JAMBURA LAW REVIEW
JALREV VOLUME 8 ISSUE 2 2026
ISSN PRINT: 2654-9266
ISSN ONLINE: 2656-0461

Beyond Litigation: Enhancing Patient Rights and Medical Dispute Settlement in Indonesia through Australian and Singaporean Models

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Article Info

Submitted: *December 10, 2025*
Revised: June 25, 2026
Accepted: August 16, 2026

Keywords:
Medical Dispute Resolution; *Alternative Dispute Resolution*; *Patient Rights*; *Hospital Liability*; *Comparative Law*

How to cite *[Chicago Manual of Style 17th edition (full note)]*: Erikson Sihotang, Teng Berlianty, and Riad Al Ajlani, "Beyond Litigation: Enhancing Patient Rights and Medical Dispute Settlement in Indonesia through Australian and Singaporean Models," *Jambura Law Review* 8, no. 2 (2026): 621–644.

Abstract

Medical dispute resolution in Indonesia remains a significant challenge, particularly regarding the effectiveness of legal mechanisms for both patients and medical professionals. In practice, medical disputes in Indonesia often involve lengthy and complex litigation, as alternative dispute resolution (ADR) has not been fully optimized. This study compares Indonesia's system with those of Australia and Singapore to identify strengths, weaknesses, and potential improvements to Indonesia's legal framework. It employs normative legal research with a comparative approach, drawing on legislation and legal literature on medical dispute resolution. The study examines regulations, dispute resolution mechanisms, and legal protections for patients and medical professionals in the three countries. The findings indicate that Australia and Singapore rely more on mediation and conciliation, which provide faster and more effective resolutions. By contrast, Indonesia still relies primarily on litigation, which is often slow and inefficient. To improve medical dispute resolution in Indonesia, strengthening ADR mechanisms by adopting best practices from Australia and Singapore is essential. This would help establish a fairer, more efficient system that better protects both patients and medical professionals.

Introduction

Health is a fundamental human right and a vital aspect of well-being that must be upheld in line with the ideals of the Indonesian nation, as outlined in Pancasila and the 1945 Constitution of the Republic of Indonesia.[1] This right is further reinforced by Law Number 36 of 2009 on Health, which defines health in Article 1, point 1 as "a state of physical, mental, spiritual, and social well-being that enables individuals to live productively both socially and economically." As such, ensuring public health is essential for national prosperity. One of the key means of achieving this is the provision of accessible and adequate healthcare services.

The Indonesian government has undertaken various efforts to provide quality healthcare services as a form of fulfilling the human right to health.[2] This commitment is reflected in the development of healthcare facilities, the improvement of medical services, and the establishment of legal protections for patients within the healthcare system.[3] In this context, hospitals play a crucial role as institutions responsible for delivering healthcare services while also ensuring the protection of patients' rights.[4] Legal protection in healthcare includes safeguarding patients' dignity,[5] privacy,[6] safety,[7] and access to fair and non-discriminatory medical treatment.[8] Legal protection represents an effort to ensure legal certainty and justice in the relationship between healthcare providers and patients.[9] Similarly, Leenen elaborates extensively on fundamental human rights, which serve as the foundation of health law.[10]

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[1] Erikkson Sitohang, "Prinsip Hukum Dalam Tata Kelola Rumah Sakit," *Yuridika* 29, no. 1 (2014): 83–99, https://doi.org/10.20473/ydk.v29i1.359; see also Arief Budiono et al., "Health Security Policies: A Comparative Study Through Constitutional Frameworks and the Insights of Veronica Rodriguez-Blanco," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 8, no. 2 (2025): 431–57, https://doi.org/10.24090/volksgeist.v8i2.10524.

[2] M. Ferdi Septianda, Deni Kurniawan, and Ella Afnira, "Smart People Dan Smart Living: Membangun Sumber Daya Manusia Unggul Dalam Optimalisasi Smart City Di Indonesia," *Jurnal Kebijakan Pembangunan* 19, no. 2 (2024): 189–204.

[3] Khoiril Huda and Ridwan Arifin, "Human Rights in Indonesia: Between Protection, Fulfillment, and Law Enforcement," *Lex Scientia Law Review* 2, no. 2 (2018).

[4] H. Indar, *Perspektif Hukum Sistem Informasi Kesehatan* (Yogyakarta: Pustaka Pelajar, 2023).

[5] Joanne M. Donkers, Reinout L. P. Roscam Abbing, and Stan F. J. van de Graaf, "Developments in Bile Salt Based Therapies: A Critical Overview," *Biochemical Pharmacology* 161 (2019): 1–13, https://doi.org/10.1016/j.bcp.2018.12.018.

[6] Henriette D. C. Roscam Abbing, "Age Determination of Unaccompanied Asylum Seeking Minors in the European Union: A Health Law Perspective," *European Journal of Health Law* 18, no. 1 (2011): 11–25.

[7] Budi Sylvana, "Tanggung Jawab Pemerintah Daerah Dalam Penyelenggaraan Kedaruratan Pra-Hospital Melalui Public Safety Center (PSC) 119 Untuk Peningkatan Layanan Kesehatan Di Indonesia," *Aktualita Jurnal Hukum* 3, no. 1 (2020): 547–64.

[8] Dwi Martini, Hayyanul Haq, and Budi Sutrisno, "Perlindungan Hukum Terhadap Pengetahuan Obat-Obatan Tradisional Dalam Rezim Hak Kekayaan Intelektual (HKI) Indonesia (Studi Pada Masyarakat Tradisional Sasak)," *Jurnal Hukum Dan Peradilan* 6, no. 1 (2017): 67–90.

[9] Dwi Nurul Safitri, "Implementasi Perlindungan Hukum Terhadap Pasien Pada Pelayanan Kesehatan Oleh Tenaga Medis Berdasarkan Undang-Undang No 36 Tahun 2014 Di Rumah Sakit Tondano," *Lex Privatum* 15, no. 2 (2025).

[10] Rayga Rayyan and Abdul Rahman Maulana Siregar, "Kepastian Hukum Dalam Penerapan Teknologi Kesehatan: Perlindungan Data Pasien Dan Malpraktik," *Politika Progresif: Jurnal Hukum, Politik Dan Humaniora* 2, no. 1 (2025): 1–11.

Medical services by healthcare professionals and hospitals are usually provided together.[11] Laboratory tests, which support healthcare services, may be done before or after certain medical procedures.[12] The legal relationship in these interactions depends on the hospital's organization and the doctor's agreement with the hospital.[13] Doctors employed full-time by a hospital provide medical services as part of the hospital's operations, making them representatives of the institution.[14] In contrast, doctors who are not full-time hospital employees can offer medical services through a therapeutic agreement directly with the patient.[15] Patients may also enter into a therapeutic agreement with the hospital for treatment and other healthcare services.[16]

The doctor-hospital relationship depends on their agreement.[17] In some cases, a patient's therapeutic agreement with the hospital also includes medical services from a doctor. In other cases, separate agreements are made between the patient, hospital, and doctor, depending on the hospital's policies. Cases such as that of Prita Mulyasari, which gained significant media attention, highlight how hospital governance can lead to incidents where patients suffer due to medical negligence. The Prita Mulyasari case of 2009 remains one of the most prominent examples in Indonesia concerning disputes between patients and healthcare institutions, particularly regarding freedom of expression and legal protection for patients. Prita Mulyasari was an Indonesian patient who became involved in a legal dispute with Omni International Hospital after sending an email complaint regarding the hospital's healthcare services in 2008. The case later became a national symbol of the struggle for consumer and patient rights in Indonesia. Her complaint led to both civil and criminal legal actions against her, including charges under Law Number 11 of 2008 on Electronic Information and Transactions. The case attracted widespread public attention and sparked broader discussions on patient rights, legal protection, and accountability in healthcare services in Indonesia.[18]

