

Restorative Justice in Health Disputes Between Patients and Hospitals from an Inclusive Justice Perspective

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Abstract

The purpose of this research is to analyze the implementation of Restorative Justice in enhancing the resolution of healthcare disputes between patients and hospitals, considering an inclusive legal framework, and identifying potential major obstacles. The research method used is normative research with a focus on legislative analysis and legal literature to explore the concept of Restorative Justice within an inclusive legal framework for resolving healthcare disputes between patients and hospitals. The researcher employs literature review and document analysis techniques to gather and analyze the legal data required for this research. This result is the implementing Restorative Justice for resolving healthcare disputes between patients and hospitals within an inclusive legal framework is an effective approach for resolving healthcare conflicts. Restorative justice emphasizes relationship restoration and mutual understanding over punishment and can be applied in cases of malpractice, patient dissatisfaction, or violations of medical ethics. To be successful, relevant regulations such as the Arbitration Law in Indonesia, trained mediators, and the involvement of all relevant parties are necessary. Protecting patients' rights, transparency, accountability, and effective communication should also be a focus. By implementing restorative justice and an inclusive legal framework, the resolution of healthcare disputes can be more effective, fair, and can improve the relationship between patients and hospitals.

Keywords: *Healthcare Disputes; Hospital; Patient; Inclusive Law; Restorative Justice.*

1. INTRODUCTION

Legal systems in various countries have experienced significant developments in understanding and handling health disputes between patients and hospitals. This change is reflected in the concept of Restorative Justice which is increasingly receiving attention in the field of health law. In recent decades, health issues have become increasingly complex topics and often trigger conflicts between patients and health care providers, especially hospitals. Patient dissatisfaction with medical services, unsatisfactory diagnoses, medical errors, and high treatment costs are often the root of disputes. On the other hand, hospitals and health service providers also face challenges in maintaining service quality while maintaining

their financial sustainability.¹ It is within this framework that the concept of Restorative Justice becomes relevant. Restorative Justice emphasizes the active role of all parties involved in the conflict to find a just and sustainable solution. Most countries have laws and regulations that regulate the rights and obligations of patients and hospitals in the context of resolving health disputes.

For example, in the United States, there are laws such as the Health Insurance Portability and Accountability Act (HIPAA) which protect patient privacy, while in the UK there is the National Health Service (NHS) Constitution which sets out the rights and obligations of patients and health service providers.² In addition, the concept of Restorative Justice has been introduced in various jurisdictions as a tool to resolve health disputes more inclusively. In the context of inclusive law, legislation creates a framework that ensures that all parties involved in a health dispute have equal access to the dispute resolution process. The aim of inclusive law is to ensure that social, economic or cultural differences do not become an obstacle for parties in conflict to obtain justice.³ In this research, we will explore how the principles of Restorative Justice and inclusive law can be integrated in resolving health disputes between patients and hospitals.

One of the main challenges in handling health disputes is finding mechanisms that allow patients and hospitals to actively participate in dispute resolution.⁴ Traditionally, dispute resolution is often dominated by the judicial process, which often tends to ignore the relationship between the conflicting parties. In many cases, patients and hospitals feel that the judicial process does not provide adequate and fair solutions. Restorative Justice offers a more inclusive alternative by placing attention on dialogue, restoration and restoration of relationships damaged by disputes.

Additionally, inclusive laws underscore the importance of maintaining equal access for all individuals, regardless of their background.⁵ In the context of health disputes, this means that both the patient and the hospital must have an equal opportunity to submit a claim or respond to a claim. Inclusive legislation will ensure that patients who may be in a more vulnerable position, such as individuals with physical or economic disabilities, also have equal access to the dispute resolution process. The importance of this research can also be seen from the challenges faced by the current health dispute resolution system. Some patients may have difficulty accessing the justice process due to high costs or lack of knowledge about the legal system. On the other hand, hospitals may face significant financial burdens due to prolonged litigation. In this context, Restorative

¹ Nadifa Maulani Fadilla and Winny Setyonugroho, "Sistem Informasi Manajemen Rumah Sakit Dalam Meningkatkan Efisiensi: Mini Literature Review," *Jurnal Teknik Informatika Dan Sistem Informasi* 8, no. 1 (2021).

