

RESTORATIVE JUSTICE APPROACH IN LEGAL PROTECTION FOR MEDICAL PERSONNEL AND PATIENTS

Gunawan Widjaja

Senior Lecturer Faculty of Law Universitas 17 Agustus 1945 Jakarta
widjaja_gunawan@yahoo.com

Abstract

The Restorative Justice approach to legal protection for medical personnel and patients is an alternative to conflict resolution that prioritises dialogue, mediation and restoration of relationships between the parties involved. This model focuses on fulfilling the needs of victims, holding perpetrators accountable, and improving social relations without relying entirely on formal, retributive legal processes. In the context of health care, this approach provides a more humane and effective solution to minimise conflict between medical personnel and patients, especially in cases of misunderstanding or suspected malpractice. By promoting transparency, openness, and empathy, Restorative Justice contributes to improving the quality of health services while maintaining the integrity of the medical profession, and encouraging a more comprehensive sense of justice for all parties.

Keywords: Restorative Justice Approach, Legal Protection, Medical Personnel and Patients.

Introduction

Medical personnel are the spearhead in public health services who have a great responsibility in providing professional health services according to applicable standards. Medical personnel are individuals with expertise in the health sector who have received formal education and professional certification that is recognised to provide health services. They consist of various professions such as doctors, nurses, midwives, and other health workers who have authority according to their respective fields (Curtis-Fawley & Daly, 2005). In practice, medical personnel play an important role in the diagnosis, treatment, prevention of disease, and rehabilitation of patients. The services provided by medical personnel are carried out in accordance with ethical and legal standards, thus demanding accuracy, professionalism, and high responsibility (Zehr & Mika, 1998).

The existence of medical personnel not only impacts the well-being of individuals but also in maintaining social stability. In emergency situations or disease outbreaks, medical personnel become the frontline who work tirelessly to ensure public safety. However, complex working conditions, potential medical errors, or patient dissatisfaction often lead to legal conflicts involving medical personnel (Latimer et al., 2005). On the other hand, patients as those who receive medical services require legal protection to ensure justice when there are allegations of malpractice or substandard services (Daly, 2002).

Legal conflicts between medical personnel and patients not only add to the psychological burden for the parties, but also have the potential to disrupt health service efforts at large. Legal settlements that prioritise retributive approaches - focusing on punishment - are often unable to provide adequate solutions for both parties. This model sometimes only worsens the relationship, creates prolonged tension, or even ignores efforts to restore trust between medical personnel and patients (Sherman & Strang, 2007).

The Restorative Justice approach, which focuses on dialogue, healing and reconciliation, is one viable solution in cases involving medical personnel and patients. Restorative Justice prioritises settlement through mediation between the parties involved, with the aim of achieving balanced justice, improving good relations, and maintaining the dignity and rights of all parties. This approach also has the potential to help reduce the negative stigma against medical personnel that often arises from legal processes that tend to blame (Roach, 2000).

Although Restorative Justice has been recognised in various aspects of the law, its application in the legal protection of medical personnel and patients still requires special attention. The absence of a specific legal framework to integrate this approach in the medical domain is one of the major challenges (Brooks, 2019). Therefore, it is important to explore how Restorative Justice can be applied in legal protection efforts so as to ensure justice, maintain good relations, and avoid protracted and destructive legal processes.

Against this background, this study seeks to answer how the Restorative Justice approach can be effectively applied in providing legal protection for medical personnel while fulfilling the rights and interests of patients.

Research Methods

The study in this research uses the literature method. The literature research method is an approach used to collect, assess, and integrate the results of previous research in order to obtain a comprehensive understanding of a particular topic. This process involves searching and critically analysing literature sources such as scientific journals, books, research reports, and other official documents (Yuan & Hunt, 2009); (Petticrew & Roberts, 2006). The main purpose of this method is to identify patterns, trends, as well as gaps in existing knowledge, so as to provide a strong theoretical foundation for future research or to develop policy recommendations. Thus, the literature research method not only helps in formulating a conceptual framework, but also increases the validity and reliability of findings by relying on proven evidence (Boote & Beile, 2005).

