

# Mediation in Medical Disputes : Harmonizing Patient Protection and Legal Certainty for Healthcare Professionals

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## Abstract

The increasing awareness of patient's rights and access to legal remedies has significantly contributed to the escalation of medical disputes in Indonesia. Conventional litigation mechanisms are often criticized for being time-consuming, costly, and adversarial, thereby risking the deterioration of the therapeutic relationship between patients and healthcare professionals. In response to these challenges, mediation has emerged as a humane, restorative, and efficient alternative dispute resolution mechanism. This paper examines the role of mediation in resolving medical disputes within the Indonesian legal framework, particularly following the enactment of Health Law No.17 of 2023. It analyzes how mediation functions to balance patient protection and legal certainty for healthcare professionals by emphasizing dialogue, accountability, and proportional justice. Using a normative juridical approach, this study explores statutory regulations, ethical principles, and comparative perspectives in healthcare dispute resolution. The findings demonstrate that mediation not only facilitates fair and efficient dispute settlement but also strengthens patient trust, enhances safety culture, reduces defensive medicine, and contributes to sustainable health governance. Therefore, mediation should be institutionalized as a primary mechanism for resolving medical disputes in Indonesia.

**Keywords :** Mediation, Medical Dispute, Health Law, Patient Protection, Legal Certainty

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## **Introduction**

The transformation of health law in Indonesia through the enactment of Law No.17 of 2023 on Health reflects a paradigm shift from a sectoral regulatory approach toward an integrated health governance system. One of the most pressing implications of this transformation concerns the management of medical disputes, which have increased alongside growing patient awareness of legal rights and access to justice.

Medical disputes are multidimensional in nature. They involved not only legal responsibility but also ethical consideration, professional judgment, uncertainty in medical outcomes, and asymmetry of information between patient and healthcare professionals. Litigation, while legally recognized, often fails to address these complexities. Instead, it may exacerbate conflict, encourage defensive medicine, and undermine trust in health services.

Mediation emerges as a legally and ethically appropriate mechanism to address these challenges. Although not expressly mandated as a compulsory procedure under Law No.17 of 2023, mediation is normatively supported through the law emphasis on patient protection, accountability, proportionality, and legal certainty. This paper argues that mediation constitutes a logical extension of the Health Law's normative framework and should be positioned as a primary mechanism for resolving medical disputes.

## **Normative position of medical disputes under Health Law No.17 of 2023**

Health Law No.17 of 2023 establishes a comprehensive legal framework governing health services, healthcare professionals, patient rights, and institutional accountability. Medical disputes are implicitly regulated through several core principles embedded in the law, rather than through a single dispute-resolution chapter. First, the law recognizes health services as activities that inherently involve medical risk. This acknowledgment is crucial, as it distinguishes adverse medical outcomes from professional negligence. Second, the law affirms that healthcare professionals are entitled to legal protection when acting in accordance with professional standards and standard operating procedures. Third, patient rights are framed not merely as claims for compensation but as entitlements to safety, information, participation, and dignity. Within this framework, medical disputes must be understood as legal events arising from the interaction between patient rights and professionals obligations. Consequently, disputes resolution mechanism must be capable of addressing both legal accountability and relational repair – an objective that litigation alone is ill-equipped to achieve.

## **Patient protection norms and their relevance to mediation**

### **3.1. Right to safe and quality health services**

Health Law No.17 of 2023 emphasizes patient safety as a fundamental principle. Patient are entitled to health services that meet professional and service standards. However, the law does not equate every unfavorable outcome with a violation of this right. This distinction underscores the importance of proportional responses to medical disputes. Mediation aligns with this normative approach by enabling contextual evaluation of medical outcomes. Rather than focusing solely on fault-finding, mediation facilitates understanding of whether harm resulted from unavoidable medical risk, system failure, or professional misconduct.

### **3.2. Right to information and participation**

The law strengthens patients rights to clear, honest, and comprehensive information regarding diagnosis, treatment options, risks, and prognosis. Many medical disputes originate from communication breakdowns rather than technical malpractice. Mediation provides a structured forum for restoring informational transparency. Through facilitated dialogue, healthcare professionals can explain medical decisions, while patients can articulate concerns and expectations. This process reinforces the normative purpose of informed consent as an ongoing communicative relationship, not merely a formal document.

## **Legal protection for Healthcare Professionals**

### **4.1. Normative basis of professional protection**

Health Law No.17 of 2023 explicitly affirms that healthcare professionals are entitled to legal protection when performing their duties in accordance with professional standards and operational procedures. This provision reflects a legislative intent to prevent unjust criminalization and civil liability arising from inherent medical risks. However, the effectiveness of this protection depends on how disputes are processed. Litigation often fails to adequately distinguish between negligence and acceptable medical risk, particularly when adjudicators lack medical expertise.

