



The Role of Mediation in Resolving Civil Legal Disputes in Health Sector

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Abstract. *This article discusses the role of mediation as a method of dispute resolution in the context of civil law in the health sector. With the increasing complexity of the relationship between healthcare providers and patients, disputes often arise as a result of malpractice, negligence, or violation of patient rights. This study analyses the effectiveness of mediation as an alternative to more formal litigation, focusing on the advantages offered by this approach, such as a faster process, lower costs, and the maintenance of good relations between the parties involved. Through case studies and interviews with legal practitioners, mediators, and representatives from health institutions, this article explores the challenges faced in implementing mediation in the health sector, including a lack of understanding of the mediation process and limitations in supporting regulations. The results of the study show that although mediation has the potential to be an effective solution in resolving civil law disputes in the health sector, there is a need for increased awareness, training, and regulatory support to maximise its benefits. This article proposes recommendations for the integration of mediation practices in the dispute resolution system in the health sector, with the aim of creating a more harmonious environment for health service providers and patients.*

Keywords: *Mediation, Civil law disputes, Health sector, Dispute resolution, Patient rights.*

1. INTRODUCTION

The resolution of civil law disputes in the health sector is of increasing importance in the context of a rapidly evolving health service. Amid the advancement of medical technology and the complexity of modern healthcare, the relationship between healthcare providers and patients often faces challenges that can lead to disputes. Cases of malpractice, negligence in providing care, and violations of patient rights are some common examples of disputes, which can result in both financial and emotional losses for the individuals involved.

In this context, mediation has emerged as a potential alternative to resolving disputes without having to go through a long and expensive litigation process. Mediation offers a more collaborative and dialogical approach, where the parties involved can communicate openly to reach a mutually beneficial solution. In contrast to litigation, which tends to be adversarial, mediation allows for dispute resolution by considering the interests and needs of all parties, including maintaining good relations between healthcare providers and patients.

However, although mediation promises many advantages, the implementation of this practice in the health sector still faces challenges. A lack of understanding of the mediation process, as well as a lack of support from existing regulations and policies, can be an obstacle to the adoption of mediation as an option in dispute resolution. Therefore, it is important to

explore the role of mediation in the context of health civil law, as well as assess the effectiveness and challenges faced during the mediation process.

This article aims to analyse the role of mediation in resolving civil law disputes in the health sector, identify existing challenges, and provide recommendations to improve mediation practices in this context. By understanding the importance of mediation as a tool for dispute resolution, it is hoped that health institutions and medical personnel can utilise this approach to create more effective, efficient, and harmonious solutions in dealing with legal disputes.

Legal Disputes In The Health Sector

Legal disputes in the health sector cover various issues that arise from the interaction between health service providers and patients. With the increasing complexity of health services and advances in medical technology, legal issues related to ethics, responsibilities, and patient rights are occurring more frequently. These disputes can involve various parties, ranging from doctors and hospitals to patients and their families. Discussion of legal disputes in the health sector needs to be done by analysing the types of disputes, the causative factors, and their impact on the parties involved.

Types of Legal Disputes in the Health Sector

1. **Medical Malpractice Cases:** One of the most common disputes is medical malpractice, where patients claim that healthcare workers made mistakes in diagnosis, medication, or treatment that caused harm. This malpractice can include misdiagnosis, wrongful surgery, or negligence in providing care according to applicable medical standards.
2. **Medical Negligence and Complications:** Cases of negligence often arise when healthcare workers fail to act in accordance with professional standards. This can include delays in providing services or not conveying the risks associated with medical procedures. In addition, disputes can also arise from complications that occur after medical procedures, where patients feel that they were not adequately informed about the possible risks.
3. **Violation of Patient Rights:** Legal disputes can also arise from violations of patients' rights, including the right to clear information, the right to give consent before medical procedures, and the right to fair and humane treatment in health facilities. Violations of these rights can lead to a poor relationship between patients and healthcare providers, and can potentially lead to legal disputes.

4. **Contract Disputes:** The interaction between patients and healthcare providers is often contractual, where there is an agreement between the two parties regarding the services to be provided. Disputes can arise if one party fails to fulfil its agreed obligations, such as a mismatch between the fees charged and the services received.

