profession.³

The social relationship between patients and medical personnel or health workers cannot be separated by agreements and disputes that will occur. Along with the development of the times, the mindset of the community, and public knowledge of legal protection, causing the relationship between patients and doctors not only in civil aspects, but can lead to criminal aspects, especially if there is a suspicion in the patient's mind that there is malpractice caused by medical personnel or related health workers.⁴ The legal relationship between patients and health workers involves rights and obligations for both parties. In this process, it is possible for disputes to occur between patients and health workers which is known as medical malpractice, meaning medical practices that are incorrect, inappropriate, or violate the law and ethics.⁵

Allegations of potential medical errors leading to medical disputes can lead to conflict. This usually occurs when there is a dispute regarding an alleged medical error in a patient, so the patient's family reports it to the authorities and takes other legal action due to the patient's lack of knowledge about the actions that should be taken to seek justice. Apart from that, increasing awareness of the rights in receiving health services also encourages patient families to be firm in their demands.⁶ The patient's family does this because the performance or service of health workers is inadequate or does not even meet the Standard Operating Procedures (SOP)

² Yudha Koswara I, "Perlindungan Tenaga Kesehatan dalam Regulasi Perspektif Bidang Kesehatan Dihubungkan dengan Undang-Undang Nomor 36 tentang Kesehatan dan Sistem Jaminan Sosial," *Jurnal Hukum Positum* 3, No. 1 (2018).

³ Maria Latifa Tsanie, "Tinjauan Yuridis Risiko Medis Terhadap Persetujuan Dokter Kepada Pasien Atas Tindakan Medis," *ALADALAH: Jurnal Politik, Sosial, Hukum Dan Humaniora* 1, no. 1 (2023): 148-65, <https://doi.org/10.59246/aladalah.v1i1.161>.

⁴ Didith Prahara, "Penyelesaian Dugaan Kelalaian Medik Melalui Mediasi (Studi Pasal 29 Undang-Undang No. 36 Tahun 2009 Tentang Kesehatan)," *Jurnal Ilmiah Ilmu Hukum* 2, no. 1 (2020).

⁵ Tisa Windayani and Nugroho Adipradana, "Restorative Justice Sebagai Alternatif Penyelesaian Sengketa Kelalaian Medis," *Jurnal Paradigma Hukum Pembangunan*, n.d., <https://doi.org/10.25170/paradigma.v5i01.1649>.

⁶ Hildayastie Hafizah and Surastini Fitriasih, "Urgensi Penyelesaian Dugaan Kesalahan Medis Melalui Restorative Justice," *Jurnal Usm Law Review* 5, no. 1 (2022), <https://doi.org/10.26623/julr.v5i1.4884>.

determined by the health service provider which can be in the form of negligence or medical errors and also failure to fulfill the standard procedures that have been determined which can cause a problem. cases, for example the victim suffered serious injuries, disability or death.⁷

The legal relationship that occurs in patients with health workers or medical personnel in the ranahcivil sphere has a certain specificity which is due to the fact that the result of the agreement between the two is not the ultimate goal of healing, but rather as a process in which medical personnel have made maximum efforts to achieve healing so that if the the world, then, cannot automatically blame doctors for alleged negligence, provided that medical actions are performed in accordance with the standards of the medical profession and Standar operational procedures. This is because the relationship between doctor and patient involves obligations that are not only focused on the end result of the medical action (*resultaat verbintennis*), but more on the responsibility to provide the best medical care and try to avoid mistakes or violations of procedures (*inspaning verbitennis*).⁸

The civil aspect relationship between the patient and the doctor is an Inspanningverbintenis agreement which is caused by a therapeutic relationship based on the doctor's actions which is a form of health effort in terms of achieving maximum recovery for the patient based on all complaints experienced by the patient regarding the disease he is suffering from because the doctor does not guarantee certainty regarding the cure of the disease. to the patient so that all efforts based on the doctor's expertise can hopefully help in healing the patient.⁹ Therefore, the relationship between a doctor and a patient is a cooperative relationship in carrying out health efforts in good faith and with the trust of the parties involved.

