

THE ROLE OF HOSPITAL MANAGEMENT IN RESOLUTION OF MEDICAL DISPUTES THROUGH MEDIATION PATHS IN THE HOSPITAL

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Abstract

The legal relationship between medical personnel and patients in carrying out their services as health workers often results in incidents where health workers intentionally or unintentionally ignore the patient's rights until a problem or dispute arises. Mediation is a means of alternative dispute resolution outside of court. Medical malpractice is an action carried out by health workers regarding evil practices or not, in the case of failure to fulfill a standard that was initially determined by the profession. Regulations regarding the resolution of medical disputes through mediation are regulated in Article 29 of Law Number 36 of 2009, there are vague norms in it where the article regulates mediation but does not clearly explain what mediation is meant to be, more specifically it does not explain the penal mediation efforts involved. results in implicit in the settings, so it needs to be researched. PP No. 47 of 2021 CHAPTER III Hospital Obligations Article 27 paragraph (1) point r states that "preparing and implementing internal hospital regulations". This means that the law has mandated hospital management to create and establish their own rules regarding resolving disputes if a medical dispute occurs in the future. The method used in this research is a normative juridical research method where this is done by researching library materials or what is often said using secondary data in the form of positive law. The results of this discussion show that hospital management has established an initial mechanism for resolving medical disputes, namely mediation. As an alternative solution to problems in a very good and structured manner.

Keywords: health services, medical disputes, mediation.

INTRODUCTION

The National Goal of the Indonesian Nation as stated in the preamble to the 1945 Constitution is to protect the entire Indonesian Nation and all of Indonesia's blood and to promote general welfare, educate the life of the nation, and participate in implementing world order based on independence, eternal peace and social justice.¹

To achieve this goal, a comprehensive and sustainable national development and guarantee program is being implemented. Guaranteeing access to health is one thing that is implemented to improve the level of public health through health efforts and community empowerment supported by financial protection and equitable distribution of health services.²In order to realize equal distribution of health services, the Government is making efforts to increase the availability of adequate health service facilities, one of which is hospitals. The role of hospitals is very significant in providing health services to the community. In practice, several times this responsibility cannot be carried out optimally.

¹The 1945 Constitution of the Republic of Indonesia, Preamble.

²Ministry of Health of the Republic of Indonesia, Regulation of the Minister of Health of the Republic of Indonesia concerning Guidelines for Implementing the Healthy Indonesia Program with a Family Approach, Minister of Health Regulation Number 39 of 2016, Section Considering letter (a).

Hospitals as one of the main components providing health services to the community have a very important role because they are directly related to the provision of health services and the quality of the services provided. The implementation of medical practice, which is the core of various activities in the implementation of health efforts, must be carried out by medical personnel who have high ethics and morals, expertise and authority whose quality must continuously be improved through continuous education and training, certification, registration, licensing, and guidance, supervision and monitoring so that the implementation of medical practice is in accordance with developments in science and technology.

Doctors and dentists with their scientific tools have unique characteristics. This uniqueness can be seen from the justification given by law, namely that it is permissible to carry out medical procedures on the human body in an effort to maintain and improve the level of health. Medical procedures on the human body carried out by non-doctors or dentists can be classified as criminal acts.

If we look back several decades, especially in Indonesia, many people think that doctors are professionals who cannot be touched by the law for their profession. Conflicts in the relationship between doctors, hospitals and patients occur in a therapeutic transaction. Conflict usually occurs when the parties do not carry out their roles as expected by the other party. The patient as the party who needs help is in a weak position so that he often does not have a profitable bargaining position for himself. On the other hand, health service providers such as hospitals are often unable to establish good communication with patients and their families, as a result therapeutic transactions are not carried out well.³

From a legal aspect, the relationship between a doctor and a patient is a relationship between a legal subject and a legal subject regulated by civil law rules which is basically carried out based on a mutual agreement, so in this relationship there are rights and obligations that are reciprocal in nature. The doctor's rights are the patient's obligations and the patient's rights are the doctor's obligations. A doctor, in carrying out his obligations towards patients, is always not free from errors and mistakes which can have negative consequences for the patient. In this case, various things can arise, including, how a doctor is considered to have committed malpractice, which provisions are used as a reference, what is the role of hospital management in resolving medical disputes, whether it is Law Number 44 of 2009 concerning Hospitals or Law No. Law Number 29 of 2004 concerning Medical Practice or Law Number 8 of 1999 concerning Consumer Protection or the Civil Code.

