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## Restorative Justice in Medical Disputes: Analyzing Responsiveness and Legal Neutrality Deficit from the Perspective of Healthcare Professionals

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## Abstract

The application of restorative justice in medical disputes in Indonesia faces significant structural obstacles. This study examines how healthcare professionals experience and perceive restorative justice, analyzes its vulnerabilities through the frameworks of responsive law and critical legal studies, and proposes a neutral, proportional model of dispute resolution, particularly through specialized medical adjudication, to address regulatory gaps that enable extortion risks and legal injustice. Using a phenomenological empirical-qualitative approach combined with statutory and critical legal analysis, the research evaluates the practical implementation of the Health Law (Law Number 17 of 2023). The findings show that restorative justice helps reduce adversarial litigation and protects the professional reputation of healthcare providers, who overwhelmingly prefer mediation to court proceedings. However, the lack of clear procedural limits and standardized restitution guidelines leaves practitioners vulnerable to misuse and disproportionate claims, causing the mechanism, intended to promote responsiveness, to drift toward repressive outcomes. This shift intensifies socio-economic inequalities and media-driven pressures, undermining legal neutrality and substantive justice. The study recommends the establishment of precise regulatory standards, independent oversight, and specialized medical adjudication mechanisms to ensure that restorative justice operates fairly, effectively, and in accordance with objective medical and legal principles.

## Keywords

Legal Neutrality, Medical Disputes, Repressive Law, Responsive Law, Restorative Justice.

## 1. Introduction

Restorative justice represents a profound philosophical departure from the traditional retributive model of criminal law. At its core, restorative justice emphasizes repairing harm caused by wrongdoing through collaborative processes involving victims, offenders, and the community, prioritizing healing, reconciliation, and accountability over punitive measures (Wenzel et al., 2011; Ahidjo, 2024). This participatory approach is designed to facilitate dialogue, cultivate empathy, and foster personal transformation, often leading to better outcomes for victims, including a greater sense of empowerment and closure, and for offenders, by promoting true responsibility and reducing recidivism (Franata & Santiago, 2023). The efficacy of restorative justice has been recognized globally, extending beyond criminal justice to areas such as systemic injustice and educational conflict resolution (Mujianto et al., 2023).

In Indonesia, the legislative and judicial system has increasingly acknowledged restorative justice as a valuable alternative, marking a shift toward a more humanistic and rehabilitative justice paradigm. This commitment is institutionalized within the juvenile justice system through Law Number 11 of 2012 and reinforced by subsequent regulations from the police and public prosecution offices, emphasizing out-of-court resolution, or diversion (Arief & Ambarsari, 2018; Mahendra, 2020). The extension of restorative justice principles is explicitly mandated in the health sector by Law Number 17 of 2023 concerning Health. Article 306, Paragraph (3), of this law directs the resolution of criminal medical disputes toward restorative justice mechanisms, while Article 310 requires the use of alternative dispute resolution outside litigation for medical errors. This legislative movement is significant, signaling a clear governmental intent to apply restorative justice principles, which traditionally focus on property crimes and minor offenses, to the highly complex and sensitive domain of medical professional liability.

The rationale for applying restorative justice to medical disputes is compelling: traditional litigation often exacerbates the already damaged relationship between patient and provider, yielding protracted, expensive, and emotionally draining processes for both parties (Nickson, 2024). Restorative justice, conversely, focuses on improving communication, addressing accountability directly, and repairing the harm through mutually agreed-upon solutions (Maskanah, 2023). Katz (2019) and Hanganu et al. (2020) demonstrate that open communication and empathy from healthcare providers can substantially de-escalate disputes, leading to higher patient satisfaction than adversarial legal routes and reducing the risk of defensive medicine for practitioners. The new Health Law aims to leverage this potential, moving away from a punitive approach previously emphasized by the criminal justice system toward one of healing and systemic learning.

However, the integration of restorative justice into the Indonesian medical and legal framework is fraught with significant paradoxes and systemic challenges. While the law advocates for a humane resolution, the application of restorative justice principles often occurs within a legal culture that remains fundamentally punitive and prone to power imbalances (Waluyo, 2015; Mukti, 2023). The civil law system, with its procedural rigidity, may struggle to fully accommodate the flexible, dialogue-centered nature of restorative justice. Furthermore, the inherent power differential between the patient (often feeling physically and emotionally vulnerable) and the medical institution (possessing scientific expertise and corporate resources) risks turning the restorative justice process into an instrument of coercion or manipulation, potentially subverting the very goal of substantive justice.

