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Comparison of Health Dispute Mediation Mechanisms in Indonesia and ASEAN Countries

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Abstract

The health dispute mediation mechanism in Indonesia has not yet developed optimally and remains general in nature, failing to specifically accommodate the complexities of medical cases. In contrast, several ASEAN countries such as Malaysia and Singaporehave established more structured and effective health mediation systems. This study aims to compare the health dispute mediation mechanisms in Indonesia and selected ASEAN countries in order to identify weaknesses and formulate recommendations for improvement. The method employed is a normative juridical approach through legal comparative analysis and literature review.

The research findings indicate that Indonesia does not yet have a specialized mediation institution, lacks specific sectoral regulations, and has a shortage of mediators with medical expertise. On the other hand, other ASEAN countries have developed institutions and regulations that support professional and efficient dispute resolution. Therefore, Indonesia needs to establish an independent health mediation body, develop sectoral regulations, and enhance the capacity of mediators in order to strengthen its medical dispute resolution system.

Keywords:

Health mediation, medical dispute, legal comparison, ASEAN.

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Background of the Problem

In recent decades, growing public awareness of patients' rights and the demand for quality healthcare services has led to an increase in medical disputes—whether administrative, civil, or criminal in nature. These disputes often end in lengthy, complex, and costly litigation processes, which can be emotionally draining for both patients and healthcare providers. As a result, mediation as a form of Alternative Dispute Resolution (ADR) has become an increasingly relevant option, offering a potentially faster, more cost-effective, and fairer way to resolve conflicts.

According to the Health Law, the resolution of medical disputes should ideally be carried out through alternative dispute resolution mechanisms, including mediation. However, there is currently no specific legal framework that governs non-litigation mediation in medical disputes. Meanwhile, the Supreme Court Regulation (Perma) No. 1 of 2016 only addresses mediation within the context of litigation in court.[1]

In contrast, other ASEAN countries, such as Malaysia and Singapore, have developed more structured health mediation systems through dedicated institutions, legislative frameworks, and collaborative approaches involving the government, medical professionals, and civil society. For example, Malaysia has the Malaysian Mediation Centre, while Singapore has implemented the Healthcare Mediation Scheme.[2]

These differences raise important questions regarding the effectiveness of Indonesia's health mediation mechanism compared to those in other ASEAN countries, and what lessons can be learned to improve the current system. Therefore, this comparative study is essential in formulating policy recommendations that can strengthen legal protection for patients while also creating a fair environment for medical professionals in dispute resolution.

Research Method

This study employs a normative legal research method, focusing on the analysis of positive legal norms and relevant legal principles. The primary focus is to examine legislation, official documents, institutional policies, and academic literature related to mediation in health dispute resolution, both in Indonesia and in selected ASEAN countries such as Malaysia, Singapore, and Thailand.

To reinforce this approach, the study also utilizes a comparative legal approach to identify differences and similarities in the legal structures, regulations, and implementation of health mediation across countries. Data collection is conducted through library research, including primary sources such as laws, court regulations, and medical guidelines, as well as secondary sources such as academic journals, books, official reports, and legal articles.

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[1] H. Yusuf, *Sistem Hukum dan Penyelesaian Sengketa Medik: Perbandingan Indonesia dengan Negara Lain*, Jurnal Intelek Insan Cendikia, Vol. 1, No. 9 (2024), hlm. 5025–5039.

[2] I. D. Anggraini, *Perbandingan Penyelesaian Sengketa Medis dengan Menggunakan Undang-Undang Kesehatan dan Undang-Undang Perlindungan Konsumen*, 2022.

Data analysis is carried out qualitatively by interpreting the content of legal norms and policies within the context of each country's health dispute resolution system. The findings of this analysis are then used to evaluate the effectiveness of existing mediation systems and formulate recommendations for improving the legal framework of health mediation in Indonesia.

Discussion

Mediation in the resolution of medical disputes has a fairly strong legal basis in Indonesia, particularly under Law No. 36 of 2009 on Health. Article 29 states that in cases of suspected negligence in healthcare services, resolution can be pursued through Alternative Dispute Resolution (ADR), including mediation. This provision is reaffirmed in Law No. 17 of 2023 on Health (Omnibus Law), which stipulates that if a healthcare professional is suspected of causing harm to a patient, the dispute should first be resolved through ADR mechanisms before pursuing litigation.