Health services in hospitals are provided by doctors as medical personnel and health workers. Health personnel according to Law Number 36 of 2014 concerning Health Personnel consist, among others, of clinical psychology personnel; nursing staff; midwifery staff; pharmaceutical personnel; public health workers. In Article 1 point 1 of Law Number 44 of 2009 concerning Hospitals (Hospital Law) states that a hospital is a health service institution that provides complete individual health services providing inpatient, outpatient and emergency services. Article 1 point 4 of the Hospital Law states that a patient is every person who consults about their health problems to obtain necessary health services, either

³Ahmad Muchsin, Legal Protection for Patients as Consumers of Health Services in Therapeutic Transactions, Journal, <https://media.neliti.com/media/publications/37042-ID>. Accessed on October 20 2022 at 01.26 WIB.

directly or indirectly at a hospital. Furthermore, Article 1 point 2 of Law Number 29 of 2004 concerning Medical Practice (Medical Practice Law) states that doctors and dentists are doctors, specialist doctors, dentists and specialist dentists who have graduated from medical or dental education either in or abroad which are recognized by the Government of the Republic of Indonesia in accordance with statutory regulations.⁴

Furthermore, the relationship between hospitals, doctors and patients that arises from therapeutic agreements sometimes gives rise to disputes. A therapeutic transaction is a relationship between two parties who make an agreement, namely a doctor and a patient, where the doctor has the authority to carry out medical procedures for the patient's recovery. Meanwhile, hospitals are authorized to provide health services. A therapeutic transaction is an agreement made by two or more people who bind themselves to another person who made the agreement, in accordance with the provisions of Article 1313 of the Civil Code. Therapeutic transactions result in the emergence of rights and obligations for the parties involved in them, namely hospitals, doctors and patients. These rights and obligations must be fulfilled by the three parties entering into the agreement.

The basis for the validity of therapeutic transactions is Article 1319 of the Civil Code which states "for all agreements whether they have a specific name or are not well known with a specific name, they are subject to general regulations regarding agreements in general." In this way, therapeutic transactions are considered valid and in accordance with the agreement in Article 1320 of the Civil Code which states "for the validity of an agreement, four conditions are required, namely the parties' agreement, the parties' skills, the existence of a specific purpose and the existence of a lawful cause."⁵

The legal responsibility of hospital management towards its personnel means that the hospital must be responsible for the quality of the personnel who work in the hospital. Hospital responsibilities in Indonesia are regulated in Article 46 of Law Number 44 of 2009 concerning Hospitals which states that hospitals are legally responsible for all losses incurred due to negligence committed by health workers in hospitals. However, to date there are no implementation regulations that clearly explain the implementation of hospital responsibilities, as regulated in Article 46 of the Hospital Law. The result is that several times there have been inconsistencies in court decisions regarding hospital responsibility patterns. For this reason, the author is interested in raising issues about The Role of Hospital Management in Resolution Medical Disputes Through Mediation in Hospitals.

With a focus of discussion on what factors cause medical disputes in hospitals, what are the rights and obligations of patients and hospitals in health services, what is the role of the medical committee in resolving medical disputes in hospitals?

METHOD

This research is normative juridical research, namely research that reveals a problem, situation or event by providing a comprehensive, broad and in-depth assessment from the

⁴Risma Situmorang, Settlement of Medical Disputes Between Patients and Hospitals. *Omnium Salute Aegri Journal* Vol. 1, No. 1 August 2021 Pg. 1-13

⁵Ibid.

perspective of legal science, namely by examining legal principles, legal rules and legal systematics.

In collecting data, document study was used, namely by studying secondary materials, in the form of legislation, other regulations, court decisions regarding health cases as well as books, papers and journals related to what was studied. The data obtained is then analyzed qualitatively, namely a data analysis method that is not based on numbers or statistics, so that the data obtained in library research is then presented in logical sentences to obtain a description of The Role of Hospital Management in Resolution Medical Disputes Through Mediation in Hospitals.