The most critical challenge, which forms the core subject of this research, is the potential for misuse and the resultant deficit of legal neutrality. In the absence of

precise regulatory guidance for medical restorative justice, specifically governing the limits of compensation (restitution), mediation protocols, and the role of third-party experts, the mechanism risks becoming a tool for extortion. Healthcare providers, fearing damage to their professional reputation, loss of license, and the psychological trauma of lengthy litigation, may feel compelled to agree to disproportionate financial settlements, regardless of their actual degree of negligence or fault (Suparman, 2020; Anesa et al., 2022). This dynamic suggests that restorative justice, while intended to create a more responsive law that meets social needs, can effectively become a repressive mechanism cloaked in the legitimacy of statutory alternative dispute resolution (Asa et al., 2021).

This study departs from prior research, which often focuses on the conceptual importance of restorative justice or on general legal implementation, by employing an empirical-qualitative approach to understand restorative justice from the rarely heard perspective of medical professionals. Therefore, this study aims to examine how healthcare professionals experience and interpret the implementation of restorative justice in medical disputes, to analyze the structural, regulatory, and theoretical vulnerabilities of its application through the frameworks of Responsive Law and Critical Legal Studies (CLS), and to formulate a neutral and proportional dispute-resolution model, potentially through specialized medical arbitration or adjudication mechanisms that can address regulatory gaps, prevent coercive or extortive practices, and restore substantive fairness in the resolution of medical conflicts.

Nonet and Selznick's Responsive Law theory and the Critical Legal Studies perspective of Unger and Kennedy assert that examining the implementation of restorative justice in medical disputes is crucial, as it can either achieve substantive justice or, conversely, exacerbate legal and social inequalities, revealing a profound paradox in its application. This research seeks not only to identify the challenges but also to propose structural and regulatory solutions, such as specialized arbitration or medical courts, to restore genuine neutrality and fairness to the resolution process.

## **2. Methods**

This study utilized a mixed-methodological approach combining empirical inquiry with normative legal analysis. The study employed a mixed-methodological Design, combining empirical qualitative inquiry with normative legal analysis. The empirical-qualitative component, grounded in a phenomenological approach, examined the lived experiences and perceptions of healthcare professionals regarding the implementation and impact of restorative justice in medical disputes. A total of twelve healthcare practitioners from various regions in Indonesia were recruited through snowball sampling, with eligibility limited to active medical personnel who had previously been involved in a medical dispute. Data were gathered through in-depth interviews conducted until saturation was achieved, at which point no new insights emerged during three consecutive interviews. All interviews were audio-recorded, transcribed verbatim, and supported by field notes to enrich contextual understanding. The data were then processed using thematic analysis, involving systematic reduction, categorization, and interpretation, followed by member checking to ensure the themes' validity and accuracy.

The study also incorporated a normative legal analysis to examine the governing statutory and theoretical landscape. This component relied on secondary legal data, including primary legal sources such as Article 310 of the Criminal Code, Law Number 17 of 2023 on Health, Supreme Court Regulation Number 1 of 2024, and relevant regulations issued by the police and public prosecution, including Indonesian National Police Regulation Number 8 of 2021. These were complemented by secondary and tertiary materials such as legal journals, critical

legal Studies literature, and Black's Law Dictionary. The legal findings were critically assessed using the responsive law theory of Nonet and Selznick and the critical legal studies framework developed by Unger and Kennedy, enabling a deeper evaluation of legal responsiveness and the structural neutrality deficits embedded in the regulatory system. This methodology provides a robust foundation for linking the empirical reality faced by medical practitioners with the philosophical and statutory intentions of the Indonesian legal system.

### 3. Results and Discussion

#### 3.1 Dual Reality of Restorative Justice

The empirical findings from interviews with healthcare professionals reveal a paradoxical and dual reality regarding the application of restorative justice in medical disputes. On one hand, medical personnel express strong, utilitarian support for restorative justice, on the other, they are acutely aware of the mechanism's inherent vulnerabilities to exploitation. This divergence between restorative justice's aspirational goals and its operational pitfalls underpins the doctor's contemporary legal dilemma.

The efficacy of restorative justice in mitigating adversarial litigation is the primary driver of its acceptance among healthcare providers. Professionals universally seek to avoid the burdens of the traditional judicial process (contending), which is characterized by protracted timelines, substantial financial costs, and an often-punitive focus. One respondent (GUP) noted that restorative justice offers an opportunity to begin dispute resolution earlier, thereby minimizing the time-consuming aspects of the litigation process. Another respondent (NAF) emphasized the personal cost, explaining that the long and slow court process often harms medical personnel by damaging their reputation and requiring vast amounts of time. This inclination toward non-litigation alternatives aligns with the yielding strategy in conflict resolution theory and reflects a rational choice to protect professional continuity and mental well-being. For the medical professional, RJ is perceived as a critical shield against the trauma and reputational damage inherent in public prosecution or civil tort claims (*onrechtmatige daad*). The resolution achieved through mediation is often perceived as a "win-win solution," focused on mutual gain and reconciliation rather than a zero-sum legal outcome, and is often framed by professional bodies such as the Indonesian Medical Association (*Ikatan Dokter Indonesia/IDI*) (Mustika et al., 2023).

