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Restorative Justice: Alternative Dispute Resolution for Medical and Health Workers Regarding Alleged Criminal Acts and Islamic Legal Perspectives

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Abstract:

Restorative Justice (RJ) is a case resolution approach oriented towards repairing harm, protecting victims' rights, and rebuilding social relationships between the parties involved in a dispute. This approach is particularly relevant for resolving cases involving medical and health professionals, especially when there are allegations of criminal offenses arising from errors in medical care or actions deemed to constitute malpractice. Resolving such cases through litigation can, in certain situations, lead to the criminalization of health professionals—even when the error was not intentional or malicious but rather influenced by the complexities and limitations of the healthcare environment. In this context, RJ offers a more human-centric alternative by prioritizing deliberation, dialogue between the victim and the health professional, the provision of compensation, and efforts to improve the quality of care. Islamic legal perspectives also align with these principles of peaceful dispute resolution through the concept of *al-sulh* (emphasizing peace and reconciliation) and the mechanism of *diyat* (compensation for harm suffered by the victim). Both concepts reflect the importance of restoring rights, ensuring justice, and balancing the interests of the parties involved. The application of RJ can also be linked to the objectives of *maqasid al-shari'ah* (the higher objectives of Islamic law), particularly the preservation of life (*hifz al-nafs*), intellect (*hifz al-'aql*), and honor (*hifz al-'ird*). Thus, the use of RJ in resolving cases involving medical and health professionals is an approach that not only supports restorative justice within the positive legal system but also rests on a value foundation consistent with the principles of justice, peace, victim protection, and the public good (*maslahah*) in Islamic law.

Keywords: criminal offense; Islamic law; medical professionals; restorative justice; sulh.

INTRODUCTION

The legal relationship between a patient and a doctor is fundamentally a form of therapeutic agreement—a relationship established when a patient receives medical services from a doctor. In this relationship, the doctor is not obligated to guarantee the patient's recovery; rather, the obligation is to provide medical care professionally and optimally, in accordance with applicable scientific and professional standards. This obligation is known as an inspanning verbintenis (an obligation of means), which emphasizes the duty to make a sincere and diligent effort

in delivering healthcare services. Consequently, when a patient seeks medical assistance, the doctor is required to take the necessary actions to alleviate symptoms, address the health condition, and strive for the best possible outcome based on their professional competence and the patient's medical status. This differs from a resultaat verbintenis (an obligation of result), where the achievement of a specific outcome is the mandatory objective. In medical care, a patient's recovery generally cannot be treated as an outcome that a doctor must absolutely guarantee, as it is influenced by various medical factors and the patient's individual condition. Therefore, the doctor's responsibility centers on performing medical actions professionally, prudently, and in compliance with standards of care, rather than solely on whether or not the patient recovers (Putra, 2001).

In practice, this principle is not always understood or heeded by patients due to the high expectations they place on physicians. Patients generally desire optimal healthcare outcomes, often viewing the success of a medical procedure as an expected result. This mindset can influence a patient's assessment when treatment outcomes fall short of expectations, even when the physician has acted in accordance with professional standards and justifiable medical considerations. Such high expectations are understandable, given that the medical profession is regarded as an officium nobile—a noble calling that entails significant moral obligations and a high level of professional responsibility in serving the public (Zuhair & Mangesti, 2024), However, there are instances where events occur beyond a doctor's actions; for example, in 2023, an eight-year-old patient named Ahmad Syamil Alfazy visited the Chasbullah Abdul Madjid Regional General Hospital (RSUD). He had previously been involved in a motorcycle accident that caused an injury to his nose. Three months later, he began to experience a loss of balance—manifesting as an inability to walk properly and signs of muscle weakness—prompting him and his parents to visit the hospital for treatment by a pediatrician.

As part of the medical treatment, the attending physician administered Topamax to the patient; subsequently, while the patient was under parental supervision after taking the medication, the patient fell from the hospital bed and became paralyzed the following day. The patient's parents cited this incident to allege malpractice by the pediatrician at Chasbullah Abdul Madjid Regional General Hospital (RSUD). However, a press statement from the hospital revealed that CCTV footage showed no negligence on the part of the doctor or medical staff; instead, the incident was caused by parental negligence in supervising the child, resulting in the fall from the bed.

As professionals, doctors, dentists, nurses, therapists, and other healthcare workers have a responsibility to provide services in accordance with their competence, professional standards, and applicable medical procedures. However, in healthcare practice, medical and healthcare workers are often the ones receiving complaints or claims from patients when their condition worsens or they become injured after receiving medical treatment. This situation does not always indicate that the harm experienced by the patient was caused by the error or negligence of the medical or healthcare worker, as the outcome of healthcare services can be influenced by various factors, including the patient's initial condition, the body's response to medical treatment, and the progression of the disease. High patient expectations for the success of medical procedures can also create a gap between expectations and the outcomes of care received. This situation highlights the importance of strengthening legal protection for medical and healthcare workers without compromising patients' rights to receive safe, high-quality, and responsible care (Jauhani et al., 2022).

