

## **Mediation as an Effective Alternative in Resolving Health Disputes**

**Abdul Rahman Maulana Siregar, Redyanto Sidi, Rahul Ardian Fikri, Elbina Theresa**

### **Abstract**

The aim of this research is to examine the effectiveness of mediation as an alternative for out-of-court health settlements after the enactment of Law Number 17 of 2023 concerning Health. The research method used is a qualitative approach with normative juridical analysis. The research results show that mediation as a method of resolving health disputes has many advantages, including ease of cost and time, easy procedures and satisfactory results between the disputing parties. These findings show that the implementation of mediation after the enactment of the Health Law has made it easier for people to access justice in health cases. The conclusion of this research confirms that mediation is an effective alternative in resolving health peace. This is due to mediation's ability to provide solutions that are faster and oriented towards a win-win solution compared to the litigation process. The implication of this research is the importance of increasing the capacity and understanding of the various parties involved in maintaining health regarding the mediation process. Apart from that, there is a need for more comprehensive regulatory and policy support to strengthen the role of mediation in the Indonesian legal system, especially in the context of maintaining health.

**Keywords:** Mediation, Alternatives, Settlement, Dispute, Health

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1st International Conference on the Epicentrum of Economic Global Framework (ICEEGLOF)  
Theme: Digital Marketing Strategy to Optimize Business Growth in the Modern Era  
<https://proceeding.pancabudi.ac.id/index.php/ICEEGLOF>

## **Introduction**

Health is a comprehensive state of well-being, including physical, mental, spiritual and social aspects that enable a person to live a productive life in a social and economic context. As a valuable asset, efforts to improve the quality of health continue to be fought for. The main goal of state health initiatives is to improve the quality of life, which in turn will improve well-being. According to Article 28A of the 1945 Constitution of the Republic of Indonesia, "every person has the right to live and the right to defend his or her life and living", which means that every individual has the right to have the same opportunity to maintain their health. This includes the right to receive adequate health services. Therefore, improving the quality of health services is the main focus. Government policies in the health sector must cover all levels of society, because health is a human right protected by the state, as emphasized in Article 28H of the 1945 Constitution of the Republic of Indonesia. In an effort to improve the quality of health, the government must develop regulations that support increasing the capabilities of doctors and medical personnel as well as the development of medical technology (Redyanto Sidi., 2023).

Health is a human right and an element of welfare that must be provided and realized by the state based on the ideals of the Indonesian nation as referred to in Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia. Every activity is an effort to realize and improve the level of health society to the highest degree implemented based on non-discriminatory, participatory and sustainable principles in the context of forming Indonesia's human resources, increasing the nation's resilience and competitiveness as well as national development.

To increase health capacity and resilience, it is necessary to adapt various policies to strengthen the health system in 1 (one) comprehensive law. Strengthening the health system carried out by the state is through the existence of the latest health legislation. With the enactment of Law Number 17 of 2023 concerning Health, the state guarantees the right of every citizen to realize a good, healthy and prosperous life physically and mentally in order to achieve the national goal of protecting the entire Indonesian nation and all of Indonesia's bloodshed to advance general welfare as mandated. in the 1945 Constitution of the Republic of Indonesia.

Talking about the world of health, of course it requires medical personnel and health workers with their respective roles. In carrying out health practices, there are roles that must be present, namely hospitals, doctors and patients. Hospitals, doctors and patients are legal subjects related to health services and create medical and legal relationships. Doctors or hospitals and patients have a special relationship, namely the doctor or hospital is the party providing health services and the patient is the party receiving health services (Wila Chandrawila Supriadi, 2001).

The growing awareness in society of the importance of law as a positive thing increases people's understanding of the importance of legal rules from various negative things when disputes occur due to health workers or hospitals, whether in the form of summons, patients making complaints or even suing. health workers which have an impact on the health services provided. In general, disputes that occur are caused by things or results provided by health workers that are inadequate or unsatisfactory, such as a lack of information given to doctors or negligence caused by health workers. As a result of this, for example, not all health services will have satisfactory results for all patients or other parties, which ultimately results in statements and opinions that this is an act of malpractice (Trini Handayani, 2014)

As in 1981 in Indonesia a new branch of legal science emerged, since the case of doctor Setianingrum in Pati. This case caused a lot of reactions among the health professions, it also received the same reaction from legal circles and especially from the public. Medical Law is a part of Health Law with a scope that only covers the medical field, namely doctors and people

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under their control which includes the fields of criminal, civil and administrative law (Redyanto Sidi dan Dessy Listiawati M, 2023).

