

Primum Remedium and Restorative Justice in Medical Dispute Resolution According to Law Number 17 of 2023

Yoseph Yulian Fanani, Fayola Issalillah, Yeni Vitrianingsih, Rafadi Khan Khayru, Adi Herisasono

Universitas Sunan Giri Surabaya, Indonesia

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ABSTRACT

This study examines the structure of legal relationships and the responsibilities of parties in healthcare services, the role of professional institutions in disciplinary enforcement, the evidentiary system utilizing recommendations from professional institutions, and the application of mediation as the primary approach to medical dispute resolution. Employing a normative approach through library research, this study analyzes the available legal mechanisms and the interactions among them. The findings indicate that healthcare services form a complex network of legal relationships that requires a comprehensive understanding to determine responsibilities proportionally. Professional institutions play a central role in assessing disciplinary violations and providing recommendations that serve as a reference for evidence. Mediation offers an efficient and humane restorative approach as an initial step before pursuing formal legal avenues. The balance of these various legal mechanisms supports the realization of justice and legal certainty for all parties.

INTRODUCTION

Healthcare services constitute a fundamental human need that must be fulfilled by ensuring quality and patient safety as the top priority. In practice, healthcare services involve various parties interacting with one another to provide the best medical care for the public. The relationships established among these parties give rise to legal consequences that must be thoroughly understood to create a balance between the rights and obligations of each party (Pramono & Kusumaningrum, 2023). Uncertainty in understanding the legal standing and responsibilities of the parties can hinder efforts to protect patients and cause harm to healthcare professionals performing their duties in good faith. A comprehensive understanding of the structure of legal relationships in healthcare services serves as the foundation for creating a fair and accountable system.

Medical disputes often arise from unsatisfactory treatment outcomes, inadequate information given to patients, or negligence in carrying out medical duties. Resolving such disputes requires a mechanism that can balance the interests of patients as service recipients and health workers as service

providers (Kusuma & Isworo, 2022). Errors in diagnosis and misconduct in practice are common triggers, and each raises different questions about liability and sanctions (Setiyadi et al., 2023; Sirenden et al., 2024). Various legal approaches can be taken, ranging from professional discipline to civil and criminal channels, each with different characteristics and objectives. Choosing the right legal channel depends on an accurate understanding of the nature of the fault and the impact it caused. Without adequate understanding of the available resolution mechanisms, the search for justice can be ineffective and even prolong the suffering of the injured party.

Conceptually, the health law system is designed to give clear certainty about the responsibilities of every party involved in providing health services. In practice, however, much uncertainty remains in determining who is responsible for patient losses and how far that responsibility can be imposed legally (Fakrulloh & Lubna, 2023). Weak legal protection for patients and unclear administrative arrangements in health services add to this uncertainty, as does practice that exceeds the authority a person holds (Tampil et al., 2023; Vitrianingsih et al., 2022; Subhi

* Corresponding author, email address: fayolaisalillah@gmail.com

et al., 2023). A partial understanding of the network of legal relationships between parties often leads to a disproportionate placement of responsibility, both on individual medical personnel and on the hospital as the institution providing the service. The mismatch between the expected legal concept and actual dispute resolution practice creates room for injustice and hinders continuous efforts to improve the quality of health services.

Health services in hospitals form a complex network of legal relationships involving doctors, nurses, support staff, the hospital as an entity, and the patient as the beneficiary. Each of these relationships has its own consequences, which need to be mapped carefully so that legal responsibility can be determined fairly and proportionally (Harmoni et al., 2022). The hospital's position as an institution makes its accountability a separate question from that of individual personnel, and it should be assessed on its own basis (Eskandar et al., 2025; Wahyusetiawan et al., 2024). It is often assumed that responsibility rests on a single party, without considering the roles and contributions of other actors in the system. Placing responsibility on the right party also requires a clear link between the act and the harm suffered, and a fair rule on who must prove it (Sopyan et al., 2024). A complete understanding of the position of each party and the legal ties that bind them is a prerequisite for determining fair responsibility for all parties in the health service system.

Professional bodies play a central role in maintaining service standards and enforcing discipline among medical personnel practicing in health facilities. The authority of professional bodies to assess disciplinary violations needs to be clearly distinguished from that of law enforcement agencies in handling cases that contain criminal elements (Dicky et al., 2023). Their oversight also rests on the duties that come with the profession, including how those duties relate to a patient's right to refuse treatment (Khayru et al., 2025), and on the competence and performance of the personnel being supervised (Darmawan et al., 2020). Overlapping understandings of the limits of each institution's authority are common, making case handling inefficient and creating legal uncertainty for the parties. The hospital's responsibility for the negligence of medical personnel under its supervision requires a clear explanation of the scope and limits of that responsibility so that legal certainty can be achieved in a balanced way.

