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Mediation in Medical Disputes as a Pathway to Substantive Justice: Reframing Global Health Law through Human-Centered Dispute Resolution

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Abstract

Medical disputes are increasingly common worldwide as patients become more aware of their rights and healthcare providers face stricter professional standards. Conventional litigation, while ensuring procedural justice, often fails to address the ethical, moral, and psychological aspects of medical conflicts. This research highlights a key gap in the literature: the limited recognition of mediation not just as a cost-effective alternative but as a tool for achieving substantive justice. Using a qualitative normative approach, this study combines doctrinal and comparative analyses. Findings show that mediation resolves disputes more efficiently than litigation and at much lower costs. Beyond efficiency, mediation improves access and delivers substantive justice by addressing patients' emotional needs, rebuilding trust, and maintaining professional integrity. However, challenges still exist, including limited legal recognition of mediation outcomes, a shortage of specialized mediators, and cultural resistance favoring litigation. This study contributes theoretically by reframing mediation as a justice-oriented process aligned with restorative justice and practically by offering policy suggestions to strengthen mediation's legitimacy and institutional role in global health governance. Therefore, mediation should be recognized not only as an alternative procedure but as a key instrument for substantive justice within international health law.

Keywords: Mediation; Medical Disputes; Substantive Justice; Health Law; Restorative Justice; Global Health Governance

Introduction

Medical disputes are becoming increasingly common around the world as healthcare services become more complex and public awareness of patient rights grows (Eryani et al., 2025). Data from the World Health Organization (WHO) shows that more than 10% of patients in developing countries have experienced adverse medical events, some of which have led to legal disputes. In Indonesia alone, data from the Ministry of Health in 2022 recorded at least 1,200 reports of alleged medical malpractice each year, with a 15% increase in the last five years. This phenomenon demonstrates that medical disputes are not isolated issues, but rather systemic problems that necessitate legal solutions that are fair, efficient, and acceptable to all parties.

The urgency of this research is even greater when we consider the tendency to resolve medical disputes through lengthy and costly litigation, which often has a negative psychological impact on both patients and healthcare professionals. Litigation tends to emphasize procedural justice—whether

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formal legal rules have been followed—but usually fails to deliver substantive justice that takes into account the moral and ethical dimensions and psychological needs of the parties involved (Bottoms & Tankebe, 2013; Tyler, 2003). Thus, there is an urgent need for alternative dispute resolution that not only provides legal certainty but also offers meaningful recovery for patients while maintaining the dignity of the healthcare profession.

However, most previous studies have focused more on the effectiveness of litigation or arbitration mechanisms in medical disputes, while mediation has been placed in a secondary position (Bingham, 2004; Brown & Simanowitz, 1995; Deason, 2005; Menkel-meadow, 2002; Metzloff et al., 1997; Shen et al., 2024; Smith & Martinez, 2009; Sohn & Sonny Bal, 2012). In fact, international comparative studies rarely mention the contribution of mediation to substantive justice. This indicates a research gap: there is a lack of research that explicitly highlights mediation not only as a cheaper and faster alternative, but also as a mechanism capable of producing substantive justice in the context of global health law.

Based on the above description, this study aims to analyze the role of mediation in medical disputes as a means of achieving substantive justice and to assess its potential in strengthening global health law. This study is expected to make two contributions: first, to provide a conceptual framework that broadens the understanding of medical dispute resolution through mediation; second, to offer practical recommendations for policymakers at the national and international levels on integrating mediation as an official instrument in the health law system.

Research Objectives

This study aims to examine the role of mediation in resolving medical disputes as a means of achieving substantive justice within the framework of global health law. Unlike conventional approaches that place greater emphasis on litigation or arbitration, this study positions mediation not merely as a faster and cheaper alternative, but as a mechanism capable of accommodating ethical, moral, and psychological dimensions that are often overlooked in procedural justice.

More specifically, this study aims to demonstrate how mediation can contribute to restoring trust between patients and healthcare professionals while maintaining professional integrity and producing fair and balanced decisions. By emphasizing substantive justice, this study aims to underscore the human dimension in medical dispute resolution, which is particularly crucial given the complexity and sensitivity of the issues at stake.

