

# The Role Of Compensation In Medical Dispute Resolution : Legal And Ethical Implications

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## The Role Of Compensation In Medical Dispute Resolution : Legal And Ethical Implications

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**ABSTRACT.** Compensation in the resolution of medical disputes in Indonesia is crucial as it provides financial compensation for patients who have suffered losses due to malpractice. Data shows an increase in the number of complaints and lawsuits related to medical disputes each year. Determining fair and proportional compensation often poses complex challenges as it involves various aspects such as the level of patient loss, healthcare service standards, medical evidence, and socio-economic factors. Therefore, a careful and holistic approach is needed in determining compensation to ensure justice and improve healthcare practices. The aim of this study is to identify the role of compensation in the resolution of medical disputes in Indonesia and to analyze its legal and ethical implications. The research method used is qualitative with a normative juridical and empirical approach. The results show that compensation in the resolution of medical disputes in Indonesia is important to ensure justice for patients and the responsibility of healthcare providers. The process of determining compensation involves mediation, negotiation, and formal legal processes. The Health Law and health regulations require hospitals to have dispute resolution mechanisms and provide patients with legal rights to compensation. Legal and ethical aspects such as integrity and justice are considered in determining compensation, creating a holistic dispute resolution system to maintain justice and the quality of healthcare services.

**Keywords:** Compensation, Medical Disputes, Legal Aspects, Ethical Aspects.

### INTRODUCTION

Health services in Indonesia, like in other countries, have a risk of malpractice which can cause disputes between patients and health workers. The issue of compensation is very important in resolving it because it can have a large financial and emotional impact (Sinaga, 2021). Based on data obtained from the Indonesian Medical Council (KKI) and the Supreme Court (MA), there is a trend of increasing number of complaints and lawsuits related to medical disputes from the public every year. Data from KKI shows that the number of complaints related to malpractice increases from year to year, with the peak occurring in 2022 with 305 complaints. Meanwhile, data from the Supreme Court also reflects a similar trend, where the number of lawsuits related to malpractice continues to increase from year to year, reaching 135 lawsuits in 2022. Deviations from health service standards that result in malpractice seem to be an issue that is increasingly disturbing the public, which reflected in the increase in the number of complaints and lawsuits submitted to relevant agencies. Therefore, the need for preventive measures and improving the quality of health services to overcome the trend of increasing malpractice cases is becoming increasingly urgent<sup>1</sup>

<sup>1</sup> Sinaga, "Medical Dispute Resolution in Indonesia," *Aerospace Law Scientific Journal* 11, no. 2 (2021).

Medical disputes are a complex phenomenon involving interactions between patients, health workers, health facilities and health financing institutions. In this context, compensation is often a central point in the resolution of medical disputes. Compensation, which is a form of financial compensation for losses suffered by patients or related parties due to medical errors or dissatisfaction with health services, has an important role in resolving conflicts between the parties involved<sup>2</sup>

Providing compensation in medical dispute resolution has significant implications from both a legal and ethical perspective. Legally, the process of determining compensation involves considering legal aspects such as medical evidence, applicable health service standards, and principles of justice. Meanwhile, ethically, providing compensation must pay attention to moral principles and professionalism in medical practice, as well as ensuring that the compensation given is in accordance with the losses experienced by the affected party<sup>3</sup>

Compensation in the context of medical dispute resolution is not merely financial compensation for parties affected by malpractice. However, it also reflects the moral and ethical responsibility of the parties involved in health services. For patients who experience harm as a result of medical errors, compensation can be a means of gaining recognition for the suffering they have experienced and obtaining fair restitution. On the other hand, for the health workers or health facilities involved, providing compensation can also be considered a form of learning and improvement in improving health service standards<sup>4</sup>

However, determining compensation in resolving medical disputes is not an easy matter. The process of determining compensation requires an in-depth analysis of various aspects, including the level of loss experienced by the patient, applicable health service standards, medical evidence, and also social and economic factors that influence the patient's condition. Therefore, it is important to continue to develop a comprehensive framework in determining fair and proportional compensation for all parties involved in medical disputes in Indonesia<sup>5</sup>

General problems often arise. One of them is the difficulty in determining the amount of compensation that is fair and proportional for all parties involved. The process of

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<sup>2</sup> Trisnadi, "Legal Protection of the Doctor's Profession in Resolving Medical Disputes.," *Journal of Legal Reform* 4, no. 1 (2017): 24-41.