Despite this normative regulation, in practice, the implementation of non-litigation mediation in the health sector still faces several obstacles. To date, Indonesia lacks derivative regulations specifically governing non-litigation mediation mechanisms in medical disputes. The only procedural regulation available is Supreme Court Regulation (Perma) No. 1 of 2016 on Mediation Procedures in Court, which focuses primarily on mediation as part of the litigation process. This means that if patients or hospitals wish to resolve disputes out of court from the outset, there is no technical or institutional framework in place to facilitate such processes.

The absence of specific regulations represents a legal and patient protection gap. Medical disputes have unique characteristics and cannot be equated with other civil disputes. Their complexity involves medical, legal, and emotional aspects, requiring a multidisciplinary approach to resolution. Unfortunately, most mediators in Indonesia come from legal backgrounds and lack expertise in healthcare. This limits the effectiveness of mediation, as not all mediators can bridge the technical perceptual gap between medical professionals and patients.

In comparison, ASEAN countries have made significant progress in developing medical mediation systems. Singapore, for instance, has the Healthcare Mediation Scheme (HMS), a voluntary mediation program to resolve medical disputes between patients and healthcare professionals without going to court. This scheme is managed by the Singapore Medical Council (SMC) in collaboration with the Ministry of Health (MOH) and employs professional mediators from the Singapore Mediation Centre (SMC). The aim is to resolve conflicts peacefully, swiftly, cost-effectively, and confidentially, while preserving good relationships between disputing parties.[3]

[3]https://mediation.com.sg/service/healthcare/

In Malaysia, while there is no dedicated medical mediation institution, medical disputes are usually handled through the Malaysian Mediation Centre (MMC), a general mediation body that also accepts medical cases, although not exclusively.[4] Additionally, many hospitals have internal mechanisms, such as complaint committees and ethics committees, which handle disputes informally. Oversight and complaint handling are also carried out by the Malaysian Medical Council and the Ministry of Health, though these bodies do not function as mediators.[5] Legally, medical mediation in Malaysia follows general provisions under the Mediation Act 2012, with no specific regulations for the medical sector. Thus, medical mediation in Malaysia remains ad hoc and not specially structured.

In Indonesia, ethical and professional discipline violations in the medical field were previously handled by the Indonesian Medical Discipline Honorary Council (MKDKI) under Law No. 29 of 2004 on Medical Practice. However, with the enactment of Law No. 17 of 2023 on Health (Omnibus Law), which repeals 11 health-related laws including the Medical Practice Law, this function has now been transferred to the Professional Discipline Council (MDP). Nevertheless, the MDP remains limited to handling disciplinary and ethical aspects of healthcare professionals. It does not address legal issues such as civil liability (compensation) or criminal responsibility in cases of alleged malpractice. As a result, patients and healthcare professionals must still resort to court proceedings to obtain legal certainty regarding compensation or procedural justice. This contradicts the spirit of Alternative Dispute Resolution (ADR), which should be a key component of the legal protection system in the healthcare sector.[6]

Recent data show that the overall success rate of court-mediated settlements in Indonesia remains low. For instance, court reports indicate that only about 10–20% of civil cases are successfully resolved through mediation.[7] This low success rate reflects the underdeveloped culture of peaceful dispute resolution. Furthermore, according to *mediajustitia.com*, the Indonesian Medical and Health Mediation and Arbitration Institute (LMA-MKI) has recently emerged as an independent body to handle non-litigation medical mediation. However, it lacks full legal legitimacy, as no government regulation has formally designated or regulated the institution's function.

