

Arbitration and Alternative Dispute Resolution in Medical Disputes Within Sharia-Compliant Hospitals: The Role of Good Faith in Balancing Patient Justice and Professional Protection

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Abstract

The expansion of Sharia-compliant hospitals in Indonesia requires a context-specific mechanism for resolving medical disputes. Law No. 17 of 2023 mandates Alternative Dispute Resolution (ADR), including arbitration, that aligns with Islamic legal principles—particularly good faith. This principle, rooted in sincerity, fairness, and respect, underpins Islamic jurisprudence and ensures ethical dispute resolution. This study proposes an ADR framework, specifically arbitration, for Sharia-compliant hospitals grounded in good-faith principles that safeguard patients' rights while protecting healthcare professionals from unjust claims. Integrating values such as *niyyah* (sincere intent), *ṣidq* (honesty), *adl* (justice), *huqūq* (respect for rights), *amānah* (responsibility), and avoidance of *ḍarar* (harm) fosters trust, fairness, and accountability, thereby sustaining an ethical healthcare environment responsive to both patient welfare and practitioner integrity.

Keywords: ADR, Arbitration, Good Faith, Sharia-compliant Hospitals, Medical Disputes.

I. Introduction

Sharia-compliant hospitals in Indonesia are those that operate in accordance with Islamic law, with their Sharia implementation approved by the National Sharia Council of the

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Indonesian Ulema Council (DSN-MUI). To standardize operations, the Indonesian Islamic Healthcare Providers Association (MUKISI) collaborated with DSN-MUI, resulting in Fatwa No. 107/DSN-MUI/X/2016, which outlines Sharia-compliant procedures for hospitals. These standards emphasize the use of halal and pure (*thoyyib*) products, the creation of an Islamic-friendly environment, and the compliance of healthcare services, financial transactions, and hospital management with Islamic principles.¹ The aim is to reassure Muslim patients that the hospital has indeed adopted Islamic values in its services, eliminating any doubt about the treatments provided. Sharia-compliant hospitals should not only deliver healthcare services but also serve as a platform for da'wah, incorporating and promoting Islamic values in every aspect of their operations.² This mechanism should address disputes that may arise between patients and medical professionals, or between patients and hospital management. Such a system should adhere to Islamic principles of good faith, fairness, and justice, ensuring that conflicts are resolved in accordance with Islamic jurisprudence. Unfortunately, despite the strong commitment of hospitals to implementing Islamic services, it has not yet been fully adopted by some Sharia-Compliant hospitals owned by Islamic organizations.³

Law No. 17 of 2023 on Health emphasizes Alternative Dispute Resolution (ADR), representing a comprehensive reform of Indonesia's healthcare system. A significant feature of this law is its focus on ADR mechanisms for resolving disputes between healthcare professionals and patients. Article 310 of the Health Law stipulates that "In cases where medical or healthcare professionals are suspected of making mistakes in the performance of their duties that result in harm to patients, disputes arising from such errors are to be resolved first through alternative dispute resolution mechanisms outside the court." This approach aims to promote amicable settlements, ease the burden on the judicial system, and foster harmonious relationships within the healthcare sector.

According to Achmad Djauhari, an arbitrator in Basyarnas, disputes can arise from disagreements over Sharia agreements (*akad*), such as transactions involving medications and medical equipment, dealings between hospitals, contracts with suppliers of drugs and

¹ Mirza Aulia et al, Analysis of Sharia Hospital Services: Systematic Literature Review, JMMR (Jurnal Medicoeticolegal dan Manajemen Rumah Sakit), 14 (1): 119-133, April 2025; Ega Dwi Putranto and Qurratul Aini, "The Role of Islamic Culture in Improving Hospital Employee Performance in Indonesia," Jurnal Aisyah: Jurnal Ilmu Kesehatan 9, no. 2 (September 30, 2024), <https://doi.org/10.30604/jika.v9i2.2918>, p. 1131.