In addition, this study aims to fill the gap in academic studies that currently lacks discussion of the role of mediation as an instrument for achieving substantive justice in global health law. Thus, this study contributes to two areas at once: first, theoretically expanding the conceptual understanding of mediation as a dispute resolution process oriented towards justice; second, practically providing policy recommendations that can be adopted at the national and international levels to strengthen the legitimacy and institutionalization of mediation in dispute resolution in the health sector.

Research Methodology

This study employs a normative qualitative approach (Gatti & McAvoy, 2024), combining doctrinal and comparative analysis (Hutchinson, 2016). This design was chosen because medical

disputes are not only technical-legal in nature, but also laden with moral values, ethics, and social implications that require a holistic understanding of the law. Thus, this approach enables researchers to examine positive legal sources while comparing practices in various jurisdictions to obtain a more comprehensive understanding of the role of mediation in resolving medical disputes.

The research data sources consist of primary and secondary legal materials. Primary legal materials include relevant international legal instruments, such as World Health Organization (WHO) resolutions and the UNESCO Universal Declaration on Bioethics and Human Rights, as well as national legislation in several countries, including Indonesia, the Netherlands, and the United States. Meanwhile, secondary legal materials were obtained from indexed international journal articles, relevant academic books, and research reports from global institutions and medical professional organizations. Sources were selected using purposive sampling, with the main criteria being relevance to the topic of mediation in medical disputes and its application in the context of substantive justice.

A doctrinal analysis was conducted to identify the legal principles governing the resolution of medical disputes, both those derived from national and international law. This analysis also aimed to examine the extent to which the concept of substantive justice is incorporated into the regulations and practices of dispute resolution currently in force. Meanwhile, comparative analysis is used to compare mediation practices in various jurisdictions, taking into account variables such as resolution time, cost, accessibility for patients and health workers, and the ability to produce substantively fair resolutions.

To ensure a high degree of replicability, each stage of the analysis was conducted systematically using a clear evaluation framework. First, efficiency was measured by comparing the average time and cost of dispute resolution between mediation and litigation. Second, accessibility was evaluated based on procedural ease and affordability for the parties. Third, the aspect of substantive justice was analyzed by examining the extent to which the results of mediation were able to provide moral, ethical, and psychological recovery, in addition to material compensation. All data obtained was then interpreted qualitatively to produce a deep understanding of the role of mediation in advancing global health law.

With this research design, it is hoped that the results can not only be replicated by other researchers using a similar analytical framework but also compared across jurisdictions, thereby contributing more broadly to the development of the literature and practice of medical dispute resolution.

Result

Efficiency and Accessibility of Mediation

The results of comparative analysis show that mediation has a much higher level of efficiency than litigation in resolving medical disputes. Data compiled by the American Bar Association reveals that the average time to resolve medical disputes through litigation ranges from 18 to 36 months, with legal costs reaching more than USD 100,000 per case. In contrast, mediation can be resolved on average within 3-6 months, at a cost of around 20-30% of litigation.

A similar situation can be observed in the Netherlands, where the Dutch Healthcare Mediation Board reports that more than 60% of medical disputes are successfully resolved through mediation

within six months or less (Niemeijer & Pel, 2005). These findings confirm that mediation provides faster and more affordable access to justice, thereby reducing the financial and psychological burden on the parties involved.

Furthermore, the advantages of mediation extend not only to quantitative aspects, such as time and cost, but also to qualitative results that transform the doctor-patient relationship (Ridd et al., 2009). Unlike litigation, which often leaves a feeling of winning or losing (a zero-sum game) and exacerbates hostility, the dialogical mediation process facilitates open and honest communication (Seul, 2004).

A study by Harvard Medical School highlights that in many cases, patients are not only seeking financial compensation, but also honest explanations, apologies, and assurances that similar mistakes will not be repeated (Ann O'hara & Yam, 2002). Trained mediators can guide both parties to understand each other's perspectives, restore trust, and often produce agreements that satisfy the emotional and procedural needs of the parties. This outcome is nearly impossible to achieve in a courtroom. Thus, mediation not only resolves disputes but also has the potential to restore damaged therapeutic relationships, which are at the heart of medical practice.