However, this instrumental acceptance of restorative justice is fundamentally undermined by the grave risk of extortion and regulatory abuse. Medical professionals express deep concern that in the absence of clear, regulated boundaries, the restorative justice process becomes a vehicle for unjust financial demands. One respondent (KIN) articulated this fear, stating that without clear rules, restorative justice can be misused, making medical personnel more vulnerable to unreasonable payment demands. This is not merely a theoretical risk; another professional (GUP) directly warned that restorative justice could become an arena for extortion if there is no strict oversight of the parties involved. The financial focus of negotiations, as noted by SIN, is that the biggest obstacle in restorative justice is that often the end result only focuses on money, whereas the desired solution is a discussion that builds justice, risks reducing the complex issue of medical accountability, which should encompass apology, systemic change, and emotional reparation, to a simple monetary transaction. This vulnerability is compounded by the asymmetry of fear, the patient may threaten criminal prosecution (which carries the ultimate professional consequence), while the doctor's primary leverage is merely to offer financial compensation to avoid that existential threat (Anesa et al., 2022).

This risk of exploitation is a direct consequence of the regulatory void in the practical implementation of restorative justice for medical cases, despite the legislative intent of Law Number 17 of 2023. The lack of specific guidance on the limits of compensation (restitution) and standardized procedures for dispute assessment allows the power dynamics to determine the outcome. Professionals argue for firm regulations governing restitution boundaries, with GIL emphasizing that clear regulations related to compensation limits must exist to avoid harming either party, and one informant (NOM) highlighting the mandatory role of trained, neutral mediators, noting that their involvement is crucial to mediate disputes and ensure that the compensation requested remains within reasonable limits. The current instability suggests that the implementation of restorative justice, though rooted in the philosophy of responsive law, risks collapsing into a form of repressive law, a system that uses flexible procedures to mask or even perpetuate unjust outcomes driven by individual power rather than substantive legal principles (Asa et al., 2021). The doctor's forced choice to settle and submit (yielding) to unreasonable demands, solely to protect their career (professional license, reputation), confirms this paradox of responsive law serving repressive ends.

### **3.2 Responsive Law Paradox: Legal Neutrality and CLS Critique in Practice**

The theoretical foundation of this study rests on understanding the tension between legal idealism and practical application, particularly in sensitive areas like medical disputes. Restorative justice is anchored in the principles of victim-offender dialogue aimed at repairing harm, in contrast to the traditional retributive justice model inherited from the *Wetboek van Strafrecht* (Ramadhan & Ariyanti, 2023). Restorative justice's adoption in Indonesia, bolstered by Law Number 17 of 2023, reflects a move toward legal responsiveness, prioritizing reconciliation and social reintegration over punishment (Hafizah & Fitriasih, 2022; Maskanah, 2023).

The conceptual analysis of legal development is drawn from Nonet and Selznick's responsive law theory, which posits that law progresses through three stages, namely repressive law (focused on control and power), autonomous law (focused on procedure and neutrality), and responsive law (focused on substantive justice and adapting to social needs) (Perwira, 2017; Asa et al., 2021). The shift toward restorative justice in medical disputes is a clear attempt to move from autonomous procedures toward a responsive system, aiming for collaborative problem-solving (Gustami & Marpaung, 2020).

However, the efficacy of this responsive shift is challenged by the critical perspective of Critical Legal Studies (CLS), particularly the work of Duncan Kennedy and Roberto Unger. CLS rejects the notion of legal neutrality, arguing that law often reflects and reinforces existing social and economic inequalities (Stewart, 2020; Zhorif et al., 2024). In medical disputes, this perspective suggests that the RJ process, even if procedurally sound, may be compromised by the power imbalance between the often wealthy institutional defendant (hospital/insurer) and the emotionally vulnerable patient/victim, or conversely, by the patient's ability to leverage social media to exert undue pressure on the medical professional (Suparman, 2020). The CLS critique highlights the risk that restorative justice could be co-opted to serve dominant interests or to merely settle cases with minimal institutional accountability, creating a "paradox of repressive responsiveness". This tension forms the core theoretical framework for analyzing the empirical findings.

