



## Urgency of Medical Justice Post Law Number 17 of 2023 Concerning Health

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### ABSTRACT

Medical dispute resolution in Indonesia has become an important topic along with the increasing number of cases of medical malpractice and negligence. The recently passed Law Number 17 of 2023 concerning Health provides a new direction in regulating medical disputes, emphasizing non-litigation resolution through mediation, arbitration, and a restorative justice approach. However, although this law offers better protection for medical personnel and patients, the urgency of establishing a medical court remains necessary. This is because the existing medical dispute resolution procedures often do not create a sense of justice for both parties, both medical personnel and patients. A medical court that has a specialty is expected to ensure justice by involving judges and experts who understand complex medical issues. Thus, medical courts have the potential to become institutions that accommodate the need for fast, fair, and appropriate resolution of medical disputes in accordance with legal standards and medical professional ethics. This study aims to describe the resolution of medical disputes after the enactment of Law Number 17 of 2023 and analyze the urgency of establishing a medical court to improve the quality of the health law system in Indonesia.

## INTRODUCTION

Some time ago, before the enactment of Law Number 17 of 2023 on Health, there was a strong push from various parties to establish a medical court or a special court for the health profession in Indonesia. This initiative even made it into the 2022 National Legislation Program (Prolegnas) of the Indonesian House of Representatives (DPR RI), although it has not yet been realized. This push was driven by the increasing number of medical disputes, medical risks, and medical negligence cases, which continue to rise alongside the development of medical services in Indonesia. In legal terms, cases of alleged malpractice are also increasing in both number and variety.

Several cases involving patients and medical or healthcare personnel have surfaced. These include the death of film actress ND following liposuction surgery in Jakarta, a case where gauze was left inside a patient (RD) after surgery at Aceh Tamiang Regional Hospital, the brainstem death of a 7-year-old child following a tonsillectomy in Bekasi, the severed finger of an 8-month-old baby due to an IV replacement procedure performed by a nurse in Palembang, and the case of a newborn's head being detached during delivery due to a midwife's actions in Riau.

Cases of medical malpractice in Indonesia highlight the need for legal protection for both doctors and patients. One example is Dr. Setyaningrum, who was convicted due to negligence that resulted in a patient's death. This reality underscores the necessity of establishing a special medical court to improve Indonesia's healthcare legal system. Such a court would provide legal certainty, protect patients' rights, and ensure that doctors practice their profession according to established standards. A special medical court could serve as a solution to improving the healthcare legal system. Stronger legal protection is needed to ensure justice and safety in medical services. Healthcare legal reform must be based on applicable legal principles and national values.

Medical dispute resolution through the Indonesian Medical Disciplinary Honorary Council (MKDKI), General Courts, or police reports has not yet met the ethical standards of utilitarian justice or justice that brings happiness. Therefore, a new institution under the Supreme Court with an ad hoc nature, called the Medical Court, is necessary. This special medical court is expected to have the same specificity as juvenile courts, human rights courts, corruption courts, and tax courts in administrative law.

In 2023, a new Health Law was enacted: Law No. 17 of 2023 on Health. This law is considered an omnibus law in the healthcare sector, integrating various laws related to health, healthcare professionals, and other matters. It also addresses medical disputes arising from relationships between healthcare providers (medical professionals, healthcare workers, hospitals, or clinics) and patients. The new health law serves as a *lex specialis*, protecting both healthcare providers and recipients. Changes have been made to the regulations governing medical and healthcare professional errors. The handling of professional errors in Law No. 17 of 2023 offers greater protection to medical and healthcare professionals. However, some provisions are still inconsistent with the paradigm

of Health Law, potentially causing harm to both providers and recipients of healthcare services.

The enactment of the new Health Law is believed to have accommodated some of the previously proposed regulations on medical disputes and medical courts. However, based on expert reviews, only some aspects have been addressed, while many gaps remain unfulfilled, raising concerns about achieving substantive and procedural justice for healthcare providers and recipients. This paper aims to provide an overview of medical dispute resolution under the new Health Law and then elaborate on the urgency of establishing a medical court after the enactment of Law No. 17 of 2023. The key question is whether such a court is still necessary or whether the new law sufficiently accommodates medical dispute resolution, making a medical court unnecessary.

