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The Role of an Advocate as a Mediator In Medical Dispute Resolution

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ABSTRACT

Mediation is an alternative with the resolution of disputes that be a way out in doing with the resolution of disputes which is considered very simple, process fast and low cost, but a mediation process were considered to eye better than the hospitals or the patients and law enforcement. As mandated in number 39 2009 article 29 who explained that "in terms of health workers is suspected of committing an omission in run profession, the negligence would have to be settled first through mediation", the mediation can be carried out in the court or litigation or outside a court or non-litigation of the court. The importance of a mediation process are needed someone who competent on legal affairs who has committed training a mediator and have passed in an exam held by the agency of education accredited the supreme court and have made an education focusing on the science of law health. The figure of an advocate who have passed training a mediator and had embarked on mastering education of law focusing on the science of law health is necessary in settling medical disputes.

Key word: *advocate, mediator, mediation medic case, litigation, non-litigation.*

1. INTRODUCTION

The role of an advocate as a mediator is necessary by the community and government agencies especially the hospital and main providers. "Based on an article 4 a code of ethics an advocate of an advocate in civil disputes has to give priority to settled with the path of peace / mediation". Which are handled an advocate of all matters of the lord shall first trying to be paid in advance in by alternative dispute settlements one of which is through a mediation process.

In the act of number 39 years in 2009 on health also set of procedure mediation for alleged medical negligence is contained in article 29 which says "in terms of health workers suspected of committing an omission in run, held negligence first has to be resolved by mediation".

The legal basis in alternative dispute resolution in Indonesia there are 4 of the 1999: the law number 30 years of arbitrage and, alternative dispute resolution the supreme court number 1 year 2016 of procedure, mediation in court article 130 HIR/RIB, the law number 48 years 2009 about power law and the legal basis alternative dispute resolution in the world of health is the law number 39 2009 about health.

A means of settling disputes may be done through the courts, ADR, and through customary institutions.Settlement procedures of dispute arranged in the book of the civil and shortcuts number 1 year 2016 about procedure mediation in a court of law that is through the courts, meanwhile the resolution of disputes that is set the law number 30 years 1999 on arbitration and alternative dispute resolution, is *alternative dispute resolution* (ADR). There are 5 including :

A. Consultation;
B. Negosiation;
C. Mediation;
D. Conciliation;
E. Expert judgment;and
F. Arbitrase

The dispute is one of the mediation mediation is mediation is the way dispute resolution negotiating process to obtain agreement of the parties with the assistance of a mediator, to produce consensus and *win-win solution,* or the sense that there are mediation on the regulation of the supreme court number 1 year 2016 about mediation which states that "the mediation dispute resolution is by negotiating process to obtain agreement of the parties with the assistance of a mediator".To complete the process through mediation with, win-win solution in a mediation process are required someone a third party are neutral in nature without partiality.At an appointed a mediator who have done training mediation and followed the test that has been certified by the supreme court.

Medical dispute is of a disagreement between the patient family or patients with of health workers, a hospital or health facilities, so that in the end is the result the end of disputed ordinary health service that do not notice and ignoring the process.[1]

Based on the description above, so issues discussed is how the resolution process mediating disputes medical in litigation and the force of law in the process and how the resolution process mediating disputes in non-medical litigation and the force of law in the process(Roesli, Syafi'i, & Amalia, 2018).

2. RESEARCH METHODS

To answer the problems that was formulated this in writing so research methods that were used in the form of research of juridical law normative, namely is using materials research with the law to break legal problem or problem to be discussed.

[1] M. Nasser, *Materi Perkuliahan Sengketa Medis Universitas Hang Tuah*, Surabaya, 21 April 2018.

The approaching we used in this writing is using *Statute Approach* and *Conceptual Approach*. *Statuteapproach* is approaching that we used by examined all the law and regulation that connected with the issues of the law that has been researching, this means that the role of the advocate as a mediator in resolving a medic case by litigation as with Perma number 1-2016 or with non-litigation as with the law of Indonesia number 30-1999 about the Alternative of finishing a case and Ablactate. Conceptualapproach is an approach that derived from views and doctrines that develops inside the science of law.By studying the doctrines in the views and in juridical science; researchers will invented ideas who gave birth to understandable s of law, legal concepts and law over of relevance to issues faced by.The understanding of these doctrines views and is an ingredient to make an argumentation law in solving issues faced by.