The process of proof in medical disputes faces its own challenges, given that such cases require

specialized knowledge in medicine and health law. Patients as injured parties often find it difficult to prove the existence of an error that caused harm, while medical personnel need certainty about the standard of proof used to assess their professional performance (Collins et al., 2024). Medical records are a key piece of evidence in this process, but their use in court still raises legal problems (Ustani et al., 2024). Proof is also difficult when treatment is given in an emergency without explicit consent, because the validity of implied consent is often questioned (Susanti et al., 2024). The role of professional body recommendations in the process of proof needs to be clearly understood so that they can serve as an objective reference for law enforcers and courts. Without an efficient and fair proof mechanism, the search for material truth in medical disputes can drag on and exhaust all parties involved.

Resolving medical disputes through the courts often takes a long time and high costs, and it can damage the relationship between patients and health workers that had previously been established. Mediation offers an alternative approach that prioritizes dialogue and mutual agreement as the first effort before taking more formal and confrontational legal routes. It is especially relevant where the dispute stems from a violation of the patient's right to decide about their own care, since the patient's interests can be addressed directly in the agreement (Nur et al., 2025). Applying mediation in medical cases requires a deep understanding of the principles of restorative justice and the limits that apply within the legal system. The effectiveness of mediation depends heavily on the readiness of the parties to engage in honest dialogue and their willingness to reach an agreement that is fair and proportional for all parties affected by the dispute.

This study aims to map the structure of legal relationships and the responsibilities of the parties in healthcare services, explain the role of professional institutions and the disciplinary enforcement mechanism within the health legal system, analyze the evidentiary system and the urgency of recommendations from professional institutions in medical dispute resolution, and examine the application of mediation as the primary legal effort in resolving healthcare service disputes. The results of this study contribute to the development of health law science by presenting an in-depth analysis of the interaction of various legal mechanisms in medical dispute resolution. For practitioners, this study provides practical references regarding available legal avenues and considerations that need to be addressed when handling medical dispute cases.

RESEARCH METHOD

This study applies a normative legal approach with an emphasis on examining primary and secondary legal materials related to dispute resolution mechanisms in the field of medical services. The primary legal materials reviewed include statutory provisions governing the administration of healthcare services as well as the legal liability basis for the parties involved in these services. Meanwhile, secondary legal materials consist of scientific literature, previous research findings, and expert opinions in the field of health law relevant to the subject matter. All legal materials were collected through a systematic literature search to obtain a comprehensive and in-depth overview of the legal framework for overall medical dispute resolution.

The analysis of legal materials was conducted using a descriptive-analytical method, which details and carefully describes the various legal paths and instruments available in medical dispute resolution. The stages of analysis include identifying arising legal issues, mapping the legal relationships among parties in a dispute, examining the roles of professional institutions and law enforcement officials, and assessing the effectiveness of each available resolution mechanism. Subsequently, conclusions were drawn based on the synthesis of various sources that have been thoroughly reviewed and analyzed. This approach ensures the presentation of research findings that are objective, coherent, and academically accountable.

RESULT AND DISCUSSION

Legal Relations and Responsibilities of Parties in Healthcare Services

Doctors as medical professionals play a crucial role in providing healthcare services to fulfill patient rights, including the right to receive care as a fundamental need in maintaining health (Alex et al., 2023). Doctors practice their profession within an administrative working relationship with hospitals as the providers of healthcare services. This administrative relationship gives rise to legal consequences in the form of the rights and obligations of each party, as well as the legal liability of both if a third party suffers losses due to a doctor's fault. Any loss experienced by a third party due to a medical error can incur legal liability for both the doctor and the hospital as the service provider, making legal certainty a fundamental principle in patient protection (Fakrulloh & Lubna, 2023).

Legal relationships in hospital health services do not involve only two parties, but cover various actors who are bound together in the medical service

system. Patients come to a hospital to receive care from a doctor, not merely to look for the hospital as a legal entity or a building. How patients judge the care they receive also depends on the quality of the service itself (Mardikaningsih, 2022). When a patient comes to a hospital, a legal relationship is created between the doctor as the service provider and the patient as the service recipient. Before the legal relationship between doctor and patient arises, a legal relationship is first created between the doctor and the hospital as a form of obligation based on an agreement between them (Hartawidjaja et al., 2022). Complex legal relationships in health services require a complete understanding of the position and responsibility of each party so that legal certainty can be achieved in resolving disputes.

When a patient receives care in a hospital, at least eight interrelated legal relationships are created: the legal relationship between doctor and hospital, nurse and hospital, support staff and hospital, doctor and nurse, doctor and patient, nurse and patient, support staff and patient, and the hospital as a legal entity and the patient (Maya et al., 2023). All these relationships show that health service is the result of collective work bound by interwoven legal norms, so legal responsibility cannot be placed on a single party without considering the role and contribution of each actor. As access to services widens through different channels, the number of relationships to be considered grows, and so does the risk of unclear responsibility (Khayru & Issalillah, 2022; Harianto et al., 2024).

