

## **LEGAL PATHWAYS AND OBSTACLES IN SEEKING COMPENSATION FOR MEDICAL MALPRACTICE: A LITERATURE REVIEW OF THE STAGES OF DISPUTE RESOLUTION IN INDONESIAN CIVIL LAW**

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### **Abstract**

This study discusses the legal channels and obstacles in claiming compensation for medical malpractice in Indonesia through a literature review of the stages of dispute resolution in civil law. The focus of the study is on legal mechanisms, including mediation, filing lawsuits, trials, and the execution of compensation decisions, as well as the various obstacles faced by victims in the process of enforcing their rights. Using a literature review method, this study analyses legal literature, court decisions, regulations, and related documents to provide a comprehensive overview of the procedures and obstacles that arise, whether procedural, substantive, systemic, or cultural. The results of the study show that although formal legal channels are available, complex obstacles often hinder victims of malpractice from accessing justice. Therefore, improvements to the legal system, increased understanding of patient rights, and the development of alternative dispute resolution mechanisms are needed to create effective and fair legal protection.

**Keywords:** medical malpractice, compensation, legal channels, Indonesian civil law, dispute resolution, legal barriers, literature review.

### **Introduction**

In this modern era, healthcare has become one of the fundamental aspects that are very important to society. Advances in medical science and technology have had a significant positive impact on improving the quality of life and health of humans (Lee, 2020). However, along with these advances, new problems have also arisen that are no less important, namely cases of medical malpractice that cause dissatisfaction and harm to patients. Medical malpractice is an act or negligence by medical personnel that deviates from professional standards, resulting in physical, psychological, or material harm to patients. This issue is crucial because it concerns human safety, which should receive optimal legal protection (Johnson, 2022).

When patients suffer losses due to medical malpractice, one of the mechanisms that can be pursued is to seek compensation from the perpetrator of the malpractice through legal channels. In the context of civil law in Indonesia, the dispute resolution process must go through various stages, ranging from mediation to court proceedings. However, in reality, the legal process often faces various obstacles that make the

process of enforcing justice complicated and lengthy. These obstacles not only hinder the restoration of victims' rights but also cause distrust in the legal system and health services in general (Susanto, 2020).

In the context of Indonesian civil law, claims for compensation for medical malpractice are regulated based on the principle of civil liability, which requires the elements of fault, loss, and a causal relationship between the malpractice and the loss suffered by the patient. This legal process is not simple because it requires strong evidence and strict procedures for the claim to be accepted by the court. Therefore, this study will discuss in detail each stage that victims must go through in seeking legal dispute resolution, from pre-trial, filing a lawsuit, to the trial process and court decision (Hadi, 2017).

Moreover, in practice, victims of malpractice face procedural, substantive, and systemic obstacles. Procedural obstacles are often related to the difficulty of proving the elements of negligence and the losses suffered by patients, making it difficult for the legal process to run effectively. Substantive obstacles include victims' lack of knowledge about their legal rights and the procedures that must be followed, as well as psychological factors that affect victims' courage in filing claims. Meanwhile, systemic obstacles include difficulties in accessing adequate legal aid and the protection afforded to medical personnel, creating an imbalance in the legal treatment of patients and perpetrators of malpractice (Hardi, 2023).

In addition, cultural and social aspects also influence the dynamics of medical malpractice dispute resolution in Indonesia. Many victims feel hesitant or afraid to pursue legal proceedings due to concerns about social and psychological impacts, such as stigma and pressure from their surroundings. This further complicates access to justice and poses a unique challenge that law enforcement and health institutions must face in providing fair and equitable legal protection to the public (Anwar, 2019).

Philosophically, efforts to resolve medical malpractice disputes through civil law must be based on the principle of restorative justice, which aims to restore the patient's condition and provide justice for all parties. Therefore, in addition to formal legal aspects, humanitarian and medical ethics aspects also need to be considered so that the dispute resolution process is not only punitive but also educational and preventive. This concept needs to be integrated into the legal system in order to create an effective and swift dispute resolution mechanism that provides a sense of justice for victims of malpractice (Putu Yudiq Maya Lestari, 2016).

