



Consumer Protection in Health Services: A Normative Analysis Of Patient Rights In Medical Malpractice Cases

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Abstract : Medical malpractice is a legal issue that positions patients as a vulnerable party susceptible to harm due to the mistakes or negligence of medical personnel. This research employs a normative juridical method to examine the implementation of consumer protection principles from Law No 8 of 1999 to cases of medical malpractice, as well as the dispute resolution mechanisms under Law No. 17 of 2023 concerning Health. Patients are positioned as consumers of health services who possess fundamental rights, such as the right to receive accurate information, safe services, and compensation in the event of negligence. Protection is afforded through preventive measures in the form of professional supervision and development, as well as repressive measures through criminal, civil, or ethical channels. The Health Law provides a tiered dispute resolution mechanism, commencing with mediation, familial settlement, examination by a Disciplinary Council, and litigation if necessary. The affirmation of the legal responsibility of medical personnel and the obligation for providers to pay compensation establishes consumer protection as a crucial framework for ensuring patient safety and enhancing the accountability of health services.

Keywords: Consumer Protection, Health Services, Medical Dispute

1. Introduction

Medical malpractice is an increasingly prominent issue alongside the growing public awareness of legal rights in healthcare services (Widjaja, 2020). Although regulations concerning the medical profession are governed by various law and regulations, such as Law No. 17 of 2023 concerning Health, the Medical Practice Law, and the Consumer Protection Law, the effectiveness of their implementation still faces serious challenges. On one hand, medical personnel often work in situations with limitations, high pressure, and constrained resources, while on the other hand, patients demand accountability for any mistakes or negligence that harm them (Pintabar et al., 2024). The imbalance in the positions of patients and health institutions causes legal protection for victims of malpractice to often be formalistic and difficult to access. This indicates a gap between legal norms and social reality that has not been fully bridged by either the judicial system or mediation institutions (Nurnanei & Bachri, 2024).

The rise in medical malpractice cases in Indonesia has raised concerns regarding legal protection for patients. Malpractice occurs when a healthcare professional deviates from the standard of care, code of ethics, or legal provisions, whether due to negligence

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or intent, resulting in harm or even death. As consumers of health services, patients are entitled to legal protection through civil, criminal, and administrative mechanism. The right to fair and humane medical treatment is also aligned with the principles of justice and the guarantee of human rights under national law (Ryansyah et al., 2025).

Alongside the increasing public awareness of their rights as patients, cases related to errors in medical practice have begun to gain public attention. One of the most crucial legal issues in the relationship between medical professionals and patients in medical malpractice. Medical malpractice refers to actions by medical professional-whether doctors, nurses, or healthcare facilities-that are not in accordance with professional standard, standard operating procedures (SOP), or medical ethics, and which cause harm to a patient (Syah, 2019).

A case of medical malpractice can have profoundly serious repercussions, not only for the patient as the direct victim but also for the patient's family, the reputation of the medical professional, public trust in health institutions, and the integrity of the healthcare system as a whole. In Indonesia, the issue of malpractice often surfaces when the media highlights a specific incident affecting a patient. However, in reality, many cases are not publicly disclosed and do not proceed to legal processes due to various structural, cultural, and administrative obstacles (Saputra et al., 2025).

Patients who have suffered harm due to malpractice have the right to file a legal claim as the aggrieved party. A claim may be filed to obtain financial compensation or to demand accountability from the medical professional. This effort can be pursued through the civil channel to demand compensation, or through the criminal channel, which can result in imprisonment for the perpetrator. The implementation of Law No. 8 of 1999 concerning Consumer Protection, along with other regulations in the health sector, provides legal protection for victims of malpractice. Based on this, legal purposes such as justice, legal certainty, and benefits to society can be realized (Isakandar, 2014).

Legal protection for patients as users of health services is not only related to the doctor-patient relationship but also encompasses the responsibility of the hospital as a provider of health services. Therefore, patient protection is regulated not only in the Health Law but also in Law No. 8 of 1999 concerning Consumer Protection Law stipulates that business actors are obligated to provide compensation for losses suffered by consumers due to the use of goods or services they produce or trade. On this basis, patients who suffer losses due to medical actions can demand compensation, either in the form of cost reimbursement, service replacement, healthcare treatment, or indemnity in accordance with legal provisions. Consumer protection for patients also includes the right to receive quality health services, in accordance with professional standards and operational standards established by the government (Amalia, 2025).