<sup>3</sup> Zaluchu and Syaharudin, "Settlement of Medical Disputes Between Patients or Patients' Families and Doctors Based on Legal Provisions in Indonesia," *Krtha Bhayangkara* 16, no. 2 (2022): 237-258.

<sup>4</sup> Andrianto and Andaru, "Hospital Accountability Patterns in Resolving Medical Disputes in Indonesia," *Journal of Law & Development* 49, no. 4 (2019): 908-922.

<sup>5</sup> Purwadi, "Principle of Presumption of Always Liability in Medical Disputes," *PADJADJARAN Journal of Legal Sciences (Journal of Law)* 4, no. 1 (2017): 104-121.

determining compensation requires an in-depth analysis of various aspects, including the level of loss experienced by the patient, applicable health service standards, medical evidence, as well as social and economic factors that influence the patient's condition. Not infrequently, lack of sufficient evidence or documentation also becomes an obstacle in resolving medical disputes through determining compensation. In addition, there are challenges related to bottlenecks in the legal process that slow down dispute resolution, increase costs, and generate uncertainty for all parties involved. Therefore, a careful and holistic approach is needed in overcoming these problems to ensure that the determination of compensation can be carried out fairly, transparently and efficiently and pay attention to relevant legal and ethical aspects <sup>6</sup>

Compensation plays an important role in medical dispute resolution in Indonesia. In this context, indemnity refers to financial compensation given to patients who have been harmed by medical negligence. Compensation can be a fair solution to help patients recover from the losses they have experienced, whether physical, financial or emotional. In Indonesia, there are several regulations governing compensation in cases of malpractice and other medical disputes, including the Civil Code (KUHPerdata), <sup>2</sup> Law Number 17 of 2023 concerning Health, and Minister of Health Regulation Number 26 of 2018 concerning Hospital Obligations. Awarding compensation in medical disputes has complex legal and ethical implications. Legally, compensation can help patients obtain compensation for the losses they experience, encourage health workers to be more careful in providing health services, and improve the quality of health services in Indonesia. Ethically, compensation can help restore a sense of justice for injured patients, be a form of responsibility for health workers for their negligence, and be a valuable lesson for health workers to avoid negligence in the future.<sup>7</sup>

Compensation in medical dispute resolution is both legally and ethically important. Legally, indemnity provides compensation to parties who experience losses due to medical errors. This helps restore justice for patients who may be experiencing physical, emotional, and financial suffering. Compensation also enforces legal accountability for health workers or health facilities involved in the dispute. Ethically, indemnification reflects a commitment to admitting and correcting mistakes, and emphasizes the importance of patient integrity and safety in healthcare practice. This creates a culture of accountability and transparency among parties involved in the health system. Thus, the role of compensation is not only to resolve

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<sup>6</sup> Suparman, "Legal Protection and Hospital Responsibility for Doctors in Medical Disputes.," *Sharia Law: Journal of Legal Studies* 17, no. 2 (2020): 188–215.

<sup>7</sup> Republic of Indonesia., "Law Number 17 of 2023 Concerning Health.," 2023.

conflicts, but also to improve health practices and strengthen public trust in the health system.

## **METHOD**

The research method<sup>4</sup> used in this research is qualitative with a normative and empirical juridical approach. This approach was chosen because it is relevant for examining the role of compensation in medical dispute resolution and its legal and ethical implications. A normative juridical approach is carried out by examining the main legal materials related to the role of compensation in medical dispute resolution. This involves analyzing legal theories, legal concepts, legal principles, and relevant laws and regulations, such as the Civil Code, Health Law, and other regulations governing compensation in a medical context. The main data sources in this approach are legal documents such as regulatory texts, legal books, and related court decisions.