Every legal relationship in health services carries legal consequences for the parties involved. As legal relationships, they naturally give rise to legal effects among all parties, whether doctors, nurses, support staff, or the hospital as a civil legal entity that can be held legally responsible. Medical disputes often arise from unsatisfactory results on the part of the medical service, a lack of information given by the doctor, or negligence of medical personnel (Lira, 2023). The hospital itself can also be held responsible for errors made by the personnel working under it (Mening et al., 2023). Fulfilling the patient's right to informed consent is an important aspect of patient protection (Sirenden et al., 2024). The responsibility of health workers toward patients who suffer losses must be carried out based on the applicable legal provisions (Indaryanti et al., 2023). Wrongful acts in practice can also lead to criminal and ethical consequences, as shown by cases of falsified documents issued by health workers (Hartika et al., 2023). Understanding the structure of legal responsibility in health services is an important foundation for preventing and resolving medical disputes fairly and proportionally.

Legal responsibility in health services covers administrative, civil, and criminal aspects, each with its own resolution mechanism according to the provisions of laws and regulations.

The hospital, as a main pillar of the health service system, has a strategic role in ensuring quality and patient safety. The hospital is the place where doctors, nurses, and support staff work as one unit of Health Human Resources as referred to in Article 197 of Law Number 17 of 2023 concerning Health, and it must be able to manage health services professionally, accountably, and responsibly with priority on patient safety. In maintaining this accountability, hospitals and health workers must follow professional norms in the form of professional standards, service standards, and standard operating procedures, as well as professional ethical norms and the applicable legal norms (Rasaki et al., 2024). Accountability of this kind also requires institutions to respect patients' rights to proper care and to treat patients fairly (Mengga et al., 2024; Hartono et al., 2024). Integrity and compliance with these norms are the main foundation for realizing health services that are just and oriented toward patient safety.

In ensuring legal protection for patients, the mechanism of professional accountability for medical personnel is a crucial aspect of the health service system. The legal responsibility of medical personnel in carrying out health services can arise when the action taken contains negligence or an error that is contrary to service procedures and causes harm to the patient (Riyanto et al., 2023). Accountability should also be assessed fairly, including when a doctor acts under emergency conditions, so that legal protection for medical personnel and for patients stays in balance (Juliarto et al., 2023). Violations of the professional code of ethics of medical personnel can cause harm to patients, which, in the context of Indonesian positive law, becomes the basis for disciplinary and administrative accountability by professional bodies established by the government. Article 305 paragraph (1) of Law Number 17 of 2023 states that patients or their families whose interests are harmed by the actions of Medical Personnel or Health Workers in providing Health Services may file a complaint with the Council referred to in Article 304. Article 304 of Law Number 17 of 2023 mandates the minister to form a council that carries out tasks in the field of professional discipline. The complaint system and the establishment of a professional disciplinary council are important instruments in maintaining accountability and ethics in health services in Indonesia.

To ensure professionalism in the practice of healthcare services, supervision of professional

discipline serves as an important instrument in the health legal system. The Council under Article 304 paragraph (2) of Law Number 17 of 2023 is tasked with determining the presence or absence of professional disciplinary violations committed by Medical Personnel and Health Personnel. Discipline is personified as professional behavior; thus, violating discipline constitutes unprofessional behavior as referred to in Article 304 paragraph (1) of Law Number 17 of 2023. Article 305 of Law Number 17 of 2023 explicitly states that complaints of alleged disciplinary violations must be preceded by losses suffered by the patient or their family, and there must be causality between the action violating discipline and the intended loss. The disciplinary accountability mechanism not only assesses norm violations, but also requires evidence of a concrete causal relationship between professional actions and the impact on the patient.

Professional Institutions and Disciplinary Enforcement Mechanisms in the Health Legal System

The professional disciplinary council only has the authority to enforce discipline regarding violations of professional standards, service standards, and operational procedure standards. The council's mandate is solely to enforce discipline concerning violations of the norms of professional standards, service standards, and operational procedure standards. Professional disciplinary enforcement is an internal mechanism aimed at maintaining the quality of services and protecting the public from unprofessional medical practices. Article 66 paragraph (1) of Law Number 29 of 2004 concerning Medical Practice, which has been revoked by Law Number 17 of 2023, stipulates that any person who knows or whose interests are harmed by a doctor's actions in practicing medicine may submit a written complaint to the Chairperson of the Indonesian Medical Disciplinary Honorary Council. Article 66 paragraph (3) of Law Number 29 of 2004 explicitly states that such complaints do not eliminate anyone's right to report alleged criminal acts to the authorities or to file a civil lawsuit for damages in court. This provision affirms that the disciplinary enforcement mechanism does not abolish the public's right to pursue criminal or civil avenues outside the council mechanism.

The logic of both laws rests on three main elements in handling disciplinary violations by medical personnel. The first element is an alleged act that violates discipline and falls under the authority of the Council. The second element is a loss suffered by the patient or their family as the reason for

reporting the medical personnel to the Council, and for this loss the patient or their family may take legal action through law enforcement officers or file a civil lawsuit for compensation. The third element is a causal relationship between the loss and the disciplinary violation in question. Complete and honest medical records help show whether a violation occurred and whether it caused the loss (Mubarak et al., 2023). These three elements form the basis for distinguishing the authority of the Council from other legal channels that patients or their families may pursue, so that legal certainty is created in handling medical disputes.