### **4.2. Mediation as a safeguard against over-criminalization**

Mediation functions as a protective filter that allows disputes to be examined substantively before escalating into adversarial legal proceedings. By involving neutral mediators with interdisciplinary competence, mediation can clarify the nature of the dispute and prevent premature attribution of fault. This approach supports legal certainty by ensuring that liability is imposed only when professional standards are demonstrably violated. It also preserves professional dignity and reputation through confidential proceedings.

## **Mediation within Indonesian Legal system**

### **5.1. Compatibility with ADR and procedural law**

Mediation in medical disputes is consistent with Indonesia's broader legal framework on alternative dispute resolution. Settlement agreements reached through mediation may be registered with the court, granting them executorial force and legal certainty. This mechanism ensures that mediation outcomes are not merely moral commitments but legally enforceable instruments. Consequently, mediation satisfies both restorative justice objectives and rule-of-law requirements.

### **5.2. Institutional mediation in health facilities**

Health facilities are legally obligated to implement internal quality assurance and complaint-handling mechanisms. These institutional structures provide a normative entry point for mediation at the organizational level. Embedding mediation within hospital governance frameworks aligns dispute resolution with patient safety systems, risk management, and continuous quality improvement.

## **Mediation and proportional justice in medical disputes**

Proportional justice is a key implicit principle of Health Law No. 17 of 2023. Not all disputes warrant punitive sanctions or monetary compensation. Some require explanation, acknowledgement, corrective action, or systemic reform. Mediation enables flexible, case-specific remedies that reflect the nature and gravity of harm. This proportionality is particularly important in medical disputes, where rigid legal remedies may fail to address emotional and relational dimensions.

## **Challenges in Implementing Mediation under Health Law No.17 of 2023**

Despite the strong normative foundation of mediation within the principles of Health Law No.17 of 2023, its practical implementation in resolving medical disputes in Indonesia faces significant structural, cultural, and institutional challenges. These barriers demonstrate that mediation cannot automatically function effectively merely because it is ethically desirable or normatively supported. Rather, its success depends on systemic readiness across legal institutions, healthcare facilities, and public perception.

- a. Limited public awareness and legal literacy

One of fundamental obstacles in implementing mediation is the limited awareness among patients and the broader community regarding mediation as a legitimate and accessible legal remedy. Most patients still perceive disputes resolution as synonymous with litigation of formal complaints to professional disciplinary bodies. As a result, mediation is often seen as informal, ineffective, or lacking enforceability. This misperception reduces its utilization, eventhough mediation offers faster, less adversarial, and more humane avenues for justice. Furthermore, Indonesia's legal culture remains heavily court-oriented, where 'justice' is frequently equated with judicial verdicts rather than consensual settlement.

b. Fear of admission of guilt among healthcare professionals

Healthcare professionals frequently hesitate to participate in mediation because of the concern that mediation may be interpreted as an implicit admission of fault or malpractice. This fear is reinforced by the criminalization tendencies in some medical dispute cases, where healthcare providers have been prosecuted even in situations involving inherent medical risks rather than negligence. Consequently, mediation becomes psychologically burdensome for doctors and hospitals, who may prefer defensive postures rather than open dialogue. This undermines the restorative intention of mediation as envisioned by proportional justice.

c. Shortage of qualified medical-legal mediators

A critical institutional problem is the lack of mediators who possess interdisciplinary competence in both medical ethics and legal accountability. Medical disputes differ from ordinary civil disputes because they involved complex clinical judgment, scientific uncertainty, ethical dilemmas, professionals standards and SOPs, emotional trauma and trust breakdown. Without mediators trained specifically in healthcare contexts, mediation risk oversimplifying disputes, failing to identify professional boundaries, or producing settlements that are neither fair nor normatively grounded.

d. Weak medical documentation and record-keeping practice

Effective mediation relies heavily on accurate documentation, including :

- Medical records
- Informed consent forms
- Clinical decision-making notes
- Patient communication logs

However, weaknesses indocumentation practices remais prevalent in many Indonesian healthcare facilities, especially in smaller hospitals or rural clinics. Incomplete records create evidentiary ambiguity, making it difficult to clarify whether harm resulted from negligence, system failure, or unavoidable medical risk. This uncertainty often pushes disputes toward litigation rather than consensual settlement.