Causes of Disputes

Some factors that contribute to legal disputes in the health sector include:

- **Lack of Communication:** Ineffective communication between health workers and patients can lead to misperceptions about medical information and the consequences of actions taken. This has the potential to create dissatisfaction and disputes.
- **Ignorance of the Law:** Many patients do not fully understand their rights under the law, which can lead to them feeling aggrieved when something unwanted happens. On the other hand, healthcare providers may also not be fully aware of their legal and ethical obligations.
- **Pressure and Stress:** A stressful work environment, such as in emergency situations or lack of resources, can affect the performance of medical personnel. Decisions made in a hurry can contribute to cases of negligence or medical error.

Impact of Legal Disputes

The impact of legal disputes in the health sector is not only felt by those directly involved, but also has broader consequences for the health system as a whole. These impacts include:

- **Financial Loss:** Legal disputes can have a significant financial impact on healthcare providers, including legal fees, claims for compensation, and potential reputational damage.
- **Crisis of Confidence:** When disputes occur, whether in the realm of litigation or within the community, public confidence in the health system can erode. This has a negative impact on patient satisfaction and the quality of services provided.
- **Increased Legal Uncertainty:** The emergence of disputes can create greater uncertainty among healthcare providers about how they should act, and can influence their clinical decisions.

Legal disputes in the health sector are complex and multifaceted issues that require careful attention and approach to resolve. Understanding the types of disputes, their contributing factors, and their impact is the first step to creating a better health system. Efforts

to improve communication between healthcare providers and patients, as well as to increase understanding of the mediation process.

The Concept Of Mediation

Mediation has been recognised as an effective method of dispute resolution, especially in the context of legal disputes in the health sector. With the increasingly complex relationship between healthcare providers and patients, and the high potential for disputes that can arise from malpractice, negligence, or violations of patient rights, the mediation approach is becoming increasingly relevant. The concept of mediation not only offers a softer and more collaborative alternative to dispute resolution, but also seeks to maintain good relations between the parties involved.

Basically, mediation is an interactive process in which a neutral mediator helps the disputing parties to communicate and find a solution together. In the healthcare sector, mediation provides a platform that allows patients and healthcare providers to express their views, concerns and needs without the accompanying pressure or threat of legal action. Experienced mediators act as facilitators, helping to establish a productive dialogue with the aim of reaching a mutually beneficial agreement.

One of the main advantages of mediation in the context of healthcare disputes is its ability to create a more friendly environment. The process is often less formal than litigation in court, allowing parties to actively participate in the settlement process. With a more empathetic and dialogical approach, mediation can help ease tensions between patients and service providers, which can often worsen in dispute situations.

Mediation also provides a number of practical advantages that cannot be ignored. The mediation process tends to be faster than litigation; disputes that can drag on in court for years can be resolved in a much shorter period of time through mediation. This is important, especially in the health sector, where prolonged uncertainty can add psychological burdens for patients and their families.

In addition, the costs associated with mediation are often lower than those of court proceedings. By reducing legal costs, mediation makes the dispute resolution process more affordable, especially for patients who may already be facing financial burdens due to their healthcare. This cost advantage also creates the possibility for more individuals to access dispute resolution mechanisms without worrying about high costs.

However, despite mediation having many advantages, several challenges remain in its implementation in the health sector. One of the main challenges is the lack of awareness and

knowledge regarding the mediation process among patients and healthcare providers. Many parties may not fully understand how mediation works and its benefits, or may even be sceptical of its effectiveness compared to formal legal action.

On the other hand, healthcare providers also need to be trained to accept feedback and criticism from patients, which can often be difficult to do in practice. Therefore, education and training on mediation for medical personnel and socialisation to patients regarding mediation rights and processes are very important.

In practice, integrating mediation into the health dispute resolution system requires support from various parties, including the government, health associations, and educational institutions. Regulations that support and encourage the use of mediation also need to be developed to create a clear framework that facilitates this process.

Overall, mediation offers significant potential to improve the way legal disputes are resolved in the health sector. With a more collaborative approach and a focus on healing relationships, mediation can help create a better atmosphere for healthcare providers and patients. As the health system faces increasingly complex challenges, the use of mediation as an alternative dispute resolution should be given more serious consideration as a step towards achieving justice and well-being for all parties involved.

