

# Judicial Mechanisms for Medical Disputes: A Normative Analysis of Litigation and Non-Litigation Pathways in Indonesia

Florindo Cardoso Gomes<sup>1)</sup>, & Ni Nengah Adiyaryani<sup>2)</sup>

<sup>1)</sup> Universitas Udayana, Bali, Indonesia, Email: ([fcgomes.unud@gmail.com](mailto:fcgomes.unud@gmail.com))

<sup>2)</sup> Universitas Udayana, Bali, Indonesia, Email: ([nnadiyaryani.unud@gmail.com](mailto:nnadiyaryani.unud@gmail.com))

**Abstract.** *Law Number 17 of 2023 controls how medical services are given in Indonesia. It also explains how to solve medical disputes. These disputes often happen because of mistakes either on purpose or by accident by healthcare workers. Articles 305, 308, and 310 explain how to handle these cases. However, they are not clear and are hard to apply. There are no clear rules about panel decisions, case deadlines, or how to judge if a doctor was negligent. This study uses a legal research method based on laws and legal ideas. It uses primary, secondary, and supporting legal sources through library research and logical analysis. The study finds that the system for solving medical disputes in Indonesia is unclear. This is because of weak law enforcement, poor legal rules, and different ways of reading the law. This creates unfairness for patients, doctors, and health institutions. To solve this, Indonesia needs to build a special medical court. This is important and urgent. By learning from other countries and adjusting it to the local legal system, such a court can bring more fairness, clarity, and faster decisions. It can also improve public trust and make health services better and safer.*

**Keywords:** *Medical Disputes, Health Law, Legal Ambiguity, Medical Court, Dispute Resolution Mechanism.*

## 1. INTRODUCTION

Health development is the state's responsibility to guarantee the basic rights of citizens, as regulated in Article 28 Paragraph (1) of the 1945 Constitution. The success of this development depends on the continuity of programs and sectors, including through health services. Health law regulates medical practice and doctor-patient relationships, with different terms in various countries, such as medical law in England and droit medical in France. In Indonesia, this regulation is stated in Law No. 17 of 2023 concerning Health (hereinafter referred to as the Health Law) which binds medical and health personnel (Nurhayati, 2021). Doctors as medical personnel have the legal authority to carry out medical actions for public health, where their duties are based on science, technology, and competence obtained through education and training, and must comply with applicable laws (Prasdyantoro & Zamroni, 2023; Utama et al., 2024).

Errors in medical services, whether intentional or due to negligence, can have implications for allegations of medical malpractice (Atmoko, 2022; Putri, 2024). However, not every medical error automatically meets the elements of malpractice if there is a justification that is in accordance with applicable professional standards and

medical guidelines. Therefore, a comprehensive legal analysis is needed to assess whether or not there is an element of gross negligence in each case (Nurdin and Hidayat, 2017).

In practice, medical dispute resolution is more often pursued through litigation than non-litigation mechanisms. This is due to the lack of socialization regarding alternative dispute resolution outside the courts and the assumption that the litigation process provides stronger legal certainty for the disputing parties (Subekti, 2019). However, settlement through litigation often has a negative impact on medical personnel, including defamation, loss of practice or employment license, psychological pressure, and the emergence of defensive medicine practices, namely the tendency of medical personnel to prioritize personal legal protection over patient safety, which can ultimately reduce the quality of health services. Law Number 17 of 2023 concerning Health has regulated the mechanism for resolving medical disputes, including in Article 305 paragraph (1), Article 308 paragraph (1), Article 308 paragraph (2), and Article 310. These provisions mandate that in resolving medical disputes, a recommendation from the relevant panel is required before a case can be processed further. However, in its implementation, this regulation faces conceptual challenges due to the vagueness of the concept of resolving medical disputes. The absence of a clear mechanism regarding the stages of dispute resolution, recommendation deadlines, and objective criteria in determining medical negligence has the potential to create legal uncertainty for patients and medical personnel.

In order to achieve legal certainty, justice, and protection of rights for all parties, more technical derivative regulations are needed to regulate medical dispute resolution procedures in more detail and systematically Only one (Amrah et al., 2024; Awangga, 2025). In addition, it is necessary to strengthen the capacity of professional councils to function independently and professionally in providing objective recommendations based on applicable medical standards (Atmoko, 2022; Sari, 2025). With clearer legal certainty, it is hoped that the medical dispute resolution mechanism can run transparently, fairly, and not harm medical personnel or patients as parties seeking justice.

