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Implementation of Informed Consent and Non-Litigation Medical Dispute Resolution at RSUD Kotapinang: A Juridical Analysis

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Abstrak

This research explores alternative medical dispute resolution at the Regional General Hospital (RSUD) Kotapinang and the legal status of informed consent in medical practice. Medical dispute resolution can be carried out through two channels: litigation (court) and non-litigation (mediation). RSUD Kotapinang has implemented mediation as a non-litigation dispute resolution method to achieve peace and provide parties the opportunity to express their interests. Although efforts to handle complaints quickly through internal mediators have been made, the implementation of mediation still needs to be adjusted to comply with applicable laws and regulations, including the requirement for mediators to be certified by the Supreme Court.
Informed consent is a crucial element in medical practice because its absence is considered a legal violation known as medical malpractice. Professional responsibility in medicine is based on ethical standards and professional duties, while legal responsibility is related to compliance with applicable regulations. Mistakes in performing professional duties can lead to sanctions from professional bodies, while legal violations can result in lawsuits in court. Therefore, informed consent must fulfill the principles of consensualism and freedom of contract to be valid and binding on the parties involved. This research emphasizes the importance of clear procedures and supporting regulations to ensure the mediation process and informed consent are effective and fair, providing adequate legal protection for patients and medical professionals involved.

Keywords: *Informed Consent, Medical Dispute Resolution, RSUD Kotapinang.*

Introduction

Every medical procedure that carries a high risk requires consent from the patient or their family, known as Informed Consent.[1] This consent is crucial as it ensures that patients understand and agree to the medical procedures to be performed, thus protecting their rights. The Republic of Indonesia Law No. 29 of 2004 on Medical Practice, which has been repealed by Law No. 17 of 2023 on Health, stipulates that medical practice involves a series of activities conducted by doctors for the health efforts of patients. This law aims to regulate medical practice with the primary objectives of providing patient protection, improving the quality of medical services, and providing legal certainty to the public.

In the book "Medical Criminal Law and Malpractice" by Beni Satria and Redyanto Sidi Jambak, Micheal Daniel Mangkey is quoted stating that the medical profession cannot be entirely measured with certainty. Doctors cannot guarantee recovery because health is highly individualistic and influenced by various factors such as immune strength, age, gender, and unpredictable medical risks. Therefore, even if two patients have the same illness and receive the same treatment, the results will not always be identical.[2]

The relationship between doctors, patients, and hospitals is a contractual relationship based on consent, in accordance with Articles 1313 and 1233 of the Indonesian Civil Code, which stipulates that obligations arise from agreements or laws. Novekawati, in "Health Law," quotes Salim HS stating that obligations govern the rights and duties between legal subjects. The term "Medical Procedure Consent" regulated by Minister of Health Regulation No. 585/Menkes/Per/IX/1989 was later changed to "Medical Procedure Consent" by Minister of Health Regulation No. 290/Menkes/Per/III/2008. Although there is no specific law on informed consent, Minister of Health Regulation No. 290 of 2008 explains its implementation. Informed consent is the patient's right to receive information about the disease, treatment alternatives, and to give consent for medical procedures after receiving such information.

RSUD Kotapinang, as a government hospital in South Labuhanbatu Regency, continues to improve the standards of facilities, management, and services to meet the high patient visits. Therefore, informed consent is required as legal consent between medical personnel and patients for medical procedures. A 21-year-old male patient came to RSUD Kotapinang with lacerations on the head and face and continuous bleeding. The doctor and nurse performed anesthesia and wound cleaning, but due to active bleeding, only temporary stitches were performed. The patient's family was

advised to refer the patient to RSUD Rantau Parapat for further care, but they refused and left without accompaniment. On June 23, 2022, a social media post by the patient's sister, Gustiana Harahap, stated that the patient's wounds had not healed and that the care at RSUD Kotapinang was only temporary. According to the social media narrative, the patient's wound did not heal, still felt painful, discharged pus, and contained stones from the previous stitches. Social media comments accused RSUD Kotapinang's doctors and nurses of not working optimally. RSUD then examined the medical records and found that the informed consent was not filled in, adding to the problem. On June 27, 2022, mediation was conducted between the patient and RSUD Kotapinang. A peace agreement was reached: the patient would not pursue legal action and would delete the social media post, while RSUD provided intensive care, including minor surgery by a specialist doctor. This agreement was signed on a stamp and witnessed by four witnesses.