Various problems in healthcare relationships can arise due to a variety of factors that cannot always be predicted or avoided. Differences in understanding of medical conditions, patient expectations regarding treatment outcomes, ineffective communication, and the potential for risks in medical procedures can trigger disputes between patients and medical or healthcare professionals. In practice, these conditions have the potential to increase the number of complaints and disputes related to healthcare services. Disputes can arise not only when patients experience harm or worsening of their condition after receiving care, but can also be influenced by perceptions regarding service standards and the responsibilities of healthcare professionals. This increasing potential for disputes indicates that the relationship between patients and medical or healthcare professionals requires a resolution mechanism that can provide balanced protection. Therefore, a dispute resolution approach is needed that is not solely oriented towards punishment but also considers restitution, protection of patient rights, and legal certainty and protection for medical and healthcare professionals (Lee & Lai, 2015a). Between 2006 and 2012, there were 182 cases of criminalization of medical and healthcare workers on charges of malpractice (Nugroho & Kusumaningrum, 2021). This number continued to soar, until, according to the Indonesian Medical Disciplinary Honorary Council (MKDKI), which later became the Professional Disciplinary Council (MDP), there were an accumulated 193 alleged cases between 2012 and 2019, with an average of 27-30 cases per year, with 59 cases occurring in 2019.

Patients' limited understanding of medical and legal aspects can lead to reports of alleged malpractice when service outcomes do not meet expectations. Reports that are not based on objective examinations have the potential to result in legal consequences for medical and healthcare professionals. Ongoing legal proceedings can disrupt professional activities, including the possibility of restricting the healthcare professional's freedom in accordance with applicable legal provisions. This situation can ultimately impact the availability of services for other patients, especially when the healthcare professional involved is a specialist with specific competencies that are difficult to quickly replace. Furthermore, legal proceedings can also affect the continued professional status and legality of medical and healthcare professionals' practices, including aspects related to their Registration Certificates (STR). This situation has the potential to cause economic and professional losses for healthcare professionals. In terms of law enforcement, the police face obstacles because they do not fully understand that what patients report is a legal problem caused by negligence by the doctor or other reasons beyond the medical professional's knowledge. In this regard, criticism has arisen against the government, which requires a review of the concept of legal protection for medical and healthcare professionals.

Pressure on the government then resulted in an update to legal protection for medical personnel and health workers through the ratification of Law No. 17 of 2023 concerning Health, by presenting a Restorative Justice approach, the government is striving for a solution aspect to allegations of malpractice that result in criminal penalties. However, the provisions of Restorative Justice regulated in Law No. 17 of 2023 Article 306 paragraph (3) which formulates the Article "Medical Personnel or Health Workers who have carried out disciplinary sanctions as referred to in paragraph (1) imposed there is an alleged criminal act, law enforcement officers prioritize dispute resolution with a restorative justice mechanism in accordance with the provisions of laws and regulations." This article is abstract because it does not indicate the type of Restorative Justice used, considering the many types of alternative dispute resolution and is only limited to the regulation of one-stop alternative dispute resolution which can only be carried out by law enforcement officers, which means that the Restorative Justice approach is carried out simultaneously with the criminal legal process, because the restorative approach is only carried out by law enforcement officers, this means that there is no freedom for the parties to appoint a mediator outside of law enforcement officers together.

Regulations concerning alternative dispute resolution in Indonesia are found, among other places, in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. However, the substance of the law focuses predominantly on arbitration rather than providing a comprehensive framework for alternative dispute resolution mechanisms. Provisions regarding the forms, stages, authority, and implementation procedures for alternative dispute resolution have not been elaborated upon in depth for various types of cases, including disputes arising from healthcare service relationships. This situation can give rise to issues when the provisions on restorative justice—contained in Article 306 paragraph (3) of Law Number 17 of 2023 concerning Health—are applied to cases involving medical personnel, health workers, and patients. The norm directing law enforcement officials to prioritize resolution through restorative justice mechanisms lacks adequate clarification regarding the applicable forms of resolution and the limits of their application.