The implications of conceptual ambiguity in several articles of the Health Law can lead to unclear mechanisms for resolving medical disputes. Some potential problems that may arise include:

1. Article 305 Paragraph (1), the ambiguity that arises is: granting the right to complain to the Indonesian Medical Discipline Honorary Council (*Majelis Kehormatan Disiplin Kedokteran Indonesia* or MKDKI) for patients or their families, but does not explain the relationship between the complaint and litigation in court, thus creating uncertainty in the legal path that must be taken.
2. Article 308 Paragraph (1) the ambiguity that arises is: it is not clear whether the MKDKI recommendation is administrative or substantive in determining criminal decisions, which can cause ambiguity in the legal process against medical personnel.
3. Article 308 Paragraph (2) the ambiguity that arises is: requiring MKDKI recommendations in civil cases, whereas civil disputes generally focus on

compensation, not ethical or disciplinary violations. This raises questions about the relevance of MKDKI recommendations in the civil realm.

4. Article 310 the ambiguity that arises is: does not regulate the mechanism if dispute resolution outside the court fails, and does not explain whether complaints to the MKDKI are included in the non-litigation process.

The ambiguity in these norms can create legal uncertainty for medical personnel, especially in terms of legal protection for clinical decisions taken in emergency conditions or cases with a high level of complexity. Therefore, implementing regulations or more specific legal updates are needed to avoid overlapping authority between the MKDKI and the judicial institution, as well as to ensure fair and proportional legal certainty for all parties in resolving medical disputes. This study aims to examine the effectiveness of the medical dispute resolution provisions stipulated in Law Number 17 of 2023 concerning Health, specifically Articles 305, 308, and 310. The primary focus of this study is to assess the extent to which these provisions provide legal clarity and protection for healthcare workers and patients in medical dispute resolution. This study also aims to identify obstacles to the implementation of existing legal norms and to explore alternative legal approaches or policies that are more applicable, fair, and oriented towards legal certainty in the context of medical services in Indonesia. Therefore, this study is expected to provide normative and practical recommendations for improving the medical dispute resolution system going forward.

## **2. METHODS**

The research method used in this article is the normative legal research method, especially by using the statute approach and conceptual approach (Ali, 2009). Normative legal research requires exploration of rules, principles, and legal doctrines to overcome legal challenges. This method is carried out by a thorough examination of the legal framework and provides a comprehensive analysis of the related legal problems faced (Amirrudin & Zainal, 2014). This study uses primary legal materials which use statutory regulations as the main source and secondary legal materials, including scientific journals and legal literature as other sources of legal materials.

## **3. RESULT AND DISCUSSION**

### **3.1. Medical Dispute Resolution Arrangements in Indonesia**

The Omnibus Law approach applied in Law Number 17 of 2023 concerning Health is a legislative method that aims to simplify various regulations in the health sector into one integrated regulation (Harahap & Hamid, 2020). Through this method, the government can change, add, or revoke various legal provisions that were previously spread across various regulations, in order to overcome overlapping regulations, increase bureaucratic efficiency, and accelerate legal reform in the health sector. The Omnibus Law is expected to improve the regulatory system related to health services, medical personnel standards, drug and food supervision, and various other aspects in the health sector that were previously hampered by the complexity of disharmonious regulations (Putra et al., 2024; Sari, 2025).

However, in its implementation, there are conceptual weaknesses that have the potential to cause legal uncertainty, especially in the mechanism for resolving medical

disputes as regulated in several articles of the Health Law. Analysis of the articles regulating the resolution of medical disputes shows that the normative explanation used in this law, especially through the phrase “Quite Clear” in the explanation of the article, can lead to different understandings among law enforcers and the disputing parties (Guwandi, 2005).

This ambiguity arises due to the absence of detailed regulations regarding dispute resolution mechanisms, including evidentiary standards, stages of the legal process, time limits for filing complaints, and the relationship between non-litigation mechanisms (outside the court) and litigation (Kurniawati & Fahmi, 2023). The absence of clear norms in these aspects can lead to inconsistencies in the application of the law and confuse medical personnel and patients as disputing parties. Furthermore, medical dispute resolution in Indonesia still experiences imperfections in the integration between various fields of law, namely:

1. Criminal law, which focuses on proving medical personnel’s mistakes, which must meet a higher standard of proof (beyond reasonable doubt), so that not all cases of negligence can be categorized as criminal acts.
2. Civil law, which focuses on compensation for patients or their families, but without clear standards in determining the amount of compensation, which can lead to disparities in court decisions.
3. State administrative law, which relates to administrative decisions in medical disputes, but does not yet have a mechanism that is coordinated with criminal or civil processes, thus causing confusion in its application.