The hospital bears legal responsibility for the negligence of medical personnel under its supervision. When a doctor works in a hospital, a civil lawsuit against the doctor also involves the liability of the hospital as the health facility where the doctor works. Article 193 of Law Number 17 of 2023 states that the Hospital is legally responsible for all losses caused by negligence of the Hospital's Health Human Resources. How well this supervision works depends on how effectively the hospital is organized (Darmawan, 2024a). This provision confirms the expansion of hospital liability as regulated in Article 193 of Law Number 17 of 2023.

The change of regulation from Law Number 44 of 2009 to Law Number 17 of 2023 widens the range of legal subjects for which the hospital is responsible. Under Article 46 of Law Number 44 of 2009, the legal subjects held accountable by the hospital as a form of vicarious liability were health workers in the hospital. In the revised provision in Article 193 of Law Number 17 of 2023, the legal subjects held accountable are Health Human Resources. Article 197 of Law Number 17 of 2023 provides that Health Human Resources consist of medical personnel, health workers, and health support or ancillary staff. Article 200 of Law Number 17 of 2023 and its elucidation describe in more detail who is included as health support or ancillary staff. Thus, the hospital is now also responsible for the negligence of all Health Human Resources, including support staff, so the scope of the hospital's legal responsibility is wider than under the previous regulation. This expansion is an important part of providing legal protection to patients and ensuring the hospital's accountability for the services it provides (Lethy et al., 2023). It also fits the duty of hospitals to keep services available to patients who need them (Mohamad et al., 2024), and it reminds us that different types of personnel owe their own duties to patients (Setiawan et al., 2023).

The legal responsibility of the hospital covers the negligence of medical personnel working under its

supervision. Where the loss suffered by the patient or their family results from a disciplinary violation, and there is an alleged crime committed by the doctor for that violation, the hospital also bears responsibility. Article 37 letter b of Law Number 1 of 2023 concerning the Criminal Code states that, where provided by law, every person may be held accountable for a crime committed by another person. The elucidation of Article 37 letter b of Law Number 1 of 2023 states that this provision contains the principle of vicarious liability, under which every person is responsible for acts done by another person who performs work or acts for them or within the limits of their orders. The principle of vicarious liability in Article 37 letter b of Law Number 1 of 2023 strengthens the legal position of the hospital in cases of alleged crimes by medical personnel, so legal certainty for patients and families is better ensured (Harmoni et al., 2022). Enforcement against malpractice by health workers shows that responsibility does not stop at the individual who committed the act (Safitri et al., 2023).

Resolving a medical dispute caused by a doctor's disciplinary violation requires an early identification of the alleged fault. The first thing to do is to assess whether the doctor really committed a disciplinary violation or not. Law Number 17 of 2023 regulates that the Council has the authority to determine whether a medical worker or health worker has committed a disciplinary violation. An adverse outcome does not automatically mean a violation, so each case must be assessed on its facts (Riyanto et al., 2023). Article 7 paragraph 1 of the Criminal Procedure Code states the authority of investigators of the Indonesian National Police to investigate alleged crimes, including alleged crimes by doctors in hospitals reported by patients or their families. The authority of the Council and of investigators of the Indonesian National Police runs side by side in determining disciplinary violations and alleged crimes by medical personnel, so good coordination is needed to avoid overlapping authority (Utama et al., 2024). Joint decisions between institutions work best when each one has a clear picture of the issues involved (Darmawan, 2024b).

In cases of doctors' disciplinary violations that give rise to alleged crimes, legal settlement is directed toward a restorative justice approach. Article 306 paragraph (3) of Law Number 17 of 2023 states that where Medical Personnel or Health Workers have carried out the disciplinary sanctions imposed and there is an alleged crime, law enforcement officers prioritize dispute settlement through restorative justice mechanisms in

accordance with the provisions of laws and regulations. If a doctor in a hospital is reported to the Council and is found by the Council to have violated discipline and is given sanctions as regulated in Article 306 paragraph (1) of Law Number 17 of 2023, and at the same time there is an alleged unlawful criminal act, then law enforcement officers must prioritize restorative settlement of the dispute for the medical personnel who have been given disciplinary sanctions (Adiputra et al., 2024). Such settlement should treat all patients fairly, and it works better when the parties receive clear information about the costs and risks involved (Napu et al., 2024; Rachim et al., 2024). The provision of Article 306 paragraph (3) of Law Number 17 of 2023 confirms the legal commitment to prioritize a restorative approach in resolving medical disputes involving alleged crimes.

The concept of *wederrechtelijk* in criminal law covers both formal and material aspects. In criminal law, an act that is *wederrechtelijk* is not only an act that is prohibited or punishable by law (formal *wederrechtelijk*), but there is also material *wederrechtelijk*, where an act may be considered *wederrechtelijk* even though it is not expressly prohibited and punishable by law, based on the general principles found in the field of law. The concept of *wederrechtelijk* covers violations of law, both formal and material, that are contrary to the principles of justice, so law enforcement against medical personnel must consider both aspects proportionally (Fernando, 2023). This matters most where new forms of service develop faster than the rules that govern them, and where gaps in regulation can leave patients without clear protection (Mokoginta et al., 2024; Sasmita et al., 2023).