Nurhasanah's research highlights the importance of applying restorative justice principles to resolve issues within the healthcare sector. However, the discussion has not yet concretely outlined the various alternative dispute resolution mechanisms that could be employed based on the specific characteristics of each case. Therefore, more specific regulations are required to ensure that the application of restorative justice entails clear procedures, criteria, and mechanisms, while also providing balanced protection for both patients and medical and health professionals (Karjoko et al., 2021). Ontran's research outlines an empirical research method, as it describes the implementation of restorative justice (Riyanto, 2024). Thus, the objective of this research is to examine the concept of restorative justice as formulated in Law No. 17 of 2023 concerning Health, specifically regarding legal protection for the parties involved—particularly medical personnel and health workers.

METHOD

This research uses a normative juridical legal research method, also known as doctrinal research. Normative juridical research is research that positions law as the norm or rule that serves as the basis for studying and analyzing a legal issue. This approach is carried out by examining various legal sources, especially statutory regulations, legal doctrine, legal principles, and jurisprudence relevant to the problem being studied. Thus, the research does not focus on collecting empirical data through observation or interviews, but is directed at obtaining legal arguments through a review of legal norms and concepts related to the application of Restorative Justice in resolving cases involving medical and health workers. This research framework is used as

a basis for identifying, understanding, and providing analysis of the legal issues that are the object of the research (Creswell & Clark, 2018).

In the analysis process, this research uses several approaches, namely the statute approach., conceptual approach, and comparative approach (comparative approach). A legislative approach is used by examining legal provisions governing medical personnel, health workers, health services, and case resolution mechanisms relevant to Restorative Justice. A conceptual approach is used to understand legal concepts related to restorative justice, dispute resolution, victim protection, medical personnel responsibilities, and the relationship between patient and health worker interests. Meanwhile, a comparative approach is used to examine the regulations and practices of Restorative Justice implementation in other countries. This comparison is intended to gain a broader perspective on the case resolution model for medical and health workers and to identify the possibility of developing a restorative approach within the Indonesian legal system (Sugiyono, 2019).

The legal materials used in this study consist of primary legal materials and secondary legal materials. Primary legal materials are obtained from various laws and regulations that have a direct relationship with the research object, including Law Number 17 of 2023 concerning Health, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, and Government Regulation Number 28 of 2024. In addition to these regulations, primary legal materials can also include other legal provisions relevant to case resolution, patient protection, the responsibilities of medical and health workers, and the application of the principle of Restorative Justice. Secondary legal materials are obtained from various literature that provides explanations and analysis of primary legal materials, such as law books, scientific journals, academic articles, research results, papers, and other library sources relevant to the research theme (Miles et al., 2014).

All collected legal materials were then analyzed using qualitative descriptive methods. The analysis was conducted by identifying, classifying, interpreting, and connecting various legal provisions and concepts found in the research materials. The results of the analysis were then systematically compiled to describe the regulation and application of Restorative Justice in resolving cases involving medical and healthcare personnel. Through this method, the research is expected to produce comprehensive legal arguments to address the research questions and provide conclusions regarding the relevance and feasibility of implementing a Restorative Justice approach in the Indonesian healthcare legal system (Sugiyono, 2023).

RESULTS AND DISCUSSION

Law Number 17 of 2023 concerning Health (hereinafter referred to as the Health Law) is a comprehensive regulation that replaces several previous regulations in an omnibus law (improving various laws in one regulation), including Law Number 36 of 2009 concerning Health (Kesuma, 2024). One of the issues that received attention in this law is regarding the restorative approach for medical personnel and health workers in enforcing criminal law in the health sector, as regulated in Article 306 paragraph (3) "Medical Personnel or Health Personnel who have carried out disciplinary sanctions as referred to in paragraph (1) which are imposed there is an alleged criminal act, law enforcement officers prioritize the resolution of disputes with restorative justice mechanisms in accordance with the provisions of laws and regulations."

This approach theoretically aims to create justice that is more oriented toward restoring the situation and balancing the interests of patients, medical and healthcare personnel, and the community (Setyawan, 2019). Although these provisions provide space for the application of a restorative justice approach, the regulations still contain a number of issues that could impact the effectiveness of its implementation in practice. The main problem lies in the lack of clear normative boundaries regarding the scope of restorative justice's application to criminal offenses in the health sector. The law does not comprehensively define the classification or characteristics of violations that can be transferred to restorative resolution mechanisms. Furthermore, there are no provisions that detail the procedures or stages that must be followed by the parties in the process. Ambiguity is also evident in the regulations regarding the position and authority of the parties responsible for facilitating and making decisions in case resolution. This situation has the potential to give rise to differences in interpretation among law enforcement officials and related institutions, thus affecting legal certainty, consistency of application, and protection of the rights of patients and healthcare personnel.