Although the case occurred more than a decade ago, it remains relevant because it illustrates the power imbalance between patients and healthcare providers, as well as the challenges of protecting patients' rights within the healthcare system. Furthermore, the case serves as an important reference point in examining the development of legal protection mechanisms for patients in Indonesia. Nevertheless, to emphasize the

[11] Novita Bernadeth Serena Linu, Y. Maarthen, and Caecilia Johanna Julietta Waha, "Kewenangan Majelis Kehormatan Disiplin Kedokteran Indonesia (MKDKI) Dalam Penanganan Sengketa Medis Dokter Dan Pasien," *Lex Privatum* 15, no. 2 (2025).
[12] Mustika Bagus Cahyani et al., "Tinjauan Literatur: Peran Rekam Medis Berbasis Elektronik Terhadap Pelayanan Kesehatan," *Jurnal Manajemen Informasi Kesehatan Indonesia* 12, no. 2 (2024).
[13] Yaumil Chaeria, Dachran Busthami, and Hardianto Djanggih, "Implikasi Kedudukan Tenaga Medis (Informed Consen) Terhadap Pertanggungjawaban Rumah Sakit," *Petitum* 8, no. 1 (2020): 1–19.
[14] Dimas Noor Ibrahim, "Tanggung Jawab Hukum Rumah Sakit Terhadap Dokter Dalam Perjanjian Medis Di Indonesia (Studi: Rumah Sakit Siaga Raya)," *Jurnal Ilmiah Publika* 10, no. 2 (2022): 275–88.
[15] Venny Sulistyani and Zulhasmar Syamsu, "Pertanggungjawaban Perdata Seorang Dokter Dalam Kasus Malpraktek Medis," *Lex Jurnalica* 12, no. 2 (2015).
[16] Setya Wahyudi, "Tanggung Jawab Rumah Sakit Terhadap Kerugian Akibat Kelalaian Tenaga Kesehatan Dan Implikasinya," *Jurnal Dinamika Hukum* 11, no. 3 (2011): 505–21.
[17] Sri Wahyuni, Kamal Hidjaz, and Sahban Sahban, "Tanggung Jawab Hukum Keperdataan Dokter Terhadap Pasien," *Journal of Lex Generalis (JLG)* 2, no. 8 (2021): 1970–82.
[18] Herawan Sauni et al., "Right to Information and Anti-SLAPP on Consumer Protection in Indonesia," *Sriwijaya Law Review* 10, no. 1 (2026): 200–222, https://doi.org/10.28946/slrev.v10i1.4544.

contemporary urgency of this issue, this article also refers to more recent developments and ongoing concerns regarding medical disputes, patient safety, and healthcare accountability in Indonesia. Therefore, hospitals must be held accountable for any negligence or misconduct that causes harm to patients.[19]

The term "liability" refers to a legal situation in which one party has the right to claim compensation, while another is responsible for paying it.[20] This means a person must take responsibility for their actions and be held accountable in court if the injured party files a lawsuit.[21] The *Burgerlijk Wetboek* (BW) does not define unlawful acts but regulates when someone can file a compensation claim for losses caused by another's actions.[22] Pitlo also explains that the BW does not directly define unlawful acts[23] but only sets the conditions for seeking compensation. According to Van Dunne, liability law initially focused on fault[24] but over time expanded to consider potential risks. In hospitals, medical negligence by healthcare professionals can have serious consequences for patients, affecting both their health and legal rights. The concept of liability is reflected in Law Number 8 of 1999 on Consumer Protection. This law states that a hospital's responsibility is determined by whether the patient has suffered harm, rather than the need to prove fault. This approach marks a shift toward strict liability, where compensation is required regardless of fault. Consequently, research on hospital governance has become increasingly important, yet it remains limited and underexplored.

Disputes between hospitals and patients cannot be overlooked, as they can cause harm to both parties. Patients who feel disadvantaged believe they have equal rights to hospital care and that those rights should be protected. This is especially true when they have paid high medical costs and expect proper treatment. Additionally, Article 9 of the 2000 Indonesian Hospital Code of Ethics (KODERSI) provides that hospitals must respect patients' fundamental rights. However, in reality, patients often find themselves at a disadvantage in legal disputes. This is because expert testimony is usually required, and most patients have little to no understanding of hospital regulations and legal processes. Therefore, this study aims to explore dispute resolution mechanisms that provide fair solutions for both patients and hospitals.

Problem Statement

Medical dispute resolution in Indonesia continues to face structural and normative deficiencies that hinder the effective protection of patients' rights and weaken hospital

[19] Sitohang, "Prinsip Hukum Dalam Tata Kelola Rumah Sakit."
[20] Endang Kusuma Astuti, "Tanggung Gugat Dokter Dan Rumah Sakit Kepada Pasien Pada Kegagalan Pelayanan Medis Di Rumah Sakit," *Masalah-Masalah Hukum* 40, no. 2 (2011): 164–71.
[21] Arman Anwar, "Tanggung Gugat Resiko Dalam Aspek Hukum Kesehatan," *Sasi* 23, no. 2 (2018): 149–60.
[22] Sri Redjeki Slamet, "Tuntutan Ganti Rugi Dalam Perbuatan Melawan Hukum: Suatu Perbandingan Dengan Wanprestasi," *Lex Jurnalica* 10, no. 2 (2013): 107–20, https://doi.org/10.47007/lj.v10i2.359.
[23] Mustabsyir Abidin and Ashabul Kahpi, "Penerapan Batas-Batas Wanprestasi Dan Perbuatan Melawan Hukum Dalam Suatu Perikatan," *Alauddin Law Development Journal* 3, no. 2 (2021): 250–64.
[24] Hanifah Nuraini, Dauri Dauri, and Ricco Andreas, "Paradigma Interpretif Konsep Penyalahgunaan Keadaan (*Misbruik Van Omstandigheden*) Pada Perjanjian Kredit Perbankan," *Refleksi Hukum: Jurnal Ilmu Hukum* 4, no. 2 (2020): 259–80.

accountability. Despite formal recognition of the right to health and the adoption of liability principles under health and consumer protection laws, dispute resolution mechanisms remain fragmented, procedurally complex, and largely inaccessible to patients. Information asymmetry, reliance on expert testimony, opaque hospital governance, and the absence of specialized forums often place patients in a disadvantaged position, resulting in resolutions that prioritize administrative closure over substantive justice. High-profile cases illustrate that medical disputes in Indonesia frequently reflect systemic governance failures rather than isolated professional misconduct. In contrast, Australia and Singapore have developed more coherent medical dispute resolution models through specialized tribunals, structured mediation systems, and clearer institutional responsibility. However, comparative insights into how such models can be adapted to Indonesia's legal and socio-institutional context remain limited. This gap underscores the need for a comparative evaluation to identify reform-oriented dispute resolution mechanisms that ensure fairness, accessibility, and substantive justice for both patients and healthcare institutions.

Methods

This study employs normative legal research[25] to examine medical dispute-resolution models by analyzing legal norms, doctrines, and regulatory frameworks governing hospital liability and patient rights. The research focuses on written law (*law in books*) as the primary object of analysis, particularly health legislation, hospital governance regulations, and liability provisions relevant to medical disputes in Indonesia, Australia, and Singapore. Primary legal materials include statutes, government regulations, and officially issued legal instruments, while secondary materials consist of scholarly articles, legal commentaries, judicial decisions, and comparative legal studies, all accessed through authoritative printed and digital databases. Tertiary materials, such as legal dictionaries and encyclopedias, are used to support conceptual clarity.