A doctor's actions that harm a patient can be subject to various forms of legal sanction under Law Number 17 of 2023. Article 440 of Law Number 17 of 2023 regulates the negligence of a doctor that causes a patient serious injury or death. Legal sanctions for doctors can take the form of administrative sanctions in the form of an administrative fine if the doctor practices in a hospital without a Registration Certificate or Practice License as referred to in Article 313 paragraph (1) in conjunction with Article 312 letter c of Law Number 17 of 2023. Doctors can also be subject to civil compensation in a civil lawsuit filed by the injured patient or family. As a last resort, doctors can be subject to criminal sanctions in the form of imprisonment or a fine if expressly regulated in laws and regulations (Anton et al., 2024). As a form of *ultimum remedium*, criminal sanctions can still be imposed if the criminal elements are met and are expressly regulated in laws and regulations, so legal certainty for patients and

medical personnel is maintained. Whichever sanction is chosen, the patient's right to a real remedy must stay protected (Rahawain et al., 2024).

The principle of *ultimum remedium* emphasizes that criminal sanctions are only imposed as a last resort against offenders who are truly responsible. The principle of *ultimum remedium* contains the element that criminal sanctions should be given to the right person because criminal offenders also possess human rights, namely the right to justice and the right to self-improvement. If criminal sanctions are imposed at the highest penalty level, punishment may relate to the possibility of human rights violations, especially the right to life and to sustain life, when applied unfairly (Firdaus et al., 2022). Contrary to the concept of punishment as an *ultimum remedium*, mediation becomes the concept of *primum remedium*, where before all legal institutions work toward the deterrence of doctors, mediation efforts are undertaken first. In the context of the medical profession, mediation as a *primum remedium* serves as the initial step of resolution before criminal law enforcement is pursued.

Evidentiary System and the Urgency of Council Recommendations in the Medical Dispute Resolution Process

Restorative justice constitutes an important mandate for Law Enforcement Officials, including in cases of disciplinary violations by medical personnel. Restorative justice is mandated for Law Enforcement Officials to pursue, even when a medical professional or health professional has clearly committed a disciplinary violation accompanied by disciplinary sanctions, and has been reported as such to Law Enforcement Officials. Law Enforcement Officials prioritize restorative justice in handling criminal cases. The resolution of criminal cases outside the criminal justice system within the philosophical framework of introducing the restorative justice approach does not aim to abolish criminal law or merge criminal law and civil law, because the restorative justice approach which prioritizes mediation pathways between the victim and the perpetrator offers a more equitable resolution outside the formal judicial system (Lawalata et al., 2024). Through the mediation approach between the victim and the perpetrator, restorative justice does not abolish criminal law, but rather complements it with a more humane and proportional resolution mechanism.

Restorative justice is the initial approach (*primum remedium*) in handling alleged crimes by doctors in health services. Resolving alleged crimes by doctors in health services through restorative justice is a *primum remedium* step to return the function of criminal law

to its path as *ultimum remedium*, a last weapon when other legal efforts cannot serve as a deterrent for a doctor (Putri & Budiarsih, 2023). This approach needs clear limits on when criminal law may be used, so that punishment stays predictable (Amir et al., 2024), and it works better when criminal law is applied together with other regulations (Ambarwati et al., 2024). Thus, criminal law continues to function as a last resort (*ultimum remedium*) when other mechanisms are no longer effective in providing a deterrent, so that a balance between justice and legal certainty can be achieved.

The legal relationship between doctor and patient is an obligation based on an agreement, as regulated in Article 280 paragraph (4) of Law Number 17 of 2023. Article 280 paragraph (4) of Law Number 17 of 2023 states that the practice of Medical Personnel and Health Workers is carried out based on an agreement between the Medical Personnel or Health Worker and the Patient, on the principles of equality and transparency. For such an agreement to be real, the patient must be able to understand the explanation given, and this depends on how it is delivered (Aisyah & Issalillah, 2021). From this contractual relationship there are two forms of legal responsibility of a doctor. First, responsibility for losses caused by breach of contract (*wanprestasi*) when an agreement exists between both parties. This occurs when a patient, with awareness and capacity, makes an agreement with the doctor who will provide care through informed consent, in which the doctor offers treatment by first explaining it and the patient, having received the explanation, gives consent (Putra et al., 2024). The legal relationship between doctor and patient can arise from an agreement (informed consent) or from the doctor's moral duty in an emergency.

A doctor's legal responsibility can also arise from an unlawful act in an emergency situation. In the legal relationship between doctor and patient, the doctor has a duty to give medical help in an emergency on humanitarian grounds (Juliarto et al., 2023). In such cases, consent is presumed and the doctrine of necessity justifies the action, but this should be limited to what the emergency truly requires (Abdullah et al., 2023). In this type of obligation, only the doctor makes the agreement to help, because of the moral duty to help a patient in an emergency, while the patient is unconscious and cannot make an agreement with the doctor who helps. In this position, an obligation arises between doctor and patient that comes from law and from the act of a person known as voluntary representation (*zaakwaarneming*) (Kudeikina et al., 2023). In this condition, the obligation between doctor and patient

comes from law and from voluntary action known as *zaakwaarneming*, so the doctor's legal responsibility still arises even without a formal agreement.