Restorative justice is generally applied in certain criminal offenses, particularly those involving victims who have a direct interest in recovery, such as in cases of minor crimes or cases involving child perpetrators (Rizaldy et al., 2023). Through Law Number 17 of 2023 concerning Health, the government provides space for the application of a restorative justice approach in handling criminal offenses related to the health sector, including cases involving alleged medical malpractice. This policy demonstrates a shift in orientation in case resolution,

which no longer solely emphasizes the imposition of criminal sanctions but also considers aspects of recovery and dispute resolution between the parties involved. However, this regulation also raises questions about how the concept of restorative justice should be understood and applied in the context of health crimes. Important questions arise regarding the types of crimes that qualify for resolution through restorative mechanisms and the limits of their application. This lack of clarity raises the need to determine the extent to which a restorative approach can be used in the realm of health criminal law and whether such mechanisms can be applied to all forms of criminal violations in the health sector.

The Restorative Justice provisions contained in Article 306 paragraph (3) of Law No. 17 of 2023 which do not provide clear limits regarding the application of restorative justice in health criminal cases can open up opportunities for perpetrators of criminal acts to abuse this mechanism as a legal loophole to avoid the criminal justice process that should be taken if they are proven guilty, in cases that cause death as proven through the results of the MDP examination, criminal sanctions must be the premium remedium (the most important remedy). Meanwhile, if the actions taken only cause injury, a Restorative Justice approach can be attempted (Febriansyah et al., 2024). In addition, without strict guidelines in Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution which discusses criminal acts in the health sector, the restorative approach risks becoming an unfair bargaining tool, especially if there is a power gap between medical or health workers and patients. Therefore, the formulation in Article 306 paragraph (3) of Law No. 17 of 2023 needs to be further developed into several paragraphs of the Article.

In general, criminal law is based on the principle of legality, which emphasizes that an act can only be punished if it has been previously determined in statutory regulations (Nainggolan et al., 2024). The application of a restorative justice approach without clear limitations and parameters in Law Number 17 of 2023 concerning Health has the potential to raise issues with the principle of legal certainty. If restorative mechanisms are implemented broadly without clear criteria regarding the types of medical actions or errors that can be resolved through this approach, the scope for interpretation in law enforcement increases. This situation can lead to differences in application between one case and another and lead to inconsistencies in the process of resolving health crimes. Furthermore, this lack of clarity can also increase the vulnerability of medical personnel and healthcare workers in carrying out their profession. Furthermore, restorative mechanisms that lack adequate oversight have the potential to be exploited by certain parties to obtain disproportionate benefits. Therefore, clear criteria, procedures, authorities, and oversight mechanisms are needed to ensure the implementation of restorative justice maintains a balance between patient protection and legal certainty for healthcare workers.

This inconsistency in regulations has the potential to impact the effectiveness of preventative law enforcement. If medical and healthcare professionals understand that any alleged violations committed in healthcare practices have the potential to be resolved through restorative justice mechanisms with relatively minor criminal consequences or even without criminal proceedings, the perception may arise that the legal risk of a violation is lower. This situation has the potential to reduce the law's deterrent power if it is not accompanied by clear boundaries and oversight mechanisms. However, the implementation of a restorative approach cannot be automatically viewed as a factor that increases the likelihood of violations. Its effectiveness depends heavily on the case criteria, the level of culpability, the consequences, and the form of accountability imposed. Therefore, restorative justice mechanisms need to be designed proportionally to provide space for victim recovery while maintaining the law's function as a preventive instrument against violations in healthcare. Given the numerous gaps in the restorative approach contained in Law No. 17 of 2023, a comparative study with other countries is needed to determine the limitations of the restorative approach and the types of restorative approaches employed in the following countries:

1. United States: Alternative Models for Dispute Resolution in the Health Sector

The United States has a legal system that prioritizes litigation in resolving disputes, including in the healthcare sector. However, some states have developed restorative mechanisms, particularly through Alternative Dispute Resolution (ADR), which includes mediation and negotiation between healthcare professionals and aggrieved patients. In California and Florida, medical malpractice cases can be resolved through mediation before reaching the litigation stage in court, using the services of a mediator outside of law enforcement. This model allows patients and healthcare professionals to find solutions more quickly and avoids the high costs of litigation. However, it is noted that in some literature, this approach is focused on civil rather than criminal matters, and therefore does not fully reflect the restorative concept in criminal law (Suratman, 2025).

2. Canada: Restorative Justice in Medical Malpractice and Negligence Cases

Canada is one of the countries that has adopted the concept of restorative justice in various aspects, including cases in the healthcare sector. One example of successful implementation is the resolution of medical malpractice cases using the healing circles model, where the patient, the victim's family, medical personnel, and the healthcare community come together in a dialogue forum to achieve fair redress for all parties. This approach is widely applied in First Nations communities in Canada, which have a restorative justice-based legal system. For example, in cases where a doctor in an Indigenous community is suspected of making a diagnostic error that results in serious consequences for the patient, the resolution process prioritizes dialogue and healing (Fadel, 2025).

