

Criminal Liability Of Medical Personnel In Law Number 17 Of 2023 Concerning Health

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Abstract. *Healthcare services, conflicts often arise between doctors and patients, involving allegations of medical criminal actions. Health laws are designed to provide greater certainty in the administration of healthcare services and to offer protection for both the public and healthcare resources. This research adopts a normative juridical approach, employing qualitative descriptive methodology. Medical professionals may face criminal charges for engaging in illegal abortions, performing reconstructive and aesthetic plastic surgery with the intent to alter someone's identity, refusing healthcare services in emergency situations, committing negligence, and practicing Without a License (STR) and/or Practice Permit (SIP). Medical professionals are obliged to adhere to professional standards, service standards, and operational procedure standards, while upholding the values of professional ethics and exerting their best efforts (Inspanning Verbintenis). Dispute resolution should initially take place through restorative justice mechanisms, utilizing alternative methods outside the court.*

Keywords: *Medical malpractice, Healthcare professionals, Dispute resolution*

A. Introduction

The provision of healthcare services must be carried out by responsible medical and healthcare professionals who possess high ethics and morals, expertise, and a commitment to continuous improvement through education and ongoing training, certification, registration, and monitoring to ensure that healthcare services meet the principles of justice and humanity and are in line with the advancements in health science and technology (Redyanto Sidi, 2022: 77-78).

Healthcare services, as defined by Law Number 17 of 2023 concerning Health, encompass all forms of activities and/or a series of services provided directly to individuals or the community to maintain and improve public health through promotive, preventive, curative, rehabilitative, and/or palliative measures (Law No. 17 of 2023 Article 1 paragraph 3).

In healthcare services, conflicts between doctors and patients are often encountered, which cannot be resolved by ethical principles. In such situations, legal principles may be applied. The current development of science and technology has increased public awareness of their rights, leading to legal issues becoming highly sensitive, especially when associated with the application of human rights (Arif Budiman, 2024:102).

The protection of citizens to receive medical services represents a repressive aspect, particularly when medical malpractice occurs (Fauji Salim, 2020:400). Health laws are enacted to provide greater certainty in the administration of healthcare services and to offer protection

for both the public and healthcare resources. The health laws stipulate that medical professionals are legally accountable if negligence occurs, causing harm to the community or patients (Beni and Sidi, 2022: 66-67).

Adequate legal protection for medical professionals is crucial in facing this situation. Room for defense must be provided so that medical professionals can explain the reasons behind their medical decisions and articulate specific contexts that may not be understood by the general public. Balancing justice for both parties, medical professionals and patients, is essential to build public trust in the healthcare profession. Involving experts in the assessment process can provide a deeper and contextual perspective on the decisions made. The existence of Law Number 17 of 2023 concerning health is considered a middle ground for problem resolution.

Through this research, the main objective is to explore the legal provisions related to the potential criminal claims against medical professionals in the provision of medical services. An in-depth analysis of this legal aspect is expected to bring a better understanding of legal protection for medical professionals in carrying out their duties and responsibilities.

With a better understanding of these regulations, it is hoped that more accurate and context-appropriate solutions or recommendations can be provided. This research serves as a platform to understand the dynamics of legal protection for medical professionals against criminal claims, aiming to foster caution among medical personnel in the practice of healthcare services.

B. Methodology

This research employs a multidisciplinary approach that integrates normative juridical law, particularly utilizing legislative approaches and philosophical perspectives. The central focus of this study is Law Number 17 of 2023 concerning Health, which serves as the primary legal foundation. Additionally, the research utilizes scholarly sources, including books and journals, to enhance the depth and breadth of the analysis. The methodology employed in this research is qualitative-descriptive, utilizing a deductive reasoning approach. Through a thorough examination of legal texts and philosophical insights, the research aims to provide a comprehensive understanding of the legal aspects of medical crimes surrounding health law issues. The approach to the subject matter is holistic, allowing for the derivation of conclusions that contribute to a broader understanding of medical criminal law.