² Caroline A B Redhead Et Al., "Relationships, Rights, And Responsibilities: (Re)Viewing The Nhs Constitution For The Post-Pandemic 'New Normal,'" *Medical Law Review* 31, no. 1 (February 2023): 83–108, <https://doi.org/10.1093/medlaw/fwac028>.

³ Silvana Secinaro et al., "The Role of Artificial Intelligence in Healthcare: A Structured Literature Review," *BMC Medical Informatics and Decision Making* 21, no. 1 (2021): 1–23, <https://doi.org/10.1186/s12911-021-01488-9>.

⁴ Teguh Anindito, "Penyelesaian Perselisihan Pelayanan Kesehatan Bagi Pasien Rumah Sakit Yang Berkeadilan," *Cakrawala Hukum* 22, no. 1 (2020), <https://doi.org/https://doi.org/10.51921/chk.v22i1.87>.

⁵ Francisco Perales et al., "You, Me, and Them: Understanding Employees' Use of Trans-Affirming Language within the Workplace," *Sexuality Research and Social Policy* 19, no. 2 (June 2022): 760–76, <https://doi.org/10.1007/s13178-021-00592-9>.

Justice can be an effective tool to reduce the financial and emotional burden faced by all parties involved in health disputes.

In addition, in the context of this research, it needs to be emphasized that an inclusive legal perspective also includes efforts to listen to patients' voices and involve them actively in the dispute resolution process. This is in accordance with the principles of Restorative Justice which emphasize the importance of listening to all parties involved in the conflict and finding adequate solutions for all parties. Patients have the right to be respected and heard, and this research will explore how dispute resolution mechanisms can facilitate patient participation in the process. Therefore, the problem formulation in this research is as follows:

1. How can the implementation of restorative justice improve the resolution of health disputes between patients and hospitals within an inclusive legal framework?
2. What are the main obstacles in implementing a restorative justice approach in resolving health disputes?

With a better understanding of the role of Restorative Justice and inclusive law in resolving health disputes between patients and hospitals, it is hoped that more effective and fair solutions can be identified to resolve conflicts in the context of health services. In the long term, it is hoped that this research can contribute to improving a more inclusive health dispute handling system, which prioritizes justice, restoration of relationships, and active participation of all parties involved.

The research method used for this research is a normative research method. Normative research will focus on the analysis of relevant legislation in the context of health dispute resolution,⁶ as well as exploring the concept and principles of restorative justice within an inclusive legal framework. The legislative approach is the main basis for this research, by identifying and analyzing the laws and regulations that apply in resolving health disputes. This involves reviewing laws, regulations and policies related to patient rights, medical ethics and dispute resolution mechanisms in hospitals. Sources of research materials used will include legal documents such as laws, regulations, and government policies, as well as relevant legal literature, case studies, and expert views in the fields of law and health. Data collection techniques will focus more on literature study and document analysis, including comparative legal analysis, and collecting relevant legal information.

The data analysis technique in this research requires researchers to compare and interpret the legal data collected, identifying gaps in legislation that may need to be revised or corrected to support a restorative justice approach in resolving health disputes between patients and hospitals. The analysis will also focus on key aspects of inclusive law and how it is implemented in the context of restorative justice. Thus, this research will use normative research methods with a statutory approach, rely on research material sources such as legal documents and literature, and apply data collection and

⁶ E. N. Butarbutar, *Metode Penelitian Hukum Langkah-Langkah Untuk Menemukan Kebenaran Dalam Ilmu Hukum* (Bandung: PT Refika Aditama, 2018).

analysis techniques that are in accordance with the research objectives in the context of resolving health disputes using a restorative justice approach and inclusive law.