RESULTS AND DISCUSSION

Factors Causing Medical Disputes in Hospitals

In the book *Medical Criminal Law and Malpractice (Aspects of Doctors' Criminal Responsibility in Health Services)* written by Dr.dr. Beni Satria, M.Kes., SH, MH and Dr. Redyanto Sidi Jambak, SH, MH that what is said to be Malpractice or one of the disputes in the medical world is divided into three, Criminal Mal-Practice Civil Mal-Practice Administrative Mal-Practice. However, the author briefly explains the factors that can cause medical disputes, namely:⁶

- a. Doing what according to the agreement should not be done;
- b. Doing what according to the agreement must be done but being late is not on time;
- c. Do what according to the agreement must be done but not perfectly;
- d. Lack of information;
- e. Communication: Method and quality, poor communication can cause problems, whereas good communication can reduce problems; Differences in perception of examples of the meaning of malpractice;
- f. Differences in interests;
- g. Gaps in expectations and results. This can happen because excessive trust can trigger, forgetting that doctors are also humans;
- h. The party who feels disadvantaged has expressed his dissatisfaction either directly to the party deemed to be the cause of the loss or to another party. This dissatisfaction cannot be resolved well or the response is slow. So if there is a problem or if there is a problem, immediately look for a solution, don't just wait. Sometimes if the patient responds slowly, he gets annoyed and then tells other people about it, and that person heats up the patient or his family, then the problem can become even more complicated;
- i. Developments in society can occur due to the influence of invalid information from social media;
- j. The fading/neglect of ethical values, this happens due to various reasons, including being money oriented, consumptive, forgetting oaths and codes of ethics.
- k. Competition between colleagues, this is very possible;
- l. Weak trust; and maybe there are others.

⁶H. Zaeni Asyhadie, 2018, *Aspects of Health Law in Indonesia*, 1st Ed. Cet.2 - Depok; Rajawali Press, Depok.Pg. 117-118.

Patient Rights and Obligations As well as hospitals in health services

The relationship between human rights, issues regarding health in our country are regulated in Law 23/1992, where in chapter III Article I Paragraph (1) and article 4 states: article 1 (1): "health is a state of well-being of body and soul. , and social issues that enable everyone to live socially and economically productive lives." Furthermore, article 4 states: "everyone has the same rights to obtain optimal health."

In this section we will discuss the rights and obligations of the parties in general. Discussion of this is very important because it shows that due to lack of understanding regarding rights and obligations, there is a tendency to ignore patient rights so that patient protection fades. Talking about patient rights in health services, in general the patient's rights are as follows:

- 1) The patient's right to care.
- 2) The right to refuse certain treatments.
- 3) The right to choose health workers and hospitals that will treat patients.
- 4) Right to information.
- 5) The right to refuse treatment without authorization.
- 6) The right to security.
- 7) The right to restrictions on discretionary care arrangements.
- 8) The right to terminate the maintenance agreement.
- 9) The right to twenty days of visitor rights.
- 10) The patient's right to sue or sue.
- 11) Patient's rights regarding legal aid.
- 12) The patient's right to advice regarding experiments by health or experts.⁷

Along with these rights, patients also have obligations, both moral and juridical. Some of the patient's obligations that must be fulfilled in health services are as follows:

- 1) Obligation to provide information.
- 2) Obligation to carry out the advice of a doctor or health worker.
- 3) The obligation to be frank if a problem arises in a relationship with a doctor or health worker.
- 4) Obligation to provide compensation if their actions harm doctors or health workers.
- 5) Obligation to provide compensation for services.⁸

Based on therapeutic agreements which give rise to rights and obligations for the parties, hospitals also have rights and obligations as health service providers.

According to Article 1 number 1 of Law Number 44 of 2009 concerning Hospitals, a hospital is a health service institution that provides comprehensive individual health services that provide inpatient, outpatient and emergency services.⁹

Hospitals have the task of providing complete individual health services. The meaning of complete health services is health services that include promotive, preventive, curative and rehabilitative.

⁷Bander Johan, 2005, Health Law, Doctor's Liability, PT Rineka Cipta, Jakarta. Pg.33

⁸Ibid.

⁹Article 1 number 1 Law Number 44 of 2009.

In essence, the hospital functions as a place to cure disease and restore health and this function has the meaning of responsibility which should be the responsibility of the government in improving the level of community welfare. Hospitals as a health service facility are part of the health resources that are very necessary to support the implementation of health efforts.

The implementation of health services in hospitals has very complex characteristics and organization. Various types of health workers with their respective scientific tools interact with each other. Medical science and technology are developing very rapidly and must be followed by health workers in order to provide quality services, making problems in hospitals increasingly complex.