This study adopts a comparative legal approach to analyze similarities, differences, strengths, and limitations of legal frameworks and dispute resolution mechanisms in selected jurisdictions.[26] Legal provisions are examined systematically through article-by-article interpretation to identify normative structures, regulatory gaps, and underlying liability principles in each jurisdiction. Comparative analysis is used to highlight similarities and differences among medical dispute resolution mechanisms, enabling evaluation of their effectiveness, fairness, and accessibility. The findings are then synthesized to formulate a problem-oriented legal solution by proposing a more coherent, justice-oriented dispute-resolution framework for Indonesia, informed by best practices observed in Australia and Singapore. Australia and Singapore were selected as comparative jurisdictions because both countries have developed and well-established medical dispute resolution systems that incorporate litigation and alternative dispute resolution mechanisms. Australia is a common-law jurisdiction with extensive experience in healthcare complaints management and independent dispute resolution bodies, while Singapore is recognized for its efficient healthcare governance and emphasis on mediation to resolve medical disputes. These jurisdictions provide relevant

[25] Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2021).
[26] I Nyoman Putu Budhiarta and I Dewa Atmadja, *Teori Hukum* (Malang: Setara Press, 2018).

comparative models for Indonesia, as they offer different yet effective approaches to balancing patient protection, healthcare provider accountability, and accessible dispute resolution mechanisms. The comparison is intended to identify best practices and potential legal reforms that may be adapted to the Indonesian context.[27] This methodological approach allows the study to offer normative recommendations grounded in legal reasoning and comparative insight rather than empirical measurement.

Conceptual Framework of Dispute Resolution Mechanisms

1. Litigation and Non-Litigation Dispute Resolution Systems

Dispute resolution is a fundamental component of the legal system, as it helps restore rights, ensure legal certainty, and achieve justice for the parties involved. Within the development of modern legal systems, dispute resolution mechanisms are generally classified into two principal models: litigation and non-litigation. Litigation refers to the resolution of disputes through judicial institutions or court-based proceedings, in which a competent court adjudicates the matter and issues a legally binding judgment. In contrast, non-litigation dispute resolution is conducted outside the court system through mechanisms collectively known as alternative dispute resolution (ADR), including negotiation, mediation, conciliation, and arbitration. These mechanisms are designed to provide more flexible, efficient, and mutually beneficial means of resolving disputes while reducing the procedural complexities often associated with judicial proceedings.[28]

Litigation places the courts as the primary institutions for examining, adjudicating, and deciding disputes in accordance with applicable procedural law. In the Indonesian legal system, litigation has binding and executorial force because court decisions are enforced in the name of the State. In the context of medical disputes, litigation-based resolution is generally pursued through civil claims for breach of contract or tort, criminal proceedings for alleged medical negligence, and administrative disputes concerning professional responsibility and the accountability of healthcare institutions.[29]

Nevertheless, dispute resolution through litigation often faces various shortcomings, particularly in medical disputes. Judicial proceedings tend to be formalistic, time-consuming, costly, and place the parties in adversarial positions.[30] Such characteristics often exacerbate the relationship between patients and healthcare professionals because litigation is primarily focused on establishing fault and imposing liability rather than restoring relationships or achieving a substantive resolution of the conflict. Furthermore,

[27] On comparative analysis as a basis for designing dispute resolution reforms, see Kadek Agus Sudiarawan et al., "Formulation of Online Dispute Resolution in Realizing Fair Industrial Relations Dispute Settlement: A Comparative Study," *Jurnal IUS Kajian Hukum dan Keadilan* 12, no. 2 (2024): 227–48, https://doi.org/10.29303/ius.v12i2.1308.

[28] Rizki Wahyudi, Natasya Yunita Sugiastuti, and Reza Kautsar Kusumahpraja, "Restorative Justice in Civil Disputes: A Progressive Approach to Civil Law," *International Journal of Health, Economics, and Social Sciences (IJHESS)* 8, no. 2 (2026): 1394–1400.

[29] Meirina Nurlani, "Alternatif Penyelesaian Sengketa Dalam Sengketa Bisnis Di Indonesia," *Jurnal Kepastian Hukum Dan Keadilan* 3, no. 1 (2022): 27–32.

[30] Saadah Kurniawati and Fahmi Fahmi, "Penyelesaian Sengketa Medis Berdasarkan Hukum Indonesia," *Innovative: Journal of Social Science Research* 3, no. 2 (2023): 12234–44.

medical disputes involve complex technical and scientific issues, while judges may not necessarily possess sufficient medical expertise to comprehensively assess professional standards, causation, and medical treatment.[31]

In response to the limitations of litigation, non-litigation mechanisms, commonly referred to as ADR, have emerged, emphasizing the amicable, flexible, and consensual resolution of disputes. Within the Indonesian legal system, ADR is regulated under Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution, which encompasses negotiation, mediation, conciliation, arbitration, and expert opinion. The emergence of ADR reflects the development of a modern legal paradigm that no longer regards the courts as the sole instrument for dispute resolution.

Theoretically, ADR is closely associated with the concept of access to justice, which emphasizes that the law should not only be formally available but also effectively accessible, simple, expeditious, and affordable for the public.[32] In medical disputes, the principle of access to justice is particularly important because patients often occupy a weaker position than healthcare institutions in terms of economic resources, access to information, and medical knowledge.

ADR also reflects a restorative justice approach that emphasizes the restoration of relationships, dialogue, accountability, and dispute resolution that accommodates the interests of all parties involved.[33] In medical disputes, a restorative approach is particularly relevant because such disputes involve not only legal issues but also ethical, humanitarian, and trust-related dimensions concerning healthcare professionals and institutions. In many cases, patients do not merely seek punishment; rather, they seek explanations, transparency, accountability, and a proportionate restoration of their rights.

Responsive law theory, as developed by Philippe Nonet and Philip Selznick, posits that law must be responsive to social needs and should not be confined solely to procedural formalism.[34] In this context, ADR reflects the characteristics of responsive law by adapting dispute resolution mechanisms to the complexity of medical disputes, which involve professional relationships, patient safety, healthcare service standards, and public interests. Furthermore, dispute resolution theory posits that the effectiveness of a dispute resolution mechanism is measured not only by the degree of legal certainty it provides, but also by its ability to produce outcomes that are fair, efficient, and acceptable to the parties involved.[35] Therefore, the development of modern legal systems

[31] Florentina Dewi Pramesuari, "Analisis Kebijakan Negara Indonesia Dalam Penyelesaian Sengketa Medis," *Jurnal Hukum Dan HAM Wara Sains* 3, no. 1 (2024): 1–8.
[32] Happy Yulia Anggraeni et al., "Penerapan ADR Dan Potensi Arbitrase Dalam Penyelesaian Sengketa Medis Di Indonesia," *Akademik: Jurnal Mahasiswa Humanis* 5, no. 1 (2025): 500–514.
[33] Amy Shientiarizki et al., "Analisis Konsep Sengketa Medis Dan Penerapan Komunikasi Medis Yang Tepat Untuk Mencegah Terjadinya Konflik Hukum Dan Etik Di Indonesia," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4, no. 3 (2026): 2856–71.
[34] Yusrizal Hasbi, Ferdy Saputra, and Hadi Iskandar, *Filsafat Hukum* (Detak Pustaka, 2025).
[35] Harumi Ram Tatiana Parengkuan et al., "Analisis Yuridis Terhadap Efektivitas Mediasi Dalam Penyelesaian Sengketa Perbuatan Melawan Hukum Berdasarkan Peraturan Mahkamah Agung Nomor 1 Tahun 2016," *Jurnal Hukum, Politik Dan Ilmu Sosial* 5, no. 1 (2026): 62–78.

demonstrates a growing tendency to prioritize non-litigation dispute resolution mechanisms in certain types of cases that require confidentiality, expediency, flexibility, and a non-confrontational approach, including medical disputes.