C. Results and Discussion

The definition of health law by Lennen, as cited in Jatri (2023), states that health law encompasses all general provisions related to health maintenance, including regulations applicable to health in its various aspects such as criminal law, civil law, administration, international guidelines, and customary practices. This definition aligns with the legal explanation provided by the Indonesian Health Law Association, according to Article 1 of the Articles of Association of the Indonesian Health Law Association (Perhuki). In general, health law can be understood as all provisions related to rights and obligations, medical services, and medical facilities in terms of health maintenance. This includes aspects of promotive, preventive, curative, and rehabilitative measures, international guidelines, customary practices, and the application of civil, criminal, and administrative legal relationships (Jatri and Meysita, 2023: 6341).

Overall, the legal scrutiny of healthcare professionals aims to ensure that every healthcare service provided adheres to the ethical, professional, and legal standards that have been established. This not only protects the interests of patients but also maintains the integrity and credibility of healthcare professionals within society (Murni et.al, 2024:7848).

The primary goal in the practice of the medical profession is to alleviate suffering and restore the health of the sick. Even in simple societies, there are individuals considered capable of healing diseases (shamans, doctors), and medicines are expected to help the sick in any way possible. Essentially, what is now referred to as the doctor-patient relationship can be traced back to healing relationships in simple societies. This concept is further complicated by the complexities brought about by social, economic, interpersonal relationships, medical science, technology, ethics, law, business, and others in the modern era (Jatri and Meysita, 2023:6341).

The profound aspect of the doctor-patient relationship lies in mutual trust. Patients, as those in need of assistance, believe that doctors can cure their illnesses. Meanwhile, doctors trust that patients have provided accurate information about their illnesses and will follow all medical instructions. Good medical service is one that meets the needs of the community, is of high quality, and is affordable (Jatri and Meysita, 2023:6341).

Legal responsibility related to violations of professional competence standards by healthcare professionals has a crucial foundation in legal regulations governing medical practice. Violations of professional competence standards can serve as the basis for legal claims against healthcare professionals. For example, if a healthcare professional makes an error in a medical procedure resulting in injury or even the death of a patient, the law permits the patient or their family to file civil or criminal lawsuits (Murni et.al, 2024:7852).

1. Criminal Prosecution of Medical Actions Under Law Number 17 of 2023

Medical actions or practices performed by healthcare professionals in the course of their duties can be subject to criminal prosecution under Law Number 17 of 2023 concerning health. The specific instances are outlined as follows:

a. Abortion

Criminal offenses related to abortion are addressed in Article 428, with the criminal charges for medical professionals specified in Article 429.

Article 428:

- (1) Any person who performs an abortion not in accordance with the provisions as stated in Article 60 on a woman:
 - (a) With her consent is punishable by imprisonment for up to 5 (five) years; or
 - (b) Without her consent is punishable by imprisonment for up to 12 (twelve) years.
- (2) If the act mentioned in paragraph (1) (a) results in the death of the woman, the punishment is imprisonment for up to 8 (eight) years.
- (3) If the act mentioned in paragraph (1)(b) results in the death of the woman, the punishment is imprisonment for up to 15 (fifteen) years.

Article 429:

- (1) Medical professionals or healthcare professionals committing a criminal act as mentioned in Article 428 may have their sentence increased by 1/3 (one-third).
- (2) Medical professionals or healthcare professionals committing the criminal act mentioned in paragraph (1) may be subject to additional penalties, such as the revocation of specific rights:
 - (a) The right to hold public office in general or specific positions; and/or
 - (b) The right to practice certain professions.
- (3) Medical professionals or healthcare professionals performing abortions due to medical emergencies or against victims of rape or other sexual violence causing pregnancy, as stated in Article 60, are not punishable.

b. Reconstructive and Aesthetic Plastic Surgery

Reconstructive and aesthetic plastic surgery can be subject to criminal prosecution, as outlined in Article 433, which states, "Any person who performs reconstructive and aesthetic plastic surgery that contradicts prevailing societal norms and is intended to alter someone's identity, as referred to in Article 137 paragraph (2), is punishable by

imprisonment for up to 10 (ten) years or a fine of up to Rp2,000,000,000.00 (two billion Indonesian Rupiah)." Furthermore, Article 137 paragraph (2) specifies, "Reconstructive and aesthetic plastic surgery must not contradict prevailing societal norms and must not be intended to alter identity."

c. Refusal of Emergency Healthcare Services

The refusal of healthcare services in emergency situations is regulated by Article 174 and Article 275.