In some more crucial cases such as insurance fraud or serious breaches of medical ethics, the Canadian justice system still uses a conventional approach with stricter criminal penalties.

3. English: Restorative Regulation in the Medical Legal System

The UK has a strict medical regulatory system and implements a restorative approach to healthcare law enforcement through the Medical Practitioners Tribunal Service (MPTS). This body is tasked with resolving medical disputes, including alleged malpractice cases, through a non-litigation approach before a case is brought to criminal court (Suratman, 2025). Medical and healthcare professionals who make mistakes can be given the opportunity to improve their practice skills through retraining and coaching by healthcare institutions. This approach is considered more effective in improving the quality of healthcare services than simply imposing criminal penalties.

4. Australia: Restorative Justice in Medical Ethics

Australia has a model similar to other countries in cases such as misdiagnosis, minor medical negligence, or conflicts between patients and medical personnel/health workers that can still be resolved through dialogue and recovery (Lintang, 2024). Indonesia, with a legal system based on civil law and influenced by customary law principles and social values, needs to design a restorative approach model that suits the characteristics of its society. Based on qualitative data in the form of comparisons that have been conducted on the application of the restorative approach in criminal cases in the health sector in countries such as the United States, Canada, the United Kingdom, and Australia, the most appropriate model for Indonesia to adopt is a combination of the systems implemented in Canada, the United Kingdom, and Australia. Before adopting a model from another country, Indonesia needs to consider several key factors, namely:

a. In line with the National Legal System, Indonesia adheres to a civil law-based legal system that prioritizes legal certainty. Therefore, the restorative approach adopted must have a strong legal basis and clear mechanisms (Aufan & Buana, 2023).
b. Protection of Victims' Rights, The restorative approach must not eliminate the victim's right to receive justice and appropriate compensation for the losses suffered as a result of health crimes (Riyanto, 2024).
c. Accountability and Supervision, The approach implemented must have a strict supervisory mechanism to prevent misuse by perpetrators of health crimes (Jabar, 2024).
d. Flexibility in Implementation: Not all health crimes can be resolved through restorative justice. Therefore, clear boundaries are needed regarding the types of cases that can use this approach.

First, Canada is one of the countries that has successfully implemented a restorative approach in healthcare cases, particularly in cases of medical malpractice and negligence by healthcare professionals. This approach, known as healing circles, involves dialogue between patients, victims' families, medical personnel, and community representatives (excluding law enforcement) to achieve just redress for all parties (Sitorus et al., 2023). This model is suitable for implementation in Indonesia because it shares similarities with the concept of deliberation and amicable dispute resolution as stipulated in the Fourth Principle of Pancasila. Disputes between patients and healthcare professionals can be resolved through non-litigation approaches, such as negotiations with hospitals or through mediation facilitated by professional organizations such as the Indonesian Medical Association (IDI). For this model to be effectively implemented in Indonesia, the government needs to establish a more formal mechanism within the legal system, for example by establishing a restorative justice-based healthcare dispute resolution institution, which can serve as a forum for dialogue before a case is brought to the criminal court.

Second, the UK has the Medical Practitioners Tribunal Service (MPTS), an independent body tasked with handling medical disputes, including allegations of ethical violations and minor criminal offenses by medical personnel. This model is quite suitable for Indonesia because it provides an alternative route for dispute resolution

before a case is brought to criminal court (Sekararum et al., 2025). Indonesia already has a Professional Disciplinary Council (MDP) as an institution responsible for handling various issues related to disciplinary and ethical violations by medical and healthcare personnel. The existence of this institution is crucial in ensuring that any allegations of professional misconduct are first assessed based on scientific, ethical, and professional disciplinary standards. However, in the context of resolving cases that potentially contain elements of criminal offenses, the MDP's authority needs to be strengthened and expanded proportionally. The MDP can be authorized to conduct an initial assessment of the characteristics of the violation, the level of culpability, and the resulting impact before the case is forwarded to law enforcement. Based on the results of this assessment, the MDP can recommend whether a case should be resolved through disciplinary mechanisms or whether it should be forwarded to the police for investigation. It is hoped that such regulations will create a clear division of authority, prevent disproportionate criminalization, and ensure protection and justice for both patients and health workers.

Third, in Australia, the dispute resolution approach developed in Australia provides space for medical personnel and other healthcare professionals suspected of misconduct to communicate directly with the affected patient or family. This process is implemented through a structured dialogue forum facilitated by an independent professional mediator outside of law enforcement. This meeting aims to create open communication between the parties involved, allowing the patient or family to express their experiences, losses, and needs arising from a healthcare service. Furthermore, healthcare professionals are given the opportunity to explain the circumstances, causal factors, and professional considerations behind the action. Through constructive dialogue, the parties can build shared understanding, identify necessary remedies, and encourage a more equitable resolution. This model can also increase trust, improve therapeutic relationships, and promote improvements in the quality of healthcare (Price et al., 2025).