The writing of this journal use law that is two ingredients law material primary and law material secondary. Law is a material material primary legal binding, the current regulation in the form of anything to do with the problems discussed in this case the law number 30-1999 on an alternative form of the resolution of disputes and arbitration, shortcuts number 1-2016 about mediation procedure in court. Secondary law material that are defined as material of law who is not binding but describing on primary law material that is processed opinion or the mind experts or expert who studies a particular subject of specifically, as opinion experts in books a journal of the law seminar, the law material and the magazine internet articles.

A step the collection of law is conducted by material by means of studies the law number 30-1999 about to take the resolution of disputes and arbitration, shortcuts number 1-2016 about mediation procedure in court and thoroughly materials law that deals with subjects of a writing, of a classifying (were aligning) material of law that has been in inventory in accordance with their needs of writing and rank the (systematization) those materials of law. Step analyze material os law to the elicit a response on the matter of used for reasoning that is the deduction (from the general to the particular argument) which was started from material of law and associated with a staple the problem in 21 cases that had broken out and discussed in this research.

The framework of the theory research used an author in this journal is a theory the authority and the theory of settlement of the dispute. The authority or authority is a term commonly used in the field law public. But the truth is there is a difference between them. The authority is what referred to ”formal power”, power derived from executive power or in Jakarta area. By that the report was power from a party a particular person were unanimous. While the authority only on

a particular part of the authority. The authority is the right give authority and power of asking to obeyed.[2]

In a philosophic manner, with the resolution of disputes is a process an attempt to restore those party to the dispute in a state of.These good relations, repaid so both sides can do relation, good social relationships and legal relation with each other.The theory that looked at about it, called the theory with the resolution of disputes.[3]

3. STUDY AND DISCUSSION

The role of an advocate as a mediator of disputes is needed because the medical scientific by conducting training a mediator and has made education mastering of law focus on scientific knowledge laws of health which can help resolve disputes medical. mediation in a procedure

Of health workers arranged in article 1 the limit 1 government regulation number 36 year 2014 about of health workers, who said that: "of health workers is every single person who devotes himself in the health sector as well as having knowledge and / or skill through education in the fields of health for certain types of need the authority to conduct. health effort". And mentioned in article 11 of health workers were placed in:

1. Medical workers;
2. Clinic Psychological workers;
3. Nursery;
4. Obstetrics workers;
5. Pharmacist;
6. Public Health Worker;
7. Environmental Health Workers;
8. Nutritional energy;
9. Medic Technically Workers;
10. Medic Biotechnical Workers ;
11. Traditional Health Workers; and
12. Another Medical Workers.

A fault or negligence in discharge of an obligation professional, as the presence of the dissatisfaction with the incidence of their patients and the patient family doctor, to the public because the hope that cannot be pervaded by physicians. Other with these words there are the gap

[2] Diah Restuning Maharani, Teori Kewenangan, www.google.com, diakses tanggal 15 Oktober 2018, pukul 17.30 WITA.
[3] Salim HS dan Erlies Septiana Nurbani, *Penerapan Teori Pada Penelitian Tesis dan Disertasi*, Cetakan Ketiga, Rajawali Pers, Jakarta, 2013, h. 135.

between hope and the fact patients or by the patient A big gap between arrogant overestimation of patients and the fact that is or by patients predisposing factor, but a source of conflict that actually could have caused by of different perception between the (e.g., about his true nature nor the purpose of medical efforts, a communication that ambiguous (e.g. a certain term having a meaning differently to other individuals), and the styles of a person individual (e.g., an arrogant or doctor attitude but temperamental) patients.[4] Started with the gap that is your predecessor to the nature of the transition a conflict turned into dispute.In times of conflict turned into a dispute, will pass through several stages or condition, are:[5]