Results and Discussion

Application of Restorative Justice in Legal Protection for Medical Personnel

Restorative justice is a legal approach that focuses on restoring relationships damaged by an offence, emphasising dialogue, peaceful resolution and humane justice. It seeks to avoid imposing sanctions that are retributive or simply punish the perpetrator. In the context of medical personnel, restorative justice is relevant due to the high-risk nature of their work, especially in relation to medical errors (malpractice) or conflicts with patients and their families. Its application aims to maintain good relations between medical personnel, patients, and society without overriding legal justice (Van Ness & Strong, 1997).

Legal protection for medical personnel through restorative justice can prevent stigmatisation and direct punishment that often ignores the complexity of the situation on the ground. In many cases, medical errors or conflicts that occur are not always motivated by bad intentions, but rather due to stressful professional conditions, heavy workloads, or lack of adequate health facilities. This approach allows medical personnel suspected of wrongdoing to communicate directly with the victim or their family to openly explain the situation, apologise, and try to find the fairest solution (González, 2012).

The restorative justice process also provides space for the victim or the victim's family to express their feelings, get clarification, and obtain recognition for the losses they have experienced. With this mediation or dialogue, the victim can understand that medical errors are not absolutely intentional, so it does not need to lead to a protracted legal process. Ultimately, the main goal of restorative justice is to reach an agreement that benefits both medical personnel and victims, emphasising psychological and social healing (Zehr & Mika, 1998).

The main advantage of this approach is to maintain the reputation and sustainability of the medical profession. Often, legal cases involving medical personnel can reduce public trust in health institutions and professionals. With the application of restorative justice, medical personnel facing allegations or suspected offences can continue to perform their duties without having to quit their profession due to excessive legal pressure. This also helps maintain the stability of the public health system as a whole (Bazemore & Umbreit, 1995).

In addition, the application of restorative justice in the protection of medical personnel is very relevant to the ethical principles of the health profession. This principle encourages conflict resolution in a wise manner, considers moral aspects, and prioritises the interests of patients and society. Restorative justice is in line with these values because it does not only focus on legal aspects, but also humanitarian and social justice aspects. This creates more conducive conditions for medical personnel to work without fear of facing excessive legal risks (Groh & Linden, 2011).

However, the application of restorative justice does not necessarily ignore the formal legal process. Restorative justice can be used as an initial or alternative approach before the case goes to court. If an amicable agreement between the medical personnel and the victim is reached, then the legal process can be stopped or diverted to a more humane settlement. However, if restorative justice does not achieve the expected results, the formal legal process can still be continued in accordance with applicable regulations (Llewellyn & Howse, 1999) .

The implementation of restorative justice requires clear regulatory support and a legal framework that allows this approach to be carried out effectively. The government and related parties must regulate the mechanism of mediation or dialogue between medical personnel and victims based on the principles of justice. In addition, medical personnel need to receive special training on restorative justice so that they understand how to deal with conflicts professionally, while respecting the rights of patients and victims' families (Clamp & Doak, 2016) .

The involvement of a third party such as a professional mediator or mediation institution is also important to ensure that the restorative justice process runs smoothly. The mediator is tasked with maintaining neutrality in conflict resolution, helping both parties reach an agreement, and avoiding domination or pressure from either party. This is important because in many cases, the power imbalance between medical personnel and patients is often an obstacle to achieving a fair solution (Boote & Beile, 2005) .

With an approach that focuses on dialogue, recovery, and peaceful resolution, restorative justice has the potential to be a better legal solution in providing protection for medical personnel. This approach not only safeguards the rights of medical personnel, but also provides justice for patients and their families. In the long run, the application of restorative justice can increase mutual trust between the public and medical personnel, create a more harmonious atmosphere in health services, and support the health system to develop better.

Application of Restorative Justice in Legal Protection for Patients

Restorative justice is an approach in the legal system that focuses on restoring harm and empowering all parties affected in legal conflicts, including victims, perpetrators, and communities. In the context of legal protection for patients, this approach is relevant for resolving issues arising from the negligence of medical personnel, health service failures, or conflicts between patients and health institutions. Restorative justice allows for a more humane resolution, prioritising dialogue and agreement to reduce the impact of trauma on patients and other stakeholders (Payne & Welch, 2015) .