The urgency of ADR in medical disputes has become increasingly significant given the sensitive and multidimensional nature of healthcare-related disputes. Medical disputes directly involve patient safety, the professional reputation of healthcare practitioners, public trust in healthcare institutions, and complex scientific assessments. Accordingly, dispute resolution mechanisms that emphasize mediation, dialogue, and professionally guided settlements possess greater potential to provide balanced legal protection for both patients and healthcare professionals. Therefore, ADR should no longer be viewed merely as an alternative means of dispute resolution, but rather as an integral component in the development of a more humane, responsive, and substantively just system for resolving medical disputes.

2. Alternative Dispute Resolution in the Indonesian Legal System

The development of modern legal systems demonstrates that court-based adjudication is no longer the sole mechanism for achieving justice. The increasing complexity of legal relationships within society, including those arising in the healthcare sector, has created a demand for dispute resolution mechanisms that are more flexible, expeditious, and efficient, and that can accommodate the parties' interests in a proportionate manner. In this context, ADR has emerged as an out-of-court dispute resolution mechanism that emphasizes amicable settlement and solutions based on the parties' mutual agreement.[36]

Within the Indonesian legal system, ADR is specifically regulated under Law Number 30 of 1999. This statute serves as the principal legal framework governing non-litigation dispute resolution through arbitration and other alternative dispute resolution mechanisms. The enactment of this legislation reflects a shift in the national legal paradigm toward recognizing consensual dispute resolution as an important component of the modern justice system. Normatively, Law Number 30 of 1999 recognizes several forms of alternative dispute resolution, including negotiation, mediation, conciliation, arbitration, and expert opinion. Negotiation is a dispute resolution mechanism in which the parties directly reach an agreement without the involvement of a third party. This mechanism emphasizes communication and compromise as the basis for resolving conflicts. In practice, negotiation is often employed as the initial stage of dispute resolution because it is informal, simple, and oriented toward the parties' mutual interests. Comparable studies of non-litigation settlement in Indonesia likewise describe negotiation as direct communication between the parties aimed at reaching an agreement and mediation as the involvement of an impartial third party without authority to decide the dispute, and they identify cooperation, mutual understanding, and

[36] Didik Sukriono et al., "Local Wisdom as Legal Dispute Settlement: How Indonesia's Communities Acknowledge Alternative Dispute Resolution?," *Legality: Jurnal Ilmiah Hukum* 33, no. 1 (2025): 261–85.

mutually beneficial agreements as the principal benefits of settling disputes outside the courts.[37]

In addition to negotiation, mediation has become one of the most widely developed ADR mechanisms in dispute resolution practice in Indonesia. Mediation is a dispute resolution process that involves the assistance of a neutral third party (mediator) to facilitate the parties in reaching a mutually acceptable settlement.[38] Unlike judges in litigation proceedings, mediators do not possess the authority to adjudicate disputes; rather, their role is limited to facilitating dialogue and communication between the parties. This characteristic makes mediation a more cooperative rather than confrontational approach to dispute resolution.

Conciliation is a dispute resolution mechanism that also involves a neutral third party; however, the conciliator may propose recommendations or settlement terms to the parties. Meanwhile, arbitration is an out-of-court dispute resolution mechanism conducted pursuant to an arbitration agreement, whereby the arbitrator is vested with the authority to render a decision that is final and binding.[39] In addition, Law Number 30 of 1999 recognizes expert opinion as a form of dispute resolution that involves professional expertise to assess the matters in dispute.

In the context of medical disputes, ADR is particularly significant because the characteristics of healthcare disputes differ from those of ordinary civil disputes. Medical disputes involve not only legal issues but also ethical considerations, professional standards, patient safety, and the relationship of trust between patients and healthcare professionals. Accordingly, adversarial dispute resolution through litigation often exacerbates conflicts and hinders the restoration of relationships between the parties.

The resolution of medical disputes through the courts often encounters obstacles such as lengthy proceedings, high costs, and the complexity of medical evidence, which requires specialized expertise. In many cases, patients do not merely seek the punishment of healthcare professionals; rather, they seek explanations, transparency, acknowledgment of error, and a proportionate restoration of their rights.[40] Under such circumstances, ADR mechanisms have greater potential to achieve expeditious, confidential, flexible dispute resolution while preserving the professional relationship between patients and healthcare professionals.

The use of ADR in medical disputes is also consistent with the principle of access to justice, which requires that individuals have access to effective, simple, and affordable dispute resolution mechanisms. Formalistic litigation often creates barriers for patients

[37] Ferli Razak, Weny Almoravid Dungga, and Julius T. Mandjo, "Non-Litigation Resolution of Business Use Rights Disputes Between PT. Lebuni and Shareholders," *Damhil Law Journal* 2, no. 2 (2022): 102–4.
[38] Wahyu Hariadi and Teguh Anindito, "Alternative Dispute Resolution (ADR) in Law in Indonesia," *Jurnal Pendidikan Kewarganegaraan Undiksha* 8, no. 3 (2020): 172–80.
[39] Muhammad Iqbal Baiquni, "Arbitrators as a Legal Profession in the Alternative Role of Dispute Resolution in Indonesia," *Jurnal Humaya: Jurnal Hukum, Humaniora, Masyarakat, Dan Budaya* 2, no. 1 (2022): 12–20.
[40] Mochamad Rizal and Rizki Maulana Ahzar, "Restorative Justice Dalam Penanganan Sengketa Medis Pasca Berlakunya KUHP Baru," *Jurnal Hukum Perdata Dan Bisnis* 1, no. 2 (2026): 46–52.

due to the costs, time, and evidentiary burdens involved. By contrast, ADR provides a more participatory process that is oriented toward the needs and interests of the parties.

The ADR approach also reflects the principles of restorative justice, as it emphasizes dialogue, relationship restoration, and the achievement of mutually acceptable solutions rather than merely imposing sanctions.[41] In medical disputes, a restorative approach is particularly important because such conflicts often involve issues of trust, communication, and professional responsibility that require a humane resolution.[42]

Responsive law theory, as developed by Philippe Nonet and Philip Selznick, regards law as an instrument that must be capable of responding substantively to social needs.[43] In this context, ADR reflects the characteristics of responsive law by adapting dispute-resolution mechanisms to the complexity and sensitivity of medical disputes. Dispute resolution is no longer oriented solely toward procedural certainty, but also toward effectiveness, substantive justice, and the protection of the parties' interests.

The existence of ADR within the Indonesian legal system reflects an important development in the paradigm of modern dispute resolution. In the context of medical disputes, ADR is not merely positioned as an alternative to litigation, but also as a more appropriate mechanism for achieving dispute resolution that is expeditious, professional, confidential, and oriented toward the restoration of relationships, as well as the balanced protection of the rights of both patients and healthcare professionals.