The philosophical tension inherent in applying restorative justice to medical disputes can be accurately framed through the theoretical critique of Nonet and Selznick's Responsive Law and the foundational arguments of CLS scholars such as Duncan Kennedy and Roberto Unger. The application of these theories reveals that the failure of restorative justice in Indonesia is not a flaw of the concept itself, but a failure of the surrounding legal structure to maintain genuine neutrality and resist external pressures.

The shift towards restorative justice under the new Law Number 17 of 2023 concerning of health is a clear legislative attempt to transition from autonomous law, characterized by rigid, formal, and often retributive procedures, to responsive law, which aims for substantive justice tailored to social needs (Perwira, 2017). The goal of restorative justice is noble to move beyond procedural adherence and address the deeper needs for reconciliation and healing. However, the empirical reality of extortion risk demonstrates the paradoxical failure of responsiveness. Instead of achieving substantive justice, the system allows flexible procedures to be co-opted for repressive outcomes, where the party with greater social or media power, or the party with the most to lose (the medical professional's career), is unfairly pressured. This is the phenomenon of repressive responsiveness, where the mechanism designed for dialogue becomes a tool for unconstrained pressure, echoing the coercive qualities of repressive law.

This theoretical failure is compounded by the CLS critique of legal neutrality. Kennedy and Unger's work argues that law is not an objective, value-free system, but one that inherently reflects and often reinforces existing social and economic inequalities and power structures (Stewart, 2020; Zhorif et al., 2024). In the context of medical disputes, this non-neutrality manifests in two critical ways: economic disparity and the influence of media and public opinion (Adiputra et al., 2024).

First, economic disparity undermines the principle of equal footing in the restorative justice dialogue. While a financially powerful hospital or insurer may settle quickly and repressively to protect corporate interests, the individual medical practitioner, particularly those in smaller private practices, faces potentially devastating financial burdens from disproportionate restitution claims (Budiarsih, 2021). This vulnerability exploits the doctor's fear of career loss, forcing them to accept settlements that are economically ruinous yet professionally protective.

Second, the influence of media and public opinion acts as an external power vector, undermining judicial and regulatory independence. CLS principles assert that law is shaped by ideological struggles (Łakomy, 2020). In viral medical cases, public opinion, amplified by social media, often pre-judges the professional as culpable, placing immense pressure on state actors (police, prosecutors, regulators) to act punitively to avoid public backlash (Taqiuddin & Risdiana, 2022). This social vector effectively turns the patient, or the perceived victim class, into a "governing force" over the legal process, even when their claims lack objective medical or legal merit. This dynamic, where the system's responsiveness to social noise overrides its duty to objective fact-finding and legal neutrality, is highly detrimental to the medical professional who relies on the legal process to evaluate competence fairly. As one respondent noted, the fear is that the government will prioritize avoiding public unrest, thus siding with the patient to quell public pressure, regardless of the evidence.

The solution, therefore, cannot simply be to mandate restorative justice, but to address the structural deficits that prevent its application in a neutral manner. This requires the legal system to erect safeguards against the exploitation of the dialogue process, ensuring that the responsiveness demanded by society is channeled through mechanisms that remain anchored to objective, neutral legal standards.

### **3.3 Restoring Neutrality: Structural Reforms and Alternative Resolution**

Given the empirical evidence of restorative justice's susceptibility to misuse and the theoretical critique of its non-neutral application in medical disputes, structural reforms are required to safeguard substantive justice for both patients and medical professionals. The solution lies in enhancing the system's objective procedural rigor through specialized adjudication, rather than abandoning restorative justice entirely.

The most viable structural reform is the establishment of a specialized adjudication system for medical disputes. This could take two forms, namely specialized medical courts or mandatory medical arbitration/mediation through a

dedicated, independent body. Currently, the system forces medical issues into either standard criminal prosecution (involving non-specialist judges) or civil litigation, leading to outcomes that are often disproportionate or medically uninformed (Nelwitis & Rias, 2023).

A specialized forum either in the form of a medical court or a dedicated medical arbitration body would substantially enhance fairness, neutrality, and proportionality in the handling of medical disputes. First, such a forum ensures expert-driven fact-finding. Judges or arbitrators would be required to have specialized competence in medical science, professional ethics, and clinical standards, enabling them to distinguish objectively between unavoidable medical complications and genuine negligence. This prevents decisions from being swayed by emotional narratives or social pressure, as highlighted by previous analyses (Amin et al., 2020; Afandi et al. 2023).