The Dimension of Substantive Justice

In addition to procedural efficiency, mediation has proven to be more responsive to substantive justice needs. Research conducted by (Daniel et al., 1999) in Australia shows that patients who participate in mediation are more satisfied because they have the opportunity to voice their complaints, receive medical explanations, and obtain recognition for their suffering. Unlike litigation, which focuses on evidence and financial compensation, mediation enables the negotiation of more humane agreements, such as formal apologies, commitments to improve service standards, or the rehabilitation of professional reputations. This is consistent with the theory of restorative justice, which emphasizes the restoration of social relations and moral recognition as the core of substantive justice.

However, it should be emphasized that this achievement of substantive justice is not a passive byproduct, but rather the result of the participatory and party-centered structure of mediation itself. Unlike litigation, which is controlled entirely by judges and lawyers, mediation transfers the power to design solutions directly to patients and healthcare providers. A meta-analysis study confirms that this high level of satisfaction correlates directly with the parties' sense of "ownership" of the process and the outcome of the agreement (Robles et al., 2015). They are not treated as objects in a case, but rather as active subjects who shape their own conflict resolution. Therefore, substantive justice in mediation arises from the process's ability to empower the parties, which in turn ensures that the solutions achieved are truly relevant and meaningful to their lives.

Furthermore, the restorative approach in mediation also has a positive systemic impact on the overall healthcare ecosystem (Dhanudibroto et al., 2025). Litigation, with its adversarial nature, tends to create a culture of blame and defensiveness in medical practice, which can hinder transparency and learning (Eftekhari et al., 2023; Liang, 2015; Struve, 2004). In contrast, mediation fosters a safe environment for acknowledging mistakes and sharing lessons learned. Data from hospital mediation institutions in Singapore shows that non-monetary settlement outcomes, such as commitments to revise patient safety protocols, have directly contributed to a decrease in similar medical incidents in

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the future. Thus, mediation not only resolves individual disputes but also catalyzes systemic improvement, increasing institutional accountability and ultimately improving the quality of healthcare services for the wider community.

However, the results of the study also show several obstacles in the implementation of medical dispute mediation. First, the legitimacy of mediation results has not been fully recognized in some legal systems. In Indonesia, for example, mediation results only have legal force if they are incorporated into a settlement agreement in court, meaning that mediation is not yet fully independent. Second, the limited capacity of mediators who understand technical aspects of medicine poses a particular challenge. A study in Japan revealed that the lack of mediators with a dual background (law and health) reduces the effectiveness of mediation, as it is challenging to connect the medical perspective with the legal framework. Third, there remains legal cultural resistance, where some parties—both patients and healthcare workers—place more trust in litigation because it is considered to provide "formal legal certainty," even though the process is lengthy and costly.

Discussion

These findings have important implications for developing global health law. Mediation can be viewed as an instrument that aligns with the right to health, as recognized in the International Covenant on Economic, Social, and Cultural Rights (ICESCR). By emphasizing substantive justice, mediation helps ensure that the right to health is not only understood as access to medical services but also as the right to fair, humane, and effective dispute resolution. Moreover, mediation conforms to WHO recommendations on the importance of people-centered health systems, as it provides space for patients to be heard and valued as individuals—not just as objects of health services.

However, the implementation of mediation as an instrument of substantive justice is not without challenges. The success of this model is highly dependent on the readiness of the legal infrastructure and the availability of mediators who are not only skilled in negotiation techniques but also have a deep understanding of biomedical ethics and the power dynamics in doctor-patient relationships. Without strict competency standards and codes of ethics, mediation risks perpetuating inequality and producing unequal agreements, especially when patients are in a physically, psychologically, or financially vulnerable position. Therefore, these findings also underscore the importance of robust oversight mechanisms and effective legal aid procedures to maintain the integrity of the mediation process.