Through this study, a systematic overview of the legal process of resolving medical malpractice disputes will be obtained, while also mapping the problems that are obstacles in practice. The data and analysis produced are expected to form the basis for recommendations for regulatory and legal policy reforms that are more responsive to the needs of victims of malpractice.

## **Research Methodology**

The research method used in this study was library research with a qualitative approach. This study collected, analysed, and interpreted various relevant legal literature, such as civil law textbooks, scientific journals, court decisions, regulations, and policy documents related to medical malpractice and dispute resolution in Indonesia (Eliyah & Aslan, 2025). In this way, the research focuses on a comprehensive review of the stages of medical malpractice dispute resolution in civil law and the obstacles or barriers that arise in practice. This approach allows for a systematic mapping of existing theories, norms, and practices, thereby providing an in-depth understanding and recommendations based on a critical analysis of existing literature sources (Zed, 2008).

## **Results and Discussion**

### **Legal Pathways in Claiming Compensation for Medical Malpractice in Indonesian Civil Law**

Legal channels are formal mechanisms provided by the legal system to demand the fulfilment of rights when violations or losses occur, including in cases of medical malpractice. In the context of Indonesian civil law, these channels are prioritised to provide justice to victims through a structured dispute resolution process regulated by law. This process requires the victim or their representative to file a claim for compensation against the medical personnel or health institution deemed to have committed malpractice (Lestari, 2018).

The initial stages of this legal process generally begin with non-litigation settlement efforts, such as mediation or amicable settlement facilitated by a third party or specific institution. Mediation aims to reconcile the disputing parties voluntarily and efficiently without having to proceed to court. In practice, mediation is a faster and less costly option and can maintain good relations between the parties, especially in the context of malpractice involving trust between patients and medical personnel (Baskoro, 2019).

If mediation is unsuccessful, the victim will usually proceed to litigation by filing a claim for damages with the District Court that has jurisdiction over the place where the malpractice occurred or the defendant's place of residence. This lawsuit is a formal step that marks the beginning of the dispute resolution process based on civil law. The filing of a lawsuit must meet procedural requirements such as the inclusion of the identities of the parties, a description of the malpractice incident, and clear legal claims (Wahyudi, 2020).

In Indonesian civil law, the legal basis for medical malpractice compensation claims can be found in the Civil Code (KUHPerdata), specifically Article 1365 on unlawful acts (*onrechtmatige daad*).

This article stipulates that any act that violates the rights of others and causes harm must compensate for the harm caused (Dwike et al., 2025). Therefore, victims of

malpractice must prove that medical personnel committed an unlawful act that caused harm. The process of proving medical malpractice is a major challenge in this legal process.

Victims must be able to present factual evidence such as medical documents, medical records, and expert testimony that can corroborate allegations of negligence or procedural errors on the part of medical personnel. The involvement of medical experts, known as expert witnesses, is crucial in providing professional opinions on the standard of medical care that should have been provided and whether that standard was violated (Handayani, 2021).

Once the lawsuit is accepted, a court hearing will take place with an agenda of examining the facts and evidence. This trial is a formal forum that determines whether the victim's lawsuit is legally proven or not. In the event of a positive verdict, the court may order the defendant to pay compensation in accordance with the losses suffered by the victim, including material and immaterial losses such as physical and psychological suffering (Ardiansyah, 2021).

Once the court's verdict is final, the execution of the verdict becomes the final stage in the civil law process. The execution of this decision ensures that the victim's rights are fulfilled and that the defendant fulfils their obligation to pay compensation. However, the execution process often faces administrative and practical obstacles, such as payment delays or new disputes regarding the assessment of damages, which prolong the settlement (Astuti, 2022).