The Indonesian Medical and Health Mediation and Arbitration Institute (LMA-MKI) is an independent institution established on August 9, 2023, in response to Article 310 of Law No. 17 of 2023 on Health. The institute provides mechanisms for resolving medical and

[4]https://www.malaysianbar.org.my/article/find/useful-forms/malaysian-mediation-centre/malaysian-mediation-centre
[5]https://mmc.gov.my/
[6]Koto, I., & Asmadi, E. (2021). Pertanggungjawaban Hukum Terhadap Tindakan Malpraktik Tenaga Medis di Rumah Sakit. *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi*, 181-192.
[7]Sassan, J., & Famauri, A. T. (2023). Mediasi sebagai Upaya Menyelesaikan Perkara pada Pengadilan Negeri. *Amanna Gappa*, 36-46.

health disputes outside the courts through mediation and arbitration, guided by principles of neutrality, integrity, and win-win solutions for all parties involved.[8]

LMA-MKI serves as an alternative platform for patients, healthcare professionals, and health institutions to resolve disputes without undergoing formal litigation. Its mediation and arbitration processes refer to provisions in Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. The advantages of this approach include faster processes, lower costs, and the preservation of confidentiality and professional relationships among the parties. The institute was founded by Indonesian healthcare and legal experts, including organizations such as the Association of Medical and Health Law Consultants (PKHMK), the Association of Medical and Health Mediator-Arbiters (PMA-MK), and the Peace Envoy Mediator Association (AMDD). LMA-MKI has opened representative offices in various provinces—such as Medan, Denpasar, Semarang, Surabaya, Makassar, and Manado—to expand access to medical and health dispute resolution services across Indonesia.[9]

Structurally, patient complaints in hospitals are still handled by internal units under the hospitals' own management.[10] This raises concerns of bias and conflicts of interest, as there is no guarantee of independence in addressing patient complaints. In countries like Singapore and Malaysia, medical disputes are managed by professional or semi-government independent bodies that are not under the hospital structure.

Conclusion

The mechanism for medical dispute mediation in Indonesia remains in its early stages of development and has yet to accommodate the unique, complex, and multidisciplinary nature of medical disputes. The absence of a dedicated institution, the lack of specific sectoral regulations, and the limited capacity of mediators are the main barriers to the effectiveness of non-litigation dispute resolution. This stands in contrast to certain ASEAN countries—particularly Singapore—which have already established independent healthcare mediation institutions, developed supportive legal frameworks, and provided mediators with dual competencies in both law and medicine.

This comparison highlights the urgent need for Indonesia to undertake both structural and normative reforms in the resolution of medical disputes. These reforms should begin with the establishment of a professional and independent healthcare mediation institution, the drafting of specific regulations detailing the procedures and substance of medical mediation, and the enhancement of human resource capacities involved in the process. With these efforts, Indonesia's healthcare mediation system can function optimally as a fair, efficient, and restorative dispute resolution mechanism for both patients and medical professionals.

[8]Risma Situmorang, *Alternatif Penyelesaian Sengketa Malpraktik Melalui Mediasi Dalam Perspektif Hukum Kesehatan di Indonesia*, Jurnal Ilmiah Universitas Jayabaya, diakses 28 Mei 2025.
[9]KCASelawyer, *Penyelesaian Sengketa Kesehatan melalui Mediasi dan Arbitrase*, https://kcaselawyer.com/penyelesaian-sengketa-kesehatan-melalui-mediasi-dan-arbitrase/.
[10]Suci Khazinatul Asrar, *Penyelesaian Sengketa Kesehatan melalui Mediasi dan Arbitrase*, Skripsi, Fakultas Ilmu Sosial dan Ilmu Politik, Universitas Islam Negeri Ar-Raniry, 2023.

Recommendations

Looking ahead, Indonesia must urgently draft implementing regulations in line with the mandate of the Health Law that specifically govern out-of-court medical mediation. These regulations should include standard operating procedures, qualifications and certifications for mediators, the establishment of an independent medical mediation body, and the integration of a digital, publicly accessible reporting and complaint system. Additionally, legal and medical education curricula should be updated to include content on non-litigation medical dispute resolution. An interdisciplinary approach between legal and medical sciences will help produce human resources better equipped to serve as professional mediators in the healthcare sector.

The government should also collaborate with professional organizations such as the Indonesian Medical Association (IDI), the Indonesian National Nurses Association (PPNI), and hospital associations to conduct regular monitoring and evaluation of medical dispute resolutions in practice. The findings from these evaluations will provide critical data for the formulation of evidence-based public policies. By building a structured medical mediation system backed by strong regulations, Indonesia will not only improve legal protection for patients and medical personnel but also foster a more just, transparent, and sustainable healthcare system.

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