The harmonization of the Health Act, the Medical Practice Act, and the Consumer Protection Act is increasingly important as malpractice cases continue to rise, because these three regulations govern interrelated areas but are often implemented separately, leading to overlapping authorities, legal uncertainty, and weak patient protection. Integrating these regulatory frameworks is necessary to ensure more consistent medical service standards, clearer law-enforcement mechanisms, and stronger guarantees of patient rights. Meanwhile, patients' limited access to dispute-resolution mechanisms in

malpractice cases is influenced by low legal literacy, cultural norms that discourage reporting healthcare providers, and institutional barriers such as complex bureaucracy, lack of transparency, and insufficient support services. These factors collectively hinder the effective handling of malpractice cases and obstruct patients' ability to obtain justice.

2. Materials and Methods

This research employs a qualitative research type. Qualitative research is scientific research that understands phenomena in the context of the natural social world, emphasizing the process of in-depth communicative interaction between the researcher and the phenomenon in question (Feny Rita Fiantika, et.al, 2018). This study uses a normative juridical research, or normative legal research, is essentially an activity that examines internal aspects of positive law (Benuf & Azhar, 2020). This research is conducted using secondary data. This normative legal research is based on secondary legal materials, which is research that refers to the norms contained in legislation, specifically those related to the problems being discussed, and it is Indonesian Positive Law (Zainal Askin Amirudin, 2012). The secondary data in this research involves an examination of written provisions in the legislation, namely Law No. 8 of 1999 concerning Consumer Protection Law and Law No. 17 of 2023 concerning Health.

3. Results and Discussion

3.1 *The Implementation of Consumer Protection Principles in Law Number 8 of 1999 to Medical Malpractice*

Medical malpractice encompasses three fundamental elements: (1) A medical action that does not conform to norms or standards; (2) The presence of negligence (culpa); and (3) A legal consequence in the form of harm to the patient. The error can take the form of an action that should not have been performed, a failure to perform an action that should have been performed, or the provision of services recklessly without fulfilling the principle of medical caution. In practice, proving malpractice requires a technical medical assessment to determine a deviation from professional standards, as well as the existence of a causal link between the action of the healthcare professional and the harm suffered by the patient (Handoyo, 2020).

The Indonesian legal system stipulates various legal instruments governing patient rights and protection against acts of malpractice. The forms of legal protection for patients who are victims of malpractice can be classified into two types, namely preventive legal protection and repressive legal protection (Unika Research Team, 2024). Preventive protection aims to prevent the occurrence of malpractice through supervision, certification, and professional development for medical personnel. Meanwhile, repressive protection encompasses mechanisms for handling cases that have already occurred, through criminal, civil, or medical ethical channels (Saputra et al., 2025).

Legal protection for patients in the realm of healthcare services is an increasingly prominent issue within the context of modern health system's dynamics. Amid the complexity of medical services that demand high professionalism, a crucial problem has also emerged regarding legal responsibility when medical errors or negligence occur that harm patients. Cases of alleged medical malpractice that have surfaced several times in Indonesia demonstrate that the relationship between patients and medical professionals does not always operate within an ideal framework. Patients are often in vulnerable

position, both in terms of information, power, and access to legal justice. In this relationship, patients are not merely seen as objects of health services but also as legal subjects who possess rights, including the right to legal protection (Suteki, 2018).

From a juridical perspective, patients can be categorized as consumers within the framework of consumer protection law. This understanding is crucial as it provides a stronger legal basis for patients to obtain comprehensive protection. Article 4 of Law No. 8 of 1999 concerning Consumer Protection stipulates that every patient, as a consumer of health services, possesses a number of fundamental rights. Patients have the right to receive medical services that provide a sense of security, comfort, and safety (Uu No. 8 Tahun 1998 Tentang Perlindungan Konsumen). Patients also have the right to choose the type of health service and medical professional according to their needs and capabilities. Furthermore, patients have the right to receive true, clear, and honest information regarding their health condition, medical procedures, potential risks, costs, and available alternative treatments. Patients have the right to voice complaints or opinions about the services they receive and are entitled to an appropriate response from the service provider. Patients also have the right to legal protection, guidance, and education regarding their rights as consumers. In the event of loss due to a medical action or service, patients have the right to receive compensation or damages in accordance with legal provisions. Finally, patients have the right to be treated fairly and without discrimination, in accordance with professional standard and the provisions of the legislation.