In addition to litigation, victims and medical personnel can also use other non-litigation channels such as complaint services at medical professional institutions and Hospital Ethics Committees. These institutions play a role in assessing the validity of malpractice claims internally and can propose a settlement before the matter proceeds to court. The existence of these channels provides alternative resolution mechanisms that can reduce the burden on the courts (Rahmawati, 2023).

Supporting regulations also play an important role in this legal channel, such as Law No. 29 of 2004 concerning Medical Practice and implementing regulations from the Ministry of Health that regulate medical service standards and patient protection. These regulations not only serve as guidelines for medical personnel in their practice but also as a legal basis for assessing malpractice (Hidayat, 2018). However, civil legal channels in medical malpractice cases still face various criticisms regarding their effectiveness in providing protection and justice. One of the main criticisms is the complicated and lengthy process, which often drains the costs and energy of victims and their families. This situation causes psychological and financial unpreparedness among victims, leading many to choose not to pursue legal action (Saadah Kurniawati et al., 2025).

Furthermore, the imbalance of power between victims and medical personnel or health institutions often hinders the legal process. Medical personnel, especially those affiliated with large institutions, usually have access to legal advisors and

stronger resources, while victims often lack information and legal assistance. This imbalance has the potential to reduce access to justice and widen the gap in legal protection (Fitria, 2021).

Civil law also still requires support in terms of comprehensive evidence. There are still many cases where the evidence is not strong enough to prove malpractice legally, especially in terms of proving the medical professional standards that must be met. Therefore, further study of regulations and support for a systematic approach to evidence is needed so that this legal route can function optimally (Sari, 2022).

The development of a stronger alternative dispute resolution (ADR) system is also a concern in this context. The use of mediation or arbitration supported by independent institutions can be a solution to accelerate the settlement of medical malpractice disputes at a lower cost and with less risk to the community. This can also open up new opportunities in dispute resolution mechanisms outside of court (Dewi, 2019).

Overall, the legal path to claim compensation for medical malpractice in Indonesia through civil law provides a legal and systematic framework, but it is still marred by various practical and structural challenges. A good understanding of this legal path is very important so that victims can navigate the legal process appropriately and obtain fair and proper protection in accordance with their rights.

### **Obstacles in Claiming Compensation for Medical Malpractice**

Seeking compensation for medical malpractice through legal channels in Indonesia often faces various complex and multidimensional obstacles. These obstacles not only hinder the legal process, but also have the potential to cause material and non-material harm to victims. It is important to understand these obstacles so that the legal system can be developed to provide better access to justice for victims of malpractice (MariNews, 2025).

One of the main obstacles often encountered is procedural obstacles. Legal procedures in medical malpractice cases are very complex, covering technical provisions for filing lawsuits, evidence requirements, and lengthy and convoluted trial processes. Victims or their families often have difficulty understanding the applicable legal rules, which delays the settlement process and makes it more complicated to obtain compensation (Lee, 2020). In addition, substantive obstacles also often arise, particularly in relation to proving medical malpractice. In civil law, proving negligence, damages, and the causal relationship between medical actions and damages is mandatory and poses a major challenge. Collecting valid medical evidence and competent expert witnesses is often not easily accessible to victims, thereby weakening their legal position (Smith, 2018).

Psychological barriers are also important to consider. Victims of medical malpractice often experience physical and mental trauma that makes them reluctant or afraid to pursue legal proceedings. Social pressure and stigma from the surrounding

community are additional factors that make victims tend to be passive and choose to resolve issues personally outside of formal legal mechanisms (Rahayu, 2021).

In terms of access to legal aid, systemic barriers also arise. Not all victims have the financial means to obtain professional legal assistance. The lack of access to affordable and quality legal aid is a significant obstacle in filing and maintaining lawsuits, resulting in inequality in obtaining legal protection between victims and medical personnel or large institutions (Anggraini, 2017). The imbalance of power and resources between victims and medical personnel or healthcare providers is also an obstacle. Medical personnel are often protected by strong institutional support, experienced legal advisors, and professional networks that can influence the legal process. Meanwhile, victims, who are often individuals with limited resources, find it difficult to fight for their rights (Kartika, 2019).