1. First, Pre conflict. stage Of the stages this is happening a a feeling of dissatisfaction to a the activity or result by one party (a patient to other parties (physician and hospitals), but this feeling as yet only be on a level perceived. Do not think so satisfied and this will be predisposing factor that would evolve being disputed. A few of the possibilities that may become the factors causing the do not think so satisfied patients is: results treatment or the act of from the doctor who is regarded as less than satisfactory even as to deteriorate; a communication that they were not satisfied with between doctor and patient, lack of explanation from parties health provider, unsatisfactory services the house men, pain caused by call or system and convenience of the hospital. Environment
2. Second, The stage conflict.In this stage, the party being disadvantaged start suggested or issuing complaints related to the discontent or displeasure although in until this stage are subjective with the sense of the word not necessarily what that are complained does indeed happened or top executives of coal mining and other parties (physician or hospital).This complaint could be passed on directly to the parties that injurious or to the other parties who would listen their complaints had been, and at this stage also the parties that injurious has known about the complaints against the act or on its services. Supposed at this stage, the parties that injurious or that which complained by patients (physician, a hospital or the management of the hospital) aware of and try to approach to know the source of the problems and clarifications on suspicion of discomfort what is felt to be by patients. During the preparatory phase of this is the act of discerning and should be a wisely from the that are complained (physician or hospital) to give an explanation to the who feel that they have harmed will position the problems. This position is in the start of positions occurring or not the occurrence of dispute when patient will receiving what is explained by a good communication clear on the problem of who is and no threw iniquity

[4] *Ibid*, h. 21.
[5] Desriza Ratman, *Mediasi Non Litigasi Terhadap Sengketa Medik*, Jakarta : Elex Media, 2012, h. 7-10.

upon doctor, the possibility of of the occurrence of dispute will reducible. If, communication at this stage failed to or fail to provide a problem, satisfaction with clarity then the complaining about will find justification out against what puzzlement, third party on family the community, the journalist on officials who authorities or writing on the mass media), it will be starting to move in to the stage of dispute.

3. Third, The stage dispute.At this stage the conflict have been discussed and may have already is in public area, this could occurs because both sides to survive at their argumentation because they felt the truth to that which is wrought or experience, as the two sides stick on each of his opinion so at this stage the occurrence of dispute.

In the practice of medicine is often the cause of dispute for a couple of things, are:[6]

1. The contents of the information (about of illnesses suffered by patients) and alternative therapy that chosen are not passed on in an incomplete manner.
2. When that information is delivered (by physicians to the patient), whether in the time before therapy that was conducted in the form of the act of certain medical. Information should be granted (by a doctor to the patient), good asked or not by patients before therapy do. It is much more certain that the information is regarding the possibility of the expansion of therapy.
3. In the manner of the delivery of information should be provided in a verbal and complete and honest and true, unless by some of the doctor the delivery of information be a disadvantage for patients, this will, information that should be given to doctors patients.
4. Who is entitled to, patient information is concerned and the next of kin if information given by doctor would only harm the patient or any expansion of therapy that unpredictable must be done to save the lives of patients.
5. To provide information is the handle or any other doctors with a clue doctor who handles.

Medical dispute derived from two words, namely disputes and medical exam. Said dispute on in English might be likened to "*conflict*" and "*dispute*", Word taught the language of different interests between both countries or more, but both can be distinguished.Used roll of conflict in the treasuries of the Indonesian language, said based on a dictionary large Indonesian language can be am going to define as " disputes strife; or a contention ", where opposition has possible to happen in yourself (internal) or a contention for the two the power or party (external). While dispute as " raised is defined as something that causes a difference of opinion, contention will go out and there is strife ", so that conflicts was said to be an a circumstance that two or more parties are faced with different interests, while feeling satisfied at the raised is one of the parties that feel aggrieved with

[6] Saftri Hartati, *Sengketa Medik : Alternatif Penyelesaian Perselisihan Antara Dokter dengan Pasien*, Diadit Media, Jakarta, 2005, h. 3.

the other party by gave rise to this problem to the surface to look for solving. Disputes may be evolved from a conflict that has been reached the escalation certain or peaked. While medical said can be defined as " including or something lang relating to medical field ", starting from the doctor of other types of health and energy under control or place where is the doctor run a profession of medicine, so that medical dispute can be defined have to the occurrence of a contention between parties the patient or the patient family with a hospital or health workers, is caused by the one of the parties who is discontented or violated the rights by other parties.[7]