In this case, there is a legal relationship between doctors and patients in health services, namely the relationship resulting from a therapeutic contract and the relationship resulting from statutory regulations. This begins with an unwritten agreement so that both parties are assumed to be accommodated when an agreement is reached, including approval of medical treatment or rejection of a medical action plan, while relationships due to statutory regulations usually arise because of obligations given to doctors because of their profession without requiring the patient's consent so that Both of these give rise to the legal, professional and ethical responsibilities of a doctor.¹⁰ the agreement between the patient and the doctor is based on the provisions of Article 1601 of the Civil Code which contains perthe agreement chartering work in which doctors provide health services to patients. Health services or therapeutic transactions carried out by this doctor as partian of the agreement, it is necessary to complywith the terms of the validity of the agreement as mentioned in Article 1320 of the Civil Code.

⁷ Ni Made Mira Junita and I Dewa Gede Dana Sugama, "Upaya Mediasi Dalam Penyelesaian Sengketa Malpraktik Medis," *Kertha Wicara : Journal Ilmu Hukum* 8, no. 11 (2019).

⁸ Setyo Trisnadi, "Perlindungan Hukum Profesi Dokter Dalam Penyelesaian Sengketa Medis," *Masalah-Masalah Hukum* 45, no. 2 (2017), <https://doi.org/10.14710/mmh.45.2.2016.150-156>.

⁹ Safitri Hariyani, *Sengketa Medik (Alternatif Penyelesaian Perselisihan Antara Dokter Dengan Pasien)*, Jakarta : Diadit Media, 2005.

¹⁰ M.Nasser, "Sengketa Medis Dalam Pelayanan Kesehatan," 2011.

Prior to the therapeutic transaction begins the engagement between the patient and the doctor with the *informed consent* is the main key before the therapeutic transaction because the *informed consent* has created obligations and rights for each party, related to the delivery of patients for all complaints to the doctor and the doctor gives a detailed explanation of the patient's condition. Based on information from the doctor so that the patient can determine the choices experienced by the patient and to obtain a medical action. then the therapeutic transaction can occur when obtaining consent from the patient.¹¹

In principle, regarding the practice of medical science, health workers, especially doctors, have an obligation to provide an explanation for the risks of medical procedures to patients. Risk is an important thing to be informed in addition to alternative medical actions, benefits and procedures. Various aspects of medical risk, including i) the nature of the risk, ii) the degree of seriousness of the risk, iii) the possibility of risk, and iv) the realization of risk.¹² This statement was supported by a judge in England named Lord Scarman who stated that when handling medical disputes, the law should regulate the doctor's obligation to explain to patients the material risks arising from medical procedures.¹³

Informed consent refers to the consent of a patient or family member for medical care where when people offer their consent, it is called "*informed consent*", which means that they agree after being given all the relevant facts.¹⁴ The doctor is obliged to inform the patient and the patient's family regarding the diagnosis and procedure of the medical procedure, the purpose of the medical procedure, and other alternative actions along with the risks that may occur before carrying out the action. medical action so that consent is given by both the patient and the patient's family, it is felt that they know the risks that will occur.

There is an example of a case in a hospital where there was negligence committed by a midwife in handling a patient who was about to give birth which was resolved through a restorative justice approach, then both of them agreed to resolve it amicably and not prolong the problem. Restorative justice is an approach to justice based on norms of responsibility, trust, openness and hope for healing which prioritizes restoration of the consequences of a crime. In addition to efforts to encourage perpetrators to take responsibility for what they have done, it also provides opportunities for the parties involved to pay attention to the rights of victims after a crime occurs and find solutions in the form of restoration and preventing similar disputes from occurring in the future. The restorative justice approach aims to restore conditions for victims through a fair and satisfactory dispute resolution process and does not focus on punishing the perpetrator.¹⁵

¹¹ Dian Ety Mayasari, "Tinjauan Yuridis Tentang Informed Consent Sebagai Hak Pasien Dan Kewajiban Dokter," *Varia Justicia* 13, no. 2 (2017), <https://doi.org/10.31603/variajusticia.v13i2.1883>.

¹² Soerjono Soekanto, *Segi-Segi Hukum Hak Dan Kewajiban Pasien Dalam Kerangka Hukum Kesehatan*, 1990.

¹³ J. Guwandi, *Persetujuan Tindakan Medik (Informed Consent)*, 2004.

¹⁴ Husein Kerbala, *Segi-Segi Etis Dan Yuridis Informed Consent, CV Nata Karya*, vol. 3, 2000.