To overcome these various problems, more specific and coordinated implementing regulations are needed, which regulate in detail the mechanism for resolving medical disputes so that they can run effectively, fairly, and provide legal certainty for all parties involved. These regulations must ensure integration between dispute resolution mechanisms in the criminal, civil, and administrative realms, and provide clear guidelines for medical personnel, patients, and judicial institutions in handling medical disputes proportionally and transparently.

Legal uncertainty in resolving medical disputes is not only caused by the vagueness of the concept of the medical dispute resolution mechanism, but also by inconsistencies in the interpretation of the law against applicable regulations. In Law Number 17 of 2023 concerning Health, although there are provisions that mandate that medical disputes should be resolved through out-of-court mechanisms, this law does not provide detailed guidelines regarding the settlement procedures, the mechanisms that must be followed, and the legal consequences if the out-of-court settlement does not reach an agreement (Utama et al., 2024; Sidik et al., 2025).

Regulatory disharmony also exacerbates legal uncertainty in resolving medical disputes. For example, Law Number 25 of 2009 concerning Public Services, which regulates dispute resolution mechanisms in public services, does not specifically accommodate the characteristics of medical disputes, which have different complexities compared to public service disputes in general. As a result, there is a regulatory gap that makes it difficult for patients and medical personnel to determine the right legal path, thus potentially increasing the escalation of conflict and adding to the burden on

the justice system.

In the context of law enforcement, Soekanto (2018) emphasized that the law must be enforced firmly, systematically, and fairly. Therefore, to overcome the problem of uncertainty in resolving medical disputes, legal reform is needed which includes revision and harmonization of regulations, so as to provide clarity regarding the stages of dispute resolution, the deadline for filing complaints, and the relationship between litigation and non-litigation mechanisms. One solution that can be considered is the establishment of a special medical court that has the competence to handle medical disputes more effectively and proportionally.

From the perspective of legal interpretation theory, legal interpretation must be consistent and contextual, namely taking into account social aspects, developments in medical practice, and standards of the medical profession. In this case, clearer legal interpretation guidelines are needed regarding how articles in medical regulations should be understood and applied (Suryadisastra et al., 2023; Ardi et al., 2023). Harmonization in this interpretation aims to reduce legal uncertainty, so that patients and medical personnel have certainty in resolving medical disputes in accordance with the principles of justice, proportionality, and legal certainty. Comprehensive legal reform is needed, including a revision of the Health Law and the preparation of new regulations that regulate the resolution of medical disputes more clearly and in detail (Utama et al., 2024; Perangin-Angin et al., 2025). Creating a more efficient, effective, and equitable medical dispute resolution system, there needs to be improvements in aspects of law enforcement and legal interpretation. Regulatory reform, the establishment of special medical court regulations, and harmonization of legal interpretation can help create a clearer resolution mechanism and reduce legal uncertainty which has so far been the main problem in resolving medical disputes in Indonesia.

### **3.2. Legal Implications of Ambiguous Medical Dispute Resolution**

Legal implications are legal consequences arising from an action, deed, or decision made by a legal subject, the assessment of which is based on applicable legal norms or provisions (Saktia, 2013). These consequences can be in the form of rights, obligations, sanctions, or changes in the legal status of the subject or object of law. Every legal action taken by an individual or institution has a legal impact that can affect both the short and long term, so that legal certainty is needed in every regulation that regulates it. In the context of resolving medical disputes in Indonesia, the vagueness of the legal concept contained in Law Number 17 of 2023 concerning Health has a direct impact on the justice, efficiency, and quality of health services. The ambiguity in the definition, procedures, and mechanisms for resolving medical disputes causes a lack of integration between the various available legal mechanisms, such as the MKDKI, general courts, criminal reports, and mediation. Although each has legal authority, the lack of good coordination between these mechanisms creates legal uncertainty, so that patients and medical personnel do not have clear guidelines in determining the dispute resolution path that must be taken (Santoso et al., 2019).