² Nur Hidayah et al., "Integration of Islamic Values Into Balanced Scorecard As A Strategic Management System at A Sharia Hospital," Jurnal Aplikasi Bisnis Dan Manajemen, May 31, 2024, <https://doi.org/10.17358/jabm.10.2.351>, p. 356.

³ Nurul Hikmatul Qowi, Sylvi Harmiardillah, and Trijati Puspita Lestari, "Application of Islamic Values in the Health Services: A Nurse Perspective," Jurnal Keperawatan 14, no. 02 (July 30, 2023), <https://doi.org/10.22219/jk.v14i02.26398>, p. 112.

medical devices, and agreements with healthcare professionals.⁴ Fatwa No. 107/DSN-MUI/X/2016, which provides guidelines for operating hospitals in accordance with Sharia (Islamic) principles, underscores the centrality of good faith in resolving medical disputes within Sharia-compliant hospitals. By emphasizing that hospitals must prioritize humanity when addressing patients' healthcare needs, and that hospitals, patients, and their representatives should consistently uphold ethical conduct and proper decorum, the fatwa provides a normative basis for fair and compassionate dispute resolution. In this context, the principle of good faith requires all parties to engage honestly, respectfully, and sincerely, focusing on equitable outcomes rather than asserting legal or contractual rights. Thus, integrating good faith into arbitration and ADR aligns the process with both the ethical and religious values central to sharia-compliant healthcare institutions. To address these medical disputes effectively and in line with the ethos of Islamic hospitals, the mechanisms for dispute resolution must be grounded in Islamic values. This means adopting arbitration and ADR methods that prioritize forgiveness, reconciliation, and relationship restoration while upholding justice. In Islamic-based ADR, forgiveness, reconciliation, and the restoration of relationships are not merely procedural tools, but are ethical and religious obligations rooted in Islamic principles. Forgiveness (*afwu*) is considered a moral duty that promotes spiritual and social harmony, reconciliation (*sulh*) emphasizes mutually agreed settlements that preserve dignity and relationships, and restoration of relationships ensures that parties return to a state of trust and communal harmony, consistent with the values of justice (*adl*) and compassion (*rahmah*).

In contrast, conventional arbitration and ADR, while it may encourage compromise or settlement, primarily focuses on efficient dispute resolution, legal rights, and avoiding litigation. It rarely incorporates ethical or spiritual imperatives, and concepts like forgiveness or restoring long-term relational harmony are not formal objectives of the process. By aligning the arbitration and ADR process with Islamic principles, these hospitals can resolve conflicts effectively while upholding ethical and spiritual values, fostering trust and harmony among all parties.

The ethos of amicable settlement in ADR, as emphasized in the Quran, was further exemplified by early practices, including those of Prophet Muhammad, who frequently served as a mediator or a mediator-arbitrator to resolve disputes. Both the Prophet and the early leaders of the Muslim community that followed him facilitated the resolution of private and public disputes while emphasizing the virtue of amicable settlement.⁵ In

⁴ Article: Perkuat Sinergitas, BASYARNAS-MUI Gandeng MUKISI, <https://basyarnas-mui.org/2022/01/10/perkuat-sinergitas-basyarnas-mui-gandeng-mukisi/>, downloaded 5 September 2025.

⁵ Said Bouheraoua, "Foundations of Mediation in Islamic Law and Its Contemporary Application," 2020, https://www.asiapacificmediationforum.org/resources/2008/11-_Said.pdf, p. 1-8.

Islam, ADR methods are deeply rooted in its jurisprudential and ethical framework. The methods include *ṣulh* (conciliation), *Tabkīm* (arbitration), and *Wasta* (mediation). *Ṣulh* is an Islamic method of dispute resolution that emphasizes mutual agreement, reconciliation, and harmony between conflicting parties. It is rooted in the principle of fostering peace and maintaining community relationships.⁶ “*Wasta*” literally means “the middle” and is linked to the verb *yatawassat*, which signifies guiding parties toward a middle ground or compromise. It refers both to the act of mediation and the individual who serves as the mediator or intermediary.⁷ *Tabkīm* in Islam is the process of resolving disputes through neutral arbitrators (*hakam*) who make binding decisions based on justice and Islamic principles. The Quran supports this method, as seen in Surah An-Nisa (4:35), which encourages arbitration to resolve marital conflicts, and Surah Al-Hujurāt (49:9-10), which advocates reconciliation among believers.⁸