¹⁵ Hafizah and Fitriasih, "Urgensi Penyelesaian Dugaan Kesalahan Medis Melalui Restorative

The restorative justice approach through mediation with consensus deliberation aims to create peace so that between the victim and the perpetrator there is no revenge and the victim's rights can be restored. In the restorative justice approach, it can be carried out using various methods, including: consultation, negotiation, mediation, payment of compensation, or other methods that have been agreed upon between the perpetrator and the victim. Not only that, other parties can also participate in resolving the problem, such as advocates, police, or community leaders who act as mediators if the resolution carried out does not find an agreement between the perpetrator and the victim so that the dispute resolution can then be continued with the last resort, namely through litigation. , but it is considered irrelevant to apply at this time because settlement through litigation can have a negative impact because it harms the reputation of both parties.

From a legal perspective, medical disputes filed by patients or their legal representatives against doctors can be pursued either through criminal or civil court as allegations of malpractice. In this kind of legal settlement, medical disputes can be resolved through two methods, namely through litigation (through court) or non-litigation (outside court). If the settlement is carried out through non-litigation (alternative dispute resolution), both parties try to reach an agreement on how to resolve the dispute with mutually beneficial results (win-win solution). When dealing with cases of alleged medical malpractice, it is recommended to choose non-litigation resolution because it is more practical and efficient.¹⁶

Thus, it is highly recommended that medical disputes be resolved through mediation. This has been regulated in the provisions of Law Number 17 of 2023 concerning Health where it is mandatory to take a restorative justice approach if a mistake has been made by a health worker before taking the litigation route because it does not require large costs or a long time, and does not emphasize the party who wins or lose, right or wrong, but rather on the outcome of a win-win solution that prioritizes the goals of the disputing parties, such as the patient or their family who are the focus of the agreement.¹⁷ so that it is hoped that medical disputes that occur can be resolved optimally in order to achieve justice for the disputing parties. Based on this, the author conducted this research with the aim of finding out and understanding the advantages and disadvantages of the restorative justice approach in resolving medical disputes.

The method applied is the normative legal approach, which refers to legal research carried out through the analysis of literature sources or secondary data.¹⁸ where known as doctrinal research, this method considers the law as what is stated in the legislation (*law in books*), or interpreted as principles or norms that set standards of

Justice.”

¹⁶ Achmad Zunaidi, *Malpraktek Dan Resiko Medik*, 2011.

¹⁷ Didith Prahara, “Penyelesaian Dugaan Kelalaian Medik Melalui Mediasi (Studi Pasal 29 Undang-Undang No. 36 Tahun 2009 Tentang Kesehatan).”

¹⁸ *Op.Cit* Ni Luh Gede, “Ni Luh Gede, *Op.Cit*,” n.d.

behaviors that are considered appropriate for humans.¹⁹ The approach methods applied in this research include the Statutory Approach and the Conceptual Approach. The data collection technique used is literature study, which involves examining books, literature and laws and regulations related to the research topic. This process includes reading, noting, quoting, selecting, and collecting related information and information. Analysis of legal materials is carried out by looking for solutions to all the issues that will be discussed. The legal material analyzed generally consists of statutory regulations, which are then evaluated through a deductive thinking pattern by generalizing from general to specific matters. After the analysis is complete, the author concludes and provides a prescription.

II. DISCUSSION

A dispute arises when there is an agreement between the parties, in which one of the parties is dissatisfied with the actions or behavior of the other. The aggrieved party then communicates their dissatisfaction to the other party. It is important to resolve disputes between these parties to avoid prolonged conflicts and to ensure justice and legal certainty for all parties involved. In the field of Health, there are often disputes between doctors and patients, caused by the mismatch of patient expectations of the process of medical services provided by doctors in an effort to cure the disease suffered by the patient. A medical dispute refers to a conflict that arises between a patient or a patient's family and health workers or between a patient and a hospital or health facility, relating to the outcome or end of a health service, without considering or neglecting the process.²⁰

Before a medical dispute occurs, it usually occurs with a pre-conflict where the patient or family feels dissatisfied with the difference between expectations and reality in health services. This then creates tension within the patient, both internally and externally, which is ultimately expressed through complaints. This process is known as conflict, which can ultimately lead to disputes. Some of the causes of patient dissatisfaction with health services from hospitals and doctors include:²¹

- a. Higher education in the community allows patients to better know their rights and increase confidence to evaluate the services of doctors.
- b. People's high expectations of medical services based on information from the public, especially from the internet.
- c. High costs that must be borne by patients to get medical services at the hospital, so that patients want results in accordance with expectations.
- d. The lack of proper communication or advice from legal experts so that can trigger conflicts.