This uncertainty has a wide impact, not only for the disputing parties but also for the quality of health services as a whole. For patients, the unclear dispute resolution procedures can hinder their right to obtain justice, especially when the legal process becomes protracted or has no certainty of outcome. Meanwhile, for medical personnel,

the potential for disputes that are not managed well can encourage the practice of “defensive medicine”, where medical personnel tend to take excessive or unnecessary medical steps just to avoid lawsuits. These implications can increase the cost of health services without providing clear clinical benefits, and have the potential to reduce public trust in medical personnel and health facilities (Ardi et al., 2023; Amiati et al., 2024).

In addition, health institutions are also affected, especially in terms of operations and reputation. Legal uncertainty in resolving medical disputes can create additional administrative burdens, as well as reduce the credibility of hospitals or clinics involved in the dispute. In the long term, tensions and distrust between patients and medical personnel will increase, which can ultimately worsen the health system as a whole, making it more expensive, slower, and less effective in improving the quality of health services (Sriwidodo et al., 2025; Sari et al., 2025).

Therefore, a more integrated and clear regulation is needed in resolving medical disputes, in order to create legal certainty, increase public trust in the health system, and ensure balanced legal protection for patients and medical personnel. Better harmonization of regulations and coordination between institutions need to be carried out immediately so that the resolution of medical disputes can run efficiently, fairly, and transparently in accordance with applicable legal principles. Legal implications arising from the aspects of Patients, Medical Personnel, Health Institutions and the National Health System, include:

**Table 1.** Stakeholder Impacts of Ambiguous Medical Dispute Resolution

No	Objects	Legal Implications
1.	Patients	Patients feel they are not getting justice because of the complicated process and inconsistent results from the available mechanisms. This vague concept reduces patients’ trust in medical personnel and health institutions. Many patients do not understand the path they should take, so they have to bear greater costs and time to resolve disputes. Legal uncertainty worsens the relationship between patients and medical personnel, often leading to conflicts that are increasingly difficult to resolve.
2.	Medical Personnel	Medical personnel take excessive steps, such as performing additional tests or procedures that are not actually necessary to avoid potential disputes. This increases the cost of health care without significant clinical benefits. Concerns about potential medical disputes can affect the mental health of medical personnel, which ultimately reduces the quality of care they provide, medical personnel feel unprotected by the law, especially when they face criminal threats in cases that are actually administrative or civil. Unresolved medical dispute cases can damage the reputation of health institutions, even though they are actually innocent.
3.	Health Institutions	Medical disputes that are not handled properly can create a negative image for health institutions. Legal conflicts often divert management’s focus, which can disrupt service operations. Health institutions often face large compensation claims due to medical disputes.
4.	National Health System	The ambiguity of dispute resolution mechanisms creates a slow, expensive and ineffective system. The absence of an integrated oversight mechanism results in weak accountability of medical personnel and health institutions. Fear of litigation distracts medical personnel from their primary focus, which is to provide the best service.

The implications of the unclear concept of medical dispute resolution in Indonesia have significant impacts on patients, medical personnel, health institutions, and the national health system as a whole. The legal perspective, especially related to the theory of justice, has various problems that arise due to the unclear rules governing the mechanism for resolving medical disputes. In order to provide a more in-depth analysis, it is necessary to link this concept to the theory of justice, which includes distributive justice, procedural justice, and substantive justice. The unclear norms in laws and regulations, especially in Articles 305, 308, and 310 of Law Number 17 of 2023 concerning Health, have significant legal impacts on patients, medical personnel, and the national health system. This unclear norm causes legal uncertainty in resolving medical disputes and has the potential to harm the parties involved. To analyze this problem, the theory of justice and the principle of legal certainty are the main basis for examining the legal implications of the unclear regulations. Analysis of Legal Theory on the Ambiguity of Concepts in the Health Law, including:

**Table 2.** Justice Analysis for Medical Dispute Ambiguity

No	Legal Theory	Legal Arguments	Legal Analysis	Legal basis
1	Distributive Justice	Distributive justice demands a fair distribution of benefits and burdens in society.	The ambiguity of medical dispute resolution procedures causes an uneven distribution of justice between patients and medical personnel. Patients and medical personnel do not receive equal treatment in accessing justice.	Article 27 paragraph (1) of the 1945 Constitution: All citizens have the right to fair and equal legal protection.
2	Procedural Justice	Procedural justice demands transparency and fairness in every legal process.	Unclear medical dispute resolution procedures create uncertainty for patients and medical personnel, worsening their relationship with the existing legal system.	Article 28D paragraph (1) of the 1945 Constitution: Everyone has the right to justice in the legal process.
3	Substantive Justice	Substantive justice demands that the outcome is fair and in accordance with the rights that should be received by the parties involved in the dispute.	Without a clear and coordinated mechanism, the outcomes of medical disputes often do not reflect substantive justice for patients and medical personnel.	Article 28G paragraph (1) of the 1945 Constitution: Everyone has the right to receive protection of their rights.
4	Legal Uncertainty	Legal uncertainty is related to the unclear procedures to be followed by the parties involved in a medical dispute.	Ambiguity in resolving medical disputes causes legal uncertainty, harming patients and medical personnel who do not know the proper path to resolving disputes.	Article 28D paragraph (1) of the 1945 Constitution: Everyone has the right to legal certainty.

The ambiguity of the norms in Articles 305, 308, and 310 of the Health Law has implications for the failure to fulfill the principles of justice and legal certainty in resolving medical disputes. To overcome this problem, more detailed derivative

regulations and harmonization between the medical dispute resolution mechanism and the applicable legal system are needed.

### **3.3. Comparison of Medical Dispute Resolution in Other Countries**

The establishment of specific legislation for medical disputes is crucial to creating a fairer, more efficient, and more transparent medical dispute resolution system. As a sector with unique characteristics and in-depth technical expertise, medical dispute resolution requires different mechanisms than other general disputes (Setyowati, 2023). According to Harjono (2019), the crucial role of specific legislation for medical disputes is to ensure Fairer Access. This means that clear regulations regarding the procedures and mechanisms for resolving medical disputes will expedite the legal process and reduce obstacles faced by the parties involved. Patients who feel disadvantaged by substandard medical treatment will have access to justice, while medical personnel will receive legal protection against unfounded claims. Improving the Efficiency of Dispute Resolution means adopting a medical dispute-focused approach, such as using judges and medical expert witnesses, so that the judicial process is more focused and avoids wasting time and resources. This will also reduce overlapping and caseloads in general courts, and provide faster and more appropriate resolutions.

**Involving Medical Experts in Legal Processes:** Medical disputes often involve technical aspects that require a deep understanding of medical practice. With judges equipped with medical knowledge or the involvement of medical experts as witnesses, decisions can be more substantial and based on accurate medical facts, resulting in fairer and more objective decisions. **Encouraging Non-Litigation Resolution:** Specialized judicial regulations for medical disputes also allow for the use of non-litigation approaches, such as mediation, conciliation, and arbitration, as alternative dispute resolution methods without the need for lengthy and formal court proceedings. This approach allows for a more restorative dispute resolution process, where patients and medical professionals can resolve their differences through dialogue and compromise. **Becoming a Tool for Oversight of the Medical Profession:** This regulation can serve as an oversight tool to ensure medical professionals adhere to ethical and professional standards in medical practice. With a more structured dispute resolution mechanism, medical professionals will be encouraged to be more careful in performing medical procedures, while patients will be more confident that there is strong oversight of the medical practices they receive.

The regulation of special medical dispute courts has a very important role in creating a medical dispute resolution system that is not only efficient but also fair, ensuring the rights of patients and medical personnel are protected, and improving the quality of health services as a whole. Although Indonesia currently has several mechanisms for resolving medical disputes through administrative, judicial, and mediation channels, the existing system still faces various challenges, such as unclear implementation of procedures, lack of medical knowledge in legal decision-making, and uncertainty regarding the regulation of medical disputes in the Health Law (Hermanto & Aryani, 2023). Therefore, it is necessary to revise the regulations and establish a special medical dispute court to provide legal certainty and increase public trust in the medical dispute resolution system in Indonesia (Auckland & Goold, 2020).

The complexity and special nature of medical disputes should encourage the



Indonesian Government to establish a law that regulates the establishment of a special medical court. The settlement of medical disputes in countries with a civil law legal system shows variations in approaches and resolution mechanisms (Tjandra, 2017). Countries such as France, Germany, the Netherlands, and Spain generally rely on general courts or special courts established under civil law to resolve medical disputes. These countries emphasize more formalistic legal procedures in the process of resolving medical disputes, where cases of malpractice or violation of patient rights are submitted to civil courts that have the authority to handle such cases. This approach prioritizes proving the fault and legal responsibility of medical personnel, using strict standards of proof (Anwary, 2023; Pujiningrum et al., 2024). On the other hand, although countries such as France and Germany choose to resolve medical disputes through general courts, this is not always fast and efficient. The technical nature of medical problems and the limited medical knowledge of general courts often result in legal uncertainty and protracted delays, which in turn can worsen the psychological and economic conditions of patients. Some countries such as the Netherlands are starting to adopt the model of special medical courts or medical panels within general courts to address this problem.