## LITERATURE REVIEW

To discuss the issue of medical disputes and medical courts, theoretical foundations ranging from grand theory, middle-range theory, and applied theory are used as the basis for analyzing the problem. In this paper, the legal state theory serves as the grand theory, the justice theory as the middle-range theory, and the law enforcement theory as the applied theory.

### 1. Legal State Theory

Historically, the concept of a legal state can be traced back to the views of Plato and Aristotle regarding the relationship between the state and law, which already existed in ancient Greece. The principle of the legal state later became the foundation of state governance during the Roman era, where civil law was used to regulate relations between citizens, provide legal certainty, and ensure that disputes were adjudicated objectively. Meanwhile, relations involving the state were governed by public law (criminal law). This system later became known as the Continental European Legal System, also referred to as Code Civil, Corpus Juris Civilis, or the Justinian Code, which was enacted by Emperor Justinian in the 5th century AD.

Jimly Asshiddiqie stated that a legal state (*Rechtsstaat*) is a state that places law as the foundation of every government policy and action. A legal state guarantees the supremacy of law, the protection of human rights, and the principle of separation of powers. Asshiddiqie also emphasized the importance of constitutionalism and the role of an independent judiciary in law enforcement. Todung Mulya Lubis argued that a legal state must be able to ensure justice, legal certainty, and respect for human rights. He highlighted the importance of good governance, including transparency, accountability, and public participation in decision-making processes. Lubis also stressed the need for legal reform to adapt to social and economic dynamics.

In relation to medical disputes, medical risks, and malpractice cases, the state must be able to regulate relations between citizens and between citizens and the government based on an established and mutually respected legal system. Through its laws, the state must protect its citizens, including in matters of healthcare, which is a fundamental human right. The state must be present for its

citizens with good governance that is transparent, accountable, and responsive to changes.

## 2. Justice Theory

The concept of justice has also existed since the time of Plato and Aristotle. Plato described justice as harmony within society, where each individual fulfills their role according to their capacity. He regarded justice as an ideal condition in which every part of society functions according to its purpose and duties. Aristotle differentiated between distributive justice (the fair distribution of welfare) and retributive justice (punishment or reward proportional to an action). He viewed justice as a virtue that ensures each individual receives what they are due.

John Locke argued that justice involves protecting individuals' natural rights, including the right to life, liberty, and property. Locke also emphasized the social contract as the foundation of governmental legitimacy. Justice must incorporate both legal and moral aspects, meaning legal justice is not only about conformity with statutory law but also alignment with prevailing moral values in society. In this context, ensuring access to justice for all social groups and maintaining an independent and impartial judiciary are crucial.

On the other hand, Satjipto Rahardjo introduced the progressive legal approach, emphasizing that law must always side with social justice. Law should not be static but must be adaptable to societal changes to achieve justice. Rahardjo also stressed the importance of a humanistic aspect in law enforcement. Hikmahanto Juwana linked justice with legal development in Indonesia, stating that justice must balance legal certainty, utility, and fairness.

Essentially, the state must ensure justice through law, and the law must guarantee justice for all parties. The presence of rights and obligations regulated in legislation serves as an assessment of justice from both substantive and procedural perspectives. Justice must be enforced by the government through an independent judiciary to ensure fairness for service recipients as well as service providers.

## 3. Law Enforcement Theory

Law enforcement theory has evolved from classical to contemporary thought, encompassing various perspectives from legal positivism, sociology of law, and critical legal theory. Classical legal thought suggests that law should be designed to prevent crime and that punishment should be proportional to the offense committed. Law enforcement must be carried out fairly and effectively to deter crime.

Over time, sociological perspectives have emerged, viewing law enforcement as a social process influenced by and influencing societal factors. This perspective introduces the concept of *legal-rational authority*, where law enforcement is based on rational rules and procedures. Contemporary law enforcement theory emphasizes the importance of legal interpretation that considers moral principles and human rights to fulfill the principles of substantive justice.