The restorative approach to dispute resolution, as developed in Australia, is fundamentally relevant for adaptation to the Indonesian legal system, particularly in handling healthcare cases, which do not always stem from deliberate or intentional harm to patients. This approach needs to be applied selectively, taking into account the type of violation, the level of culpability, the consequences, the victim's condition, and the results of disciplinary and professional examinations. Therefore, restorative justice is not positioned as a mechanism to eliminate the accountability of medical or healthcare professionals, but rather as an alternative resolution that allows for the recovery of patient losses while also providing healthcare professionals with the opportunity to take responsibility for their actions. Some cases that may be considered for using this approach include the following.

First, unintentional misdiagnosis. In healthcare practice, the diagnostic process is highly complex because medical personnel must make decisions based on the patient's clinical condition, examination results, available information, and the patient's disease progression. Misdiagnosis does not always indicate gross negligence or deliberate misconduct. Therefore, if the examination results indicate that the error occurred without intent and falls within the professional risk threshold, resolution through restorative dialogue may be considered. The patient and family can receive an explanation of the medical decision-making process, while the medical personnel have the opportunity to clarify their responsibilities. Agreements can be directed toward patient recovery, funding for continued care, an apology, and improvements to service procedures.

Second, incorrect medication administration without fatal consequences. Medication errors can occur due to various factors, such as communication errors, administrative errors, inaccurate recording, or weaknesses in the service system. If the error does not result in death or serious harm and can be corrected through medical intervention, restorative mechanisms can be a proportionate alternative. Through a dialogue forum involving the patient, family, healthcare professionals, and an independent mediator, the parties can identify the cause of the error and determine the form of redress needed. In addition to compensation for actual losses, the resolution can also include an evaluation of procedures and preventative measures to prevent similar incidents from occurring again.

Third, conflicts between patients and medical personnel arise from miscommunication. Disputes in healthcare are not always caused by medical errors, but can arise from differences in understanding regarding diagnosis, medical procedures, treatment risks, prognosis, costs, and patient expectations. In such situations, a restorative forum can provide a means for both parties to meet directly with the assistance of a professional mediator. Patients are given the opportunity to express their complaints and recovery needs, while medical personnel can provide open explanations of the actions taken. This process is expected to reduce misunderstandings, restore trust, and produce a fair agreement. However, its implementation must still take into account the level of error and the consequences so that cases with serious criminal elements are not automatically transferred to restorative justice mechanisms.

Law Number 17 of 2023 concerning Health is a form of legal reform in the health sector designed to integrate various provisions previously scattered across a number of laws and regulations. The presence of this

law demonstrates the state's efforts to build a more comprehensive health legal system, including regulating the rights and obligations of patients, medical personnel, health workers, and accountability mechanisms in the provision of health services. One interesting provision to examine is Article 306 paragraph (3), which provides space for the use of a restorative justice approach (Restorative Justice) when medical or healthcare workers who have undergone disciplinary sanctions are still facing allegations of criminal activity. This provision essentially directs law enforcement officials to prioritize dispute resolution through restorative justice mechanisms in accordance with statutory provisions (Nickson & Neikirk, 2024).

Theoretically, these provisions indicate a tendency to shift the paradigm of case resolution, which previously focused on sanctions, to an approach that prioritizes recovery. This orientation not only questions the form of punishment for the party deemed to have committed the error, but also considers the losses suffered by the victim, the form of accountability of the party committing the error, and efforts to repair the relationship between the parties. This approach is particularly relevant in resolving cases related to medical services because the relationship between patients and medical personnel is complex and involves trust, health needs, and professional risk. Errors in healthcare are not always caused by an intention to harm the patient. These conditions can be influenced by human factors, limitations in diagnosis and medical conditions, ineffective communication, weaknesses in the service system, or certain circumstances that are difficult for medical personnel or health workers to fully control (Lee & Lai, 2015b). Therefore, not all medical errors can be treated with the same accountability pattern.

However, research results indicate that the formulation of Article 306 paragraph (3) still leaves conceptual and practical problems. The most fundamental problem lies in the unclear definition of health crimes that can be resolved through a restorative approach. The provision uses the term "prioritizing dispute resolution through restorative justice mechanisms," but does not provide a detailed explanation of what types of cases can be pursued through this mechanism. There are also no adequate regulations regarding the stages of resolution, the form of reparation that can be provided to victims, the status of the parties, the institutions authorized to facilitate the process, or the legal consequences if a restorative agreement is not reached (Susila, 2021).