On the other hand, countries with civil law systems such as the Netherlands and Spain have also begun to use mediation or Alternative Dispute Resolution (ADR) approaches, which provide an opportunity for patients and medical personnel to reach a peaceful agreement without going through formal courts. Based on legal analysis, the approach applied by countries with civil law systems, such as France and Germany, shows a tendency to prioritize formal procedures and proof of guilt through general courts (Melenko, 2020). This is in accordance with the principle of the supremacy of law which guarantees dispute resolution through structured and clear procedures. However, this approach faces challenges in terms of efficiency and technical understanding of very specific medical aspects. The weakness of this system is the inability of general courts to optimally handle technical medical problems, so adjustments are needed to ensure fairer and more appropriate decisions.

Countries such as the Netherlands and Spain that have begun to integrate medical panels or mediation into their legal systems provide a more flexible and efficient alternative, reducing reliance on general courts that may not have adequate medical expertise. This approach pays more attention to substantive justice by providing space for a more humane resolution, namely through healing the relationship between the patient and the medical staff, rather than simply determining who is at fault. Therefore, the establishment of special medical court regulations in Indonesia will be very important to answer the need for efficient and effective resolution of medical disputes, by directly involving the medical aspect in the legal process (Sari, 2025).

On the other hand, although countries with common law systems such as the United States and Singapore have different approaches, they also seek to introduce efficiency in resolving medical disputes through mediation and arbitration mechanisms. In Singapore, for example, the use of institutions such as the Singapore Medical Council (SMC) and the general court system demonstrates an attempt to create a more structured and efficient system even without a special medical court (Irsyadi & Jevis, 2024). This approach demonstrates the importance of a balance between procedural and substantive justice and the efficiency of resolving medical disputes. Comparison of Other Countries on the Medical Dispute Resolution Process, including:

**Table 3.** Comparative Overview of Medical Dispute Resolution and Legal Systems

No	Country	Medical Settings	Legal System	Establishment of Medical Court	Dispute Resolution
1	Indonesia	Law Number 17 of 2023	Civil law or Continental European law	No Medical Court yet	- MKDKI - Mediation
2	Japan	Medical Practice Act of 1994	The Civil Law System with 6 legal codes is influenced by German Law and French Law.	No Medical Court yet	- Mediation - Court General
3	Netherlands	Healthcare Quality, Complaints and Disputes Act	Continental European Legal System	No Medical Court yet	- Independent Dispute Committee - General Court - Disciplinary Court for Care - National Health Reporting Center ( <i>Landelijk Meldpunt Zorg</i> )
4	France	Treatment and Medical Acts (Ordinance 2015-899)	Continental European Legal System	No Medical Court yet	- Mediation with the hospital - Local Administrative Court - Seeking non-binding Mediation - Criminal Report - French Civil Court
5	USA	- Liability Act - Good Samaritan Law - Medical Legal Consideration	Common law legal system	No Medical Court yet	- Medical Courts - American Medical Association
6	Singapore		Common law legal system	Having a Medical Court	- Singapore Medical Council (SMC) under the Singapore Ministry of Health - Medical Courts in the General Courts - Mediation

Based on comparison with other countries, it is very clear that Indonesia needs to establish a special medical dispute court regulation to handle medical disputes more efficiently and in a structured manner. This regulation will ensure more appropriate decisions by involving medical experts and provide better substantive justice for all parties involved. Dispute resolution theory supports the existence of a special medical dispute court regulation and alternative non-litigation mechanisms to create a more

effective, fair, and efficient system in resolving medical disputes.

Adopting the concept of establishing special judicial regulations for medical disputes, Indonesia can improve substantive and procedural justice in resolving medical disputes. This process will not only guarantee the rights of patients, but also protect medical personnel from baseless lawsuits. A more efficient judicial structure that focuses on medical aspects will make the public feel more secure in terms of getting justice, while medical personnel will also receive protection in accordance with their professional standards. Therefore, the establishment of special judicial regulations for medical disputes in Indonesia is very important to ensure that the legal system runs in line with the growing needs of the community in terms of health services.