In Indonesia, legal scholars focus on the importance of legal supremacy, judicial independence, legal reform, and a humanistic approach to law enforcement. Challenges in Indonesia's legal enforcement include corruption and unresolved injustices. Other issues include political interference in the judiciary and the lack of reliable resources within judicial institutions.

In the context of this study, law enforcement should be carried out through judicial institutions that can ensure justice for both complainants and respondents, as well as for service providers and recipients. To guarantee a competent, fair, and integrity-driven judiciary, special courts should be established for specific cases. Several special courts have already been established, such as juvenile courts, corruption courts, tax courts, and human rights courts. Currently, an urgent need is the establishment of a medical court, which has distinct characteristics compared to general courts.

## METHODOLOGY

This study uses a descriptive method to describe the existing conditions and situations related to medical disputes and the settlement process in the new Health Law. The researcher describes in detail how medical disputes are resolved after the ratification of Law No. 17 of 2023, as well as an analysis of the urgency of establishing a medical court. This method is used to provide a clear and complete picture of the new regulations and legal systems and their impact on the medical profession and patient protection.

## RESEARCH RESULT AND DISCUSSION

This paper will focus on two main issues: an overview of the resolution of medical disputes following the enactment of Law No. 17 of 2023 on Health and the urgency of establishing a medical court after the issuance of this law. These two aspects are interconnected, as if the resolution framework in the first issue is deemed inadequate, there will be a need for arguments supporting the urgency of a medical court.

### 1. Overview of Medical Court after Law No. 17 of 2023 on Health

The regulation and handling of professional misconduct in the medical and health fields under Law No. 17 of 2023 on Health are considered an improvement over previous laws, such as Law No. 29 of 2004 on Medical Practice and Law No. 36 of 2009 on Health, which have been repealed. Law No. 17 of 2023 introduces better regulations and offers greater protection for medical and health professionals compared to previous laws. Some of the key points include:

- a. **Enhanced Legal Protection** – Improved legal protection for medical and health professionals, including hospital liability for the negligence of medical and healthcare workers within the hospital.
- b. **Risk Manager and Legal Committee** – Each hospital is expected to have a risk manager and a legal committee to handle disputes arising from alleged professional errors.
- c. **Separation of Medical Malpractice and Criminal Offenses** – This law distinguishes between professional errors in healthcare services (medical

- malpractice) and criminal offenses (unlawful profession). Medical malpractice is recognized as part of healthcare services, not a criminal act.
- d. **Professional Discipline Council** – The establishment of the Professional Discipline Council for Medical and Health Personnel to resolve medical disputes. A restorative justice mechanism and alternative dispute resolution outside the court system are prioritized.
  - e. **Medical Dispute Resolution** – Medical disputes are resolved through compensation or other reparations without interference from general law enforcement officers. However, if no agreement is reached, a report can be filed with the police.

With the enactment of Law No. 17 of 2023 on Health, Indonesia enters a new era in healthcare management and implementation. This law not only reforms the existing healthcare system but also restructures the legal framework to ensure the provision of more effective, efficient, and equitable healthcare services. One critical aspect of this law is the handling of malpractice cases. The law establishes clear procedures and operational standards for investigating and resolving malpractice cases, ensuring that all cases are handled fairly, comprehensively, and within a reasonable timeframe. Consistent and fair law enforcement not only protects patients but also defends healthcare workers from baseless accusations.

In principle, medical dispute resolution can be carried out through litigation and non-litigation channels. However, according to the Health Law, non-litigation methods are prioritized. Medical dispute resolution outside the court system can be conducted through various methods such as consultation, mediation, negotiation, and arbitration. Litigation is pursued only when agreements or justice cannot be achieved through non-litigation means.