2. ANALYSIS AND DISCUSSION

2.1 The Implementation of Restorative Justice in Resolving Health Disputes between Patients and Hospitals within an Inclusive Legal Framework

This Implementation of restorative justice in resolving health disputes between patients and hospitals can be an effective approach within an inclusive legal framework. Restorative justice, or restorative justice, is an approach that focuses on restoring relationships and mutual understanding, not just punishment.⁷ In a healthcare context, this could include cases of malpractice claims, patient dissatisfaction, or violations of medical ethics. Understanding the application of restorative justice in resolving health disputes is very important. The restorative justice approach provides a foundation for open dialogue between all parties involved in the dispute, including the patient, the patient's family, medical staff, and the hospital.⁸ In an inclusive legal framework, the implementation of restorative justice requires support from relevant regulatory aspects. One of the relevant laws and regulations in this context is Law Number 30 of 2009 concerning Arbitration and Alternative Dispute Resolution This law provides an important legal basis for the use of mediation and other alternative processes in resolving health disputes. With regulations that allow the use of a restorative justice approach, parties involved in a dispute can more effectively communicate and seek fair and dignified solutions, while promoting a healthy and harmonious recovery for all parties involved.

In practice, when a dispute occurs between a patient and a hospital, a restorative justice approach can be an effective solution by involving a mediator or facilitator who has been trained in this process. The legal basis for the involvement of a mediator in dispute resolution can be found in Article 5 of the Arbitration Law. The role of the mediator is very important in helping all parties involved in the dispute to communicate with each other, express their problems, listen to each other, and together find a fair and satisfactory solution.⁹ In the context of health disputes, mediation has great potential to facilitate important conversations about what happened, its impact, and how the parties can work together to improve a situation that may have given rise to dissatisfaction or disagreement. Mediators can help create an environment where patients and hospitals can feel that their voices are heard, and together reach agreements that promote improvements in health care and better relationships in the future.

⁷ Dewi Setyowati, "Memahami Konsep Restorative Justice Sebagai Upaya Sistem Peradilan Pidana Menggapai Keadilan," *Pandecta Research Law Journal* 15, no. 1 (June 2020): 121–41, <https://doi.org/10.15294/pandecta.v15i1.24689>.

⁸ Cat Pausé, George Parker, and Lesley Gray, "Resisting the Problematisation of Fatness in COVID-19: In Pursuit of Health Justice," *International Journal of Disaster Risk Reduction* 54, no. January (2021), <https://doi.org/10.1016/j.ijdrr.2020.102021>.

⁹ Sulaeman Sagoni, Rahmi, and Sitti Hijrah, "Efektivitas Hukum Terhadap Mediasi Dalam Penyelesaian Sengketa Tanah Di Kelurahan Cina, Kecamatan Pammana, Kabupaten Wajo," *Legal Journal of Law* 2, no. 11 (2023): 79–90.

It is also important to ensure that the law provides adequate protection to patients in the context of restorative justice processes. In many jurisdictions, laws regarding health and patient rights are well regulated. For example, in Indonesia, Law Number 36 of 2009 concerning Health (*Health Law*) provides a legal framework that regulates patient rights, including their right to receive safe and quality health services. This provides a strong legal basis for patients to submit complaints or disputes regarding the health services they receive. In an inclusive legal context, patients must have a clear right to participate in the restorative justice process and ensure that the principles of justice are well maintained and upheld in all aspects of health services. In resolving health disputes, a restorative justice approach can utilize independent third parties to strengthen the integrity and transparency of the process. These third parties may take the form of medical ethics committees, regulatory bodies, or patient rights advocacy groups.¹⁰

In an inclusive legal framework, it is important for statutory regulations to provide support for the establishment and operation of these third parties. For example, Law Number 29 of 2004 concerning Medical Practice (*Medical Law*) regulates the formation and function of the Medical Ethics Code Commission which can act as a third party in assessing medical ethics disputes. The role of this third party is very important to ensure that the restorative justice process runs with optimal fairness and transparency, so that all parties involved can feel that justice has been upheld. In implementing restorative justice in resolving health disputes, an inclusive law-based approach plays a crucial role in understanding and appreciating the cultural and social aspects that influence each case. Restorative justice, by its very nature, emphasizes the importance of understanding the unique context and specific needs that each individual has in a health dispute situation.¹¹