Article 276 of Law No. 17 of 2023 stipulates that every patient has the right to receive clear information regarding their health condition. The patient also has the right to receive an adequate explanation concerning the health services provided. Furthermore, the patient must receive services that are in accordance with medical needs, professional standards, and the established quality of service. The patient has the right to consent to or refuse medical procedures, except for procedures required to prevent infectious diseases or to handle Extraordinary Events (KLB) or outbreaks. The patient also has the right to access information contained in their medical records, seek opinions from other medical or health professionals, and obtain other rights as regulated by the legislation (UU No. 17 Tahun 2023).

Law No. 8 of 1999 concerning Consumer Protection enables a balanced assessment between the position of the patient as a user of health services and the medical professional as the service provider. This provision, reinforced by Decree of the Minister of Health No. 756 of 2004, which positions health services as a form of enterprise, indicates that medical services can be viewed as business activity. The WTO's perspective, which treats health facilities and medical personnel as service entities, further affirms the relevance of applying consumer protection rules. Consequently, the Consumer Protection Law functions to protect the rights and interests of patients within the healthcare service relationship (Susanto, 2013).

According to Article 1 Number 1 of Law No. 8 of 1999 concerning Consumer Protection, a consumer is any person who uses goods or services for personal, family, or other needs, without the intention of deriving a commercial profit. This means that a consumer is an end-user who utilizes a product or service solely to fulfill their needs, not

for business activities. The rationale for importance of consumer protection is explained in Article 3 of the same law, namely: To enhance consumer awareness and self-reliance; To protect them from the negative impacts of using goods or services; To strengthen consumers ability to demand their rights; and To create a protection system that provides legal certainty and access to information. Furthermore, these regulations also aim to foster a sense of responsibility among business actors and encourage the improvement of the quality of goods or services for the safety, security, and comfort of consumers. (Wangsa, 2024).

According to Law No. 8 of 1999 concerning Consumer Protection, Article 7 paragraph F stipulates the obligation to "provide compensation, restitution, and/or replacement for losses resulting from the usage, consumption, or utilization or traded goods and/or services," Consumer protection is a primary focus strongly emphasized by society. Therefore, the Indonesian Civil Code (KUHper) regulates consumer protection provisions that apply to patients as users of health services. Substantively, the Civil Code contains provisions related to consumer protection, where patients are considered interested parties. The Civil Code plays a role in protecting consumers, which the aim of safeguarding patient interest and preventing patients from suffering losses due to unlawful acts and potential negligence that may be committed by medical personnel. In other words, the Civil Code aims to ensure that patients receive appropriate legal protection and shields them from potential losses caused by legal violations or negligence that may be carried out by the medical party (Nuryaasiinta, 2019).

Regarding liability for compensation due to medical services, the provision of Article 7 paragraph F is reinforced by Article 19 of Law No. 8 of 1999, which stipulates that business actors are responsible for providing compensation if a consumer suffers damage or loss as a result of using the goods or services they provide. This compensation can take the form of refund, replacement with equivalent goods or services, or the payment of indemnity, including healthcare services if necessary. This obligation must be fulfilled within a reasonable period from the time the loss occurs, and it does not eliminate the possibility of criminal charges if the importance of business actors's responsibility in guaranteeing the safety and ququality of services, as well as in restoring consumer losses when errors or failures in products or services occur. Therefore, legal protection for malpractice victims is not only benefitital for parents as the aggrieved party but also encourages improvements in the healthcare service system as a whole. Transparent and accountable mechanisms can enhance public trust in health institutions and facilities. Furthermore, the existence of legal liability motivates medical professionals to enhance their competence and adhere to professional ethical standards.