In addition to the above factors, dissatisfaction may also arise from the view that if the therapeutic agreement cannot be fulfilled by the doctor, this may be regarded as

¹⁹ Amiruddin dan H Zainal Asikin, *Pengantar Metode Penelitian Hukum*, 2006.

²⁰ rudy Hidana Dkk, *Etika Profesi dan Aspek Hukum Bidang Kesehatan, Widina Bhakti Persada Bandung*, 2020.

²¹ Widodo Tresno Novianto, *Sengketa Medik, Pergulatan Hukum Dalam Menentukan Unsur Kelalaian Medik, UNS Press*, 2017.

an unlawful act resulting in harm to the patient. This has led to many lawsuits filed by patients on the basis that there is an act against the law.

Literally, the practice of medicine involves various forms of concrete behavior. The medical actions of a doctor can be active or passive actions. Active actions require certain physical movements or parts of the body to carry them out, while passive actions are the inaction that the doctor should perform. The obligation to act arises from positions, titles, duties, and so on as a result of which the doctor is legally obliged to act in certain situations. Therefore, if the doctor does not fulfill the legal obligations assumed, he is considered guilty and will be prosecuted legally if it causes harm.²²

Medical actions that can be considered a mistake on the part of the doctor must have characteristics that are contrary to the law. Contrary to this law may arise due to several possibilities such as: (1) violate the standards of the medical profession; (2) violate established operational procedures; (3) violate the law, such as practice without official permission or certificate of competence; (4) violate the code of medical ethics; (5) violate the general principles in (6) violation of general moral norms; (7) therapy that is not in accordance with the patient's medical needs; and (8) therapy that is not in accordance with the approval of the information provided and so forth. Therefore, in the case of medical malpractice, whether the harm occurred as a result of the negligence of the doctor or actions contrary to the law will largely depend on the reasons for the lawsuit filed by the patient. This is because basically, the consequences that arise will lead to one point, namely the occurrence of irregularities in the medical services provided by doctors in medical practice.²³

In general, disputes that occur by patients can be filed with claims or lawsuits against doctors or hospitals for various reasons, but not limited to: doctors not fulfilling their promises or commitments; doubts about the doctor's qualifications or expertise; assessment of the doctor's behavior, both in terms of professionalism and personal; disappointment due to the results of medical procedures that do not match the patient's or family's expectations; neglect or violation of patient rights; the view that medical costs are too high; errors in communication, understanding, or interpretation; and reasons related to financial compensation.²⁴ However, based on Law Number 17 of 2023 concerning Health regarding dispute resolution in Article 310, it has been explained that "In the event that a Medical Personnel or Health Personnel is suspected of making an error in carrying out their profession which causes harm to the Patient, the dispute arising as a result of the error is resolved first through an alternative "So, it can be interpreted that if there is a medical dispute carried out by health workers or medical personnel against patients, then it is prioritized to first resolve the dispute using a restorative justice approach through mediation.

²² Widodo Tresno Novianto.

²³ *Ibid*

²⁴ Purwadianto, *Kejahatan Profesional Okupasional Oleh Dokter, Jurnal Hukum Pelita*, vol. 4, 2000, <https://doi.org/10.37366/jh.v4i1.2378>.

This is because in resolving medical disputes, there are two paths that can be used, namely through litigation (court) and non-litigation. The non-litigation dispute resolution process involves *penyelesaian Sengketa Alternatif* Alternative Dispute Resolution (ADR) methods. In the perspective of Law Number 30 of 1999 on arbitration and Alternative Dispute Resolution, ADR is a way to resolve disputes out of court based on the agreement of the parties, to the exclusion of litigation in court. On the other hand, litigation is the last Dispute Resolution effort that can be taken by the parties to the dispute. This process involves a trial in court, where the judge has the authority to regulate and decide the case. Litigation is a process in which the parties to a dispute face to face in court to defend their rights. The final result of dispute resolution through litigation is a decision that establishes the winning and losing parties.²⁵