In the world of healthcare, legal conflicts often occur when patients feel their rights have been violated. For example, there are cases of malpractice or medical treatment that are deemed to violate professional standards. The application of

restorative justice here can provide a more constructive solution than traditional approaches that tend to be retributive - punishing the perpetrator without focusing on restoring the victim's harm. With the facilitation of mediation, restorative justice allows for acknowledgement of responsibility on the part of the perpetrator while openly listening to the patient's grievances, resulting in a fair settlement for both parties (Wasson et al., 2020) .

Patients need not only legal protection, but also physical and psychological healing after an adverse event. Restorative justice seeks to remove the stigma and pressure that usually accompanies the formal legal process in court. Through this alternative approach, patients can feel more heard and obtain justice without being trapped in a long and tiring legal process. In addition, perpetrators, such as medical personnel or health institutions, are given the opportunity to make amends without losing their reputation. (Baldwin-Ragaven, 2010) .

Another advantage of implementing restorative justice is that it promotes systemic change in health care. Conflicts between patients and medical personnel are often triggered by a lack of communication, unclear procedures, or a lack of transparency. By providing a platform for facilitative dialogue, restorative justice can be a tool to detect and address systemic problems that hinder the quality of healthcare. Namely, it encourages health institutions to focus more on system improvement, instead of just resolving individual legal issues (Hyman et al., 2010) .

However, implementing restorative justice also has its challenges. One of the main challenges is resistance from perpetrators or health institutions who are concerned that this approach may embarrass them or expose wrongdoing. Therefore, education about the benefits of restorative justice for all parties needs to be developed, including for medical personnel, patients, and the government. Restorative justice should be understood as an approach to resolve conflicts peacefully, not as a tool for excessive blame (Wachtel & McCold ., 2003)

Regulations that support the application of restorative justice in the health context are also needed. In Indonesia, the concept of restorative justice is still developing and has not been fully integrated into the general legal system, especially in the health sector. The existence of adequate policies and regulations will encourage better application of this approach, including in specific cases involving patients. Support from the government, health professional organisations, and civil society is key to the optimal implementation of restorative justice (Drost et al., 2015) .

In addition, cross-sector collaboration is essential to develop restorative justice schemes for patients. The role of professional mediators, psychologists, and advocates can help facilitate communication between patients and medical personnel or health institutions. With strong collaboration, restorative justice will not only be a legal solution, but also a holistic approach that takes into account the health, psychological, and social aspects of patients (Ptacek, 2010) .

Overall, the application of restorative justice in legal protection for patients is a step forward that benefits all parties involved. This approach not only ensures a more humane justice, but also creates space for systemic changes that support high-quality healthcare. With proper regulation and education, the application of restorative justice can be one of the main solutions to resolve legal conflicts in the medical world in a productive and sustainable manner.

Benefits and Challenges of Implementing Restorative Justice Approach in Legal Protection for Medical Personnel and Patients

Restorative justice is a legal approach that emphasises dialogue, reparation and problem solving between the parties involved in a legal dispute. In the context of legal protection for medical personnel and patients, this approach can provide significant benefits. One of the important benefits is restoring the relationship between medical personnel and patients that may have been fractured by medical events. The dialogue process in restorative justice helps to identify the root of the problem and find a solution that is fair to all parties (Wexler, 2018).

For medical personnel, restorative justice provides a more humane legal protection. Rather than facing the often lengthy and stressful process of litigation, this approach allows medical personnel and patients to discuss issues directly. Medical personnel can provide a more open explanation of their medical actions, and patients have the space to air their grievances without feeling ignored. This can alleviate potential conflicts, which often arise due to a lack of effective communication between the two parties (Harris, 2006).

From the patient's perspective, restorative justice offers the opportunity for faster and more relevant reparations. In conventional approaches, filing lawsuits often takes a long time, leaving aggrieved patients with a long wait for justice. Restorative justice speeds up the resolution process by focusing on practical, recovery-orientated solutions. In addition, this approach gives patients the right to hear direct explanations from medical personnel, so that they better understand the situation (Braithwaite, 2018).