The research question in this paper is: in what ways can Islamic hospitals operationalize the principle of good faith in healthcare delivery by upholding Islamic ethical standards, avoiding practices prohibited by Sharia, and incorporating arbitration to resolve disputes between medical practitioners and patients? In Indonesia, disputes in Islamic hospitals often involve sensitive issues such as patient consent, treatment decisions, and financial responsibilities. In several cases, families have raised objections when hospital decisions were perceived as inconsistent with Islamic ethical principles, yet the resolution was pursued only through conventional mediation processes that did not address the parties’ religious concerns. A striking example is the case at an Islamic hospital in Duren Sawit, East Jakarta, where a 26-year-old patient, identified as H, lost four fingers after an emergency amputation that followed childbirth complications.⁹ The family claimed they were asked to sign a consent for a ventilator while the patient was semi-conscious, raising questions about informed consent and medical ethics from an Islamic perspective. However, the dispute proceeded only through legal representation and conventional complaint mechanisms, with no Islamic arbitration platform to address the ethical and faith-based sensitivities at stake. Similarly, at RS Islam Cempaka Putih in September 2024, parents alleged their newborn was exchanged with another baby.¹⁰

⁶ Aseel Al-Ramahi, “Sulh: A Crucial Part of Islamic Arbitration,” *SSRN Electronic Journal*, 2008, <https://doi.org/10.2139/ssrn.1153659>.

⁷ R. B. Cunningham and Y. K. Sarayrah, *Wasta: The Hidden Forces in Middle Eastern Society* (London: Praeger, 1993).

⁸ Al-Ramahi, “Sulh: A Crucial Part of Islamic Arbitration,” p 12-13.

⁹ RS Islam Jaktim klarifikasi dugaan malapraktik, sepakat damai (East Jakarta Islamic Hospital Clarifies Alleged Malpractice, Reaches Peaceful Settlement), <https://www.antaranews.com/berita/5026633/rs-islam-jaktim-klarifikasi-dugaan-malapraktik-sepakat-damai>, 9 Agustus 2025, downloaded: 5 September 2025.

¹⁰ Kasus Bayi Diduga Tertukar di RS Islam Cempaka Putih Akan Dihentikan (The Alleged Baby-Swapping Case at RS Islam Cempaka Putih Will Be Dropped.), Kompas 24 December 2024, available at:

While the hospital facilitated a DNA test and the Komisi Perlindungan Anak Indonesia (KPAI) engaged in mediation, the resolution relied solely on secular legal and procedural mechanisms, without Islamic arbitration, to safeguard religious legitimacy. These cases highlight the urgency of establishing Islamic ADR, including arbitration mechanisms in healthcare, to complement existing dispute-resolution systems and ensure outcomes that resonate with both legal and religious values.

The primary objective of this research is to highlight the critical importance of applying the principle of good faith under Islamic law to safeguard patients from negligent and irresponsible medical practices while simultaneously protecting medical professionals from frivolous claims. This study addresses the research gap by linking the theoretical concept of good faith in Islamic legal traditions with its practical application in resolving healthcare disputes through ADR, especially arbitration. It emphasizes how, in theory, the principle of good faith fosters justice, equity, and ethical conduct in healthcare settings within the context of Islamic legal traditions.

To date, limited research has analyzed the use of ADR within Islamic hospitals to provide justice for patients in cases of medical malpractice and to offer legal protection for medical practitioners against frivolous claims. This research gap may stem from the relatively recent enactment of the Health Law and the lack of comprehensive studies on its application within Islamic healthcare contexts. Moreover, the concept of good faith in Islam, particularly in the context of arbitration and ADR, remains underexplored, with most studies focusing primarily on contractual matters.¹¹ Therefore, it is essential to examine how good faith in Islam applies specifically to arbitration within ADR, addressing both patient justice and practitioner protection in Islamic healthcare. This research employs a juridical-normative methodology by examining existing legal sources and authoritative interpretations, including Indonesian statutory law, relevant judicial precedents, and Islamic law, to establish the doctrinal basis for the principle of good faith in dispute resolution.