Article 280 of Law Number 17 of 2023 affirms that the agreement between medical personnel and the patient contains best efforts and does not promise success. Article 280 paragraph (1) of Law Number 17 of 2023 states that the agreement contains best efforts, which Article 280 paragraph (3) explains means not promising success. Article 280 paragraph (2) states that effort means that medical personnel and health workers carry out their professional work in accordance with norms, professional standards, service standards, and the patient's health needs (Putra et al., 2024). Because the duty is one of effort, negligence is the central question when a patient is harmed, and it should be judged against these standards (Lethy et al., 2023). Thus, what is promised in the relationship is the fulfillment of professional and service standards and the patient's medical needs, not a guarantee of success, so the legal responsibility of a doctor is measured by compliance with those standards.

If the obligation comes from an agreement, the legal responsibility is breach of contract (*wanprestasi*), where the performance lies in providing efforts that meet professional and service standards. *Wanprestasi* is the failure to meet professional or service standards. This matches the logic of proof in which the Council is the entry point to a breach that causes loss, and for a lawsuit for compensation, the medical personnel or health worker being sued may ask the Council for a recommendation as an argument of proof under Article 308 paragraphs (2) and (4) of Law Number 17 of 2023. These standards should be applied equally to every hospital, whatever its orientation, so that patients receive the same quality of care (Amalia & Issalillah, 2025). In a lawsuit for compensation, the Council's recommendation can be used as an argument of proof that professional or service standards were not met, so the judge has a strong basis for deciding the case.

In criminal law the principle of *actori incumbit onus probandi* applies, which means that whoever makes a claim must prove it. The process of proof in medical disputes depends heavily on the availability and completeness of medical records, expert statements, and documentation of medical actions performed during and after health services (Maulidiyandi et al., 2024). The accuracy and clarity of medical records help ensure fairness and accountability in health services and maintain the integrity and transparency of the relationship between patients and

health workers (Kholis et al., 2023). Medical records have an important position as legal evidence in resolving medical disputes (Mubarak et al., 2023). In the search for material truth, the patient can only prove the loss or consequence regulated by law, while the fault that caused the consequence is very difficult to prove before a judge. Proof practices need to keep up with changing times while holding on to long-standing principles of fairness (Amri & Khayru, 2022). This makes the search for evidence of a criminal event at the investigation stage very long and often exhausting for the reporting party, so a more efficient and fair proof mechanism is needed. Disputes between parties are not always negative, so their resolution must be managed well to reach the best outcome for the interests of both sides (Dedi et al., 2024).

Legal disputes arise from the conflict between a sense of justice and legal certainty, and law must contain the values of justice, benefit, and certainty. Three values must exist as the content of law, namely justice, benefit, and legal certainty. If a patient or family reports to Law Enforcement Officers, Article 308 paragraphs (1), (3), and (5) of Law Number 17 of 2023 state that Law Enforcement Officers must request a recommendation from the Council. Article 308 paragraph (5) clearly states that this recommendation contains whether or not the investigation process may be continued. Justice is harder to reach when one party, usually the patient, stands in a weaker position than the other (Mardikaningsih, 2021). Law Number 17 of 2023 recognizes the importance of proving a doctor's fault, which is a disciplinary fault that causes harm to the patient. For such loss and fault, if a criminal provision has been violated by the doctor, Law Number 17 of 2023 affirms that proof of a doctor's disciplinary fault that harms a patient can become the basis of a criminal violation, with the Council's recommendation as a reference for investigation (Ali et al., 2024).

Article 306 and Article 308 of Law Number 17 of 2023 have a similar legal logic, only the entry point differs. In Article 306, the entry point is a disciplinary complaint that begins with a complaint to the Council as in Article 305 paragraph (1) of Law Number 17 of 2023. In Article 308 paragraph (1), the entry point is not a complaint to the Council, but the patient or family reports directly to Law Enforcement Officers. Whether the entry point is a complaint of an alleged disciplinary violation or an alleged crime, the Council has the same standard of proof, which is to assess whether the doctor violated professional standards, service standards, and standard operating procedures. In both routes, the Council still uses the same standard of proof to assess violations of professional standards, service standards, and

operating procedures (Iskandar et al., 2024).

The main difference between a disciplinary violation and an unlawful act lies in the proof of causality regarding the patient's losses. In complaints of alleged disciplinary violations, it is not necessary to prove causality between the disciplinary violation and the loss suffered by the patient or their family, because a disciplinary violation is a behavioral infraction that is regulated and does not depend on the outcome of that behavioral infraction. This differs from alleged unlawful acts (*wederrechtelijk*), which must fulfill the element of actual loss suffered by the patient. In negligence causing disability, severe injury, or death as regulated in Article 440 of Law Number 17 of 2023, the elements of disability, severe injury, or death of the patient must be fulfilled, given that Article 440 is a material offense that requires a tangible consequence in order to impose criminal liability for a doctor's negligence.