In the litigation process, the most striking aspects are the high cost, long duration, heavy psychological burden, coupled with the formality and complexity of the process. The negative effects of litigation against a doctor, dentist, or hospital include a compromised reputation, increased professional insurance premiums, and a psychological burden that is not comparable to the experience experienced by the party filing the lawsuit. From a societal perspective, litigation may result in a decrease in the quality of health care due to the outcome of court decisions, as medical professionals may be reluctant to take risks in their practice, which may ultimately increase health care costs. Sometimes, the costs incurred for litigation far exceed the claims received by the claimant, both the plaintiff and the defendant must find a lawyer to accompany. Litigation can also damage the relationship between doctors, dentists, or hospitals with patients and their families. Therefore, to resolve medical disputes in the best possible way, a restorative justice approach through mediation is a more appropriate solution.²⁶

The restorative justice approach is an approach used to repair and restore the relationship between the perpetrator and the victim through efforts to achieve peace outside the courtroom. The main aim is to resolve legal problems that arise as a result of the dispute in a way that satisfies all parties involved. Restorative justice in this case refers to the restoration of justice, where each party involved in a dispute is given the opportunity to negotiate with an emphasis on welfare and justice. This aims to provide a deterrent effect on perpetrators who are deemed legally guilty of criminal acts, with the hope that they will not repeat similar acts in the future.²⁷

The use of the concept of restorative justice in dealing with medical disputes aims to reduce the number of cases that continue to grow and ensure that victims from the community and the environment get adequate justice. One form of restorative justice approach is penal mediation, which includes rehabilitation, resocialization,

²⁵ Nurnaningsih Amriani, *Mediasi : Alternatif Penyelesaian Sengketa Perdata Di Pengadilan, Jakarta : Rajawali Pers*, 2012, <https://doi.org/10.1093/he/9780198788928.003.0010>.

²⁶ Andi Offset Ari Yunanto, Helmi, *Hukum Pidana Malpraktek Medik, Tinjauan Dan Perspektif Medikolegal, Jurnal Ilmu Hukum*, 2010.

²⁷ Apong Herlina, *Perlindungan Terhadap Anak Yang Berhadapan Dengan Hukum, Jakarta: PT. Raja Grafindo Persada*, 2004, <https://doi.org/10.52249/ilr.v2i2.79>.

restitution, reparation, and compensation in resolving criminal cases in medical practice. This approach also changes the view of crime or medical negligence from simply a matter between the perpetrator (the doctor) and the state representing the victim (the patient), and ensures that the settlement process is not only centered on the perpetrator (the doctor) and the state (the public prosecutor).²⁸

With the development of the dispute resolution system and mechanism, it is formally regulated, including the legal basis of out-of-court mediation derived from law no. 30 of 1999 on arbitration and Alternative Dispute Resolution. In the law, there is a discussion about Alternative Dispute Resolution. Based on the provisions of the law in the Act, it has been explained that mediation is an option to resolve disputes, meaning that in the case of medical disputes, settlement can be done through mediation. According to Munir Fuady, mediation is an alternative method of dispute resolution, where there is a negotiation process to resolve the problem with the help of outside parties who do not have rights and are neutral and will work closely with the parties to the dispute to help find a satisfactory solution for both parties. The third party who helps resolve the dispute is called a mediator."²⁹

Prior to Law No. 30 of 1999 in force, there are no rules related to extrajudicial mediation. However, after the publication of Mahkamah Agung RI Regulation No. 1 year 2016 (Perma) there is a greater impetus to resolve disputes through mediation in court, according to the provisions in Article 23 of Perma No. 1 of 2016. Currently, mediation in court refers to Article 4 Perma No. 1 year 2016, which states that all disputes that occur should try to use settlement by consensus deliberation mediated by the mediator.³⁰ A mediator is an intermediary party to facilitate the resolution of disputes between the parties, without interfering in the decision-making process. Mediators facilitate meetings between related parties, conduct negotiations, propose alternative solutions, and work together with the parties to reach an agreement in resolving the dispute. The mediator's duties also include guiding efforts to find solutions so that the parties are willing to work together in resolving the dispute at hand.³¹

Mediation can be initiated by police, prosecutors, and judicial agencies with the aim of facilitating dialogue between victims and perpetrators, both for victims who experience serious impacts and for perpetrators. If there are signs of unlawful acts, resolution through a restorative justice approach may be preferred. This approach involves meeting all relevant parties such as the director of the hospital, the chairman of IDI, the patient's family, related doctors, community leaders, police, witnesses, and so on, to sit together and discuss in order to reach an agreement. If compensation is required, the amount of compensation can be discussed and regulated fairly. This is done as part of reconciliation and recovery efforts if there

²⁸ S Tri Herlianto, "Mediasi Penal Sebagai Alternatif Penyelesaian Perkara Tindak Pidana Praktik Kedokteran" 43, no. 2 (2009).