II. Balancing Risks in Healthcare: Patient Vulnerabilities, Professional Liabilities, and the Challenge of Frivolous Claims

In the Indonesian legal system, the legal relationship between patients and medical practitioners, such as doctors, nurses, midwives, and pharmacists, is primarily governed

<https://megapolitan.kompas.com/read/2024/12/24/13065931/kasus-bayi-diduga-tertukar-di-rs-islam-cempaka-putih-akan-dihentikan>, downloaded at: 5 September 2025.

¹¹ Ebrahim Shoarian and Mahsa Jafari, "Good Faith Principle in Contract Law: A Comparative Study under Shari'ah, Islamic Law Jurisdictions with Emphasis on Iranian Law," *Arab Law Quarterly* 37, no. 4 (July 1, 2021): 391–417, <https://doi.org/10.1163/15730255-bja10089>, p. 3.

by contract law and is referred to as an *inspanning verbintennis*, or *best-efforts obligation*.¹² This concept is reflected in several provisions of the Indonesian Civil Code (KUH Perdata). Article 1239 establishes that an obligation to perform or not to perform an act must be fulfilled diligently, while Articles 1243–1248 regulate liability for breach of such obligations (*wanprestasi*). In addition, Article 1338 requires contracts to be performed in good faith (*itikad baik*), and Article 1365 provides the basis for liability under unlawful acts (*perbuatan melawan hukum*), which is often invoked in medical malpractice disputes. Together, these provisions form the doctrinal foundation for understanding the obligations and responsibilities of medical practitioners toward patients.

Patients have the right to receive adequate, informed, and respectful care, with their health and safety prioritized, as guaranteed under Article 32 of Law No. 44 of 2009 on Hospitals. Legal practitioners have an obligation to provide competent, ethical, and timely medical treatment, in accordance with Law No. 29 of 2004 on Medical Practice, Articles 51–52, and to maintain confidentiality. Hospitals, as institutions, have both the right and the obligation to manage the healthcare environment, ensuring that appropriate facilities, resources, and staff are available to meet patients' needs, while also complying with relevant regulations and maintaining patient rights and safety within the institution as stipulated in Law No. 44 of 2009 on Hospitals, Articles 29 and 31.

In the context of *inspanning verbintenis* (an obligation of effort, not result, often seen in civil law systems), medical services provided to patients are bound by the principle that healthcare professionals must deliver their services to the best of their ability, exercising reasonable care and skill, but without guaranteeing specific outcomes.¹³ In an “*inspanning verbintenis*,” the healthcare provider commits to delivering a diligent effort rather than a guaranteed result.¹⁴ While healthcare professionals are not bound to guarantee specific outcomes under the principle of *inspanning verbintenis*, it is equally important that they uphold their duty of care by clearly communicating the procedures, risks, and expected outcomes to patients. This ensures that patients are fully informed and can provide consent with a clear understanding of the potential risks involved. The obligation to explain procedures, risks, and expected outcomes clearly to patients is part of the duty of

¹² Ida Sugiarti, “Legal Protection of Patient Rights to Completeness and Confidentiality in Management of Medical Record Documents,” in *The Proceedings of the 2nd Bakti Tunas Husada-Health Science International Conference (BTH-HSIC 2019)* (Paris, France: Atlantis Press, 2020), <https://doi.org/10.2991/ahsr.k.200523.045>.

¹³ Sugiarti, “Legal Protection of Patient Rights to Completeness and Confidentiality in Management of Medical Record Documents.”