In a mediation process can be completed both directly in non litigation or outside the court or litigation or on the court (Susilo & Roesli, 2018). The process of resolving the mediation outside the court or non litigation, an advocate of can be a a mediator if appointed one of the parties and approved other parties to consider taking the third side who is neutral with settling disputes with the methods mediation.In the resolution process mediation on the court an advocate of can be a a mediator if appointed by the judge in or appointed by one of the parties then other parties agree that an advocate of as a mediator accepted as a third party to assist with the resolution of disputes with the methods mediation.

Although in a mediation process there is no law in writing explains how the event mediation but to succeed a mediation process seemed so a mediator shall tersistem and structured.Moore says identify a mediation process into -belas phases, are:[8]

a. *Initial Contracts with the disputing parties*
b. Selecting Strategy to Guide Mediation;
c. Collecting and Analyzing Background lnformation;
d. Designing a Plan for Mediation;
e. Building Trust and Cooperation;
f. To start Mediation Session;
g. Defining lssue and Setting Agenda;
h. Uncovering Hidden Interests of the Disputing Parties;
i. Generating Options of Disputing Disposal;
j. Assessing Options for Settlement);
k. Final Bargaining;
l. Achieving Formal Agreement.

In addition mediation procedure on the court: first, the stage pre mediation covering the following steps. A the plaintiff registering the content of its lawsuit in a court of law then the

[7] Desriza Ratman, *Op. Cit*., h.4.
[8] Christopher W. Moore, *The Mediation Process, Pactial Strategies for Resolving Conflict*, Cetakan Kedua, Jossey-Bass, San Fraancisco, 2014, h. 211-367.

registrar will invite the parties to come the first session of times with the agenda. The first is the parties present the first time and judge an examiner matter in the meeting that is attended the parties explain basic procedure early before entering matter is to do the parties to take mediation as ordered by the provisions of article 17 paragraph (i) regulations the supreme court number 1 year 2016 about mediation procedure in court. In terms of parties of the plaintiff or defendant more than one, mediation on after the summons is done legally and worthy of although not all the present, as ordered article 17 paragraph (4) regulations the supreme court number 1 year 2016 about mediation procedure in court. Second, judge an examiner matter is obliged to explain procedure a mediation with the parties as ordered article 17 paragraph (6) regulations the supreme court number 1 year 2016 about mediation procedure in court. Material which is to be explained by a judge an examiner matter to the side is as mentioned in article 17 paragraph (7) that includes: (a) understanding and the stead of mediation (b) An obligation the parties to attend directly meetings mediation and therefore the truth of the law of mediation by not having good intention (c) the cost of that may be incurred as a result the assigning a mediator is not judges and not a court, (d) the selection of a peace deal by deed pursue peace, (e a duty the parties or power law to sign the form explanation. Judge an examiner matter be obliged to submit form a mediation with explanation of parties who echoes remarks that the parties: (a) has given the information procedure mediation in a complete manner of magistrates an examiner cases and (b) well understand mediation procedure (c) would be willing followed through mediation with good faith. Third, the parties to sign the form explanation of mediation. An explanation of procedure mediation by a judge an examiner controversy and the signing of a form explanation mediation is obliged to loaded in the news the event a trial. Fourth, the parties to the day of the trial they receive an explanation of procedure mediation or two the next day is obliged to conferring of one or more in order to choose a mediator who listed as a mediator in a court of law including the costs that might arise if they so choose a mediator is not judges and not court. And the fifth if the parties failed to have agreed and conspired together to choose a mediator, the president of the tribunal pointed judges and given priority in the judge certified a mediator. Those who do not the president of the tribunal issue the determination of containing the commandments to the parties to take mediation and the name of a mediator chosen by parties or assigned by the president of the tribunal. Seventh an examiner matter is obliged to delay the trial judge to provide the opportunity to the parties to take mediation compulsory. And those after receiving the determination of the assignment as a mediator, a mediator determine day and date the meeting mediation. Ninth a mediator over power judge an examiner matter through the registrar will notify the parties with the help of bailiff. Power was because of the meaning without law need to be made in the form of the power of attorney. Bailiff

or bailiff of a substitute for shall be obliged to perform the notice for the parties which they are commanded by a mediator judge and non-participants a mediator judge as ordered article 21 paragraph (3) regulations the supreme court number 1 year 2016 about procedure mediation in a court of law.[9]