Second, proportionality of sanctions would be more consistently upheld. A specialized mechanism is better positioned to impose remedies that correspond to the actual level of fault. In cases involving simple negligence, the forum could prioritize administrative measures, such as warnings or mandatory retraining and restitution where appropriate, rather than resorting prematurely to criminal punishment. Criminal sanctions would be reserved for instances of gross recklessness or intentional wrongdoing, reflecting the concerns voiced by healthcare professionals who emphasize that sanctions for negligence should not prematurely end a medical career. This approach is aligned with Article 70 of the 2023 Criminal Code, which encourages alternatives to imprisonment for negligence-based offenses.

Finally, such a specialized dispute-resolution system would help insulate medical cases from external pressures. By operating within a structured and formally recognized legal framework, the forum would provide a buffer against distortions triggered by viral media coverage or fluctuating public sentiment. This would re-center the resolution of medical disputes on evidence, legal reasoning, and scientific objectivity, thereby strengthening both fairness and trust in the system.

Successful international models support this approach. South Korea established the Korea Medical Dispute Mediation and Arbitration Agency (*K-Medi*) in 2011, and Japan utilizes specialized bodies to investigate medical incidents (Kwon, 2015; Kimura, 2018). These systems, operating within a civil law context similar to Indonesia, demonstrate that a procedural mechanism can be created to resolve complex medical cases efficiently and fairly, thereby preventing the escalation of medical errors into punitive criminal matters.

Furthermore, to strengthen the integrity of the restorative justice process itself, the government must establish clear, legally binding guidelines concerning financial restitution. This regulation must set proportional ceilings for compensation in restorative justice dialogues, preventing the mechanism from being exploited for extortion. This legislative intervention would stabilize the power dynamic by limiting the financial threat that patients can leverage against medical professionals.

Law Number 17 of 2023 represents a philosophical step toward responsive law via restorative justice, the empirical reality of its application risks creating a paradox where legal procedures are co-opted by external power, leading to non-neutral outcomes. The commitment to substantive justice requires the state to provide not just a flexible dialogue mechanism, but a robust, specialized legal structure that can guarantee legal neutrality, procedural fairness, and proportional accountability for all parties involved in medical disputes.

Comparatively, experiences from countries such as New Zealand, South Korea, Japan, and Taiwan demonstrate that restorative justice in medical disputes is only effective when supported by strict legal guidelines, clear compensation limits, certified mediators, and independent medical adjudication bodies. Without these structural safeguards, the mechanism easily shifts into a financial bargaining process

vulnerable to coercion, as also seen in the Indonesian context. Models like New Zealand's ACC system and South Korea's K-Medi Agency affirm that the success of restorative justice depends heavily on the legal system's ability to neutralize media pressure, political influence, and power imbalances between parties. These findings reinforce the argument that the concept does not fail in theory, but is weakened in practice because Indonesia's legal and institutional infrastructure has not yet provided adequate neutrality and protection for all stakeholders.

#### 4. Conclusion

The adoption of restorative justice in Indonesian medical disputes, mandated by Law Number 17 of 2023 concerning Health, presents a significant paradox of responsiveness. Empirically, restorative justice is highly favored by medical professionals as it effectively mitigates the psychological and reputational damage of protracted litigation. However, the study confirms that in the absence of precise regulatory safeguards and independent oversight, restorative justice mechanisms are susceptible to exploitation, leading to unjust financial demands that violate the principle of proportional accountability. This vulnerability is the practical manifestation of the theoretical critique that responsive law, when implemented without sufficient legal neutrality, devolves into a form of repressive law driven by external pressures (media influence, economic disparity). To resolve this paradox and ensure substantive justice, the state must prioritize structural reforms, establishing specialized medical courts or mandatory arbitration mechanisms to ensure objective, expert adjudication and enacting clear regulations on restitution limits to stabilize the power dynamic in mediation and safeguard professionals from coercion, thereby guaranteeing the effectiveness and fairness of the restorative justice process.

Based on the study's findings and the context presented in the introduction, the implications suggest that while restorative justice has the potential to expedite the resolution of medical disputes and protect professional reputations, its implementation without clear regulatory guidelines risks misuse, reinforces power imbalances, and may lead to non-neutral outcomes. This study is limited by its exclusive focus on healthcare professionals, leaving the perspectives of patients and public institutions, such as hospitals or insurers, underexplored, which may affect the generalizability of the findings. For future research, it is recommended to conduct comparative studies involving multiple stakeholders, including patients and regulators, and to examine the effectiveness of specialized medical arbitration or courts in ensuring proportionality and neutrality in dispute resolution, thereby providing a more comprehensive and practical framework for policy development.

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### ***Data Disclosure Statement***

The data that support the findings of this study are available from the corresponding author upon reasonable request.



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