Hospitals are run on the basis of Pancasila and are based on human values, ethics and professionalism, benefits, justice, equal rights and anti-discrimination, equality, patient protection and safety, and have a social function.

Hospital Rights are regulated in Article 61 number 7 of Law Number 11 of 2020 concerning Job Creation, as follows:

- 1) provide correct information about Hospital services to the community;
- 2) provide safe, high-quality, anti-discriminatory and effective health services by prioritizing the interests of patients in accordance with hospital service standards;
- 3) provide emergency services to patients according to their service capabilities;
- 4) play an active role in providing health services during disasters in accordance with their service capabilities;
- 5) provide facilities and services for disadvantaged or poor people;
- 6) carry out social functions, among others, by providing service facilities for indigent/poor patients, emergency services without down payment, free ambulances, services for victims of disasters and extraordinary events, or social services for humanitarian missions;
- 7) create, implement and maintain quality standards for health services in hospitals as a reference in serving patients;
- 8) maintain medical records;
- 9) providing adequate public facilities and infrastructure, including prayer facilities, parking, waiting rooms, facilities for the disabled, breastfeeding women, children and the elderly;
- 10) implementing a referral system;
- 11) refuse the patient's wishes which are contrary to professional and ethical standards as well as statutory provisions;
- 12) provide correct, clear and honest information regarding patient rights and obligations;
- 13) respect and protect patient rights;
- 14) implement Hospital ethics;
- 15) have an accident prevention and disaster management system;
- 16) implementing government programs in the health sector, both regionally and nationally;
- 17) make a list of medical personnel who practice medicine or dentistry and other health personnel;

- 18) prepare and implement internal hospital regulations;
- 19) protect and provide legal assistance to all Hospital officers in carrying out their duties;
And
- 20) enforce the entire hospital environment as a smoke-free area.

Next, Hospital Obligations are regulated in Article 30 of Law Number 44 of 2009 concerning Hospitals, as follows:

- 1) determine the number, type and qualifications of human resources in accordance with the Hospital classification;
- 2) receive compensation for services and determine remuneration, incentives and awards in accordance with statutory provisions;
- 3) collaborate with other parties in order to develop services;
- 4) receive assistance from other parties in accordance with statutory provisions;
- 5) sue the party who caused the loss;
- 6) obtain legal protection in providing health services;
- 7) promote health services in hospitals in accordance with statutory provisions; And
- 8) get tax incentives for public hospitals and hospitals designated as teaching hospitals.

The Role of Home Management in Resolving Medical Disputes in Hospitals

A hospital is an organization that, through organized professional medical personnel and permanent medical facilities, provides medical services, continuous nursing care, diagnosis and treatment of diseases suffered by patients. In the past, the function of a hospital was only to cure sick people, but in its current development it has become a health center. With the emergence of the need for continuity of service with developments in medical science and technology, the function of hospitals now also includes education and research. Hospitals are institutions that can apply business principles without violating medical ethics and protecting the poor.

If patients or consumers are not satisfied with the services provided, complaints are likely to occur. Submission of complaints can be done in writing or verbally to the service provider. Comprehensive customer complaint management is an effective way to deal with customer complaints as a tool and concept of total quality management. Poor service quality can cause complaints from customers. For this reason, a comprehensive quality management system and effective complaint management are needed.¹⁰

Based on hospital management regulations Law Number 44 of 2009 that patients, families and visitors can submit complaints directly or indirectly. Complaints can be submitted directly to service officers, room heads, and the General, Household, Legal, Public Relations and Marketing Sub-Divisions. Patients can also submit complaints indirectly through the Complaint Box.

¹⁰Hariadi R. Basics of medical ethics. In: Darmadipura, editor. Bioethical studies. Airlangga University Press, Surabaya. 2005..

Handling Complaints Based on Response Speed

Speed of Response to complaints is the speed of the Hospital in responding to complaints whether written, verbal or through the masses, media that have identified the level of risk and risk impact by determining risk grading/impact in the form of extreme (red), high (yellow), low (green) and proven by data, and follow-up on response time to complaints in accordance with risk categorization/grading/impact.

a) Red Grading Complaints

1) Understanding

Red Grading Complaints are customer complaints that tend to be related to the police, courts, death, threaten the system/sustainability of the organization, potential material losses, etc.

2) Procedures for Handling Red Grading Complaints

(a) Operations for handling customer suggestions/complaints are carried out by the General, Household, Legal, Public Relations and Hospital Marketing Sub-Divisions.