Wibowo's (2021) study on medical dispute resolution in private hospitals through mediation shows that the implementation of mediation through legal representatives is not perfect due to various hindering factors. [3] Ummah's (2019) research reveals that litigation mediation often fails, creating a deterrent effect on doctors and hospitals, and in some cases, doctors' practice licenses are revoked, resulting in negative impacts on the community. An example of successful non-litigation mediation is Supreme Court Decision No. 1550 K/Pdt/2016, although the outcome was not ideal because the patient experienced a 50% disability, which should have been anticipated by a competent and knowledgeable doctor. [4]

Method

This type of research is descriptive, which is an approach oriented towards natural phenomena or occurrences. Qualitative research is fundamental and naturalistic in nature, conducted not in a laboratory but in the field, studying problems within society, the prevailing practices, and specific situations, including relationships, activities, attitudes, perspectives, ongoing processes, and the effects of certain phenomena.[5] This research type is normative legal research. Normative legal research involves examining and analyzing library materials or secondary data, thus it is also called library research or theoretical/dogmatic legal research. Therefore, the materials examined in normative legal research are library materials or secondary data, which originate from primary and secondary sources.[6]

Result And Discussion

Alternative Medical Dispute Resolution at RSUD Kotapinang

Medical dispute resolution can be conducted through two channels: litigation (court) and non-litigation (consensual/non-adjudicative).[7] The non-litigation method that is frequently used is mediation, which aims to achieve peace by providing the parties with an opportunity to present proposals according to their interests.[8] Research shows that RSUD Kotapinang maximizes efforts to prevent legal issues through swift handling of complaints, coordinated with Public Relations and relevant units, facilitated by internal mediators. Although rapid complaint resolution has been achieved, the implementation of mediation needs to be reviewed to ensure compliance with regulations. Article 23 paragraph (1) of Supreme Court Regulation No. 1 of 2016 allows for out-of-court settlements to obtain a peace agreement. Article 13 paragraph (1) stipulates that mediators must be certified by the Supreme Court or an accredited institution. Mediators must be neutral, and the mediation process includes the following stages: Introduction, Statement of Parties, Schedule, Caucus, Parley, and Agreement/Settled.[9]

Article 1 paragraph (10) of Law No. 30 of 1999 explains that Alternative Dispute Resolution (ADR) includes consultation, negotiation, mediation, conciliation, or expert appraisal, and is conducted outside the court. Article 310 of Law No. 17 of 2023 regulates that when medical or health professionals are suspected of committing errors in their professional duties causing harm to patients, the first step should be to resolve the dispute through alternative channels outside the court. This approach, known as Alternative Dispute Resolution (ADR), includes methods such as mediation, conciliation, or arbitration. ADR aims to achieve a faster, more efficient, and less confrontational resolution compared to court litigation.

Using ADR in medical disputes offers several advantages. First, it allows for more open and direct communication between patients and medical professionals, which can reduce misunderstandings and increase the likelihood of reaching a peaceful agreement. Second, ADR is often more flexible and can be tailored to the needs and desires of both parties, unlike the more rigid and formal court processes. Third, resolving disputes outside the court is generally faster and cheaper than the lengthy and costly litigation process.

However, the success of ADR heavily depends on the involvement and cooperation of both parties and a neutral and competent mediator. In this context, it is important for healthcare institutions to have clear ADR procedures and well-trained mediators. Additionally, supporting and regulating ADR is crucial to ensure that the process is fair and effective, providing adequate legal protection for both patients and medical professionals involved.

Legal Status of Informed Consent

Informed consent is a crucial element in a doctor's medical practice, as the absence of this consent is considered a legal violation in both civil and criminal contexts, known as medical malpractice.[10] In the criminal aspect, as stated by Muntaha in his book “Medical Malpractice Criminal Law” quoting Roeslan Saleh, a person can be held criminally liable if the following elements are met: committing a criminal act, being capable of responsibility, acting intentionally or negligently, and having no exculpatory reasons.[11]

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When facing criminal charges from patients and their families, a doctor practicing his profession will encounter two types of responsibility: professional and legal. Professional responsibility is related to errors in performing duties according to the medical code of ethics, while legal responsibility is based on applicable regulations.