Article 174 Paragraphs:

- (1) Healthcare facilities owned by the Central Government, Local Government, and/or the community are obligated to provide healthcare services for individuals in emergency conditions to prioritize life-saving measures and disability prevention.
- (2) In emergency conditions as mentioned in paragraph (1), healthcare facilities owned by the Central Government, Local Government, and/or the community are prohibited from refusing patients and/or requesting upfront payment. They are also prohibited from prioritizing administrative matters, leading to delayed healthcare services.

Article 275 Paragraphs:

- (1) Medical professionals and healthcare personnel practicing in healthcare facilities must provide first aid to patients in emergency conditions and/or during disasters.
- (2) Medical professionals and healthcare personnel providing healthcare services in the context of life-saving actions or disability prevention for individuals in emergency conditions and/or during disasters are exempt from liability for compensation claims.

Sanctions for refusal of treatment to patients in emergency conditions are outlined in Article 438 of Law Number 17 of 2023: Leaders of healthcare facilities, medical professionals, and/or healthcare personnel who fail to provide first aid to patients in emergency conditions at healthcare facilities as specified in Article 174 and Article 275, paragraphs:

- (1) are punishable by imprisonment for up to 2 (two) years or a fine of up to Rp200,000,000.00 (two hundred million Indonesian Rupiah).
- (2) In cases where the actions described in paragraph (1) result in disability or death, the leaders of the healthcare facility are punishable by imprisonment for up to 10 (ten) years or a fine of up to Rp2,000,000,000.00 (two billion Indonesian Rupiah).

d. Negligence/Recklessness

In Article 440, it is stipulated:

- (1) Every Medical Professional or Healthcare Personnel who commits negligence resulting in severe injury to a patient is punishable by imprisonment for up to 3 (three) years or a fine of up to Rp250,000,000.00 (two hundred and fifty million Indonesian Rupiah).
- (2) If the negligence as mentioned in paragraph (1) results in death, every Medical Professional or Healthcare Personnel is punishable by imprisonment for up to 5 (five) years or a fine of up to Rp500,000,000.00 (five hundred million Indonesian Rupiah).

e. Practice Without a License (STR) and/or Practice Permit (SIP)

In Article 312, every individual is prohibited from:

- (1) Wrongfully using an identity, such as a title or any other form, that gives the impression to the concerned public that they are Medical Professionals or Healthcare Personnel who hold an STR and/or SIP.
- (2) Using tools, methods, or any other means in providing services to the public that create the impression that they are Medical Professionals or Healthcare Personnel who hold an STR and/or SIP.
- (3) Engaging in practice as Medical Professionals or Healthcare Personnel without possessing an STR and/or SIP.

Article 313 Paragraphs:

- (1) Every Medical Professional or Healthcare Personnel practicing without an STR and/or SIP as mentioned in Article 312, letter c, is subject to administrative sanctions in the form of an administrative fine.
- (2) Provisions regarding the procedures for imposing administrative sanctions as mentioned in paragraph (1) are regulated by Government Regulation.

Article 441:

- (1) Every individual who wrongfully uses an identity, such as a title or any other form, creating the impression to the concerned public that they are Medical Professionals or Healthcare Personnel with an STR and/or SIP as mentioned in Article 312, letter a, is punishable by imprisonment for up to 5 (five) years or a fine of up to Rp500,000,000.00 (five hundred million Indonesian Rupiah).
- (2) Every individual who uses tools, methods, or any other means in providing services to the public, creating the impression that they are Medical Professionals or Healthcare

Personnel with an STR and/or SIP as mentioned in Article 312, letter b, is punishable by imprisonment for up to 5 (five) years or a fine of up to Rp500,000,000.00 (five hundred million Indonesian Rupiah).

Article 442: Every individual who employs Medical Professionals and/or Healthcare Personnel without an SIP as mentioned in Article 312, letter c, is punishable by imprisonment for up to 5 (five) years or a fine of up to Rp500,000,000.00 (five hundred million Indonesian Rupiah).