(b) Preparing facilities and infrastructure for receiving customer suggestions/complaints, by installing a Complaint Box and providing a Complaint Sheet in the box at each units services and information centers for IRJA, IRNA, and IGD Hospital.

(c) Check the Complaints Box twice a week

(d) Suggestions/complaints sourced from mass media and oral reports are then also written in the suggestion/complaint book.

(e) Public Relations Officers immediately report complaints that are serious in nature, such as having an impact on medical-legal aspects or legal aspects, to the Head of the General, Household, Legal, Public Relations and Marketing Sub-Divisions.

(f) The Head of General, Household, Legal, Public Relations and Marketing Sub-Divisions reports the complaint to the Head of Administration for follow-up by management

(g) All relevant parties in management, together with the medical committee, discuss and evaluate the complaint

(h) After a meeting with related parties, a complaint or conclusion on the complaint case is made, which is then stated in the form of a recommendation. There are 2 recommendations, namely:

(1). Internal in nature, such as punishment or sanctions against employees or employees who are affected by complaints

(2). External in nature, by following up the complaint to the relevant party which will be conveyed by Management.

(i) Recommendations are filled in the follow-up column on the Handling Sheet and returned to the Public Relations Officer.

(j) If the problem has been resolved, the handling/follow-up sheet will be marked "close" or "C".

(k) Follow-up for red grading is carried out a maximum of 1x24 hours.

b) Yellow Grading and Green Grading Complaints

1) Understanding

Yellow Grading Complaints are customer complaints that tend to relate to media coverage, potential material losses, etc. Meanwhile, Green Grading Complaints are customer complaints that do not cause significant losses either materially or immaterially.

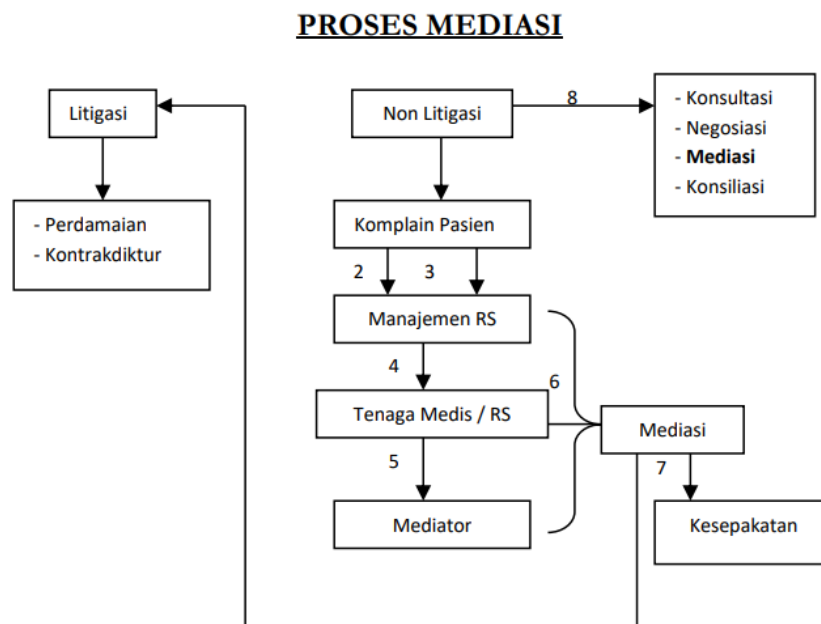
2) Procedures for Handling Yellow Grading Complaints

- (a) Operations for handling customer suggestions/complaints are carried out by the General, Household, Legal, Public Relations and Marketing Sub-SectionsHospital.
- (b) Preparing facilities and infrastructure for receiving customer suggestions/complaints, by installing a Complaint Box and providing a Complaint Sheet in the box at each service unit and information center.
- (c) Check the Complaints Box twice a week
- (d) Suggestions/complaints originating from the mass media and oral reports are then written on the Complaint Sheet
- (e) Record all suggestions/complaints that come in either through the Complaint Box or from the mass media or verbal reports in the Complaint Book and Handling Sheet.
- (f) Submit the Handling Sheet to the General Administration (Incoming Letter) to be put on the agenda and given a Disposition Sheet
- (g) The Complaint Sheet which has been given a disposition sheet is submitted to the Deputy Director according to each problem.
- (h) If the disposition has been received from the Deputy Director, immediately deliver 1 file of Complaint Sheet (consisting of the Complaint Sheet, Handling Sheet and Disposition Sheet) in accordance with the contents of the disposition
- (i) The relevant Work Unit fills in the follow-up actions that have been taken in the follow-up column on the Handling Sheet and returns them to the Public Relations Officer
- (j) The Public Relations Officer confirms the Work Unit's follow-up to those giving suggestions/complaints by telephone.
- (k) If the problem has been resolved, the handling/follow-up sheet will be marked "close" or "C".
- (l) Follow-up for yellow grading takes a maximum of 3 working days.
- (m) Follow-up for green grading takes a maximum of 7 working days.