In many cultures, the patient's family often has a very significant role in health care decisions. Therefore, laws and regulations must be designed in such a way as to enable family involvement in the restorative justice process. In addition, to ensure effective participation of all parties, it is sometimes necessary to implement adequate communication methods, such as translators or interpreters, so that all parties involved can communicate effectively and understand the information provided. In implementing restorative justice in resolving health disputes, transparency and accountability are important aspects that need to be considered. The restorative justice approach aims to restore damaged relationships between patients, medical personnel and health institutions, while ensuring that errors that occur are not repeated in the future. Within an inclusive legal framework, regulations should regulate the reporting and disclosure of information related to health disputes. For example, in the Indonesian context, the Health Law requires hospitals to have accurate and complete patient medical records.

¹⁰ Jonathan Hobson et al., "Restorative Justice, Youth Violence, and Policing: A Review of the Evidence," *MDPI* 11, no. 62 (2022): 1–20.

¹¹ Annemieke Wolthuis et al., "Dutch Developments: Restorative Justice in Legislation and in Practice," *The International Journal of Restorative Justice* 2, no. 1 (2019): 118–34, <https://doi.org/10.5553/ijrj/258908912019002001007>.

These medical records are an important basis in the dispute resolution process, because accurate and comprehensive information is needed to fully understand what happened.¹² In cases of violations of medical ethics, the Medical Law also regulates reporting and follow-up on ethical violations by medical personnel. By having clear and transparent regulations, all parties involved can have confidence that health dispute resolution is carried out fairly and openly.¹³ This supports efforts to rebuild trust between all parties involved, while avoiding the recurrence of errors that could harm patients and medical personnel. Therefore, transparency and accountability are key elements in implementing the principles of restorative justice in the context of resolving health disputes. In an inclusive legal framework, it is important to establish a strong monitoring and evaluation mechanism to ensure the effectiveness of the implementation of restorative justice in resolving health disputes. This mechanism could include the establishment of a commission or independent body that has responsibility for overseeing the implementation of restorative justice in health cases. In this regard, legislation needs to expressly mandate that these bodies have sufficient powers and resources to carry out their monitoring functions effectively. Apart from that, the Arbitration Law can also provide a legal basis for the establishment of an independent arbitration body.¹⁴

This arbitration body will play a role in supervising the mediation process and assessing whether the resulting decision is in accordance with the principles of restorative justice. In implementing restorative justice in resolving health disputes, a very important step is ensuring that all parties involved understand the process and its objectives. Within an inclusive legal framework, laws and regulations can require education and training on restorative justice for medical personnel, patients and patient families. For example, the Indonesian Medical Law may stipulate that every medical personnel must undergo medical ethics training which includes an understanding of the principles of restorative justice.¹⁵ This will not only help create a better understanding of this approach, but also enable all parties involved, from medical personnel to patients and their families, to participate effectively in the health dispute resolution process, creating a more inclusive and fair environment. In conclusion, implementing restorative justice in resolving health disputes between patients and hospitals within an inclusive legal framework can be an effective approach.

Restorative justice offers a way to restore damaged relationships, understand the perspectives of all parties, and find solutions together. Relevant laws and regulations, such as the Arbitration Law, the Health Law, and the Medical Law, can provide a legal basis for the implementation of restorative justice. In an inclusive legal framework, it is

¹² hildayastie Hafizah And Surastini Fitriasih, "Urgensi Penyelesaian Dugaan Kesalahan Medis Melalui Restorative Justice," *Jurnal Usm Law Review* 5, no. 1 (April 2022): 205, <https://doi.org/10.26623/julr.v5i1.4884>.

¹³ Ángela Del Carmen López-Tarrida, Rocío de Diego-Cordero, and Joaquin Salvador Lima-Rodríguez, "Spirituality in a Doctor's Practice: What Are the Issues?," *Journal of Clinical Medicine* 10, no. 23 (2021): 1–16, <https://doi.org/10.3390/jcm10235612>.