Benefits Of Mediation In Health Dispute Resolution

Mediation is an increasingly popular method of dispute resolution in various sectors, including the health sector. This process offers a number of advantages that make it highly relevant for application in disputes between healthcare providers and patients. With its collaborative characteristics, mediation can be an effective solution that facilitates dialogue and problem solving, instead of the confrontation that often occurs in litigation.

One of the main advantages of mediation is its ability to create a faster resolution process. In litigation, dispute resolution often takes years before finally reaching a court decision. This lengthy legal process not only adds stress to patients, but can also potentially damage the relationship between healthcare providers and patients. In contrast, mediation allows the parties involved to focus on dialogue and find solutions in a relatively short period of time. This is important in the healthcare sector, where emotional tension and the need for clarity can be resolved more quickly through mediation.

In addition, lower costs are also a significant advantage of mediation. Court proceedings often require substantial expenditure on legal costs, including lawyers' fees and the court costs themselves. Mediation, on the other hand, tends to cost much less. With lower

costs, mediation can access more individuals who may not be able to file legal claims in court. This opens up opportunities for patients to obtain justice without being burdened by financial costs that can be a barrier.

Another advantage of mediation is its ability to maintain good relations between the parties involved. In many cases, disputes in the health sector arise from situations where poor communication and misunderstanding can make matters worse. Mediation creates space for open communication, where each party can express their views and feelings in a safe atmosphere. By establishing better channels of communication, mediation can reduce tension and allow both parties to repair their relationship, which is very important in the often ongoing context of health services.

Furthermore, mediation also provides flexibility in reaching solutions. In litigation, decisions are often made based on strict laws and can produce unsatisfactory results for one party. Mediation, on the other hand, allows for creativity in developing different and more personalised solutions, so that they can be tailored to the needs and desires of each party. This means that the results of mediation are more likely to be accepted by all parties involved, because they have input and participation in the decision-making process.

Another advantage of mediation is that it creates a less stressful atmosphere for patients. Dealing with health issues is stressful enough, and the litigation process often adds to the emotional burden. Mediation provides a more friendly and empathetic approach, helping to resolve issues without the pressure that often accompanies the court process. This approach is one of the reasons why many parties prefer to communicate through mediation rather than through formal legal channels.

Although mediation has many advantages, it is important to remember that its success depends on the willingness of all parties to be actively involved and open. Awareness of the value of mediation and education about the process is essential to maximise its potential.

Overall, mediation has shown itself to be an effective dispute resolution mechanism in the healthcare sector. With clear advantages, such as faster processes, lower costs, the ability to maintain relationships, flexibility in solutions, and a comfortable atmosphere, mediation is not only beneficial for the individuals involved, but also for the health system as a whole. The application of mediation in dispute resolution can help create a more harmonious and accountable environment in the health sector, directing efforts to create justice and improvement for all involved.

Laws Governing Mediation In The Health Sector

Law No. 17 of 2023 concerning Health

Article 310 of Law Number 17 of 2023 states that medical personnel or health workers who are suspected of committing errors in the practice of their profession and causing harm to patients, as well as causing disputes, shall be resolved in advance through alternative dispute resolution outside the court.

Medical disputes can be resolved through legal and ethical channels. Legal channels include civil law, criminal law, or consumer protection law. The resolution of medical disputes through civil law can be seen from the aspect of therapeutic agreements. Meanwhile, the ethical channel is through the medical and health personnel disciplinary council (Article 304 of the Health Law).

An alternative dispute resolution is a dispute resolution or difference of opinion institution through procedures agreed upon by the parties, namely out-of-court settlement by means of consultation, negotiation, mediation, conciliation, or expert assessment.

Mediation as a method of dispute resolution is increasingly recognised as an effective alternative in the health sector, especially given the complexity of the relationship between healthcare providers and patients. In this context, it is important to understand the legal framework governing mediation, specifically through Law No. 17 of 2023 concerning Health, the Criminal Code (KUHP), and the Civil Code (KUHPerdata).