As for legal sanctions for malpractice committed by doctors or healthcare workers under Law No. 17 of 2023 on Health, they are stipulated in Article 440, which states: "Any Medical or Health Personnel who commits negligence resulting in serious injury to a patient shall be sentenced to imprisonment for up to 3 (three) years or a maximum fine of Rp250,000,000.00 (two hundred and fifty million rupiah). If the negligence as referred to in paragraph (1) results in death, the Medical or Health Personnel shall be sentenced to imprisonment for up to 5 (five) years or a maximum fine of Rp500,000,000.00 (five hundred million rupiah)." Hospital criminal liability for malpractice actions under Law No. 17 of 2023 on Health is regulated in Article 447 paragraphs (1), (2), (3), and (4) of this law.

## 2. Urgency of Medical Court after Law No. 17 of 2023 on Health

Law No. 17 of 2023 is believed to provide a new direction for structuring and systematizing the healthcare sector. Some key points relate to medical disputes and their resolution, which prioritize mediation-arbitration (non-litigation) based on restorative justice. This approach is considered to enable faster resolution compared to lengthy litigation processes. Nevertheless, a medical court is still deemed essential. Some fundamental reasons for the

necessity of establishing a medical court after the enactment of Law No. 17 of 2023 on Health include:

**a. Supporting the Implementation of Law No. 17 of 2023 on Health in Medical Dispute Resolution**

Medical dispute resolution in courts has been governed by various regulations, including the Civil Code, the Criminal Code, Law No. 29 of 2004 on Medical Practice, Law No. 36 of 2009 on Health, Law No. 36 of 2014 on Health Workers, and Law No. 17 of 2023 on Health. Under the new Health Law, medical dispute resolution is more directed towards restorative justice through mediation and arbitration. This is considered a middle ground offering a win-win solution. However, non-litigation avenues may not always lead to agreement or justice for all parties involved, necessitating the establishment of a medical court.

Regarding the role of a medical court, this institution has the potential to guarantee justice for doctors accused of malpractice. A specialized court tailored to the needs of the healthcare sector would ensure that malpractice cases are handled with appropriate perspectives and standards, involving judges and experts who understand the technical and complex medical issues. The number of medical dispute cases is expected to continue increasing, requiring swift resolution through both litigation and non-litigation channels. To enhance the quality of medical dispute resolution, a competent medical court with appropriate expertise is necessary.

**b. Serving as a Means of Justice for Relevant Parties**

Medical dispute resolution often becomes prolonged and ultimately fails to fulfill the sense of justice for both service recipients and providers. Doctors or medical personnel frequently suffer losses in terms of time, effort, expenses, and reputation due to medical disputes. Meanwhile, patients often receive unsatisfactory compensation for civil damages or suffer significant health losses, such as disability or death.

A specialized medical court is established to uphold justice for all parties involved in disputes, with the expectation of delivering fair decisions based on legal enforcers' understanding of the cases at hand. One way to achieve this is by appointing ad hoc judges who have specialized knowledge and expertise in the disputes they adjudicate, ensuring justice for all concerned parties.

**c. Clarifying the Position and Authority of the Indonesian Medical Disciplinary Honorary Council (MKDKI)**

The MKDKI has long been responsible for examining and making decisions on medical disputes in Indonesia. It is an institution tasked with upholding medical discipline, authorized to determine whether doctors or dentists have committed errors in applying medical knowledge and to impose appropriate sanctions. Therefore, MKDKI's processes emphasize *due process of ethics* rather than *due process of law*.

*Due process of law* refers to a legal principle that ensures fair and procedural treatment within the formal judicial system. This principle includes rights such as notification, fair hearings, open trials, and opportunities for

defense. However, the procedures followed by MKDKI are based on professional ethical rules and norms, which may differ from formal legal proceedings.

In practice, however, MKDKI sometimes issues overlapping decisions between ethical discipline and court-based legal sanctions. With the establishment of a medical court, such overlaps can be avoided. MKDKI's decisions should strictly pertain to discipline and ethics, while the medical court focuses on legal approaches.

**d. Providing Education to the Public, Medical Personnel, and Healthcare Workers**

Court decisions can serve as precedents and provide guidance on expected medical practice standards in the future. Litigation outcomes in malpractice cases often lead to changes in medical practices, encouraging healthcare providers to improve the quality of care and patient safety.