Management Strategy in Handling Complaints

Based on the regulations of the hospital where the author serves, if there is a medical dispute it can be resolved by mediation, in accordance with article 29 of Law Number 36 of 2009 concerning Health, in the event that medical personnel are suspected of committing negligence in carrying out their profession, the negligence must be resolved first through mediation. Mediation process at Dr. TNI-Naval Hospital. Komang Makes lasts for 7 (seven)

days, the following is a chart of the medical mediation process at the Dr. Indonesian Navy Hospital. Komang Makes.



Information:

1. There is a sense of patient dissatisfaction with services and medical procedures. The parties to the dispute are the patient and the patient's family who feel disadvantaged by the actions taken by medical personnel, or the medical services provided by the hospital. Indonesian Navy Dr. Komang Makes.
2. Conveying patient dissatisfaction to Hospital management Indonesian Navy Dr. Komang Makes.
3. Patients who feel disadvantaged by medical personnel or services provided by the hospital Indonesian Navy Dr. Komang Makes come to the hospital Indonesian Navy Dr. Komang Make to convey his dissatisfaction to the Hospital management Indonesian Navy Dr. Komang Makes.
4. Hospital management Indonesian Navy Dr. Komang Makes receive patient complaints.
5. Hospital management Indonesian Navy Dr. Komang Makes After receiving complaints from patients who feel disadvantaged, the hospital management will submit a complaint to the party concerned.
6. Submitting a patient's complaint to the party concerned, for example a patient complains to a surgeon at the hospital and then the management conveys to the surgeon that there is a patient who is dissatisfied with the medical treatment carried out by the surgeon.
7. Appoint a mediator to conduct mediation.
8. Meeting of the parties by the Mediator.
9. For patients who complain, for example to a surgeon, the mediator will call the surgeon and bring him together with the patient who feels aggrieved to carry out mediation, then the surgeon provides an explanation of the medical actions that have been carried out,

for example the risks that will be experienced by the patient and even other matters. which is undesirable, if the patient has not received an explanation from the surgeon. Then the mediator calls the ethics committee or medical committee to call all specialist doctors and senior doctors, hospital management and patients to provide an explanation of the medical services and medical procedures that have been carried out by the hospital.

10. Peace
11. Patients who understand and accept the explanation given by medical personnel agree that the medical dispute they are experiencing has been resolved or an agreement has been reached. The parties who have reached a peace agreement declare in writing their agreement to the agreement reached and then sign it by both parties. Before it is signed by the parties, the mediator is obliged to check the contents of the peace agreement so that there is no agreement that makes it easier or burdensome for either party.
12. Litigation Track
13. If the mediation process is carried out by the mediator and the parties do not find an amicable agreement, they will take the litigation route and start the case from the beginning.

CONCLUSION

1. There are many kinds of causes that cause medical disputes, some of which are a lack of good communication between medical staff and patients or patient families, so that the information conveyed is often misinterpreted by the patient's family. Furthermore, society still thinks that every hospital and doctor must be able to treat a patient's illness until they recover. In fact, what hospitals and medical personnel do is to strive for health for patients with the knowledge and ethics that have been studied by doctors and medical personnel.
2. The author has explained the rights and obligations of hospitals, doctors and patients in detail in the discussion points which of course refer to applicable laws, such as medical practice law and hospital law. Law Number 44 of 2009.
3. PP No. 47 of 2021 CHAPTER III Hospital Obligations Article 27 paragraph (1) expressly instructs that every hospital under management must make rules or standards regarding the resolution of disputes or problems arising as a result of health services. Article 29 of Law Number 36 of 2009 clearly instructs that if there is a medical problem resulting from health services, the first step to be taken is mediation, which of course has the domain and scope of hospital management.

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