Medical Dispute Resolution System in Indonesia

1. Legal Framework of Medical Dispute Resolution in Indonesia

The medical dispute resolution system in Indonesia is fundamentally structured through a combination of healthcare law, civil law, criminal law, administrative law, and out-of-court dispute resolution mechanisms.[44] This complexity demonstrates that medical disputes are not viewed merely as matters of legal violations, but also involve issues of professional ethics, patient safety, healthcare service standards, and the protection of human rights in the healthcare sector. In a modern rule-of-law state, a comprehensive regulatory framework exists to ensure balanced legal protections for patients, as recipients of healthcare services, and healthcare professionals, as providers of professional services.

[41] Dewi Asri Yustia et al., "Restorative Justice: Finding Common Ground Between Justice and Shared Interests," *Jambura Law Review* 8, no. 1 (2026): 229–49, https://doi.org/10.33756/jlr.v1i1.32646.
[42] Endang Kusuma Astuti, Endang Wahyati Yustina, and Anisah Che Ngah, "Miscommunication as a Cause of Disputes in the Relationship Between Doctors and Patients in Hospitals," *Lex Scientia Law Review* 9, no. 1 (2025): 139–78, https://doi.org/10.15294/lslr.v9i1.21791.
[43] A. Hans Tayeb Adrian, Mira Nila Kusuma Dewi, and Nur Wahyu Hidayat, "Rekonstruksi Teori Hukum Dalam Masyarakat Modern," *Al-Istinbath: Jurnal Ilmu Hukum Dan Hukum Keluarga Islam* 2, no. 3 (2025): 157–66.
[44] Istiana Sari and Prasetyo Edi, *Transformasi Hukum Penyelesaian Sengketa Medis Di Indonesia* (CV Eureka Media Aksara, 2026).

The principal legal framework governing the resolution of medical disputes in Indonesia is currently set forth in Law Number 17 of 2023 on Health. This statute provides that healthcare services must be delivered in accordance with the principles of patient safety, professionalism, accountability, and legal certainty. Furthermore, the Health Law allows the resolution of healthcare disputes through out-of-court mechanisms before resorting to litigation. This regulatory approach reinforces a shift in Indonesia's healthcare law paradigm toward dispute resolution that is proportionate, restorative, and oriented toward protecting all parties involved.

In addition to the Health Law, the regulation of medical disputes is also closely connected to the Medical Practice Law, which governs professional standards, physicians' obligations, informed consent, medical records, and the professional liability of healthcare practitioners. The legal relationship between a physician and a patient is fundamentally a therapeutic relationship that gives rise to reciprocal rights and obligations for each party.[45] Accordingly, violations of professional standards, medical negligence, or failures to fulfill healthcare service obligations may give rise to legal consequences under civil, criminal, and administrative law.

The Hospital Law also provides the legal basis for the responsibility of healthcare institutions toward patients. Hospitals are not only responsible for the quality of medical services provided, but are also required to ensure patient safety, establish complaint-handling mechanisms, and resolve disputes arising from healthcare services. In practice, hospitals may be held liable for medical errors committed by healthcare professionals acting within the scope of the institution.[46]

Medical disputes may also be examined within the consumer protection framework as regulated under the Consumer Protection Law. In certain contexts, patients may be regarded as consumers of healthcare services who are entitled to rights relating to safety, comfort, accurate information, and compensation for losses suffered. The consumer protection approach broadens the perspective of liability in medical disputes by treating healthcare services as part of a legal relationship between service providers and service recipients.

The development of digitalized healthcare services has also given rise to new issues concerning the protection of patients' personal data. The use of electronic medical records, telemedicine, and health information systems requires healthcare institutions to comply with the principles of data confidentiality and security as regulated under the Personal Data Protection Law. In the context of medical disputes, the disclosure or misuse

[45] Jevon Agustinus Dwi Putra, M. Nasser, and Edwin Edwin, "Tanggung Jawab Hukum Pimpinan Rumah Sakit Pada Penyelesaian Sengketa Medik Secara Non Litigasi Di Rumah Sakit," *Jurnal Syntax Imperatif: Jurnal Ilmu Sosial Dan Pendidikan* 5, no. 4 (2024): 830–37; see also Anggraeni Endah Kusumaningrum, Siti Farahiyah Ab Rahim, and Mahesa Paranadipa Maikel, "Enforcement of Therapeutic Transaction Arrangements as an Instrument of Legal Protection for Patients with Mental Disorders," *Lex Scientia Law Review* 10, no. 1 (2026): 173–98, https://doi.org/10.15294/lslr.v10i1.20655.

[46] Velliana Tanaya and Intan Indriani Putri, "The Civil Liability of Hospitals for Malpractice Committed by Healthcare Personnel Resulting in Baby Switched at Birth Incidents," *Jurnal IUS Kajian Hukum dan Keadilan* 13, no. 1 (2025): 1–19, https://doi.org/10.29303/ius.v13i1.1539.

of patients' health data may give rise to additional legal liability for both healthcare professionals and healthcare facilities.

Conceptually, the legal framework governing the resolution of medical disputes in Indonesia reflects a multidimensional approach that simultaneously incorporates various legal instruments. Nevertheless, this regulatory complexity has also given rise to issues of normative disharmony, jurisdictional overlap, and uncertainty regarding effective dispute-resolution mechanisms. In many cases, patients continue to face difficulties accessing justice, while healthcare professionals are at risk of professional criminalization due to the absence of a comprehensively integrated medical dispute resolution system.

2. Litigation-Based Medical Dispute Resolution in Indonesia

The resolution of medical disputes through litigation is a formal mechanism within the judicial system. Within the Indonesian legal system, litigation remains the primary instrument for enforcing legal liability arising from alleged medical errors or negligence. Through litigation, patients or their families may initiate civil claims, file criminal complaints, or pursue administrative proceedings against healthcare professionals and healthcare institutions.[47]

In the field of civil law, medical disputes are generally based on breach of contract and tort (unlawful act). A breach of contract claim arises when a medical professional or hospital is deemed to have failed to fulfill the obligations of care as agreed upon in the therapeutic relationship between doctor and patient. Meanwhile, a tort-based claim is grounded in acts that violate the applicable standard of care, professional standards, or patient safety principles, resulting in harm or loss to the patient.

In addition to civil liability, medical disputes may also develop into criminal cases where there is an alleged gross negligence resulting in serious injury or the death of a patient. In practice, the use of criminal law instruments against medical professionals is often subject to debate, as medical actions inherently involve unavoidable risks even when performed in accordance with professional standards. Accordingly, the criminalization of medical practice has become a significant issue within Indonesia's healthcare dispute resolution system. Furthermore, medical disputes may also be addressed through administrative law mechanisms, particularly in relation to licensing, professional discipline, and the authority of healthcare institutions. Administrative sanctions may include warnings, restrictions on practice, revocation of licenses, or other disciplinary measures imposed on healthcare professionals.