Legal action against a medical professional can only be taken if a patient suffers a loss die to a violation of previously agreed-upon obligation. A claim for default (wanprestasi) can be based on Article 1371 paragraph 1 of the Indonesian Civil Code (KUHPerdata), which grants the victim the right to claim the cost of recovery as well as compensation for injuries or disabilities arising from either intentional actions or negligence. In cases related to the violation of a medical contract, it must be proven that the doctor had an agreement with the patient and subsequently breached the contents of that agreement through a fault (Sinamo, 2019).

In civil law, a patient who is a victim of malpractice can file a claim for compensation based on breach of contract (*wanprestasi*) or unlawful acts (*onrechtmatige daad*). This lawsuit is typically directed at the medical professional personality or at the healthcare institution, such as a hospital, which is vicariously liable for the actions of the medical professionals under its supervision. The normative basis for this civil legal protection is found in: Article 1365 of the Indonesian Civil Code (KUHPerdata) concerning unlawful acts, Article 1366 concerning negligence, and Article 1367 paragraph 3 concerning liability for the actions of others within an employment relationship. Furthermore, Article 1239 of the Indonesian Civil Code can be invoked if there is a violation of therapeutic agreement between the patient and the doctor. The forms of compensation that can be claimed cover material and immaterial damages, including the cost of further medical care, loss of income, and psychological suffering due to the erroneous medical action (Naurah et al., 2025). This civil law provisions come into effect when the delivery of health services violates Article 1365 of the Indonesian Civil Code, constituting an unlawful act due to a medical action that deviates from the standard and involves negligence and/or intent. A healthcare service action is a therapeutic relationship (a contractual relationship for health services) between a doctor and a patient. This signifies the existence of an agreement between the two parties. In civil law, this falls under the principles of contract law, where both parties have rights and obligations in the engagement. Patients are protected by consumer law, whereby if an action is not in accordance with procedure, civil legal measures can be pursued as a form of consumer protection.

3.2 Resolution of Medical Disputes Based on Law No. 17 of 2023.

In contemporary healthcare services, the interaction between medical practitioners and patients goes beyond ethical obligations and creates a legal bond referred to as a therapeutic contract (Priyadi, 2020).

Health is an essential requirement for every individual. Healthcare is a service-based industry, but it possesses unique (*lex specialis*) features that distinguish it from other service or product sectors. These include consumer ignorance and supply-induced demand, where healthcare providers shape consumer decisions, leaving patients with limited bargaining power and restricted freedom of choice (Saragih et al., 2024).

Enforcement of the Discipline of Medical and Health Workers in Article 304 of Law No. 17 of 2023 concerning Health (UU No. 17 Tahun 2023): (a) In order to support the professionalism of Medical and Health Workers, the enforcement of professional discipline must be implemented; (b) For the enforcement of professional discipline as referred to in paragraph (1), the Minister shall establish a council tasked with matters in the field of professional discipline; (c) The council as referred to in paragraph (2) shall determine whether or not a violation of professional discipline has been committed by a Medical or Health Worker; (d) The council as referred to in paragraph (2) may be permanent or ad hoc; (e) Further provisions regarding the duties and functions of the council as referred to in paragraph (2) shall be regulated by a Government Regulation.

Article 305 number (1) of Law No. 17 of 2023 concerning Health, a patient or their family whose interests have been harmed by the actions of a medical worker or Health

Worker in providing Health Services may file a complaint to the council as referred to in Article 304. Article 306 of Law No. 17 of 2023 concerning Health; (1) A violation of discipline by a medical worker or health worker as referred to in Article 304 paragraph (3) shall be subject to disciplinary sanctions in the form of: a) a written warning; b) an obligation to undergo education or training at an educational institution in the health sector or at the nearest educational hospital competent to conduct such training; c) temporary deactivation of the Registration Certificate (STR); and/or d) a recommendation for the revocation of the Practice License (SIP). (2) The results of the examination as referred to in paragraph (1) are binding on the medical worker and health worker. (3) If a medical worker or health worker upon whom the disciplinary sanctions as referred to in paragraph (1) have been imposed is still suspected of a criminal offense, law enforcement officials shall prioritize dispute resolution through a restorative justice mechanism in accordance with the provisions of laws and regulations (UU No. 17 Tahun 2023).