Mediation as the Primary Legal Effort in Resolving Healthcare Service Disputes

The application of mediation as an initial mechanism in healthcare service dispute resolution, as regulated in Article 310 of Law Number 17 of 2023, reflects a progressive legal approach oriented toward the restoration of social relations. Article 310 of Law Number 17 of 2023 states that in the event that Medical Personnel or Health Personnel are suspected of committing errors in practicing their profession that cause losses to the Patient, disputes arising from such errors must first be resolved through alternative dispute resolution outside the court. This regulation aims to create a fair and responsive health system through mediation as well as legal protection for health personnel who work in accordance with professional standards, but its implementation requires adequate legal education so that such protection can be utilized by all parties (Yuliani et al., 2023). The rationale of Law Number 17 of 2023 is highly constructive because resolution through mediation takes on a broad meaning—not only when a healthcare service dispute enters the realm of civil law when a patient or family files a lawsuit against their doctor, or when the dispute has not yet entered the court. The effectiveness of mediation in medical dispute resolution heavily depends on the parties' understanding of the mechanism and benefits of mediation, as well as regulatory support that prioritizes non-litigation resolution as a form of legal protection for patients and medical personnel. Mediation not only serves as an alternative instrument outside the court, but also functions as a space for dialogue that prevents the escalation of conflict and strengthens trust between

patients and healthcare personnel.

Article 310 of Law Number 17 of 2023 emphasizes that alleged medical errors resulting in losses must first be resolved through Alternative Dispute Resolution outside the court. Even at the level of alleged errors causing losses, it is mandated that dispute resolution be conducted through Alternative Dispute Resolution outside the court. This means that before a legal decision determines a fault, the dispute must first be resolved through a non-litigation mechanism. In the concept of civil lawsuits regarding losses suffered by patients in the form of bodily injury, the nominal value of compensation is difficult to determine, often giving rise to fantastic non-material compensation claims. The Supreme Court Jurisprudence in Case Review (Peninjauan Kembali) Decision Number 650/PK/Pdt/1994 issued guidelines based on Articles 1370, 1371, and 1372 of the Civil Code (Burgerlijk Wetboek), stating that non-material compensation can only be granted in certain matters such as cases of death, severe injury, and defamation. This step prevents the escalation of unmeasured non-material claims, as limited by the Supreme Court jurisprudence and the provisions of the Civil Code (Burgerlijk Wetboek).

Article 1370 of the Civil Code (Burgerlijk Wetboek) states that in the event of intentional homicide or negligence by a person, the victim's spouse, children, or parents who customarily depend on the victim's livelihood have the right to claim compensation assessed according to the standing and wealth of both parties, as well as the circumstances. Article 1371 of the Civil Code (Burgerlijk Wetboek) states that causing injury or disability to a limb intentionally or through negligence grants the victim the right to claim reimbursement for healing costs and losses caused by such injury or disability, assessed according to the standing and capability of both parties and the circumstances. This latter provision applies when assessing damages arising from a crime against a person's individual integrity; thus, this difficult-to-determine nominal value creates a distinct injustice when decided by a judge. Therefore, Alternative Dispute Resolution serves as a more proportional path because the parties can mutually agree upon the amount of compensation in accordance with the justice they feel.

Article 4 of Supreme Court Regulation Number 1 of 2016 exempts criminal cases from the obligation of mediation, but it does not explicitly prohibit mediation in criminal cases. Article 4 of Supreme Court Regulation Number 1 of 2016 means that criminal cases are exempt from the obligation of mediation, but it is not stated that mediation of

criminal cases is not allowed. Law Number 8 of 1981 concerning Criminal Procedure Law and Law Number 2 of 2002 concerning the Indonesian National Police do not regulate mediation by the police at the inquiry or investigation stage. Because the Criminal Procedure Code and the Indonesian National Police Law do not regulate mediation at the inquiry or investigation stage, room for criminal mediation remains open normatively, even though it has not been accommodated procedurally. Such gaps between rules and institutions are common, and in practice they often leave the parties without a clear path (Khayru et al., 2024).

Police Chief Letter Number B/3022/XII/2009 opens room for mediation by the police in criminal cases with small material losses through the Alternative Dispute Resolution approach. The Police Chief Letter allows mediation by the police at the inquiry or investigation stage with the following conditions: efforts to handle criminal cases with small material losses are settled through the concept of Alternative Dispute Resolution; settlement of criminal cases using Alternative Dispute Resolution must be agreed by the disputing parties; the settlement is based on deliberation to reach consensus and is known by the surrounding society; it respects social legal norms and customs and meets the principle of justice; it empowers members of Community Policing and the Police-Community Partnership Forum; and cases that have been settled are no longer touched by other legal action. With the principles of deliberation, social justice, and public involvement, Alternative Dispute Resolution at the investigation level becomes a restorative instrument that supports the goals of Community Policing in a preventive and proportional way.