Although litigation provides legal certainty through binding court judgments, this mechanism has several limitations in resolving medical disputes. Litigation tends to be time-consuming, costly, highly formalistic, and adversarial, which often exacerbates the relationship between patients and healthcare professionals. In addition, the burden of proof in medical disputes is highly complex, as it requires scientific and technical assessments that are not easily understood within general court proceedings. Another

[47] Pramesuari, "Analisis Kebijakan Negara Indonesia Dalam Penyelesaian Sengketa Medis."

limitation is the insufficient understanding among law enforcement authorities regarding the characteristics of medical practice. In many cases, medical actions that involve inherent professional risks are often equated with criminal negligence.[48] This condition creates legal uncertainty for medical professionals and may lead to the practice of defensive medicine, namely, the provision of excessive or unnecessary medical services intended to avoid potential legal claims or liability.[49]

3. Non-Litigation Medical Dispute Resolution in Indonesia

The development of modern health law systems indicates that medical dispute resolution is not always effective when handled through litigation. Therefore, non-litigation mechanisms, or ADR, have increasingly become a relevant approach to resolving healthcare service disputes. In the Indonesian context, medical disputes outside the court are resolved through mediation, negotiation, arbitration, professional ethical and disciplinary proceedings, as well as internal hospital complaint mechanisms.[50]

Mediation is the most widely used mechanism in non-litigation medical dispute resolution. It involves a neutral third party acting as a mediator to assist the disputing parties in reaching a mutual agreement without resorting to formal adjudicatory proceedings. In medical disputes, mediation offers a space for dialogue between patients and healthcare professionals, ensuring that dispute resolution is not solely focused on proving fault but also on restoring relationships, enhancing transparency, and achieving a mutually beneficial settlement.[51]

In addition to mediation, medical disputes may be resolved through professional, ethical, and disciplinary mechanisms. Within Indonesia's health law system, the Indonesian Medical Discipline Honor Council (*MKDKI*) is authorized to examine alleged violations of the professional discipline of medical doctors and dentists. This mechanism is important because medical disputes are not always related to legal wrongdoing, but may also involve breaches of professional standards and medical ethics.[52]

At the level of healthcare service institutions, hospitals also maintain internal complaint resolution mechanisms as part of patient protection and healthcare risk management. These mechanisms are generally carried out through clarification, internal investigation, mediation, and the provision of certain compensation where service errors are identified.

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[48] Hildayastie Hafizah and Surastini Fitriasih, "Urgensi Penyelesaian Dugaan Kesalahan Medis Melalui Restorative Justice," *Jurnal USM Law Review* 5, no. 1 (2022): 205–23.
[49] Toto Surianto Subu et al., "Addressing Legal Uncertainty in Delayed Informed Consent: Protecting Health Workers in Indonesian Hospitals," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 8, no. 2 (2025): 329–44, https://doi.org/10.24090/volksgeist.v8i2.13089.
[50] Anggraeni et al., "Penerapan ADR Dan Potensi Arbitrase Dalam Penyelesaian Sengketa Medis Di Indonesia."
[51] Gunawan Widjaja, "Peningkatan Efektivitas Penyelesaian Sengketa Medis Melalui Alternatif Non-Litigasi (Mediasi Dan Arbitrase) Pasca Penerapan UU No. 17 Tahun 2023," *Journal of Community Dedication* 4, no. 4 (2025): 95–105.
[52] Muhammad Afiful Jauhani, *Kepastian Hukum Penyelesaian Sengketa Medik Non Litigasi* (CV Eureka Media Aksara, 2025).

Such internal approaches are essentially aimed at preventing the escalation of disputes into litigation.

Normatively, strengthening non-litigation medical dispute resolution aligns with the spirit of Law Number 17 of 2023 on Health, which promotes the effective, prompt, and fair resolution of health-related disputes. Non-litigation approaches also reflect the principles of restorative justice, as they prioritize dialogue, relationship restoration, and the protection of all parties' interests.

However, the implementation of non-litigation medical dispute resolution in Indonesia still faces various challenges. Mediation mechanisms have not functioned effectively due to the limited number of mediators with both legal and healthcare competencies.[53] In addition, there is no nationally integrated specialized institution for resolving medical disputes, resulting in dispute resolution being dispersed across different institutions. Another issue is the suboptimal legal protection for both patients and healthcare professionals within non-litigation processes. Patients often feel in a weaker bargaining position during negotiations with hospitals, while healthcare professionals are concerned that amicable settlements may still leave room for future criminal claims. As a result, trust in the effectiveness of ADR in medical disputes remains relatively limited.

Although non-litigation mechanisms have significant potential to provide faster, more humane, and more efficient resolution of medical disputes, the current system still requires institutional strengthening, regulatory harmonization, and the establishment of a specialized mechanism to ensure balanced legal protection for both patients and healthcare providers.[54]

4. Current Challenges in Indonesian Medical Dispute Resolution

Indonesia's medical dispute resolution system continues to face structural, normative, and institutional challenges that undermine the effectiveness of legal protections for both patients and healthcare professionals. These complexities indicate that existing dispute resolution mechanisms have not yet been fully capable of addressing the needs of a modern healthcare system, which requires legal certainty, substantive justice, and balanced protection of professional practice.

One of the principal challenges is the lack of regulatory harmonization within the healthcare sector. The legal framework governing medical liability is dispersed across various legal instruments, including the Health Law, the Medical Practice Law, the Hospital Law, the Civil Code, the Criminal Code, and other regulations governing healthcare professionals. This fragmented regulatory landscape often leads to overlapping norms and uncertainty about the appropriate dispute resolution mechanism.

[53] Herliana Herliana, "Maqasid al-Sharia in Court-Mediation Reform: A Study on Efficiency and Social Justice in Medical Disputes," *De Jure: Jurnal Hukum dan Syar'iah* 15, no. 2 (2023): 214–29, https://doi.org/10.18860/j-fsh.v15i2.23962.

[54] Gunawan Widjaja, "Optimalisasi Mediasi Dan Arbitrase Sebagai Alternatif Penyelesaian Sengketa Antara Tenaga Medis Dan Pasien Berdasarkan UU No. 17 Tahun 2023 Tentang Kesehatan," *Journal of Community Dedication* 4, no. 4 (2025): 122–36.

Consequently, medical disputes are frequently addressed through various legal approaches without a coherent, integrated framework.[55]

The continued dominance of a litigation-oriented culture also influences the resolution of medical disputes in Indonesia. Many alleged malpractice cases are immediately directed toward criminal proceedings without first undergoing mediation or professional disciplinary review.[56] However, not every adverse medical outcome can be classified as a criminal offense, as healthcare services inherently involve medical risks that cannot always be avoided. Another significant challenge is the weakness of mediation and other non-litigation dispute resolution mechanisms. Although the regulatory framework provides opportunities for ADR, its implementation remains suboptimal due to the limited availability of qualified professional mediators, the absence of specialized healthcare dispute resolution institutions, and the relatively low level of public trust in amicable settlement mechanisms. In practice, mediation is often treated merely as a procedural formality rather than as a substantive process capable of genuinely restoring relationships between the parties.[57]

Indonesia also does not yet have a specialized, independent medical dispute tribunal or an integrated institution dedicated to resolving medical disputes, as has been developed in several other jurisdictions. The absence of such a specialized body results in medical disputes being addressed through multiple forums, including the general courts, internal hospital complaint mechanisms, and professional healthcare institutions. This institutional fragmentation may lead to legal uncertainty and inconsistent outcomes.