Another benefit is the creation of a win-win solution approach that prevents prolonged conflict. Restorative justice seeks to find a middle ground that satisfies the needs of both parties, so that both medical personnel and patients feel valued in the legal process. The approach reduces the social stigma that often arises from medical conflicts, where medical personnel are often perceived as negligent, while patients may be perceived as too demanding. With a restorative approach, each party can undergo the legal process in a more comfortable atmosphere (Hyman et al., 2010).

However, the implementation of restorative justice is not without its challenges. One of the main challenges is the lack of understanding among the public, including medical personnel and patients, on how this approach works. Many people still think

that legal settlements should be done formally through the courts. Ignorance of the benefits of restorative justice can lead to resistance, making it difficult to effectively implement this approach within the existing legal system (Liebman & Hyman, 2010).

In addition, the success of restorative justice depends on the willingness of the parties to dialogue and find solutions together. If one party is not willing to cooperate, for example, medical personnel are not willing to provide explanations, or the patient refuses to discuss, then the goal of restorative justice may not be achieved. Mutual trust is key to this approach, but building trust is not always easy, especially in conflict situations that are already very tense (Hurley, 2009).

Another challenging factor is the availability of competent facilitators to run the restorative justice process. Facilitators play an important role in ensuring that dialogue is fair and conducive. Unfortunately, the number of facilitators trained to use this approach is still limited, so the implementation of restorative justice can be constrained, especially in areas that do not have adequate access to legal experts (Stubbs, 2004).

Restorative justice approaches also require support from clear regulations that are integrated into the national legal system. Without a supportive legal framework, this approach can face major challenges in practical implementation. In some cases, medical personnel and patients may feel hesitant to use restorative justice because they are afraid of compromising their other legal rights. Therefore, it is important for the government to strengthen the legal basis that supports this approach (Curtis-Fawley & Daly, 2005).

Conflicts of interest can also be a challenge in the application of restorative justice. In the handling of certain medical cases, there are often third parties, such as insurance companies or health institutions, that are directly or indirectly involved. The presence of these parties can sometimes complicate the dialogue process, especially if they have different interests from the patient or medical personnel. To solve problems like this, a more comprehensive approach is needed (Zehr & Mika, 1998).

On the other hand, restorative justice has the potential to reduce the criminalisation of medical personnel. In some cases, unintentional medical actions are often brought into the criminal realm. Restorative approaches can help avoid this by providing an alternative resolution mechanism that focuses more on recovery than punishment. It is important that medical personnel do not feel legally threatened whenever they face claims from patients (Latimer et al., 2005).

Overall, restorative justice brings a breath of fresh air in legal protection for medical personnel and patients. This approach enables conflict resolution in a more peaceful, humane, and solution-orientated manner. However, existing challenges, such as lack of understanding, resistance, and technical barriers, must be overcome through capacity building, regulatory development, and integration between various parties. By doing so, restorative justice can be an effective approach in maintaining balance and justice between medical personnel and patients in Indonesia.

Conclusion

The Restorative Justice approach to legal protection for medical personnel and patients offers a model of conflict resolution that prioritises dialogue and restoration of relationships over punishment. Restorative Justice aims to create a more humane atmosphere of justice by focusing on the needs of victims, perpetrators, and the wider community. In the context of medical personnel and patients, this approach allows for mediation and peaceful dispute resolution, thereby minimising prolonged conflict and accelerating the recovery of both parties.

Furthermore, this approach provides space for medical personnel to explain the conditions and situations that occurred so as to reduce misunderstandings and provide better insight to patients and their families regarding the medical actions taken. The mediation presented in Restorative Justice places medical personnel and patients as equals in a constructive dialogue, where patients can express their grievances directly and medical personnel have the opportunity to provide clarifications or apologies when necessary. This approach can rebuild trust between patients and medical personnel and avoid protracted legal action.

Finally, Restorative Justice provides a more efficient and harmonious alternative solution in resolving disputes between medical personnel and patients. By reducing the involvement of formal litigation and focusing on healing and restoration, this approach can also reduce the psychological burden experienced by both parties. In addition, this approach is expected to improve ethical compliance and professionalism in medical practice, as well as create a health care environment that is more qualified and empathetic to the needs of patients.

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