### **3.4. Legal Reforms Toward Fair Future Special Medical Court Establishment**

Medical dispute resolution in Indonesia currently faces significant challenges, especially related to procedural and substantive justice. In this context, Law Number 17 of 2023 concerning Health has not been fully able to provide a fair and effective solution for resolving medical disputes, both in the procedural and substantive realms. One of the main problems is the heavy burden faced by judges in handling various medical disputes, which are often beyond their ability to understand in depth (Santoso, 2022). This occurs due to the lack of technical medical understanding possessed by judges, who often do not have a background or expertise in the medical field. As a result, decisions made in general courts often do not reflect substantive justice for the parties involved, especially patients and medical personnel (Prasdyantoro & Zamroni, 2023).

This problem is further exacerbated by the ambiguity in the applicable legal regulations, so that many medical disputes cannot be resolved in a manner that is in accordance with the principles of justice. This is contrary to the mandate of Article 28D paragraph (1) of the 1945 Constitution which affirms the right of every person to recognition, guarantees, protection, and certainty of fair law (Sutarjo, 2021). In order to uphold this justice, more specific legal reforms are needed and the establishment of special medical dispute court regulations that can resolve this problem. These regulations must be able to assess medical dispute cases not only from a general legal perspective, but also consider the technical, ethical, and disciplinary aspects of the medical profession that are often overlooked in general courts (Bharata et al., 2024).

The establishment of special medical dispute court regulations must be based on solid and clear laws and regulations, as is the case with the establishment of other special courts, such as the Commercial Court regulated in Law Number 37 of 2004 concerning Bankruptcy and Law Number 13 of 2016 concerning Patents, or the Corruption Crime Court regulated in Law Number 46 of 2009. According to Wibowo (2020) In the context of special medical dispute courts, comprehensive regulations must cover several important aspects, including.

1. **Scope of Authority:** Regulations regarding the types of disputes that are within the jurisdiction of the court, such as violations of the code of ethics of the medical profession, medical professional discipline, claims for breach of contract related to medical services, or criminal acts that occur in medical practice. This will clarify the types of medical disputes that can be resolved through this special judicial route.

2. Competence of Judges: Regulations regarding judges who are specifically assigned to handle medical disputes, who have a technical understanding of medical practice and medical law. These judges need to be supported by credible expert witnesses in the medical field, who can provide a more objective assessment of the problems faced.
3. Special Procedures: These regulations also need to include special procedures for resolving medical disputes, both litigation and non-litigation. These procedures must take into account the complexity of medical disputes, such as regulating the stages of mediation or arbitration before entering the litigation stage in court, as well as settlement mechanisms that prioritize fair, efficient, and appropriate resolutions to the characteristics of medical cases.

With comprehensive special medical dispute court regulations, it is hoped that the medical dispute resolution process can be more in accordance with the principles of justice, both in terms of procedure and substance. This legal update will create a more fair, efficient, and effective settlement mechanism, as well as provide better protection for patients, medical personnel, and other related parties.

Medical dispute resolution requires a structure and mechanism that is not only effective, but also responsive to the needs of the community and the ever-evolving complexity of medical law. One approach that can be adopted is a dispute resolution system that integrates non-litigation and litigation stages, as applied in the settlement of industrial relations disputes. In this system, the dispute begins with a non-litigation stage that emphasizes dialogue and efforts to resolve the dispute peacefully and efficiently. The first stage in resolving this medical dispute is bipartite negotiations, where the patient or his/her family submits a complaint or claim related to medical treatment to the health facility or medical personnel involved (Amiati et al., 2024). This complaint is submitted through a predetermined official mechanism, such as a patient complaint unit at a hospital or related health institution. Furthermore, both parties will try to resolve the dispute directly through open dialogue, with an effort to reach a mutually beneficial agreement. If bipartite negotiations do not produce an agreement, the dispute will proceed to the next stage, namely tripartite negotiations involving a third party, namely a mediator or conciliator.

At the tripartite stage, a mediator or conciliator who has competence in the field of medical law and medical ethics will help the parties to find a fair solution. This is where the role of the MKDKI becomes very important. MKDKI, which focuses more on the discipline of the medical profession, can play a role as a mediator or provide recommendations regarding violations of the medical code of ethics that may occur in the dispute. Recommendations provided by MKDKI in the form of mediation or conciliation will help the parties to find a faster solution and do not require a formal court process. In this case, MKDKI can facilitate negotiations and help medical parties to accept responsibility for negligence or violations that are non-criminal in nature.