An empirical approach, on the other hand, would involve studies of the implementation of the role of compensation in medical dispute resolution in society and health care practices. This involves interviews with stakeholders, including patients, healthcare professionals, legal experts and other interested parties. In addition, this approach can also involve direct observation of medical dispute resolution practices in the field. By combining these two approaches, this research will provide a more comprehensive understanding of how the role of compensation in medical dispute resolution is implemented, how it impacts on health care practices, and to what extent this complies with the legal framework and impacts society socially and ethically.

## **DISCUSSION**

### **1. The Role of Compensation in<sup>6</sup> Medical Dispute Resolution in Indonesia**

The role of compensation in medical dispute resolution in Indonesia plays a crucial role in ensuring justice for the parties involved, especially patients who may experience losses due to medical procedures. Compensation in this context aims to provide compensation to patients who experience negative physical, mental or financial impacts due to negligence or errors in health services.

Health Law Number 17 of 2023 (UU Kes) outlines a mechanism for resolving medical disputes with a focus on compensation. Article 185 offers two ways of settlement, namely through mediation and arbitration, which can be done outside of court with the help of a mediator or arbitrator. If mediation is unsuccessful, the dispute may proceed to arbitration or court. Article 186 stipulates that compensation for malpractice is borne by health workers,

health service facilities and guarantors. In addition, Article 187 regulates the amount of compensation that patients can claim, including costs for treatment, rehabilitation, material and immaterial losses, and lost income. The Health Law gives patients the right to demand compensation without proving intent on the part of health workers (Article 189) and limits the time for resolving disputes through mediation and arbitration to a maximum of 6 months (Article 190). Articles 191 to 193 regulate other provisions related to arbitration awards, the right to appeal, and the distribution of dispute resolution costs. It should be noted that the Kes Law only provides a basic framework, and more detailed rules can be found in forthcoming government regulations<sup>8</sup>

In addition, Minister of Health Regulation (Permenkes) Number 56 of 2014 concerning the Implementation of Hospital Accreditation regulates that hospitals must provide a dispute resolution mechanism including providing compensation to patients who experience malpractice<sup>9</sup>

The process of determining the amount of compensation can involve several stages, starting from mediation, negotiation, to formal legal processes such as arbitration or court. There are several factors that are considered in determining the amount of compensation, such as the level of negligence, impact on the patient, additional medical costs, and other financial losses. Therefore, compensation does not only function as compensation for financial losses, but also as a form of moral and legal responsibility on the part of health service providers<sup>10</sup>

The process of determining the amount of compensation in medical dispute resolution in Indonesia is a series of stages that include mediation, negotiation, and can even reach the stage of a formal legal process such as arbitration or trial. This approach reflects an effort to achieve a fair and balanced settlement for all parties involved. This process involves careful consideration of several factors that influence the amount of compensation that will be given to patients who may experience losses due to medical errors<sup>11</sup>

The level of negligence is one of the central factors taken into account in determining the amount of compensation. An evaluation of the extent to which the medical procedure performed involved negligence or unprofessionalism can be the basis for determining

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<sup>8</sup> Indonesia.

<sup>9</sup> Ministry of Health of the Republic of Indonesia., "Minister of Health Regulation Number 269/Menkes/Per/III/2008 Concerning Medical Services," 2008.

<sup>10</sup> Busthomi et al., "The Urgency of Health Courts as an Effort to Solution Medical Disputes in Indonesia," *Kertha Semaya Journal* 11, no. 11 (2023): 2677–2693.

<sup>11</sup> Priyadi, "Legal Protection for Patients in Medical Disputes," *Legal Horizons: Scientific Magazine of the Faculty of Law, Wijayakusuma University* 2, no. 22 (2020): 79–89.

compensation. Apart from that, the impact on the patient is also an important factor. The amount of compensation must reflect the extent of suffering or loss experienced by the patient as a result of the medical error.