Professional responsibility in medical practice is based on ethical standards and professional duties that must be fulfilled by medical personnel. This includes the obligation to provide competent care in accordance with established medical practice standards. Errors in performing professional duties, such as failing to provide sufficient information or performing procedures not in line with standards, are considered violations of professional responsibility. These violations can result in sanctions from professional bodies or medical institutions and diminish patient trust in medical personnel.[12]

On the other hand, legal responsibility refers to the obligation to comply with applicable laws and regulations in medical practice. This includes regulations regarding informed consent, patient protection, and safety standards in medical procedures. Violations of these regulations can lead to legal action in court. For example, if a doctor fails to obtain adequate informed consent before performing a medical procedure, they can be sued for medical malpractice. In such cases, the patient must prove that they suffered harm due to the doctor's non-compliance with the applicable regulations.[13]

The main difference between professional and legal responsibility is that professional responsibility relates to ethical standards and practices within the medical profession, while legal responsibility relates to compliance with laws established by the state. Both responsibilities aim to ensure that medical personnel provide safe, effective care that adheres to ethical and legal standards. Violations of either or both responsibilities can result in serious consequences, including disciplinary actions by professional bodies and legal actions by patients or authorities.[14]

Determining the basis for claims and proving negligence or errors in a doctor's actions in medical malpractice cases is a significant challenge due to the lack of clear measures, standards, and parameters, despite the existence of medical records. In Indonesia, medical malpractice cases are often debated on whether they involve medical ethics violations or legal breaches causing disability, death, or worsening patient conditions. This lack of clarity complicates proving whether a medical action has indications of deviation or legal violations that can be legally pursued as malpractice.

Informed consent has an important position in civil law because it relates to the agreement between doctor and patient. According to Article 1320 of the Civil Code, a contract must meet four conditions: agreement, legal competence to make a binding commitment, a specific subject matter, and a lawful cause. Informed consent must meet these conditions, meaning there must be sufficient information from both parties. However, if informed consent does not meet Article 1320 jo 1338 of the Civil Code, it is considered a violation of the freedom to contract principle. Article 1338 of the Civil Code states that any legally made agreement binds the parties as law.

The agreement in informed consent is considered imperfect if it does not meet the principle of consensualism, which means a contract is valid if there is an agreement on the main elements of the contract without requiring specific formalities. Additionally, Article 1321 of the Civil Code stipulates that no agreement is valid if given by mistake, obtained by coercion, or fraud. Therefore, if informed consent is made under coercion, the agreement is considered void, and the contract is not valid.

Informed consent that does not meet the five freedoms in the principle of freedom to contract is considered non-binding. If there is abuse of circumstances or undue influence, informed consent does not meet the valid agreement conditions as stipulated in Article 1320 jo 1321 jo 1323 of the Civil Code and Article 1338 of the Civil Code. Thus, informed consent must meet the principles of consensualism and freedom to contract to be valid and binding on the parties involved.

Informed Consent in the administrative aspect aims to ensure that patients understand and agree to the medical procedures to be performed. However, it is recognized that not all patients can understand the information from the doctor. Some groups of patients are exempted from the requirement to receive information due to their conditions. These groups include minors, patients with mental disorders, patients whose health could be compromised by medical information (e.g., patients with weak hearts), and patients receiving placebo treatments, where complete information is not necessary due to the pharmacological nature of the drug.

Furthermore, in situations where the patient is unconscious or unable to give consent, doctors are permitted to perform medical actions without the patient's consent based on the concept of "zaakwaar neming" or voluntary representation according to Article 1354 of the Civil Code.[15] This allows doctors to provide urgent and necessary care to save the patient's life or health without waiting for consent that may not be possible to obtain in time. This concept is important to ensure that medical care is not delayed in emergencies where time is critical.

This administrative approach balances the need to obtain patient consent with the practical realities in the field. It provides flexibility for medical personnel to act in the best interest of the patient in urgent situations while respecting patient rights in conditions where they can provide informed consent. Therefore, this system is designed to offer maximum protection for patients while ensuring they receive appropriate and effective care according to their health conditions.

Conclusion

Medical dispute resolution at RSUD Kotapinang is conducted through two channels: litigation and non-litigation. The non-litigation method frequently used is mediation, which aims to achieve peace by providing the parties an opportunity to present proposals according to their interests. RSUD Kotapinang has made maximum efforts to prevent legal issues by swiftly handling complaints through coordination with Public Relations and relevant units, facilitated by internal mediators. However, the implementation of mediation needs to be reviewed to ensure compliance with applicable regulations, such as those outlined in Supreme Court Regulation No. 1 of 2016, which requires mediators to be certified and neutral.

Informed consent is a crucial element in medical practice, as its absence is considered a legal violation, both in civil and criminal contexts, known as medical malpractice. Professional responsibility in medicine is based on ethical standards and professional duties, while legal responsibility is based on compliance with applicable regulations. Errors in performing professional duties can result in sanctions from professional bodies and decrease patient trust, while legal violations can lead to lawsuits in court. Therefore, informed consent must fulfill the principles of consensualism and freedom of contract to be valid and binding on the parties involved.

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