¹⁴ Huala Adolf, "URGENSEI PEMBENTUKAN UNDANG-UNDANG TENTANG ARBITRASE INTERNASIONAL," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 10, no. 2 (March 2017), <https://doi.org/10.25041/fiatjustisia.v10no2.684>.

¹⁵ Rizky Muhammad Casesaria and Dey Ravena, "Kasus Malpraktik Oleh Bidan Yang Melakukan Kesalahan Persalinan Di Rumah Sakit Riau Melalui Penerapan Restorative Justice Dihubungkan Dengan Undang-Undang No. 36 Tahun 2009 Tentang Kesehatan," *Bandung Conference Series: Law Studies* 3, no. 1 (January 2023), <https://doi.org/10.29313/bcsls.v3i1.5035>.

important to ensure the protection of patient rights, involve independent third parties, take cultural and social aspects into account, encourage transparency and accountability, and provide incentives for the use of restorative justice. Apart from that, education and training about restorative justice must also be provided to all parties involved. With this approach, health dispute resolution can be fairer, more effective, and improve the relationship between patients and hospitals.

2.2. Applying a Restorative Justice Approach in Resolving Health Disputes: What are the Problems?

The restorative justice approach has become an increasingly important topic in resolving disputes in various fields, including in the health context.¹⁶ Although this concept has great potential to produce fair and sustainable solutions to health disputes, there are several key obstacles that need to be overcome. In the Indonesian context, legislation plays an important role in regulating the restorative justice process. One of the main obstacles in implementing a restorative justice approach in resolving health disputes is the lack of awareness and understanding of the concept of restorative justice among health practitioners, patients and the general public. Many parties are still more accustomed to the traditional approach, which tends to focus on punishment and punishment. This created initial disapproval of approaches focused on recovery, peace and reconciliation.¹⁷

To overcome this obstacle, education and outreach about restorative justice needs to be improved, either through training for health professionals, outreach to the community, or health education campaigns. By increasing understanding of the concept of restorative justice, we can open the door to a more holistic and recovery-oriented approach to resolving health disputes, creating a more compassionate environment, and promoting reconciliation within the health system. Limited resources are also a serious obstacle in implementing restorative justice in health disputes. The restorative justice process often requires considerable time, energy and financial resources. This includes training for mediators, facilitators and support staff, as well as infrastructure to manage the restorative justice process.¹⁸ Especially in the context of health services, these resources can be a serious constraint, especially in countries with limited health budgets. In an effort to resolve health disputes through a restorative justice approach, adequate financial support is needed. Without sufficient financial support, the implementation of restorative justice in health dispute cases may be hampered and make it difficult for the parties involved to reach a fair and satisfactory resolution. Therefore, it is important for the government and related parties to allocate adequate resources to support the implementation of restorative justice in the health context and ensure wider access to a fair dispute resolution process.

¹⁶ Henny Saida Flora, Fradhana Putra Disantara, and Mac Thi Hoai Thuong, "The Lex Favor Reo Principle After New Criminal Code: A Corrective Justice's Perspective," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 22, no. 2 (2023): 67–80.

¹⁷ Maidina Rahmawati et al., *Peluang Dan Tantangan Penerapan Restorative Justice Dalam Sistem Peradilan Pidana Di Indonesia* (Jakarta: Institute for Criminal Justice Reform, 2022).

¹⁸ Kia Gluschkoff et al., "Reporting of Health Information Technology System-Related Patient Safety Incidents: The Effects of Organizational Justice," *Safety Science* 144, no. August (2021), <https://doi.org/10.1016/j.ssci.2021.105450>.