This highlights the importance of a medical court in educating all relevant parties, including health institutions, about healthcare, medical risks, medical disputes, and malpractice.

Decisions from a medical court help enhance public and medical personnel's understanding of their rights and obligations, as well as the ethical and legal standards governing medical practice. Cases handled by the medical court often set precedents that guide how similar situations should be addressed in the future, helping medical professionals understand the legal consequences of their actions.

Litigation outcomes frequently expose weaknesses in the healthcare system, prompting necessary improvements. For example, hospitals may revise their procedures or policies to enhance patient safety and minimize malpractice risks. By ensuring a transparent and fair legal mechanism for resolving medical disputes, public trust in the healthcare system can increase. The public will feel more assured that there is adequate legal protection in the event of medical errors.

**e. Encouraging Out-of-Court Settlements**

The establishment of a specialized medical court promotes alternative dispute resolution mechanisms such as mediation or negotiation, reducing the burden on the judicial system. Given the high costs, long durations, and outcome uncertainties associated with medical litigation, many parties prefer alternative dispute resolution methods such as mediation and arbitration. Medical courts often encourage these methods as they are quicker, more cost-effective, and flexible.

The existence of a fair and transparent medical court enhances public and medical personnel's trust in the legal system, fostering voluntary dispute resolution. When parties trust that they will be treated fairly, they are more inclined to settle disputes amicably without resorting to lengthy litigation.

Several reasons provide a solid basis for the importance of a medical court as a specialized judicial body to handle medical disputes in Indonesia. Law No.

17 of 2023 on Health has established a strong foundation for the *restorative justice* approach and strengthened the use of non-litigation pathways through medical mediation-arbitration. This means that the existence of a medical court can reinforce the implementation and support of Law No. 17 of 2023 on Health, which is considered a milestone in Indonesia's healthcare legal reform.

## CONCLUSION

A medical court is an inevitability, given the increasing number of medical disputes resulting from the growing healthcare services in Indonesia, leading to a higher potential for conflicts. Therefore, a specialized court is needed to handle medical dispute cases, especially following the enactment of Law No. 17 of 2023 on Health.

The establishment of a medical court is crucial to supporting the implementation of the new health law, namely Law No. 17 of 2023 on Health. A medical court can help ensure justice in medical disputes, encourage out-of-court settlements, educate the public, medical personnel, and healthcare workers, and assist the Indonesian Medical Disciplinary Honorary Council (MKDKI) in its duties.

## ADVANCED RESEARCH

In writing this article the researcher realizes that there are still many shortcomings in terms of language, writing, and form of presentation considering the limited knowledge and abilities of the researchers themselves. Therefore, for the perfection of the article, the researcher expects constructive criticism and suggestions from various parties.

## REFERENCES

- Almaidha Sitompul (2023). " 5 kasus malpraktik terbaru di Indonesia yang bikin ngeri". <https://www.inilah.com/5-kasus-malpraktik-terbaru-di-indonesia-yang-menggemparkan> . diakses tanggal 12 Juli 2024
- Asshiddiqie, J. (2019). "Rule of Law and Constitutionalism in Indonesia." *Indonesian Journal of International Law*, 16(2), 253-273.
- Busthomi, A. F., Sutarno, S., Nugraheni, N., & Huda, M. K. (2023). Urgensi Pengadilan Kesehatan Sebagai Upaya Solusi Masalah Sengketa Medis Di Indonesia. *Jurnal Kertha Semaya*, 11(11), 2677-2693.
- Butar-Butar, D., & Yusuf, H. (2024). Sanksi Hukum Tindak Pidana Malpraktik Dokter Menurut Undang-Undang Nomor 17 Tahun 2023 Tentang Kesehatan. *Jurnal Locus Penelitian Dan Pengabdian*, 3(4), 318-329.
- Butt, S. (2020). "The Rule of Law and Judicial Independence in Southeast Asia: The Case of Indonesia." *Journal of Law and Society*, 47(4), 578-596.
- Daeng, Y., Ningsih, N., Khairul, F., Winarsih, S., & Zulaida, Z. (2023). Pertanggungjawaban Pidana Rumah Sakit dan Tenaga Medis Di Atas Tindakan Malpraktik Berdasarkan Undang-Undang Nomor 17 Tahun 2023 Tentang Kesehatan. *INNOVATIVE: Journal Of Social Science Research*, 3(6), 3453-3461.
- Juwana, H. (2020). "Legal Reform and Justice in Indonesia: A Balancing Act." *Journal of Indonesian Legal Studies*, 4(1), 98-115.