Issues relating to medical evidence also constitute a significant challenge in both litigation and non-litigation proceedings. Medical disputes involve complex scientific and technical matters that require specialized expertise to determine whether a particular medical intervention complied with the applicable professional standards of care. In many cases, patients face difficulties in obtaining access to medical records and relevant health information, while healthcare professionals are exposed to legal pressures arising from differing interpretations of inherent medical risks and professional negligence.[58]

There is often an imbalance of power between patients and healthcare institutions. Hospitals and healthcare professionals generally possess greater resources, expertise,

[55] Irwan Triadi, "Penyelesaian Sengketa Kesehatan Dengan Metode Non Litigasi, Mediasi, Arbitrase Dan Alternatif Lainnya," *Journal of Law Perspectives Review* 1, no. 1 (2025): 43–52.
[56] Nurul Ummah, Fifik Wiryani, and Mokhammad Najih, "Mediasi Dalam Penyelesaian Sengketa Medik Dokter Dengan Pasien (Analisis Putusan PN No. 38/Pdt.G/2016/PN.Bna Dan Putusan Mahkamah Agung No. 1550 K/Pdt/2016)," *Legality: Jurnal Ilmiah Hukum* 27, no. 2 (2019): 205–21.
[57] Rospita Adelina Siregar, "Transformasi Penyelesaian Sengketa Medis: Sebuah Paradigma Baru Dalam Hukum Kesehatan Indonesia," *Jurnal Hukum Mimbar Justitia (JHMJ)* 11, no. 1 (2025): 52–64; see also Nirwan Junus et al., "Integration of Mediation in Divorce Cases Reviewed from Supreme Court Regulation on Court Mediation Procedures," *Jambura Law Review* 6, no. 1 (2024): 183–205, https://doi.org/10.33756/jlr.v6i1.19370.
[58] Yuyut Prayuti et al., "Efektivitas Mediasi Dan Arbitrase Dalam Penyelesaian Sengketa Konsumen Kesehatan," *Syntax Idea* 6, no. 3 (2024): 1533–44.

and access to information than patients.[59] This disparity frequently undermines the effectiveness of dispute resolution processes, particularly in negotiation and mediation. Accordingly, the challenges of medical dispute resolution in Indonesia extend beyond regulatory shortcomings and also encompass institutional structures, legal culture, access to justice, and the protection of medical professionals. These conditions underscore the urgency of reforming the medical dispute resolution system toward a more responsive, integrated, and balanced framework that ensures equitable legal protection for both patients and healthcare providers.

Comparison of Medical Dispute Resolution in Other Countries

1. Medical Dispute Resolution Mechanisms in Australia

In addition to its well-developed healthcare system, Australia has established a comprehensive framework for resolving medical disputes that combines administrative complaint mechanisms, professional disciplinary processes, ADR, and civil litigation. As a common-law jurisdiction, Australia emphasizes both patient protection and healthcare provider accountability through multiple dispute-resolution pathways. This multi-layered approach enables patients to seek remedies through non-judicial and judicial mechanisms depending on the nature and severity of the dispute.[60]

Patients who experience dissatisfaction with healthcare services may pursue several avenues for dispute resolution. First, they may submit complaints directly to healthcare providers or hospitals via internal complaint-handling systems. If the matter cannot be resolved internally, patients may lodge complaints with independent health complaint bodies established by state or territorial legislation. These institutions serve as external oversight mechanisms and provide accessible procedures for investigating complaints against healthcare providers and healthcare institutions.[61]

Several institutions play a central role in the Australian medical dispute resolution system. In New South Wales, complaints may be submitted to the Health Care Complaints Commission (HCCC), which has authority to investigate complaints concerning professional misconduct, unsatisfactory professional conduct, and deficiencies in healthcare services. Similar functions are performed by the Office of the Health Ombudsman (OHO) in Queensland and equivalent agencies in other Australian jurisdictions.[62] These bodies operate independently from healthcare providers and are

[59] Naimah Naimah et al., "Conceptual Reconstruction of Medical Consent in Healthcare Services: Islamic Contract Law Analysis of the Principle of At-Tarāḍī," *Jurisdictie: Jurnal Hukum dan Syariah* 17, no. 1 (2026): 71–98, https://doi.org/10.18860/j.v17i1.40014.
[60] Tianlu Yin, Zhaojie Liu, and Yanli Xu, "Analysis of Crisis Management of Medical Disputes in China and Australia: A Narrative Review Article," *Iranian Journal of Public Health* 48, no. 12 (2019): 2116–23, https://doi.org/10.18502/ijph.v48i12.3542.
[61] Mary Anne Noone and Lola Akin Ojelabi, "Alternative Dispute Resolution and Access to Justice in Australia," *International Journal of Law in Context* 16, no. 2 (2020): 108–27, https://doi.org/10.1017/S1744552320000099.
[62] Merrilyn Walton et al., "Management and Outcomes of Health Practitioner Complaints in Australia: A Comparison of the National and New South Wales Systems," *Australian Health Review* 44, no. 2 (2020): 180–89, https://doi.org/10.1071/AH18262.

empowered to assess complaints, conduct investigations, facilitate dispute resolution, and recommend disciplinary action when necessary.

In relation to professional regulation, the Australian Health Practitioner Regulation Agency (AHPRA) functions as the national regulator for registered health practitioners. AHPRA works together with the National Boards responsible for different health professions, including medical practitioners, nurses, dentists, pharmacists, and other healthcare professionals. Complaints involving professional competence, ethical misconduct, or breaches of professional standards may be referred to AHPRA for assessment and regulatory action. Depending on the circumstances, sanctions may range from cautions and conditions on practice to suspension or cancellation of professional registration.[63]

The process of handling patient complaints generally follows several stages. A patient first submits a complaint to the relevant healthcare provider or regulatory body. The complaint is then assessed to determine its nature and seriousness. If the matter appears suitable for consensual resolution, mediation or conciliation may be facilitated between the parties. Where allegations involve professional misconduct, patient safety concerns, or serious negligence, a formal investigation may be initiated. Following investigation, the matter may be resolved through recommendations, disciplinary proceedings, referral to a tribunal, or civil litigation where compensation is sought.

Australia places significant emphasis on ADR in medical disputes. Mediation and conciliation are commonly used to resolve disputes efficiently while preserving relationships between patients and healthcare providers. Through mediation, an independent neutral mediator assists the parties in reaching a mutually acceptable settlement. Conciliation involves a more active role by the conciliator, who may propose possible solutions to the dispute. These mechanisms are generally faster, less costly, and less adversarial than court proceedings, making them attractive options for resolving healthcare-related disputes.[64]

In addition to mediation and conciliation, several Australian jurisdictions utilize tribunal mechanisms for the resolution of healthcare-related disputes. Civil and Administrative Tribunals operating at the state level provide specialized forums for hearing complaints involving professional conduct, disciplinary matters, and certain compensation claims. Tribunals offer a more flexible and accessible dispute resolution process compared to ordinary courts while maintaining procedural fairness and legal accountability.[65]

Where disputes involve allegations of medical negligence and claims for damages, patients may pursue civil litigation before the courts. Medical negligence claims in Australia are governed primarily by common law principles and relevant civil liability legislation. To establish liability, a claimant must prove four essential elements: duty of

[63] Walton et al., "Management and Outcomes of Health Practitioner Complaints in Australia."
[64] Dominique Egan, "Workplace Relations: Complaints against Medical Practitioners," *The NSW Doctor* 14, no. 6 (2022): 16–17.
[65] Jenni Millbank, "Reinstatement of Previously Deregistered Health Professionals in Australia: Legal Determinations of Risk, Patient Safety, and Public Interest," *Federal Law Review* 51, no. 1 (2023): 3–30, https://doi.org/10.1177/0067205X221146334.

care, breach of duty, causation, and damages. The healthcare provider must owe a legal duty of care to the patient; there must be a failure to meet the required standard of care; the breach must have caused the injury or loss suffered by the patient; and actual damages must be demonstrated. Courts assess these elements by considering expert medical evidence and the applicable professional standards.[66]

The Australian model demonstrates a balanced approach to medical dispute resolution by integrating complaint-handling systems, regulatory oversight, alternative dispute resolution mechanisms, professional disciplinary proceedings, tribunals, and judicial remedies. This integrated framework provides multiple avenues for patients seeking redress while ensuring accountability, upholding professional standards, and maintaining public confidence in the healthcare system.