In implementing restorative justice in the context of health disputes, cultural and social aspects can be significant obstacles. The concept of restorative justice conflicts with certain cultural or religious values that are dominant in a society.¹⁹ For example, in some cultures, harsh punishment is considered the only way to punish wrongdoers. Implementing restorative justice in this context will require further efforts to explain and convince the public of the benefits of this approach. It is necessary to adapt the restorative justice approach to suit the prevailing cultural and social context. To achieve this, dialogue and a deep understanding of the cultural values, norms and beliefs that exist in society are needed. Prioritizing effective communication and building awareness of the benefits of restorative justice in resolving health disputes can help convince the community socially and culturally. In this case, collaboration with stakeholders and providing comprehensive education will play an important role in introducing and implementing restorative justice effectively in different cultural and social contexts.

The complexity of laws and regulations in the health sector is also often the main obstacle in implementing restorative justice. In many countries, strict regulations have been put in place to protect patient rights and ensure high standards of care. However, a restorative justice approach requires a degree of flexibility in the dispute resolution process that may conflict with existing health regulations.²⁰ For example, in some cases, legal action may need to be implemented to protect the public from questionable medical practices. Therefore, it is important to find the right balance between recovery and legal compliance by accommodating existing health legislation, so that the restorative justice system can function effectively in this highly regulated health context. Ethics and privacy issues are important aspects that need to be addressed in the context of restorative justice in the health sector. Medical information includes sensitive data, such as medical records, diagnoses, and patient treatments. Maintaining the privacy and confidentiality of this information is a must, considering the sensitivity and importance involved in an individual's health.²¹ However, the restorative justice approach emphasizes openness and sharing of information to facilitate understanding and resolution of conflict. This can be a dilemma, especially if the parties involved do not feel comfortable talking openly about their health issues.

Therefore, clear and strict mechanisms are needed to protect patient privacy. Legislation needs to be drafted and implemented strictly so that medical information disclosed in the context of restorative justice remains confidential and is not misused. Thus, patient safety and privacy rights are maintained while allowing the restorative justice process to take place effectively. Another obstacle that needs to be considered in implementing a restorative justice approach in a health context is the inequality of power between the parties involved in a health dispute. Patients often feel unequal

¹⁹ Henny Saida Flora, "Restorative Justice in the New Criminal Code in Indonesia: A Prophetic Legal Study," *Rechtsidee* 11 (December 2022), <https://doi.org/10.21070/jihr.v11i0.836>.

²⁰ Irene Cambra-Badii, Ariadna Pinar, and Josep E. Baños, "The Good Doctor and Bioethical Principles: A Content Analysis," *Educacion Medica* 22, no. 2 (2021): 84–88, <https://doi.org/10.1016/j.edumed.2019.12.006>.

²¹ Yudi Yasmin Wijaya, Edy Suyanto, and Fanny Tanuwijaya, "Rekam Medis: Penggunaan Informasi Medis Pasien Dalam Pelaksanaan Asas Perlindungan Publik," *Veritas et Justitia* 6, no. 2 (December 2020): 399–423, <https://doi.org/10.25123/vej.3717>.

in power when compared to healthcare providers or medical institutions. Restorative justice emphasizes the active participation of all parties in the dispute resolution process, but if the patient feels anxious or helpless in this process, this can hinder the effectiveness of the restorative justice approach. To overcome these barriers, it is critical to develop mechanisms that ensure that patients feel safe, heard, and respected in the dispute resolution process. By taking patient interests and emotions into account, we can create an environment that supports better collaboration and recovery in cases of health disputes.

The restorative justice approach in resolving health disputes requires close collaboration between the various parties involved, including patients, health service providers, authorities, and possibly health insurance companies.²² Synergy between all parties is the main basis for ensuring the smooth implementation of this approach. However, in practice, achieving an adequate level of cooperation is often a challenge. Differences in interests, goals, and perspectives between these parties can pose significant obstacles. To overcome this, serious efforts are needed to change the culture within the health system, one that encourages collaboration, open communication, and understanding of each party's perspective. In addition, a strong commitment from all parties involved is very important to bridge the gap and create an environment that supports the implementation of a restorative justice approach in resolving health disputes..