- Katz, J. A., & Boulton, D. (2021). "Judicial Approaches to Medical Malpractice: Trends and Implications." *Journal of Health Law & Policy*, 14(1), 45-68.
- Kelsen, H. (2022). *What is justice?: Justice, law, and politics in the mirror of science*. Univ of California Press.
- Lubis, T. M. (2019). "Rule of Law and Good Governance in Developing Countries: An Indonesian Perspective." *Global Governance*, 25(1), 75-89.
- Mahfud MD. (2018). "Justice and Legal Reform in Indonesia: Ensuring Access to Justice." *Indonesian Journal of International Law*, 15(1), 45-65. h. 45
- Manurung, M., & Yusuf, H. (2024). Penyelesaian Sengketa Medis Di Luar Pengadilan Melalui Alternatif Penyelesaian Sengketa Menurut Uu No. 17 Tahun 2023 Tentang Kesehatan. *Jurnal Intelek Dan Cendekiawan Nusantara*, 1(2), 2929-2941.
- Mayora, E. T. R., & Yusuf, H. (2024). Kebijakan Hukum Penyelesaian Sengketa Medis Melalui Restorative Justice Nonlitigasi Mediasi Pendekatan Win-Win Solution. *Jurnal Intelek Dan Cendekiawan Nusantara*, 1(2), 2516-2527.
- Mello, M. M., & Kachalia, A. (2020). "The Role of Medical Malpractice Law in Improving Patient Safety." *New England Journal of Medicine*, 382(6), 545-550.
- Nelwitis, A., & Rias, A. I. (2023). Dasar Pertimbangan Dibentuknya Pengadilan Khusus Profesi Medis Sebagai Upaya Pembaharuan Hukum Kesehatan Nasional di Indonesia. *Unes Journal of Swara Justisia*, 7(3), 1017-1031.
- Pujianti, S. (2023). Proses di MKDKI Fokus pada Due Process of Ethics. <https://www.mkri.id/index.php?page=web.Berita&id=19351&menu=2>, diakses tanggal 12 Juli 2023
- Rahardjo, S. (2018). "Progressive Law: The Struggle for Justice in Indonesia." *Indonesian Journal of Socio-Legal Studies*, 2(2), 123-138.
- Risma, D. R. S. (2022). Penyelesaian Sengketa Medis Yang Berkeadilan Menuju Pembaruan Hukum Medis Nasional. *Disertasi*, Universitas Tarumanagara, Jakarta.
- Soge, A. D. (2023). Analisis Penanganan Kesalahan Profesi Medis Dan Kesehatan Dalam Uu Nomor 17 Tahun 2023 Tentang Kesehatan Menurut Perspektif Hukum Kesehatan. *Jurnal Hukum Caraka Justitia*, 3(2), 146-164.
- Tanjung, I. U. Arah Baru Pelayanan Kesehatan Indonesia Pasca disahkannya Undang-undang Nomor 17 tahun 2023 tentang Kesehatan. *Juris Sinergi Journal*. 1 (6), 1-21.
- Wiratmadinata, W. (2022). Konstruksi Teoritis Pembentukan Teori Negara Hukum Pancasila (NHP). *Jurnal Hukum Samudra Keadilan*, 17(1), 40-52.
- Yusuf, M., & Siregar, W. A. (2023). Perkembangan Teori Penegakan Hukum dalam Perwujudan Fungsi Norma di Masyarakat. *Sultra Research of Law*, 5(2), 58-65.