Health services are an important thing that must be improved in quality based on applicable health service standards so that people can experience the health services provided. Health services are basically an effort to help prepare everything the patient needs by providing satisfaction in accordance with what the patient expects.

Disputes in the health sector often arise because of disharmonious relationships in the health services provided to patients. Health disputes are triggered by gaps in perception and interests between patients and health service providers which result in legal settlement processes.

In general, health dispute resolution can be done through court or litigation and outside court or non-litigation. In the case of settlement through litigation, the positions of the parties in dispute will be opposite in settlement through court. The settlement process through court or litigation is less profitable for the parties because the resulting court decision is that there are parties who win and there are parties who lose, in addition to the length of the process or trial, the burden of proof, the trial being open to the public which causes the relationship between the parties to be strained.

Settlement through non-litigation as an alternative dispute resolution that is resolved without going to court and as an Alternative Dispute Resolution using solutions such as negotiation, consultation, mediation, arbitration and expert assessment. In this discussion, the resolution was carried out through mediation. The reason for the parties to bring the dispute that occurs to be resolved through mediation or without going to court/non-litigation as a way or alternative to reach consensus or deliberation which is considered effective and efficient and the result is a win-win solution for the parties, while settlement through litigation or court there are parties who lose and win, resulting in an unsatisfactory decision for the losing party (Abdul Rahman Maulana Siregar, 2023).

In the criminal justice system, non-litigation resolution, known as restorative justice, is a resolution process carried out outside the criminal justice system that involves victims, perpetrators, families of victims and perpetrators, the community and parties who have an interest in a criminal act that occurred. to reach agreement and settlement. Restorative justice is a fair resolution that involves perpetrators, victims, their families, and other non-criminal parties, together to seek resolution of criminal acts and their consequences, by prioritizing recovery, not retribution (Rahul Adrian Fikri, Abdul Rahman Maulana Siregar dan Fitri Rafianti, 2022).

Due to the health dispute that occurred between the disputing parties, the Unitary State of the Republic of Indonesia will remain intact as an independent and sovereign country if the Indonesian state continues to maintain and develop the values of togetherness (the third and fourth principles of Pancasila). This value of togetherness is implemented by maintaining the spirit of diversity and deliberation in resolving disputes to realize Indonesian unity.

Based on this, the scope of this discussion includes mediation as an effective alternative in resolving health disputes. Mediation as an alternative for resolving health disputes outside of court after the enactment of Law Number 17 of 2023 concerning Health, which focuses on reviewing the effectiveness of mediation as an alternative for non-litigation dispute resolution in resolving health disputes compared to the litigation process.

From various previous cases that occurred between communities, mediation as an alternative dispute resolution has been widely recognized as an effective alternative method for resolving disputes in various fields, including business, family, environmental, customary and other disputes. Several studies show that mediation can reduce the burden on the courts and provide faster and more satisfactory solutions for the parties to the dispute.

The update to this discussion is the emphasis on reviewing the effectiveness of mediation in the context of health disputes in Indonesia after the enactment of Law Number 17 of 2023 concerning Health. This research offers a new perspective by highlighting the impact of recent regulations on the mediation process and how this affects the resolution of health disputes.

From these descriptions, the issues raised are: How effective is mediation as an alternative for resolving health disputes after the enactment of Law Number 17 of 2023 concerning Health?

The purpose of this scientific article is to review the effectiveness of mediation in resolving health disputes after the enactment of Law Number 17 of 2023 concerning Health and provide recommendations for improving the implementation of mediation in the context of health disputes in Indonesia. Apart from that, it is hoped that it can contribute to the development of mediation policies and practices in the health sector.