Another obstacle arises from the suboptimal nature of existing regulations and legal mechanisms. Some rules relating to medical malpractice may still be vague or unclear in terms of law enforcement, making it difficult for judges to make fair decisions in line with complex medical contexts. This results in legal uncertainty for both victims and medical personnel (Kumar, 2020).

Complex and slow bureaucracy in the process of submitting and verifying evidence is also an obstacle. Convoluting administration can prolong the time it takes to resolve disputes, increase costs, and cause mental exhaustion for victims and their families. This situation increases frustration and has the potential to reduce victims' motivation to consistently demand their rights (Wahyuni, 2020).

The legal culture of Indonesian society is also often an obstacle in itself. A culture that tends to prioritise amicable settlements and avoid open conflict can cause victims to choose to give in or resolve issues informally, so that malpractice issues are not properly and thoroughly resolved in the legal sphere. The public's low level of trust in the judicial system also contributes to this obstacle (Wahyu, 2021). The public is often pessimistic about the justice that will be obtained from legal proceedings, especially in cases involving medical personnel and large institutions. This doubt fosters a reluctance to fight through legal channels, which ultimately weakens efforts to protect patients' rights (Davis, 2019).

Inaccuracy and a lack of understanding of the techniques of evidence in malpractice cases are also obstacles. Victims' advocates or legal representatives sometimes lack specialisation in malpractice cases, resulting in ineffective evidence strategies. This can lead to lawsuits being dismissed or less than optimal compensation being awarded (Smith, 2018).

Another obstacle that has emerged is the potential for conflicts of interest among the parties involved, including in medical professional supervisory bodies and judicial institutions. These conflicts can lead to suboptimal case handling, slow resolution processes, and bias in legal decisions that are detrimental to victims (Mustofa, 2019).

The lack of legal education and awareness regarding patient rights is also a significant obstacle. Many patients do not understand their legal rights in healthcare services or the legal procedures related to malpractice, so they are unable to maximise the available legal protection and are unaware that certain medical actions constitute malpractice (Marune, 2024). In addition, technical obstacles, such as the unavailability of complete and transparent medical data, are issues that hinder the process of proving and filing lawsuits. Healthcare institutions sometimes find it difficult to access or are unwilling to provide the necessary documents, making it difficult for victims to prove their claims (Brown, 2021).

Overall, the obstacles to claiming compensation for medical malpractice are a combination of interrelated procedural, substantive, cultural, systemic, and technical factors. A comprehensive understanding of these obstacles is essential in designing improvements to the legal system and policies so that victims' access to justice can be optimally protected.

## **Conclusion**

The legal process for claiming compensation for medical malpractice in Indonesia through civil law provides a clear and systematic framework, ranging from mediation efforts, filing lawsuits in court, trial proceedings, to the execution of verdicts. This mechanism is an important instrument in ensuring the protection of patients' rights and the formal resolution of disputes. However, a deep understanding of the stages of dispute resolution is necessary for this mechanism to run effectively and provide the justice that is due.

Nevertheless, the various obstacles faced by victims in claiming compensation are complex and multidimensional. Procedural obstacles in the form of lengthy and complicated legal processes, substantive obstacles in terms of proving fault and loss, and systemic obstacles such as limited access to legal aid and the imbalance of power between victims and medical personnel or health institutions are significant factors that hinder access to justice. In addition, cultural, psychological, and legal uncertainty factors also exacerbate the situation, requiring serious attention to improve the system.

Therefore, strengthening legal channels and reducing these obstacles are key to creating an effective, swift, and fair medical malpractice dispute resolution system. Recommendations to strengthen mediation and alternative dispute resolution mechanisms, improve public understanding of the law, and reform relevant regulations are essential to promote equitable access to justice for victims. The results of this study are expected to form the basis for the development of more responsive and humane legal policies and dispute resolution practices in Indonesia.

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