In addition, the expansion of mediation into the realm of cross-border disputes raises complex questions regarding jurisdiction and the enforcement of decisions. This study identifies that the current international legal framework remains fragmented in regulating the recognition and enforcement of mediation outcomes, in contrast to arbitration, which already has established instruments, such as the New York Convention. To realize the potential of mediation as a pillar of global health law, a multilateral consensus is needed to regulate these technical aspects, including model clauses in international health agreements and strengthening the capacity of global institutions, such as the WHO, to facilitate non-litigious dispute resolution.

From a theoretical perspective, this study enriches health law literature by offering a new analytical framework for mediation as an instrument of substantive justice. This goes beyond the traditional understanding that places mediation solely as an instrument of procedural efficiency.

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From a practical standpoint, this study provides a basis for policymakers to integrate mediation into the health law system through regulatory strengthening, training of specialist mediators, and international recognition of the legitimacy of mediation outcomes. Thus, mediation can function not only at the national level, but also as an instrument for cross-border dispute resolution in the context of global health law.

Scientific Novelty and Research Contribution

This study presents scientific novelty in the discourse of global health law by shifting the focus of mediation from merely an instrument of procedural efficiency to an instrument for achieving substantive justice. Most of the previous literature has only emphasized the aspects of speed and low cost in resolving medical disputes through mediation. However, this study explicitly demonstrates that the primary value of mediation lies in its ability to restore social relations, address the emotional needs of patients, and maintain the professional dignity of healthcare workers—things that are rarely discussed by litigation. This perspective broadens the scope of studies on medical dispute resolution and situates mediation within a more humane and sustainable framework of restorative justice.

The scientific contribution of this research also lies in the development of a substantive evaluation framework that can be replicated across jurisdictions. By assessing efficiency, accessibility, and substantive fairness simultaneously, this research offers a new analytical model that both academics and health law practitioners can use. This model differs from previous studies, which tended to measure only procedural effectiveness, without considering moral, ethical, and social dimensions.

From a practical standpoint, this study makes a real contribution to the formulation of health law policy, both at the national and global levels. First, this study recommends strengthening the legitimacy of mediation outcomes through more stringent regulations, so that mediation is not only a secondary option, but stands on equal footing with litigation. Second, this study emphasizes the need for training mediators who possess a dual understanding of law and health, enabling them to address the challenges of complex medical disputes effectively. Third, this study provides a conceptual basis for international organizations, such as the WHO, to integrate mediation as an official instrument in global health governance, enabling its widespread adoption by member countries.

Thus, this study not only fills a gap in academic literature but also has a practical impact in promoting a health law system that is more responsive to the needs of the global community. The novelty offered is the repositioning of mediation from a mere technical instrument to a key pillar in realizing substantive justice, while affirming its relevance in the framework of international health law.

Conclusion

This study confirms that mediation plays a strategic role in resolving medical disputes by offering something that goes beyond procedural efficiency, namely, the ability to deliver substantive justice. The results of the analysis show that mediation not only speeds up the process and reduces costs, but also provides space for the moral, ethical, and psychological recovery of the disputing parties. Thus, mediation serves as a means to restore trust between patients and health workers, while maintaining the integrity of the medical profession.

Critical reflection on practices in various jurisdictions reveals that, although mediation has excellent potential, challenges persist, particularly regarding the legitimacy of mediation outcomes, the limited capacity of mediators with dual expertise, and the resistance of a legal culture that prioritizes litigation. However, this is precisely where the importance of repositioning mediation in global health law lies: from an alternative instrument to a primary instrument capable of accommodating humanitarian values.

The contribution of this research is twofold. Theoretically, this research broadens the scope of health law studies by situating mediation within the frameworks of substantive justice and restorative justice. Practically, this research offers policy recommendations that can enhance the legitimacy and institutionalization of mediation, both at the national and international levels, including within the global health governance agenda coordinated by organizations such as the WHO.

Ultimately, this study highlights the need for a global health legal system that is more responsive, humane, and inclusive. Mediation, with all its potential, needs to be recognized not only as a procedural alternative, but as a valid instrument of justice—a path toward substantive justice in medical disputes in the era of health globalization.

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