Legal protection for patients is a crucial component of healthcare services to ensure that patient rights are not violated, whether due to mistakes, negligence, or intentional actions by medical professionals. If a deviation in service occurs, there are three legal avenues that can be pursued: criminal, civil, and administrative, depending on the nature and impact of the act. In the criminal sphere, the law is used to impose sanctions on medical professionals proven to have committed negligence or serious errors resulting in severe injury or death. The provisions of Article 359 and Article 360 of the Indonesian Criminal Code (KUHP) are often used as the legal basis—Article 359 regulates negligence resulting in death, while Article 360 regulates negligence causing severe injury. Furthermore, Article 440 of Law No. 17 of 2023 concerning Health also imposes criminal penalties for health workers whose negligence leads to serious injury or death. Even the refusal to provide emergency assistance is now considered a criminal act, as emphasized in Article 438 of the same Law. This protection through the criminal channel is repressive in nature, aimed at upholding justice for patients and providing a deterrent effect to prevent similar errors from recurring (Naurah et al., 2025).

Based on the provisions of Article 310 of Law No. 17 of 2023 concerning Health, it is stipulated that if a medical worker or health worker is suspected of having committed an error in the practice of their profession which has caused loss to a patient, any dispute arising from that error shall first be settled through alternative dispute resolution outside the court. This legal resource is to be resolved through a familial-deliberation (*kekeluargaan*) model between the complainant and the respondent. If the dispute is not resolved through familial deliberation, it may then be proceeded with other legal remedies, whether in the form of a civil lawsuit or a report to the police.

Mediation serves as a suitable method for resolving disputes outside litigation. Under Supreme Court Regulation (Perma) No. 1 of 2008, every civil case must undergo mediation prior to entering the courtroom; failure to do so renders the court's decision legally invalid (Yuliani, 2022).

Medical disputes are complex issues involving legal, medical, and social aspects. In Indonesia, there are several mechanisms that can be used to resolve medical disputes. This resolution process generally aims to find a fair solution for both parties, both the

patient and the medical professional. The mechanisms for resolving medical disputes are as follows: (Pattipeilohy & Yusuf, 2025):

- a. Out-of-Court Settlement (Non Litigasi)
 1. Mediation: A process in which a neutral third party (mediator) assists both parties in reaching an agreement. This is the most common method and is often faster and less expensive than legal channels.
 2. Conciliation: Similiar to mediation, but the third party plays a more active role in proposing suggestions or settlement options.
 3. Arbitration: Dispute resolution through a decision made by one or a panel of arbitrators chosen by both parties. The arbitrator's decision is binding.
 - d. Consumer Dispute Resolution Agency (BPSK): For patients who feel they have been harmed as consumers, a complaint can be filed with the BPSK.
- b. Settlement Through the Courts (Litigasi)
 1. Civil Lawsuit: If an agreement is not reached through non-litigation channels, the patient may file a civil lawsuit with the court to claim compensation for the losses incurred.
 2. Criminal Prosecution: If the medical error is considered a criminal offense, a criminal prosecution can be pursued.

4 Conclusions

The implementation of consumer protection principles from Law No.8 of 1999 provides a strong legal foundation for patients, as users of health services, to obtain comprehensive protection from harmful medical practices. Patients have the right to clear information, a sense of security, comfort, and compensation if services do not meet standards. In the civil, criminal, and ethical realms, the position of patients is reinforced through regulations that enforce the accountability of medical professionals and health facilities for any negligence or violation of the medical agreement. The research findings emphasize that improving the accountability of medical personnel and healthcare facilities requires harmonized regulations, structured oversight, and firm enforcement of sanctions. Theoretically, these findings also strengthen the legal framework for consumer protection by highlighting the need for regulatory alignment and improvements in dispute-resolution mechanisms so that patient protection in malpractice cases can function more effectively.

Law No. 17 of 2023 further reinforces the procedures for resolving medical disputes by prioritizing non-litigation channels, especially mediation and a familial-deliberation approach, before a case is brought to court. The establishment of Disciplinary Council is also a crucial step to assess profesional violations and impose binding sanctions. Criminal and civil channels remain available if non-litigation resolution is unsuccessful or if there is gross negligence resulting in serious harm. Overall, the provisions in the Consumer Protection Law and the Health Law complement each other in providing guarantees of protection, legal certainty, and a sence of security for patients, while simultaneously encouraging the improvement of quality and profesionalism among medical workers and health facilities.

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