The ambiguity of these regulations has the potential to give rise to differing interpretations in their implementation. Law enforcement officials may use different considerations in determining which types of medical cases meet the criteria for resolution through restorative justice mechanisms. This situation can lead to inconsistent application of the law and impact legal certainty for the parties. On the one hand, restorative mechanisms serve an important function in preventing the criminalization of medical personnel or healthcare workers for errors committed without intent. This approach allows for proportional resolution of cases, taking into account compensation for losses and professional responsibility. However, on the other hand, their implementation must still ensure the protection of victims. Restorative mechanisms should not be used to override patients' rights to justice, recovery, and adequate legal protection (Widjayanto, 2025). Therefore, the application of restorative justice in healthcare cases must be placed within a framework of balance between protecting medical personnel and fulfilling the rights of patients as victims.

This issue becomes even more important when the incident results in serious consequences, such as permanent disability or death. In cases resulting in the loss of a patient's life, the protected legal interests concern not only the individual relationship between the patient and the medical staff, but also the public interest in the provision of safe and responsible healthcare services. Therefore, a restorative approach cannot be automatically applied to all types of health crimes. Cases with very serious consequences require an objective examination process to determine whether there are elements of error, negligence, violations of professional standards, or criminal elements. In this context, the results of a disciplinary investigation by an authorized institution are crucial. A disciplinary investigation can be an instrument for distinguishing between professional misconduct, ethical violations, negligence, and acts of a criminal nature. If an action is proven to have resulted in death and meets the elements of a criminal act based on an objective examination, criminal liability must remain an essential part of the law enforcement system (Sujana & Fikri, 2025). Conversely, if the error is non-fatal, unintentional, and the victim has an interest in restoring the relationship and providing compensation, a restorative approach may be more relevant to consider.

The implementation of restorative justice must also consider the principle of legality in criminal law. The principle of legality requires that an act be subject to criminal responsibility based on established legal provisions. In this context, the issue is not merely whether the restorative approach conflicts with the principle of legality, but rather how this mechanism is positioned within the criminal law system in a clear and measurable manner. A restorative approach should not create new norms without a legal basis or allow authorities to freely determine

which cases can be dismissed without objective parameters. Certainty regarding criteria, procedures, authority, and legal consequences is a prerequisite for its implementation to remain within the bounds of criminal law. Beyond the issue of legal certainty, there is also the risk of unequal positions between patients and medical or healthcare professionals. In many circumstances, medical professionals have greater professional knowledge, access to medical information, and support from healthcare institutions than patients. This situation can create an imbalance when the restorative process is carried out without mechanisms to protect victims. Agreements reached through pressure, ignorance, or the victim's inability to understand the legal consequences cannot be considered an ideal form of restorative justice (Hafizah & Fitriasih, 2022). Therefore, the victim's consent must be given freely and based on adequate information, while the mediation process needs to be carried out by an independent and competent party.

Comparisons with several countries show that the application of a restorative approach in healthcare cases can be implemented through various models. In the United States, medical dispute resolution is widely developed through Alternative Dispute Resolution (ADR) mechanisms, particularly mediation and negotiation. These mechanisms provide an opportunity for patients and healthcare professionals to resolve disputes without directly entering the litigation process. The advantages of this model lie in its flexibility, time efficiency, and the possibility of achieving mutually agreed-upon compensation. However, ADR mechanisms in the United States are generally used more in civil disputes and therefore cannot be fully equated with restorative justice in criminal cases. Canada offers a different perspective through the use of a restorative approach within specific communities, including through the healing circles mechanism. This model brings together victims, their families, the perpetrators, and community elements in a dialogue forum. The primary goal is not simply to determine who is at fault, but also to understand the impact, acknowledge the victim's losses, and find a form of redress acceptable to all parties (Adiputra et al., 2024). This approach is relevant to Indonesian social conditions because it incorporates elements of dialogue, deliberation, recovery, and community involvement. These values also align with the culture of family problem-solving that is developing in Indonesian society.

The United Kingdom demonstrates a model that places greater emphasis on professional oversight and development. Through a medical professional tribunal system, medical personnel who commit errors can face professional review and receive sanctions or guidance commensurate with the severity of the violation. This approach demonstrates that errors in medical care do not always require criminal penalties. In certain circumstances, competency enhancement, retraining, practice restrictions, or professional development can be more effective instruments to prevent similar errors from recurring. However, professional mechanisms must be distinguished from criminal proceedings if an act meets the elements of a crime. Meanwhile, Australia offers lessons on the importance of open communication between healthcare professionals and patients and the families of victims. Certain medical errors can be resolved through meetings facilitated by professional mediators, allowing healthcare professionals to explain the circumstances, admit fault if proven, and jointly determine the form of redress with the victim. This model has preventive value because it can improve the relationship between patients and healthcare professionals while simultaneously fostering a culture of safety in healthcare (Darma et al., 2020).