Additional medical costs are also considered, including any additional costs the patient may incur to deal with the consequences of the medical error. Other financial losses, such as loss of income due to not being able to work, are also part of the consideration. Compensation, in the context of medical disputes, is not just compensation for financial losses. Moreover, compensation also reflects the moral and legal responsibility of the health service provider. This is in line with the principles of medical ethics and the legal basis that regulates health practices in Indonesia<sup>12</sup>

The important role of compensation in medical dispute resolution reflects a commitment to providing protection to patients and supporting the principles of justice in health services in Indonesia. Therefore, implementing fair and transparent compensation is an important basis for efforts to improve the quality and safety of health services in Indonesia. (Source: Law Number 36 of 2009 concerning Health; Minister of Health Regulation Number 56 of 2014 concerning Implementation of Hospital Accreditation)<sup>13</sup>

The role of compensation in resolving medical disputes in Indonesia has close relevance to several theories of justice, especially theories of distributive justice and procedural justice. The theory of distributive justice emphasizes efforts to allocate profits or losses fairly to the parties involved in a medical dispute. In this context, providing compensation aims to restore balance in distribution, ensuring that patients who experience suffering or loss receive compensation in accordance with the needs and welfare of society<sup>14</sup>

Furthermore, procedural justice theory strengthens the process of determining compensation by emphasizing the importance of carrying out the legal process fairly, transparently and equally. The patient's right to obtain compensation is reflected in the principles of procedural justice, where all parties have the opportunity to be heard, and decisions are based on accurate and relevant information. This process becomes a vehicle for achieving procedural justice that reflects integrity and honesty, along with ethical principles that govern health practices<sup>15</sup>

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<sup>12</sup> Sinaga, "Medical Dispute Resolution in Indonesia."

<sup>13</sup> Sinaga.

<sup>14</sup> Jauhani, "The Dilemma of Doctors' Capability and Impartiality as Medical Dispute Mediators .," in *SCOPINDO MEDIA LIBRARY.*, 2020.

<sup>15</sup> Jauhani, Supianto, and Hariandja, "Legal Certainty for Settlement of Medical Disputes Through Mediation Outside of Court," *WELFARE STATE Law Journal* 1, no. 1 (2022): 29–58.

Providing compensation in medical dispute resolution also reflects ethical values in medical practice. These theories highlight the need for careful assessment of the degree of negligence, contribution, and impact on the patient in determining the amount of compensation. By linking the role of compensation to justice theory, efforts can be made to achieve an optimal balance between profit sharing, procedural justice, and ethical principles in providing quality health services in Indonesia<sup>16</sup>

Based on the discussion above, it can be concluded that the role of compensation in resolving medical disputes in Indonesia emphasizes the importance of justice for patients who may experience adverse impacts due to poor medical practices. Health Law Number 17 of 2023 provides a legal basis that mandates the patient's right to receive compensation for losses caused by errors by health service providers. As a preventive measure, hospitals are required by Minister of Health Regulation Number 56 of 2014 to provide a dispute resolution mechanism, including providing compensation to patients who experience malpractice. The process of determining the amount of compensation involves mediation, negotiation, and formal legal processes such as arbitration or court. In determining the amount of compensation, aspects such as the level of negligence, impact on the patient, additional medical costs and other financial losses are the main considerations. Compensation here is not only compensation for financial losses, but also as a form of moral and legal responsibility on the part of the health service provider.

The application of compensation in medical dispute resolution in Indonesia has implications that are in line with the theories of distributive justice and procedural justice. The theory of distributive justice emphasizes the need to reallocate profits or losses fairly to the parties involved. Compensation, in this context, becomes an instrument to restore distributional balance, ensuring that patients who experience suffering or loss receive compensation in accordance with the needs and welfare of society. Furthermore, procedural justice theory strengthens the process of determining compensation by emphasizing the importance of carrying out the legal process fairly, transparently and equally. The patient's right to obtain compensation is reflected in the principles of procedural justice, where all parties have the opportunity to be heard, and decisions are based on accurate and relevant information. The application of compensation as a medical dispute resolution mechanism reflects ethical values in medical practice, prioritizing integrity and honesty in assessing the level of negligence, contribution and impact on patients. By combining legal principles, theories of justice, and

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<sup>16</sup> Purwadi, "Principle of Presumption of Always Liability in Medical Disputes."

ethical values, efforts can be made to achieve optimal balance in health services in Indonesia.