Community involvement and education play a key role in making the restorative justice approach an effective method in resolving health disputes. Communities need to be empowered with a deep understanding of the basic principles of restorative justice and how they can participate in the process. Involving them in decision making, listening to diverse perspectives, and promoting dialogue are important steps. In addition, education about the rights and obligations of patients and health service providers is a basis that needs to be improved. This education helps create an environment that supports a restorative justice approach by providing a better understanding of important aspects of health disputes. Unfortunately, public awareness and understanding of restorative justice in the health context is often still low in many places. Therefore, there needs to be a real effort to increase public understanding of this concept through educational programs, information and awareness campaigns that are inclusive and sustainable.

The existence of traditional or skeptical views in some communities towards alternative methods of dispute resolution is also an obstacle. Some individuals still prefer conventional approaches to resolving legal problems, and this can influence the acceptance of restorative justice. In addition, there is discomfort and uncertainty among some individuals or community groups regarding the ability of restorative justice approaches to provide true justice. This is often due to existing distrust of the legal system in general or previous negative experiences in the context of more traditional

²² Sulistyanta et al., "Restorative Justice Sebagai Alternatif Penyelesaian Secara 'Win-Win Solution' Kasus Resiko Atau Kekeliruan Medis (Medical Malpractice)," *Lex Librum : Jurnal Ilmu Hukum* 7, no. 2 (2021): 229–42, <https://doi.org/http://dx.doi.org/10.46839/Ijih.v7i2.459>.

legal systems.²³ Therefore, to successfully implement a restorative justice approach in health disputes, it is necessary to carry out more intensive education and outreach efforts to overcome these cultural and social barriers and build a better understanding of the benefits of this approach in achieving justice and fair resolution in the health context.²⁴

The influence of the pharmaceutical and health insurance industries on the implementation of restorative justice approaches in health disputes can be a significant obstacle. Both industries have strong business interests in the healthcare sector, often focused on achieving financial gain. While a restorative justice approach emphasizes restoration and reconciliation, this may conflict with their business goal of minimizing financial losses.²⁵ In practice, this can make it difficult to achieve true justice in resolving health disputes, because financial interests can dominate the process. Therefore, strict regulations and transparency mechanisms are needed to prevent potential conflicts of interest that could hamper the dispute resolution process. With strong regulations and transparent procedures, it is hoped that the application of a restorative justice approach in health disputes can be more effective and side with the interests of patients and society in general.²⁶ In regulating the application of restorative justice in the context of health disputes, legislation needs to provide clear guidelines regarding which types of disputes are suitable for this approach and which types of disputes are better handled through conventional legal systems. Determining which type of dispute is suitable for restorative justice requires considering the severity of the error and the involvement of the parties involved. In some situations, restorative justice can still be used as an addition or alternative to conventional justice processes.

This approach can be used to promote healing, reconciliation and reintegration in the context of less serious or non-criminal health disputes. However, it is important for legislation to provide clear guidance in this regard, so that the selection of appropriate dispute resolution methods can be made by considering all relevant factors. Even though Health Law Number 36 of 2009 does not explicitly mention restorative justice, there are several relevant articles that can support its implementation. One of them is Article 12 which emphasizes the importance of community participation in making decisions about health services. This article can be interpreted as support for the restorative justice process which involves patient and community participation in resolving health disputes. Including the community in the health dispute resolution process can promote collective accountability and reconciliation.

Apart from that, Article 13 of the Health Law also has relevance in the context of restorative justice. This article emphasizes the patient's right to obtain clear and honest information about diagnosis, prognosis and treatment options. The principles

²³ Yashomati Ghosh and Anirban Chakraborty, "Secularism, Multiculturalism and Legal Pluralism: A Comparative Analysis Between the Indian and Western Constitutional Philosophy," *Asian Journal of Legal Education* 7, no. 1 (January 2020): 73–81, <https://doi.org/10.1177/2322005819859674>.

²⁴ Rhona K.M. Smith et al., "Hukum Hak Asasi Manusia (HAM)," *Evolusi Pemikiran Dan Sejarah Perkembangan Hak Asasi Manusia*, 2008, 51.

²⁵ Gerry Johnstone, "Restorative Justice and the Culture of Control," *Special Issue: Rethinking the Restorative Dimension of Criminal Justice* 61, no. 1 (2022): 25.