Based on this comparison, Indonesia does not have to adopt the entire model of other countries. The Indonesian legal system has its own characteristics as a country that adheres to the civil law tradition and values deliberation and family-based conflict resolution. Therefore, a more appropriate model is to establish a Restorative Justice mechanism that combines elements of victim recovery, professional examination, independent mediation, and maintaining criminal accountability for cases that meet the elements of serious crimes. In the Indonesian context, strengthening the role of the Professional Disciplinary Council (MDP) is crucial as part of this mechanism. The MDP can play a role in providing professional assessments regarding the actions of medical or healthcare personnel. However, this function must be implemented proportionally and not replace the authority of law enforcement officials. The results of disciplinary hearings can be used as a consideration in determining whether a case is more appropriately resolved through disciplinary mechanisms, mediation, and recovery, or whether it should be escalated to criminal proceedings. This ensures a clear distinction between ethical violations, disciplinary violations, civil disputes, and criminal offenses (Limijadi et al., 2025).

The Restorative Justice model applied to resolving health cases must ensure the protection and fulfillment of victims' rights in a proportional manner. Patients need to receive clear and comprehensive information regarding the incident, their legal rights, acceptable forms of compensation, and the consequences of any agreement reached. Victim recovery is not limited to financial compensation but can include reimbursement of medical expenses, follow-up care, rehabilitation, an apology, or improvements to healthcare procedures. Each form of recovery must be determined based on a fair agreement and provided without pressure on the victim

(Irawati, 2019). Therefore, the application of Restorative Justice is not solely aimed at ending the litigation process, but must be able to provide real recovery to victims while encouraging improvements in the quality and safety of the healthcare system.

Based on the overall research results, it can be understood that Article 306 paragraph (3) of Law Number 17 of 2023 represents an important step in opening up space for resolving health cases through a more restorative approach. However, this norm still requires further regulation to avoid legal uncertainty and is not misused as a means to avoid criminal liability. Future regulations need to provide limits on the types of cases that can be resolved restoratively, especially by distinguishing unintentional and reversible medical errors from serious criminal acts that have serious consequences. The mechanism must also guarantee the victim's consent, the independence of the mediator, the involvement of professional institutions, transparency of the process, and oversight of the implementation of the agreement (Sujana & Fikri, 2025). Thus, Restorative Justice in cases involving medical and health workers should not be positioned as an absolute replacement for the criminal justice system, but rather as an alternative mechanism used selectively based on the characteristics of the case. This approach will be more effective if developed through a combination of disciplinary examinations, mediation, victim recovery, professional development, and proportional criminal liability. Such a model allows for a balance between protecting medical personnel from inappropriate criminalization and protecting patients from medical actions that truly meet the elements of criminal error. Ultimately, the implementation of Restorative Justice with clear boundaries, procedures, and oversight can support the creation of a health law system that is not only oriented towards punishment, but also towards recovery, prevention, legal certainty, and improving the quality of health services.

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CONCLUSION

Based on the research findings, it can be concluded that the provisions of Article 306 paragraph (3) of Law Number 17 of 2023 concerning Health—which allow for the application of a Restorative Justice approach in resolving criminal cases within the health sector—are relevant to establishing a case resolution mechanism that is more oriented toward restoration. This approach offers an alternative to conventional criminal proceedings, particularly in cases involving the relationship between patients and medical or health personnel. However, the provision still faces conceptual and practical challenges that could impact its effectiveness and fairness. Issues requiring attention include the lack of clarity regarding the scope of cases eligible for the restorative approach, the potential for mechanism abuse, concerns over legal certainty, and the need for more robust oversight mechanisms. To ensure the application of Restorative Justice is focused, fair, and accountable, further regulations are needed to clearly define the types and characteristics of health-related criminal offenses eligible for this approach. Cases with severe and widespread consequences—specifically those resulting in death or serious harm to the victim—require special consideration and should not automatically be directed toward restorative resolution. Furthermore, a transparent resolution mechanism must be established through implementing regulations that govern procedural stages, the authority of the parties involved, victim consent, forms of redress, and oversight mechanisms. Oversight and accountability must also be strengthened to prevent the restorative approach from being used as a means to evade legal liability. At the same time, protections for medical and health personnel must be balanced with the protection of patient rights, including the use of proportionate legal measures in response to reports or allegations of misconduct. Thus, the application of Restorative Justice should be positioned as a restorative mechanism that upholds legal certainty, fairness, a balance of interests, and accountability.

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