If the non-litigation stage (bipartite and tripartite) fails to achieve the desired resolution, then the dispute can be forwarded to the litigation path through a formal court. This litigation process will be passed through the first-level court, which is a formal documented legal process, and if there is no satisfactory agreement or decision, the dispute can be brought to the appellate court and can finally reach cassation in the Supreme Court. However, this litigation process must still be seen as the last step after

efforts to resolve through non-litigation have failed. In the context of civil disputes, it is generally related to lawsuits against medical personnel or health facilities related to negligence or breach of contract that harms patients. Recommendations from the MKDKI, although not legally binding, will be very relevant and can be used as supporting evidence or as consideration in court decisions, as well as providing guidance on ethical and disciplinary aspects of the medical profession that can ease the judge's decision in civil cases.

In addition, in criminal cases involving elements of medical negligence or malpractice leading to criminal acts, the MKDKI can provide recommendations that influence the judge's considerations in imposing sanctions or punishments. These recommendations, although not binding legal decisions, can be important considerations in the criminal justice process to consider more rehabilitative and restorative sanctions against medical personnel, in addition to or as an alternative to criminal penalties (Sutrisno, 2017). This aims to maintain the dignity of the medical profession while providing recovery for patients who have been harmed. Overall, the integration of a dispute resolution system that combines non-litigation and litigation channels will create a more efficient, transparent, and equitable medical legal system. By providing more space for dispute resolution outside the courts, the burden of cases in court can be reduced, while the dispute resolution process becomes faster, cheaper, and prioritizes the principle of restorative justice. This integration also guarantees legal protection for patients and medical personnel, and creates better legal certainty in the future, thereby reducing the uncertainty and tension that often occurs in medical disputes (Putri, 2024).

Legal reform in the establishment of special courts for medical disputes is essential to ensure fair dispute resolution. The ambiguity in Law Number 17 of 2023 concerning Health regarding the responsibilities of medical personnel, dispute resolution mechanisms, and the authority of institutions such as the MKDKI, creates legal uncertainty. Therefore, it is important to form special judicial regulations that integrate litigation and non-litigation aspects, involve judges with medical understanding, and use independent expert witnesses (Sutrisno, 2017). These regulations must accommodate the principles of the rule of law, namely justice, transparency, and protection of individual rights, as well as overcome the unclear authority between general courts and professional bodies. More comprehensive and systematic legal reforms will provide legal certainty for all parties and reduce uncertainty in resolving medical disputes. Legislative theory also emphasizes the importance of laws that are responsive to social needs and developments in the medical and legal worlds, so that these reforms can create an efficient, fair, and transparent justice system (Prabowo, 2015).

#### **4. CONCLUSION**

The Omnibus Law in Law No. 17 of 2023 aims to simplify health regulations, its implementation still faces the problem of unclear resolution of medical disputes. This uncertainty impacts patients, medical personnel, health institutions, and the health system as a whole, worsens relationships, and increases costs and administrative burdens. To overcome this problem, more detailed regulatory updates and harmonization between dispute resolution mechanisms are needed, as well as the establishment of special medical courts to ensure legal certainty and justice in the

dispute resolution process. Special judicial regulations for medical disputes are essential to handle the complexity of medical disputes in a more efficient and fair manner. Clear resolution of medical disputes will ensure fair legal access for patients and medical personnel, speed up the process, and provide protection for both parties. In addition, the use of judges and medical expert witnesses in the judicial process can increase efficiency, avoid wasting time, and ensure objective and appropriate decisions. The establishment of this regulation can also encourage dispute resolution through non-litigation alternatives such as mediation or arbitration, which are faster and do not involve formal court processes. This regulation also serves as a tool for monitoring the medical profession, encouraging medical personnel to comply with ethical and professional standards. Although Indonesia already has several mechanisms such as general courts and the MKDKI, the existing system still faces obstacles and needs to be revised to provide more specific and structured solutions. Other countries such as the Netherlands and Singapore have adopted a more efficient and equitable approach, which can be an example for Indonesia in establishing a special court for medical disputes. The government together with the DPR and related institutions must immediately draft a special law for resolving medical disputes. The government needs to establish a special medical court that has exclusive jurisdiction to handle medical disputes, and the government and professional associations must educate the public about their legal rights in health services and the importance of a non-confrontational dispute resolution mechanism.

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