2. Medical Dispute Resolution Mechanisms in Singapore

The legal framework governing medical dispute resolution in Singapore is derived from a combination of statutory regulation, professional disciplinary mechanisms, and common law principles.[67] The principal legislation includes the Healthcare Services Act 2020, which regulates healthcare providers and establishes standards for healthcare services; the Medical Registration Act 1997, which governs the registration, professional conduct, and disciplinary proceedings of medical practitioners through the Singapore Medical Council (SMC); and the Civil Law Act, which provides the legal basis for negligence claims and compensation. In addition, medical disputes may be addressed through institutional mechanisms such as the Healthcare Mediation Scheme (HMS) and the Clinical Claims Resolution Process (CCRP), which promote the resolution of disputes through mediation and negotiated settlement before resorting to litigation. As a common-law jurisdiction, Singapore also relies significantly on judicial precedents in determining standards of medical negligence and professional liability.[68]

In addition to its highly developed healthcare system, Singapore has established a structured framework for resolving medical disputes that emphasizes early resolution, mediation, professional accountability, and judicial oversight. The Singaporean approach reflects a preference for resolving healthcare disputes through consensual and non-adversarial mechanisms before resorting to formal litigation.[69] As a result, patients are provided with several avenues for seeking redress, ranging from mediation and administrative complaints to disciplinary proceedings and civil court actions.

One of the primary mechanisms for resolving healthcare disputes in Singapore is the Healthcare Mediation Scheme (HMS). The HMS was introduced to provide patients and

[66] Jill Walsh et al., "Clinical Innovation and Scope of Practice Regulation: A Case Study of the Charlie Teo Decision," *Australian Health Review* 48, no. 1 (2024): 91–94, https://doi.org/10.1071/AH23157.
[67] Lee Theng Lim et al., "Medico-Legal Dispute Resolution: Experience of a Tertiary-Care Hospital in Singapore," *PLOS ONE* 17, no. 10 (2022): e0276124, https://doi.org/10.1371/journal.pone.0276124.
[68] Majid Twahir, "Use of Alternative Dispute Resolution in Healthcare," *JADR & Sustainability* 1, no. 2 (2024): 1–23.
[69] Istiana Sari, "Alternative Dispute Resolution in Medical Dispute Resolution: Initiating the Establishment of an Alternative Medical Dispute Resolution Institution in Indonesia," *Fox Justi: Jurnal Ilmu Hukum* 15, no. 2 (2025): 392–408.

healthcare providers with an accessible and less adversarial process for resolving disputes arising from medical treatment. Through mediation, an independent neutral mediator assists the parties in identifying issues, clarifying misunderstandings, and negotiating mutually acceptable solutions. The scheme is intended to preserve the therapeutic relationship between patients and healthcare providers while reducing the financial and emotional costs associated with litigation. Mediation is particularly encouraged in cases involving communication breakdowns, dissatisfaction with treatment outcomes, and compensation disputes where the parties remain willing to engage in constructive dialogue.[70]

Singapore also utilizes the Clinical Claims Resolution Process (CCRP), which serves as an alternative framework for handling clinical negligence and insurance-related claims. The CCRP encourages the early assessment of complaints and facilitates negotiations between healthcare institutions, insurers, and patients.[71] The objective is to provide timely compensation where appropriate while avoiding lengthy court proceedings. Through this mechanism, disputes may be resolved through settlement discussions, expert assessment, and negotiated compensation agreements before formal legal action becomes necessary.

In addition to mediation and claims resolution mechanisms, patients may lodge formal complaints against medical practitioners with the Singapore Medical Council (SMC). The SMC functions as the statutory regulatory authority responsible for maintaining professional standards within the medical profession. Complaints may concern professional misconduct, ethical violations, incompetence, breaches of professional standards, or conduct that undermines public confidence in the medical profession. Upon receiving a complaint, the SMC may conduct preliminary inquiries, appoint investigation committees, and where necessary refer matters to disciplinary tribunals. Sanctions may include warnings, financial penalties, suspension from medical practice, or, in serious cases, removal from the medical register.[72]

The complaint process generally begins when a patient submits a complaint to the healthcare institution or directly to the relevant regulatory authority. The matter is then assessed to determine whether it is suitable for mediation, administrative resolution, disciplinary investigation, or judicial proceedings. Where mediation is appropriate, parties are encouraged to participate in the Healthcare Mediation Scheme. If professional misconduct is alleged, the matter may be referred to the Singapore Medical Council. Cases involving substantial claims for damages or complex issues of medical negligence may ultimately be brought before the courts.

As a common-law jurisdiction, Singapore recognizes civil liability for medical negligence through judicial decisions and established tort principles. To succeed in a medical negligence claim, a patient must generally establish that the healthcare professional

[70] Nadja Alexander and Shouyu Chong, "Mediation and Appropriate Dispute Resolution," *Singapore Academy of Law Annual Review of Singapore Cases* 23 (2022): 670–709.
[71] Ching-Yi Lee et al., "Medical Dispute Cases Caused by Errors in Clinical Reasoning: An Investigation and Analysis," *Healthcare* 10, no. 11 (2022): 2224, https://doi.org/10.3390/healthcare10112224.
[72] Peter Loke, "Mediation in Doctor-Patient Dispute Resolution," *Singapore Medical Association Medical News*, 2013, 14–15.

owed a duty of care, breached the applicable standard of care, caused injury or loss to the patient, and that compensable damage resulted from the breach. Singaporean courts frequently rely on expert medical testimony to determine whether the healthcare provider's conduct met the standards expected of a reasonably competent medical practitioner in similar circumstances.

The Singaporean model demonstrates a strong preference for ADR and professional self-regulation while preserving access to judicial remedies where necessary. By integrating mediation, clinical claims resolution mechanisms, professional disciplinary proceedings, and civil litigation, Singapore has developed a comprehensive and efficient framework for resolving medical disputes. This approach seeks to balance patient protection, professional accountability, healthcare quality, and public confidence in the healthcare system.

Conclusion

This study demonstrates that the medical dispute resolution systems in Australia and Singapore place greater emphasis on ADR mechanisms than the Indonesian system. In Australia, medical disputes may be addressed through a combination of complaint-handling bodies, health ombudsmen, professional regulatory agencies, conciliation processes, tribunals, and civil litigation. Patients are provided with multiple avenues for seeking redress, allowing many disputes to be resolved without resorting to lengthy court proceedings. Similarly, Singapore adopts a multi-layered dispute resolution framework comprising the Healthcare Mediation Scheme (HMS), the Clinical Claims Resolution Process (CCRP), complaint mechanisms within healthcare institutions, disciplinary proceedings before the Singapore Medical Council (SMC), and civil litigation for medical negligence claims. In contrast, although Indonesia recognizes mediation and professional disciplinary processes, medical dispute resolution remains largely oriented toward litigation and formal legal proceedings. This often results in longer resolution periods, higher costs, and procedural complexity for patients seeking remedies. The comparative analysis indicates that both Australia and Singapore have developed more integrated and accessible dispute resolution frameworks by combining administrative complaint mechanisms, mediation, professional oversight, and judicial remedies within a coordinated system. Accordingly, Indonesia may strengthen its medical dispute resolution framework by expanding the role of mediation, improving institutional complaint-handling mechanisms, enhancing coordination between professional disciplinary bodies and healthcare regulators, and promoting accessible non-litigation dispute resolution processes. Such reforms would contribute to a more efficient, accessible, and patient-oriented medical dispute resolution system while maintaining accountability within healthcare services.

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