Law No. 17 of 2023 concerning Health is the legal basis that provides an umbrella for regulating various aspects of health, including dispute resolution that can occur in health services. The articles in this law mention the importance of protecting patients' rights and the obligation for health workers to meet established service standards. Although the law does not explicitly mention mediation, the basic principles contained in it provide scope for the application of mediation as a method of conflict resolution in the health sector.

The Health Act emphasises the importance of collaboration between health service providers and patients, and requires the existence of a complaint mechanism that is accessible to patients. In this context, mediation can serve as a tool to resolve disputes arising from patient complaints without involving a more formal litigation process. This arrangement reflects the intention to create a more communicative and responsive resolution atmosphere for patient complaints, supporting the main objective of the Health Act to improve the quality of health services.

The Criminal Code

In addition to Law No. 17 of 2023, the Criminal Code is also relevant in the context of dispute resolution in the health sector. The Criminal Code regulates various criminal offences, including medical malpractice, which can lead to legal disputes. In this case, actions taken by health workers that harm patients can potentially lead to criminal liability.

However, the Criminal Code also facilitates the use of mediation in some cases, especially those related to violations of the law that do not result in serious physical harm. In the context of healthcare, if malpractice does not result in fatal consequences, the parties involved may choose mediation as a first step to reach a settlement. Mediation in this context allows healthcare providers to admit mistakes and compensate patients without having to face criminal proceedings.

The Civil Code

On the other hand, the Civil Code explicitly regulates contracts and civil liability, including contracts formed between healthcare providers and patients. Mediation in the context of civil disputes in the healthcare sector is important because of the number of cases involving patient dissatisfaction with the services provided, potential negligence, and claims for compensation.

The Civil Code provides the basis for dispute resolution through mediation, with the principle that the parties can seek a joint solution to avoid litigation. At the same time, the Civil Code regulates the procedure for dispute resolution through mediation, especially in the case of an agreed agreement. In the context of health services, the agreement may include an agreement on the type of services the patient will receive and the limits of the service provider's responsibility.

Recommendations For Improving Mediation Practice

Mediation practice in dispute resolution in the health sector is increasingly recognised as an effective alternative to formal litigation. However, in order to optimise the benefits of mediation and make it the primary option for handling legal disputes in the health sector, a number of recommendations need to be considered and implemented. These recommendations include strengthening the legal framework, improving training for mediators, socialising health service providers and patients, and developing mechanisms that support mediation practices.

Strengthening the Legal Framework

One important step to improve mediation practices is to strengthen the legal framework that supports this process. The law governing mediation in the health context needs to be clarified and realised in the form of more specific regulations. The development of clear operational guidelines on mediation in the health sector can help many parties understand the procedures and their rights during the mediation process. Stronger regulations will provide clear guidance on how mediation is expected to be conducted, as well as guaranteeing protection for all parties involved.

Training and Education for Mediators

The quality of the mediator greatly influences the success of the mediation process. Therefore, training and education that focuses on mediation techniques, understanding of the health sector, and good communication skills are very important. Mediators need to be equipped with knowledge of health law and issues that often arise in disputes between healthcare providers and patients. An ongoing training programme can help mediators become more effective in their role, so that they can handle a variety of situations better and help reach constructive agreements.

Dissemination to Healthcare Providers and Patients

Dissemination of information about mediation and its benefits should be widely disseminated among healthcare providers and patients. Many parties may not be fully aware of the option of mediation as an alternative to resolving disputes. Therefore, educational campaigns that include seminars, workshops, and easily accessible information materials can improve understanding of the mediation process. Clear and transparent information on how mediation works, its advantages, and how to access mediation services will provide all parties with the necessary knowledge.

Development of Support Mechanisms for Mediation

Institutional support is essential to facilitate effective mediation practices. The development of support mechanisms, such as mediation centres accessible to patients and healthcare providers, can facilitate access to mediation. In addition, health institutions can collaborate with non-governmental organisations or independent mediation agencies to provide professional and qualitative mediation services. Thus, the mediation process will be more organised and can provide fair results for all parties.

Through strengthening the legal framework, training mediators, better socialisation, and solid institutional support, mediation can become a more desirable alternative.

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