## **2. Legal and Ethical Aspects of Compensation in Medical Disputes**

Determining compensation in medical disputes in Indonesia involves complex legal and ethical aspects which together form the basis for a fair resolution and in accordance with applicable health principles. Legally, determining compensation in medical disputes in Indonesia is based on a legal framework that regulates the rights and obligations of patients, as well as determining the responsibilities of health service providers. Health Law Number 17 of 2023 is the legal basis which gives patients the right to obtain compensation for losses arising from negligence in health services. Through the articles contained in this law, patients have a legal basis to demand compensation if they experience negative impacts due to medical practices that do not comply with standards.

Apart from that, in the hospital realm, Minister of Health Regulation Number 56 of 2014 is a legal reference that requires a dispute resolution mechanism, including providing compensation to patients who experience malpractice. This regulation stipulates the procedures and procedures that must be followed by hospitals in resolving medical disputes, including determining the amount of compensation appropriate to the losses experienced by the patient. Thus, the legal aspect in determining compensation creates a clear and standardized framework for handling medical disputes, protecting patient rights, and establishing the legal responsibilities of health service providers <sup>17</sup>

Ethical principles, such as integrity, honesty, and fairness, play a central role in assessing the extent of negligence, positive contribution, and impact on patients in the context of determining compensation in medical disputes. Integrity emphasizes moral consistency and professionalism in medical practice, while honesty is the basis for conveying information transparently regarding medical errors that may occur. Furthermore, the principle of justice reflects efforts to provide fair and balanced treatment to patients who experience harm (Busthomi et al., 2023)

The moral responsibility of health service providers is an important consideration in the process of determining compensation. Compensation is not only a legal obligation that must be fulfilled, but also a form of moral responsibility towards patients who experience negative impacts due to medical practices that may not be optimal. By integrating the principles of medical ethics, the process of determining compensation is directed at achieving justice,

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<sup>17</sup> Indonesia., "Minister of Health Regulation Number 269/Menkes/Per/III/2008 Concerning Medical Services."

transparency and integrity in fulfilling patient rights and maintaining public trust in health services. Therefore, the ethical aspect not only provides a moral foundation, but also shows the commitment of health service providers to the interests and welfare of patients.

The process of determining the amount of compensation also involves legal processes, starting from mediation, negotiation, to formal legal processes such as arbitration or trial. The judge or arbitrator uses legal grounds to determine the amount of fair compensation based on existing facts and evidence. This process reflects an effort to achieve a fair and balanced solution for all parties involved, in accordance with the principles of procedural justice.

The importance of combining legal and ethical aspects in determining compensation creates a settlement system that is holistic and in accordance with medical ethical standards and applicable law. This approach not only provides legal certainty, but also creates a health service environment of quality and integrity. Therefore, determining compensation in medical disputes is not just a legal action, but an effort to maintain justice, ethics and the quality of health services in Indonesia.

## CONCLUSION

1. Compensation in resolving medical disputes in Indonesia has an important role in ensuring justice for patients who experience negative impacts from medical practices. Health Law Number 17 of 2023 provides the legal basis for patients' rights to compensation, and Minister of Health Regulation Number 56 of 2014 requires hospitals to provide a dispute resolution mechanism. The process of determining the amount of compensation involves mediation, negotiation, and a formal legal process. Indemnity is not only financial reimbursement, but also the moral and legal responsibility of the health care provider. By integrating legal principles, theories of justice, and ethical values, the application of compensation aims to achieve optimal balance in health services in Indonesia.
2. Determining compensation in medical disputes in Indonesia involves interrelated legal and ethical aspects. Legally, Health Law Number 17 of 2023 and Minister of Health Regulation Number 56 of 2014 are the legal basis which gives patients the right to obtain compensation for losses due to negligence in health services. This regulation also requires hospitals to have a dispute resolution mechanism, including providing compensation to patients who experience malpractice. On the other hand, the ethical aspect involves principles such as integrity, honesty, and fairness, which guide the assessment of the level of negligence and the impact on patients. The moral responsibility of health care providers is also an important consideration. The process of determining compensation

includes mediation, negotiation and formal legal processes, reflecting efforts to achieve a fair and balanced settlement. The combination of legal and ethical aspects in determining compensation creates a holistic settlement system to maintain justice, ethics and the quality of health services in Indonesia.

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