²⁶ Bruce P. Archibald, "Capabilities Approaches and Labour Law through a Relational and Restorative Regulatory Lens," in *The Capability Approach to Labour Law* (Oxford University Press, 2019), 218–38, <https://doi.org/10.1093/oso/9780198836087.003.0012>.

of transparency and open communication stated in this article can be an important foundation for implementing restorative justice. In resolving health disputes through a restorative justice approach, the parties involved need to receive clear and honest information about the mistakes that occurred, and have a better understanding of the consequences. This will facilitate a more effective process of reconciliation, recovery and reintegration. Although Health Law Number 36 of 2009 does not yet regulate restorative justice in detail, the interpretation and application of the principles contained therein can support efforts to implement restorative justice in resolving health disputes in Indonesia. Apart from the Health Law, there are other regulations that can be the basis for implementing restorative justice in health disputes.

For example, Law Number 29 of 2004 concerning Medical Practice. This law states the obligation of doctors to provide information to patients and their families, which is also relevant in the context of restorative justice. Honest information and good communication between doctors and patients are very important in resolving health disputes. However, to further support the application of restorative justice in resolving health disputes, there needs to be a revision or amendment to existing laws and regulations. This could include adding provisions that explicitly regulate the restorative justice process, the rights and obligations of the parties involved, as well as implementation mechanisms. By having clear provisions, it will facilitate the application and protection of law in the use of a restorative justice approach in resolving health disputes. In addition, legislation may also include incentives or mandates for health institutions to adopt a restorative justice approach in dispute resolution. This can encourage the implementation of restorative justice more widely and consistently at various levels of health services.

Thus, updates in regulations can provide a strong legal foundation and the support needed to implement restorative justice as an effective approach in resolving health disputes in Indonesia. In conclusion, applying a restorative justice approach in resolving health disputes is a complex challenge. Key barriers include legal and regulatory complexity, privacy issues, power inequalities, cooperation between parties involved, community involvement, cultural and social barriers, and influence from the pharmaceutical and health insurance industries. To overcome these barriers, sustained efforts are needed, including cultural change within the health system, integration of restorative justice approaches within the health care system, public education, and efforts to increase cooperation between the various parties involved in health disputes. With these steps, perhaps we can create an environment where a restorative justice approach can contribute to a more just and dignified resolution of health disputes.

3. CONCLUSION

The main contribution of this research is related analysis implementation of restorative justice in resolving health disputes between patients and hospitals within an inclusive legal framework is an effective approach to resolving health disputes between patients and hospitals. Restorative justice, or restorative justice, prioritizes restoring relationships and mutual understanding rather than punishment. This approach can

be used in cases of malpractice claims, patient dissatisfaction, or violations of medical ethics. Implementation of restorative justice within an inclusive legal framework depends on relevant regulations, such as Law Number 30 of 2009 concerning Arbitration and Alternative Dispute Resolution (*Arbitration Law*) in Indonesia. Involving trained mediators in the dispute resolution process and involving the patient, patient's family, medical staff, and the hospital is also important. Protection of patient rights, transparency, accountability and the implementation of adequate communication methods must also be considered. By implementing restorative justice and prioritizing inclusive legal aspects, health dispute resolution can proceed more effectively, fairly, and improve relationships between patients and hospitals.

The application of a restorative justice approach in resolving health disputes has great potential, but faces several major obstacles. One of them is the lack of understanding of the concept of restorative justice among health practitioners and the general public, who are more accustomed to traditional approaches that focus on punishment. To overcome this, better education and socialization is needed. In addition, legislation does not sufficiently support restorative justice in the health context, and revision of regulations is needed to reflect restorative justice principles. Resource limitations, cultural and social barriers, legal complexities, and privacy issues also need to be considered. The influence of the pharmaceutical and health insurance industries could also be an obstacle, requiring strict regulation. In overcoming these obstacles, community involvement, education, and cultural change in the health system are the keys to implementing restorative justice effectively in resolving health disputes.

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