## **Research Methods**

The type of research is normative research with a statutory approach and literature study. Data collection is carried out by collecting data through sources such as statutory regulations, the internet, cases, journals, court decisions and other sources related to mediation as an effective alternative in resolving health disputes.

The data obtained will be analyzed using qualitative analysis methods. Data analysis is done by collecting materials sourced from legal materials based on concepts, theories, statutory regulations, doctrine, expert opinions, legal principles or researchers' views.

## **Results**

### **The Effectiveness of Mediation as an Alternative for Resolving Health Disputes After the Enactment of Law Number 17 of 2023 concerning Health**

#### **1. Mediation as an alternative dispute resolution**

Broadly speaking, dispute resolution is carried out in 2 (two) ways, namely litigation (judicial) dispute resolution and non-litigation (outside court) dispute resolution (Mulyani Zulaeha, 2016). Every community has ways to obtain agreement in determining dispute resolution options. The method used to resolve a particular dispute will have consequences, both for the parties to the dispute and society in the wider sense. Because there are consequences from the choice of dispute resolution, in choosing the most appropriate mechanism the parties need to pay attention to the form of the problem and what the parties expect in resolving the dispute as well as the costs that can or will be borne by the parties (Gunawan Wudjaja dan Ahmad Yani, 2000.)

The increase in cases in court and the many criticisms of court institutions have given rise to the idea of further empowering out-of-court settlement patterns. Frank Sander from Harvard University in 1976 predicted a solution to this, namely by preventing disputes from occurring and exploring alternative dispute resolution outside of court (Naskah Akademik MARI, Tahun 2005). Settlement of disputes outside of court is a form of response to the increasing trend of cases piling up in court.

Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution in Article 1 Paragraph (10), alternative dispute resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside the court by means of mediation, consultation, negotiation, conciliation or expert judgment.

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In relation to out-of-court settlement through mediation, mediation is a method of peaceful dispute resolution that is appropriate, effective and can open wider access for the parties to obtain a satisfactory and fair resolution. Mediation is basically negotiation involving a third party who knows and has expertise regarding effective mediation or disputes experienced by the parties and can assist in the process of producing a settlement agreement between the disputing parties (Nurnaningsih Amriani, 2012). Apart from that, mediation is also defined as an effort to resolve disputes between the parties by mutual agreement which is resolved by a mediator who is neutral and does not make decisions or conclusions in order to carry out deliberations and exchange opinions in order to reach consensus (Susanti Adi Nugroho, 2009).

According to Christopher W. Moore, quoted by Bambang Sutyoso, mediation is intervention in a dispute or negotiation by a third party who is acceptable, impartial and neutral and does not have the authority to make decisions in assisting the disputing parties in their efforts to reach a voluntary agreement by each of them. -each party in resolving disputed issues (Bambang Sutyoso, 2008).

Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court in Article 1 Paragraph (1), states that mediation is a method of resolving disputes through a negotiation process to obtain agreement between the parties with the assistance of a mediator. Meanwhile, the definition of a mediator in Article 1 Paragraph (2) is a judge or other party who has a mediator certificate as a neutral party who helps the parties in the negotiation process to find various possibilities for resolving the dispute without using the method of deciding or forcing a resolution.

Mediation has developed into an increasingly popular alternative method of dispute resolution. Mediation is a process in which disputing parties sit together assisted by a neutral party to reach a mutually beneficial agreement. Mediation offers a simpler approach compared to court proceedings. Unlike litigation which often results in a win or lose decision, mediation emphasizes achieving a solution that is acceptable to all parties to the dispute or a win-win solution.

The main advantage of mediation is the ability to maintain good relations between the parties to the dispute. In a business context, for example, maintaining good relationships with work partners or clients is very important for business continuity. A mediation process that prioritizes approach and cooperation allows disputing parties to understand each other so that it is easier to reach a satisfactory resolution for both parties. This is different from the court process which tends to often leave emotional connections.

Apart from maintaining good relations, mediation also offers time and cost efficiency. The court process often takes a long time and costs a lot of money and can be a big burden for the parties to the dispute. Mediation on the other hand, usually takes place over a shorter period of time and at a more affordable cost. Mediation is an attractive option for individuals seeking quick and cost-effective dispute resolution.