²⁹ Munir Fuady, *Hukum Kontrak (Dari Sudut Pandang Hukum Bisnis, Nuansa Cendekia*, 2001.

³⁰ Mohammad Hatta, *Hukum Kesehatan & Sengketa Medik*, Liberty Yogyakarta, 2013.

³¹ Takdir Rahmadi, *Mediasi Penyelesaian Sengketa Melalui Pendekatan Mufakat*, 2010.

are errors that require payment of compensation.³²

The advantages of resolving medical disputes through mediation include: ³³ 1) Cheaper compared to other options in terms of cost. 2) There is a tendency for the parties involved in the dispute to accept and be involved in the mediation decision. 3) Used as a basis for litigants to carry out their own negotiations regarding the case in the future. 4) Provides an opportunity to examine the conflict that is the root of a dispute. 5) Provide opportunities for the creation of mutual trust between the litigants to avoid hostility and revenge. Apart from that, another positive benefit of mediation is that the relationship between doctors and patients will remain well maintained because basically both have the same goals, even in their respective contexts and responsibilities.³⁴

Meanwhile, there are some disadvantages in dispute resolution through mediation, including: 1) this process may take a relatively long time. 2) implementation is difficult because the execution process is similar to the execution of the contract. 3) It depends on the goodwill of all parties to resolve the dispute amicably. 4) the results of mediation may not be optimal, especially if sufficient information and authority is not provided. 5) If you do not involve a lawyer in the mediation process, it is possible that important legal information is not conveyed to the mediator, resulting in a biased verdict. Mediation also has limitations in terms of legal support of the process and its results, including the implementation of the resulting dispute settlement (peace) agreement. The process and decisions that arise cannot be enforced directly and the Perma that is the guideline in conducting the Mediation is not binding. Therefore, a law governing mediation is needed to provide more binding legal certainty. ³⁵

Thus, although the application of restorative justice approach in resolving medical disputes may disappoint patients because compensation is not in accordance with expectations, but the principle of restorative justice is still important to do in medical error disputes. This is due to the increasing number of medical disputes from year to year and the complexity of medical cases that are not easily understood by legal authorities such as prosecutors, judges and investigators because when using the litigation path, the legal process can be long and melewati go through many stages, while not all parties will benefit from the process. Therefore, the application of restorative justice approach as a method to achieve peace without mutual harm is short-tan that needs to be applied in resolving medical disputes between patients and doctors or health services in hospitals. ³⁶

³² Hafizah and Fitriasih, "Urgensi Penyelesaian Dugaan Kesalahan Medis Melalui Restorative Justice."

³³ Munir Fuady, *Arbitrase Nasional, Alternatif Penyelesaian Sengketa Bisnis*, Citra Aditya Bakti, 2003, <https://doi.org/10.23971/jaq.v3i2.1179>.

³⁴ Dedi Afandi, "Mediasi: Alternatif Penyelesaian Sengketa Medis," *Majalah Kedokteran Indonesia* 59, no. 5 (2009).

³⁵ Afandi.

³⁶ Pentadi Teguh, "Rekonstruksi Regulasi Penyelesaian Sengketa Medis Berbasis Nilai Keadilan Restorative" (2023).

III. CONCLUSION

In an effort to resolve medical disputes, it is preferred to use an alternative approach to restorative justice through mediasi based on the provisions of law 17/2023 on health in Article 310. So that by taking mediation assisted by the Mediator is expected to be able to restore relations between the parties involved after the dispute, help find solutions in dispute resolution optimally and be able to reach a consensus with the benefit of both parties. The advantages of the restorative justice approach in resolving medical disputes, namely satisfactory final results for all parties, preserving existing relationships or ending relationships in a lesser way, saving time, saving costs, fast settlement procedures compared to litigation, while the disadvantages of The restorative justice approach in resolving medical disputes includes relying heavily on good faith because if there is no good faith in the mediation process from both parties, then an agreement will never be reached and the conflict cannot be resolved, mediation will be difficult to reach an agreement if the parties do not provide information clearly and transparently and there is a possibility that the mediator takes a more favorable position towards one of the parties so that this can affect the mediation process to be ineffective because parties who feel they are not supported will find it difficult to open up and reach a solution that is satisfactory for both parties.

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