The next stage is a mediation process in a court of law covering the following steps.The first is within the period of 5 (five the day from the determination of the command of mediation by a judge an examiner matter to the parties, the parties can transfer their resumes matter to each other and to a mediator.The preparation of resumes matter by the parties sides a and to a mediator because they did not actually is compulsory, but rather an the suggestion or voluntary in accordance the formulation of the provisions of article 24 paragraph (1) regulations the supreme court number 1 year 2016 about mediation procedure in court second, a mediator hold or gatherings of mediation sessions and doing repairement identify a mediation process into -belas phases as explain are up here. Third, shortcuts number 1 year 2016 also arranged that a mediation process can discuss problems that is not expressly stated in a lawsuit along posita or petitum discussing issues of them can help the parties reached an agreement peace.The expansion of discussing issues outside posita and petitum a lawsuit very was necessary in order to have obtained information that drive the birth of a dispute or a proceeding in the court.Fourth, on the basis of agreement of the parties a mediation process may involve an expert, a community figure or of adat figures if greater involvement it can clarify problems under negotiation and could help the parties work on those problems that under negotiation.[10]

The force of law a mediation process litigation on the court or called judicial is the result the end or an agreement in the form of peace certificate issued by a court had the strength of execution same as decisions which are with a magnitude of fixed set of laws (*Incrach*).

While the force of law mediation but is non litigation of the contractual arrangement so student described in the law number 30 years 1999 asserted that the agreement between the resolution of disputes in writing shall be final and binding the parties to be implemented in good faith and give likely to be registered with the district court within at most 30 (thirty) days since the signing.If the result of the mediation the non litigation of the registered a suit in court the results of the mediation checked by the judge in and god is dading certificate or peace, certificate so a mediation process non litigation of the inquisitorial and have the force of law as is the case in mediation litigation.Because a mediation process that is fast, cheap and simple.

[9] Takdir Rahmadi, *Mediasi Penyelesaian Sengketa Melalui Mufakat,* Edisi Pertama, Rajawali Pers, Depok 2017, h. 205 – 207.
[10] *Ibid,* h. 213.

4. CONCLUSION

Based on these chapters of our analysis of the ancients the following served a conclusion that is it about problems in the in this research, are:

1. The role of an advocate on the process mediating disputes medical training who has committed a mediator and have passed in the program magistrate health law is its role in settling disputes through the completion of medical alternative that is settled through a method of mediation.

   In the process of mediating disputes in litigation, through the completion of medical dading certificate or peace certificate and have permanent legal entity (incrach) and is the inquisitorial, as is the case of newsworthy events in the investigation began to wrap up the opener before judicial until mediation procedure. Including medical dispute resolution in non litigation, past peace deals that has been filed with a court that authorized will have official peace certificate from the court by filing a lawsuit this is what statutorily certificate owner of power that is the same as award in the process of litigation binding (incrach) and is the inquisitorial.

SUGESTIONS

1. It is a dispute with the case of medical attention should be given to more active for the government especially the law enforcement to play an active role in resolving a dispute with the methods mediation because this method is very effective, simple and does not eat any a short time if put to good use by law enforcement.
2. 2.The need for socialization to a mediation process this is necessary for the hospitals, of health workers to republic of Indonesia state police to the need for special handling to medical problem solved this beforehand with the process of mediate first between parties a hospital or health workers with a patient or family patients, based on bill no 39 years old 2009 on health article 29 indicating that: in terms of health workers is suspected of committing an omission in run profession, this neglect would have to be settled first by mediation.
3. 3.He made a new division in the hospital that specialize in medical problems with the resolution of disputes could hinder efforts to lower if the occurrence of medical disputes to be settled by quickly so that all right with intractable problems immediately and mediate the party to the dispute.

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