In the legal context in Indonesia, mediation has also been regulated and facilitated by various laws and regulations. Such as Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Law Number 8 of 1999 concerning Consumer Protection, Supreme Court Regulation No. 1 of 2016 concerning Mediation Procedures in Court and other regulations. Through various regulations, the court is expected to encourage various dispute resolutions through mediation before the case is heard. This step not only helps reduce the burden on the courts, but also provides an opportunity for the parties to reach a more satisfactory agreement.

Overall, mediation as an alternative dispute resolution offers various advantages compared to the litigation process. From maintaining good relations, time and costs, easy

procedures to regulatory support, mediation is a relevant option in resolving various types of disputes. Therefore, encouraging the use of mediation in various disputes can provide great benefits to society and the legal system as a whole.

## 2. Effectiveness of Mediation as an Alternative for Settlement of Health Disputes After the Enactment of Law Number 17 of 2023 concerning Health

Mediation as an alternative dispute resolution has become an increasingly popular choice in various fields, including health disputes. In contrast to the litigation process which often takes a lot of time and costs a lot, mediation offers an approach that is easier to understand. In mediation, the disputing parties are accompanied by a mediator or neutral party, whose role is to help find a solution that is acceptable to both parties. Mediation not only reduces the burden on the court but also provides more satisfactory results because the solution reached is a win-win solution.

In the context of health disputes, mediation is very relevant in resolving disputes through mediation of cases that arise. Disputes between patients and health care providers can cover a variety of issues, from malpractice, misdiagnosis, to administrative issues. The mediation process allows both parties to discuss openly and find solutions to the problems they face, with the aim of reaching a fair agreement without having to go through lengthy court procedures. This also helps and maintains good relationships between patients and health care providers.

If a health dispute occurs between the disputing parties, it would be better for the parties to choose mediation as an alternative for resolving the dispute outside of court because the result expected by the parties is a win-win solution. The regulations are further regulated in Article 310 of Law Number 17 of 2023 concerning Health, namely, in the event that a Medical Personnel or Health Personnel is suspected of making a mistake in carrying out their profession which causes harm to the Patient, the dispute arising as a result of the mistake is resolved first through an alternative dispute resolution outside of court.

The existence of mediation as an alternative dispute resolution is supported by the enactment of Law Number 17 of 2023 concerning Health, providing a clearer legal framework and supporting the use of mediation in resolving health disputes. With this regulation, it is hoped that mediation will become the main choice for parties in dispute, considering that the process is faster and costs less compared to the process of settling through litigation. Apart from that, the Health Law also encourages health service providers to be more proactive in resolving disputes through mediation.

However, the application of mediation in health disputes is not without obstacles. One of the main obstacles is the lack of public understanding and awareness about the benefits of mediation in resolving disputes. Many parties still believe that the only way to resolve disputes is through court. Therefore, special legislation is needed that more intensively regulates mediation as an alternative dispute resolution.

Overall, mediation as an alternative resolution in health disputes offers many benefits and is an effective solution for the parties. With appropriate regulatory support, mediation can be the main choice in resolving disputes in the health sector. This not only reduces the burden on the courts but also increases patient and public satisfaction and trust in the existing dispute resolution system.

Based on the existence of alternative dispute resolution arrangements in resolving health disputes outside the court based on Law Number 17 of 2023 concerning Health, based on the results of the analysis, mediation has benefits as an alternative dispute resolution outside the court in the context of health disputes for the parties as follows: (Abdul Rahman Maulana Siregar, Redyanto Sidi, Rahul Ardian Fikri dan Elbina Thresa, 2023)