2. Prevention of Criminal Actions by Medical Professionals

Competence stands as a pivotal factor determining an individual's success in their profession, particularly in healthcare. The primary competencies for healthcare professionals encompass patient-focused care, evidence-based practice, quality improvement, and the utilization of information technology as part of an interdisciplinary team. Healthcare professionals must adhere to professional competency standards, operational procedures, and ethics to provide quality and safe services to patients. Nevertheless, there are instances where healthcare professionals deviate from their competencies, resulting in a decline in service quality. This is often attributed to insufficient competency supervision, weak administrative systems, a lack of community participation, and law enforcement. Despite legal assurances for quality healthcare, failure to adhere to competencies can have a negative impact on healthcare outcomes (Murni et al., 2024:7848).

Stipulated in Law Number 17 of 2023, Articles 279, 280, and 291; medical professionals and healthcare practitioners, in carrying out their practices, are obliged to adhere to professional standards, service standards, and operational procedure standards, while upholding the ethical values of the profession. Providing healthcare services to patients necessitates the commitment to exert their best efforts (Inspanning Verbintenis).

Legal accountability for doctors engaging in malpractice occurs when a doctor fails to conduct their practice in accordance with the standards of the medical profession and the Standard Operating Procedures (SPO) regarding medical service standards, as well as the healthcare needs of the patient. Consequently, the breach of medical ethics automatically takes place. Therefore, doctors must be held legally accountable for their actions (Christian et al., 2024:168).

In legal terminology, "negligence," translated as "kelalaian" in Indonesian, generally does not constitute a legal violation or crime. A person can be considered negligent if they act indifferent or careless, neglecting the interests of others, as is customary in societal interactions. As long as the consequences of negligence do not result in harm or injury to others, or involve trivial matters, there are typically no legal repercussions. This principle is based on the adage "de minimis not curat lex," meaning the law does not concern itself with trifles. The legal system does not intervene in matters deemed trivial (Beni and Sidi, 2023: 26-27).

Negligence becomes serious and criminal when it reaches a certain level, disregarding the safety of life or the property of others. The law cannot remain passive, as such negligence constitutes a violation of public interest and legal standards. Consequently, when it leads to accidents, injuries, or even loss of life, it is categorized as a criminal offense (Beni and Sidi, 2023: 27-28).

In the context of the contractual relationship between a doctor and a patient, certain requirements must be met:

- a. There must be consent from the contracting parties. This consent takes the form of a meeting involving an offer and acceptance by the healthcare provider, leading to the establishment of a contract. The agreement is between the doctor and the patient regarding the nature of the medical service offered by the doctor and accepted by the patient. Therefore, the consent between the parties must be voluntary.
- b. There must be an object that is the substance of the contract. The object or substance of the contract in the doctor-patient relationship is the provision of medical services desired by the patient and given to them by the doctor. The object of the contract must be assignable, legal, and within the scope of the profession.
- c. There must be a cause or consideration. This cause or consideration is the factor that motivates the doctor to provide medical services to the patient, whether through compensation or simply out of goodwill and care from the doctor. Payment for medical services is considered implied and known to the patient, except when required by law or deemed for charitable purposes. The inability of a patient to pay does not affect the existence of the contract or reduce the doctor's responsibility for negligence claims (Jatri and Meysita, 2023: 6342).

In the context of emergency medical situations where a doctor does not have written consent (informed consent) from the patient, the application of the doctrine of necessity can be analyzed as follows:

- a. Medical actions that must be taken by a doctor in emergency situations are usually exempted from standard procedures requiring informed consent because these actions are essential to save lives or prevent serious health damage.
- b. The doctrine of necessity is applied because, in emergencies, there is often no time or possibility to obtain informed consent. This situation justifies doctors to act immediately without such consent.
- c. In situations where allowing someone to experience death due to a lack of informed consent is considered more morally and ethically reprehensible than violating standard procedures, the action that usually requires consent will be performed (Wisnu and Yovita, 2023: 75).

Besides dealing with incompetent patients, other issues frequently encountered by doctors in emergency situations related to obtaining informed consent include:

- a. Insufficient time to obtain informed consent due to sudden and rapid life-threatening emergencies, such as cases of total airway obstruction preventing the patient from breathing at all.
- b. The absence of responsible family members (unclear patient status), such as cases of a homeless individual found unconscious due to severe head trauma on the roadside.
- c. Responsible family members are present but not at the hospital and cannot be contacted by various means by the doctor during the emergency, for example, in cases of emergency patients in the hospital in the early morning while the family is sleeping at home.
- d. Responsible family members are present but unable or unwilling to provide informed consent due to chaotic conditions and an inability to think clearly. For example, after being fully informed of the risks of the procedure, the family becomes increasingly confused/fearful of potential consequences.