Penal mediation is generally applied to criminal cases with small material losses, where the size of the loss is determined from the reporter's side. The type of criminal case handling that can be mediated is a criminal report with small material losses, so the measure is the reporter's material loss. The loss of a malpractice victim is bodily injury whose loss is not material, and if it is calculated and converted into material form, there are immaterial components in addition to the material ones. Injuries after treatment are often tied to risks that were or were not explained beforehand (Amir et al., 2024), and the emotional burden that follows is real but hard to measure in money (Khayru & Issalillah, 2022). Because the loss of a malpractice victim is immaterial, penal mediation in this case demands a more adaptive approach to the principle of restorative justice. The idea and thinking about mediation in criminal cases,

which came to be known as penal mediation, is an innovation in the criminal justice system related to the idea of criminal law reform.

Penal mediation within the framework of restorative justice offers a philosophical approach that emphasizes equality and mutual agreement. Philosophically, win-win penal mediation can give the highest justice to the disputing parties because they can agree on their respective portions according to proportion, and this is achieved through offers and acceptance by the parties until an agreement arises. Real equality also requires that the patient understands their rights and the information given, so that agreement is reached freely (Chairul et al., 2023). The understanding of justice in restorative justice emphasizes a balanced focus on the injured party, the party who caused the loss, and the society affected. Thus, penal mediation becomes a path to justice that is participatory, proportional, and sustainable for all parties.

Article 306 paragraph (3) of Law Number 17 of 2023 emphasizes the importance of restorative justice in handling alleged crimes by medical personnel. Article 306 paragraph (3) affirms that if Medical Personnel or Health Workers have been proven to have made an error and an alleged crime arises from the disciplinary violation, Law Enforcement Officers prioritize restorative justice. When Law Enforcement Officers receive a report from a patient or family with evidence that the Medical Personnel or Health Worker has been given and has carried out administrative sanctions from the Council, Law Enforcement Officers prioritize settling the report by bringing together the patient or family as the reporter and the medical personnel or health worker as the reported party. Complete and accurate records help establish the facts before the parties meet (Kholis et al., 2023). Applying restorative justice in cases of alleged medical crimes is a more humane and solution-oriented approach because it brings the offender and the victim together to reach a fair agreement, especially if the offender has undergone administrative sanctions from the professional body. This approach gives room for a fair and humane settlement between the reporter and the reported party.

Resolving medical disputes through mediation reflects justice born from deliberation and consensus. In a settlement process by deliberation to reach consensus, justice is created by the parties (Nasution, 2020). A settlement is fair in practice when the parties feel they were treated well and are satisfied with the result (Darmawan et al., 2022). The discussion of justice in resolving medical disputes through mediation is based on balance and proportion. This

understanding of justice matches the idea of proportion between individual justice, social justice, and state justice, in which justice becomes the substance of law consisting of individual, social, and political elements (Trisnadi, 2017).

Justice in medical disputes can be achieved through proportional agreements among the parties. The parties will assume their respective proportions, and justice is created through their own agreement (Nasution, 2020). Departing from this concept of justice, the disputing parties employ their own criteria of justice, and the sense of justice within the parties becomes the foundational idea of proportional justice created through alternative dispute resolution via mediation (Setyawan, 2019). When the legal liability of a doctor is pursued through civil or criminal legal institutions, it is the value of justice that a judge seeks to uphold in deciding a case (Susila, 2021). Criminal law as a last resort (*ultimum remedium*) also serves as a pathway through which justice can be achieved if a doctor who commits an unlawful act and causes losses to the patient or their family is subjected to criminal deterrence sanctions (Setyawan, 2019). Ultimately, both mediation and criminal law aim to realize justice for all affected parties, with mediation serving as the primary step that prioritizes relationship restoration and mutual agreement (Trisnadi, 2017).

Law Number 17 of 2023 positions mediation as the primary initial step in medical dispute resolution. The direction of Law Number 17 of 2023 in placing Alternative Dispute Resolution outside the court as the first path (*primum remedium*) through mediation is not a pragmatic step in resolving disputes that cause losses to patients or their families. This step represents a primary effort that philosophically fulfills the core elements of justice that is, when patients or their families, alongside medical personnel or health personnel and hospitals, attain their respective values of justice, and those values can be agreed upon through the settlement agreements they create. Through mediation, each party can formulate and agree upon their justice proportionally without having to go through a lengthy, exhausting, and costly judicial process.

CONCLUSION

Healthcare services form a complex network of legal relationships involving various parties, each with their respective rights and obligations. Legal liability in this system cannot be imposed solely on a single entity, but must take into account the role and contribution of every actor involved. Professional institutions play a crucial role in enforcing discipline and service

standards, while their recommendations provide an objective reference in the evidentiary process across various legal avenues. Mediation as the primary effort offers a more humane and efficient approach to resolving disputes, while still respecting the rights of the parties to pursue formal legal channels when necessary. The balance between these various legal mechanisms is key to realizing justice and legal certainty within the healthcare service system.

The implications of these findings indicate the need for better synergy among professional institutions, law enforcement officials, and hospitals in handling medical disputes. Enhancing the understanding of the available resolution pathways can assist parties in choosing the most appropriate and proportional approach according to the characteristics of the case at hand.

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