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- a. **Affordable Costs**  
Choosing mediation as an alternative for resolving disputes outside of court provides affordable cost benefits for all parties involved. Apart from affordable costs, it also provides alternative benefits that are more time and financial efficient than going through lengthy and expensive court processes.
- b. **Fast and Efficient Dispute Resolution**  
Mediation can speed up dispute resolution. The mediation process is usually faster than settlement through court which requires a long time in the dispute resolution process. The most important thing about the benefits of mediation as an alternative dispute resolution in health disputes is that it affects access, quality and health services.
- c. **Reducing the Court's Burden**  
Using mediation as a step in resolving health disputes will reduce the burden on the courts. We can see this piling up of cases in court (Abdul Rahman Maulana Siregar, Rahul Ardian Fikri, Mhd. Azhali Siregar, 2023) and giving priority to resolving health disputes through alternative dispute resolution as guaranteed in Law Number 17 of 2023 concerning Health.
- d. **Maintaining Good Relations**  
Mediation as a supporter in maintaining relationships between disputing parties in maintaining health. The relationship between patients and health service providers is very important because mediation will help reduce potential conflicts and ensure that the relationship remains good, which can ultimately improve the quality of health services.
- e. **Desired Results**  
Mediation provides a greater opportunity to find solutions according to the specific needs and context of building health. This makes it possible for the disputing parties to formulate solutions or results that are desired by the parties and have the character of a win-win solution which cannot be achieved if they choose to resolve through court.

After the enactment of Law Number 17 of 2023 concerning Health, mediation is an alternative claim resolution which is expected to be effective in handling health claims. The health law introduces various mechanisms to ensure a speedy and efficient resolution, including the use of mediation. This is important considering that health is often faced with very sensitive considerations regarding patient health insurance, requiring a resolution approach that can maintain confidentiality and good relations between the parties to the dispute.

The effectiveness of mediation in health settlements can be seen from several aspects. First, mediation offers simplicity in handling various types of health peace, from peace between patients and health service providers, to peace between health institutions and insurance companies. By having a neutral party who is able to resolve health disputes, the mediation process allows all parties to provide their views and concerns, and work together to find mutually beneficial solutions without having to go through a long and expensive litigation process.

Apart from that, the success of mediation in resolving health disputes is strongly supported by the regulations in Law Number 17 of 2023 in Article 310. The health law not only recognizes mediation as an alternative method of resolving disputes, but also encourages the use of mediation before the case is brought to court. This provides a strong legal basis for the mediation process, so that the parties to the dispute feel more confident in using mediation as a solution. This regulatory support also helps reduce the workload in the field and re-establish a culture of deliberation and consensus settlement.

In addition, mediation in the health sector has great potential to increase the satisfaction of all parties involved. The confidential mediation process provides an opportunity for patients and health care providers to discuss problems openly and find mutually acceptable solutions. This not only helps complete a settlement quickly, but also repairs relationships that may have been disrupted as a result of the settlement. In the long term, mediation can contribute to improving the quality of health services and public confidence in the health system.

Overall, after the enactment of Law Number 17 of 2023 concerning Health, mediation as an alternative settlement has shown its effectiveness in handling various health settlements. From the simplicity of handling various types of disputes, affordable costs and a fast resolution process, strong regulatory support, to the potential to improve satisfaction and relationships between parties, mediation offers a more efficient and harmonious solution compared to the litigation process. Therefore, encouraging the use of mediation in the health sector can provide great benefits for all parties involved and the health system as a whole.

## **Conclusion**

Mediation has developed into an increasingly popular alternative method of dispute resolution. Mediation is a process in which disputing parties sit together assisted by a neutral party to reach a mutually beneficial agreement, mediation offers a simpler approach compared to court proceedings. Unlike litigation which often results in a win or lose decision, mediation emphasizes achieving a solution that is acceptable to all parties to the dispute or a win-win solution.

Mediation as an alternative method for resolving health disputes has many advantages, including simplicity of cost and time, easy procedures and satisfactory results between the parties to the dispute. These findings show that the implementation of mediation after the enactment of Law Number 17 of 2023 concerning Health has made it easier for people to access justice in health cases. Mediation is an effective alternative in resolving health disputes, this is due to mediation's ability to provide solutions that are faster and oriented towards a win-win solution compared to the litigation process. The implication of this research is the importance of increasing the capacity and understanding of the various parties involved in health disputes regarding the mediation process. In addition, there is a need for more comprehensive regulatory and policy support to strengthen the role of mediation in the Indonesian legal system, especially in the context of health disputes.

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