To address such situations, doctors should not hesitate to promptly perform necessary medical procedures. The Health Law Number 17 of 2023 in Indonesia recognizes the concept of presumed consent in emergency situations, allowing doctors to perform medical procedures without explicit patient consent if the patient is unable to give consent or if there is no family that can be contacted. This is stated in Article 80 paragraph (3) and Article 293 paragraph (9). Although high-risk medical procedures in emergency situations are not explicitly regulated, doctors can rely on other articles in this law, including Article 293 paragraph (10) emphasizing the best interests of the patient, Article 275 paragraph (1)

requiring doctors to provide assistance in emergency cases, and Article 273 paragraph (1) providing legal protection to doctors who act according to standards. Furthermore, Article 275 paragraph (1) also exempts doctors from liability claims in emergency cases, providing legal security for doctors to act quickly to save a patient's life without hesitation (Wisnu and Yovita, 2023: 79).

Every medical professional intending to practice must have a Registration Certificate (STR) as mentioned in Article 260. The convenience now is that the STR is valid for a lifetime, eliminating any reason for medical professionals not to have an STR due to difficulties in obtaining one. In addition to the STR, healthcare professionals in their professional practice must have a permit/Practice Permit (SIP) renewed every 5 years with the requirement of sufficient professional credit points (SKP), as mentioned in Article 263 to Article 266 of Law Number 17 of 2023 concerning Health.

3. Resolution of Medical Criminal Claims

The stages in resolving allegations of legal violations by medical professionals are outlined in Article 308 of Law Number 17 of 2023 concerning Health. Medical professionals suspected of engaging in unlawful actions during the provision of healthcare may face criminal sanctions. Investigators from the State Civil Apparatus or the Indonesian National Police submit a written recommendation to the board.

The board's recommendation is based on whether the medical professional's practice aligns with professional standards, service standards, and operational procedure standards. This recommendation must be provided within 14 working days from the date of receipt of the request. If the board fails to provide a recommendation within this period, it is considered as recommending an investigation into the alleged criminal act.

Furthermore, according to Article 424, certain State Police Investigators (Polri) and Civil Servant Investigators within the government managing health affairs have the authority and responsibility to conduct investigations into health-related criminal acts based on the Criminal Procedure Code. Civil Servant Investigators notify the public prosecutor of the initiation of an investigation and submit the investigation results through the Indonesian National Police investigators.

Civil Servant Investigators, under the coordination and supervision of the Indonesian National Police, have the authority to receive reports and examine the accuracy of reports and information about criminal acts in the health sector. They can summon, examine, or conduct searches related to alleged criminal acts in the health sector, take initial actions at

the crime scene, restrict individuals from entering or leaving the crime scene for investigative purposes, instruct individuals suspected of committing health-related crimes to stop, examine the identity of individuals suspected of committing health-related crimes, seek information and evidence from individuals or legal entities related to health-related crimes, detain, examine, and confiscate letters, documents, and/or other evidence in health-related criminal cases, conduct examinations at specific locations where documents or other items related to health-related crimes are suspected to be present, summon individuals for questioning as suspects or witnesses, seek assistance from experts in carrying out investigative tasks related to health-related crimes, terminate the investigation if there is insufficient evidence to prove the existence of health-related crimes, and take other actions after coordinating with the Indonesian National Police for investigative assistance.

The board evaluates whether the actions of medical professionals fall under medical or criminal risks. Two standards distinguish between medical and criminal risks: (Beni and Redi, 2022: 33).

1. The presence of errors or omissions in medical actions, such as doing something that should not be done, not doing what should be done/neglecting duties (negligence), and violating legal provisions.
2. Doctors not adhering to the standards of medical services outlined by professional associations in their respective fields of expertise.

This is evaluated based on the intention or intent to violate the law in the actions of a perpetrator, including the use of tools, methods, or other means to provide services to the public as if they were doctors or dentists with registration certificates or practice permits (Fadhlan et al., 2023: 305).

Doctors have responsibilities in treating patients, and from a legal health perspective, these responsibilities may fall under criminal malpractice if the actions meet the elements of criminal delicts. The doctor's responsibility for patient harm due to malpractice must be based on the consideration that unlawful actions were found in the medical professional's conduct.