e. Litigation-oriented legal culture and limited institutional trust

Another major barrier is the persistence of an adversarial legal mindset within both the public and professional community. Patient may distrust mediation because it is perceived as hospital-controlled os biased. Meanwhile, hospital may distrust patient's intentions, fearing that mediation may still lead to lawsuit. This mutual distrust prevents mediation from functioning as a cooperative restorative mechanism. Instead, disputes become framed as battles over liability rather than opportunities for dialogue, accountability, and systemic improvement.

f. Lack of explicit procedural mandates under Health law No.17 of 2023

Although the Health Law embeds patient protection and professional legal certainty, it does not yet provide explicit procedural mandates or detailed institutional pathways for mediation. In practice, this normative gap results in :

- Inconsistent application across hospitals
- Absence of standardized mediation units

- Uncertainty regarding enforcement of agreements
- Limited integration with patient safety governance.

Thus, mediation remains optional rather than structurally embedded.

These challenges confirm that mediation requires not only normative legitimacy but also institutional infrastructure and cultural transformation

### **Strengthening mediation through normative and institutional reform**

To operationalize mediation as a primary dispute resolution mechanism within the framework of Health Law No.17 of 2023, normative reinforcement and institutional restructuring are urgently required. Mediation must evolve from an optional alternative into an integrated component of national health governance.

a. Explicit regulatory recognition of mediation in medical disputes

The first necessary reform is the issuance of explicit implementing regulations that recognize mediation specifically as a preferred mechanism for resolving medical disputes. Such regulation could take the form of :

- Government Regulation (PP)
- Minister of Health Regulation (Permenkes)
- Supreme Court procedural integration

Clear recognition would provide legal certainty and reduced ambiguity regarding mediation's authority.

b. Establishment of hospital-based mediation units

Hospitals should be encouraged, or required, to develop institutional mediation units as part of internal governance frameworks. These units would function similarly to patient safety committees and should handle :

- Early complaints
- Communication failures
- Informed consent disputes
- Adverse event dialogue

Embedding mediation internally strengthens responsiveness and prevents escalation into criminal or civil proceedings.

c. Certification and professionalization of medical mediators

To address mediator shortages, certification programs must be developed for mediators specializing in healthcare disputes. Such certification should include training in :

- Medical ethics
- Clinical risk standards
- Health law accountability
- Communication and trauma-informed dialogue

Professional mediators with medical-legal expertise would enhance both patient trust and professional protection.

d. Integration of mediation into patient safety and risk management policies

Mediation should not be treated merely as a legal option, but as part of patient safety governance. By integrating mediation into hospital risk management systems, disputes can become learning opportunities, contributing to :

- Prevention of repeated harm
- Transparency in service delivery
- Safety culture improvement
- Reduction of defensive mechanism

Thus, mediation becomes an instrument of sustainable health system reform.

e. Continuous education for healthcare professionals and patients

For mediation to function effectively, both patients and professionals must understand its normative purpose. Educational initiatives should include :

- Legal literacy programs for patients
- Mediation training for hospital staff
- Communication improvement for physicians
- Awareness that mediation is not meant by guilt admission

This cultural shift is crucial for restorative justice.

f. Strengthening enforcement and legal binding force of mediation outcomes

To ensure legitimacy, mediation agreement must be easily enforceable and legally binding. Settlement outcomes should be :

- Documented formally
- Registered through court mechanisms
- Aligned with professional disciplinary frameworks

This ensures that mediation produces not merely moral outcomes but enforceable legal certainty.

g. Institutionalizing mediation as a structural pillar of health governance

Ultimately, mediation should be institutionalized as a structural pillar of Indonesia's health governance architecture. Such institutionalization would:

- Harmonize patient protection and professional certainty
- Reduce judicial overload
- Strengthen trust in healthcare institutions
- Advance humane accountability systems

These strategies would transform mediation from an optional mechanism into a structurally embedded component of health governance.

### **Implications for health governance and legal development**

Institutionalizing mediation contributes to broader health governance objectives, including trust-building, transparency, and learning from adverse events. It shifts the legal culture from blame-oriented accountability toward system-oriented responsibility. From a legal development perspective, mediation represents an adaptive response to the complexity of modern healthcare, reinforcing the legitimacy of health law as a responsive and humane regulatory field.

### **Conclusions**

Based on a normative analysis of Health Law No.17 of 2023, mediation emerges as a legally coherent and ethically justified mechanism for resolving medical disputes. It harmonizes patient protection with legal certainty for healthcare professionals, promotes proportional justice, and strengthens health system governance. Accordingly, mediation should be formally institutionalized as a primary dispute resolution mechanism within Indonesia's health law framework.

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