In proving a criminal act, medical professionals cannot be punished if the elements of the crime are not met. These elements include:

1. The act or action (*actus reus*), including actions or omissions that violate the law.

2. Guilt (*mens rea*), including malicious intent, intention, negligence, or justifiably ignorance.
3. The connection between the resulting loss and the act of negligence.

The resolution of medical professionals suspected of committing crimes in the health sector is explained in Article 306 of Law No. 17 of 2023. If a medical professional is suspected of a criminal act, law enforcement prioritizes dispute resolution through a restorative justice mechanism in accordance with regulations. Article 310 also states that if a medical professional is suspected of making mistakes in their profession resulting in harm to the patient, disputes arising from these errors should be resolved first through alternative dispute resolution outside the court. Not every suspected criminal act by medical professionals is immediately taken to court.

Considering the pattern of criminal accountability for medical professionals as outlined above, the government appears to be making efforts to enhance legal protection for healthcare professionals. This is evident from the effort to ensure whether the actions of medical professionals causing harm to patients are in line with professional standards, service standards, and operational procedure standards.

From the above explanation, the author believes that the implementation of Law Number 17 of 2023 on health is still a dilemma. Namely:

1. The board is a crucial gateway for resolving medical criminal disputes. There is no detailed explanation of the duties and authority of the board. We must patiently await detailed regulations on the board mentioned in the health law.
2. The investigation of health-related criminal acts is a specialized crime that requires involvement of healthcare experts to determine whether the actions of medical professionals are in accordance with professional standards, service standards, and operational procedure standards.
3. In general, investigators (especially Polri or certain Civil Servant Investigators) often lack the expertise to determine whether the actions of a medical professional are in accordance with professional standards, service standards, and operational procedure standards. To determine whether the actions are in accordance with professional standards, service standards, and operational procedure standards, analysis must be conducted by those truly competent in medical procedures (Yusuf, 2023: 2807).

Various shortcomings and weaknesses in health service regulations will have a significantly adverse impact on health services and the community. To address these issues, legal instruments need refinement as they can serve as a social control tool to

maintain order in society. Health law, laden with special health law, is not yet well-developed. Therefore, its legal instruments are currently directly applied with general legal regulations, often contradicting the essence of health. These legal instruments in health law can be classified as a form of specialized law (*lex specialist*).

The weakening role of professional organizations in Law No. 17 of 2023. The medical profession has the potential to face discrimination in resolving medical disputes. Often, the resolution of medical disputes is brought to general criminal resolution using the Criminal Code as a basis. Given that health law is specialized, its resolution should also use specialized courts. Moreover, the medical profession is a noble profession that upholds the ethical values of the profession. The potential for medical professionals to have malicious intent towards their patients is very small. It becomes a significant task for professional organizations to protect their members from criminal legal claims.

Given the current state of health law, medical professionals must be legally literate and continue to learn health law to clearly understand the legal protection for healthcare professionals in the transition of health legal products. Cooperation between legal and health experts in actualizing ethical and legal norms, both through regulations and integrated legal knowledge with health sciences, is essential, whether developed nationally or internationally (Arif Budiman, 2024: 113).

D. Conclusion

The Health Law is established to provide greater certainty in the organization of health services and to offer protection for both the community and healthcare resources. Within the Health Law, it is stipulated that medical professionals will be legally responsible if negligence occurs, resulting in harm to the public or patients.

Criminal charges can be brought against medical professionals for actions such as conducting illegal abortions, performing plastic surgery for the purpose of changing someone's identity, refusing healthcare services in emergency situations, committing negligence/malpractice, and practicing without a valid Professional Registration Certificate (STR) and/or Practice Permit (SIP).

To prevent legal claims against medical professionals, they are obligated to adhere to professional standards, service standards, and operational procedure standards. Upholding the ethical values of the profession and providing healthcare services to patients with the best efforts (*Inspanning Verbintenis*) is crucial. Additionally, medical professionals must possess a valid STR and/or SIP when practicing.

The resolution of medical disputes involves investigators (Polri or Civil Servant Investigators) submitting a written recommendation to the board. In cases where medical professionals are suspected of committing criminal acts, dispute resolution prioritizes restorative justice mechanisms through alternative dispute resolution outside the court.

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