¹⁴ Bonifasius Nadya Aribowo, B. Resti Nurhayati, and Sofyan Dahlan, “Persepsi Pasien Tentang Aspek Hukum Perikatan Upaya (Inspanning Verbintenis) dalam Transaksi Terapeutik Antara Dokter dengan Pasien di Rsud Kota Salatiga,” *SOEPR4* 3, no. 1 (January 6, 2018): 52, <https://doi.org/10.24167/shk.v3i1.696>.

care.¹⁵ If communication is insufficient or misunderstood, patients may consent to treatments without fully appreciating the risks, leading to dissatisfaction or disputes if outcomes differ from expectations. For instance, surgery may lead to infections, or medications may cause adverse reactions despite proper prescription and monitoring. In an “*inspanning verbintenis*,” these risks do not necessarily constitute a breach of the obligation, provided the professional acted in accordance with standard care practices.¹⁶

The relationship between patients and medical practitioners in hospital settings is inherently imbalanced,¹⁷ often leaving patients in a vulnerable position where they may be exploited or unable to assert their rights. Medical practitioners possess specialized knowledge and training that patients typically lack. This disparity can make patients overly reliant on practitioners to interpret medical information, explain procedures, and recommend treatments. Illness and hospitalization often leave patients in a weakened emotional and physical state, making them more susceptible to exploitation. This vulnerability can also lead to overcharging for services, unnecessary procedures, or inadequate care.¹⁸

Disputes can arise if patients perceive negligence when outcomes are unfavorable, even if the provider fulfilled their obligations under the “*inspanning verbintenis*” standard. Patients may have unrealistic expectations or misunderstand the nature of “*inspanning verbintenis*,” believing they are entitled to specific results. This mismatch can lead to legal claims, even when the provider acted competently. Providers need to document their efforts thoroughly to defend against such claims.¹⁹

Given these inherent power imbalances and the heightened vulnerability of patients in hospital settings, ADR provides a more appropriate forum for dispute resolution than conventional litigation. ADR processes, including arbitration, are generally more confidential, less adversarial, and more responsive to the need for preserving the doctor–patient relationship. Within this framework, the principle of good faith becomes essential to ensure that resolutions are fair, compassionate, and ethically grounded. Good faith serves as a moral and procedural safeguard, ensuring that both parties are treated honestly, transparently, and with respect throughout the dispute resolution process. In

¹⁵ Sulistini Sulistini, Iffatin Nur, and Akhyak Akhyak, “Medical Disputes on the Concept of Inspanningsverbintenis vs Resultaatsverbintenis: A Critical Review,” *European Journal of Humanities and Social Sciences* 3, no. 2 (April 11, 2023): 103–14, <https://doi.org/10.24018/ejsocial.2023.3.2.435>.

¹⁶ Anang Riyan Ramadianto, “The Deviation of Informed Consent Practices: Understanding The Inspanning Verbintenis And Legal Aspects,” *Jurnal Ilmiah Dunia Hukum*, October 19, 2023, 56, <https://doi.org/10.56444/jidh.v0i0.3462>.

¹⁷ Chris Stern Hyman and Carol B. Liebman, “Mediating Medical Malpractice Lawsuits: The Need for Plaintiff and Physician Participation,” *Dispute Resolution Magazine* 16, no. 3 (2010).

¹⁸ Frank Griffin, “Fighting Overcharged Bills from Predatory Hospitals,” *Arizona State Law Journal* 51, no. 3 (2019): 1003–56.

¹⁹ Iran Sahril, “Implementation Of Standard Clauses In Therapeutic Agreements Related To The Legal Protection Of Consumer Health Services,” *Jurnal Pendidikan Dan Konseling* 4, no. 4 (2022).

such a context, good faith helps restore trust, encourages open communication, and mitigates the risk of further harm or exploitation. It compels healthcare providers to act with integrity and compassion, while also guiding facilitators to create a safe, equitable space for patients to express their concerns and seek redress. Thus, incorporating good faith into ADR is not only consistent with Islamic ethical principles but also crucial for achieving fair and just outcomes in medical disputes. In medical disputes, where issues often involve human dignity, patient safety, and professional responsibility, good faith helps create an environment of openness and cooperation. This allows patients and healthcare providers to share information transparently, acknowledge mistakes or misunderstandings, and work toward mutually acceptable solutions. Thus, good faith not only aligns ADR with Islamic ethical foundations but also enhances the legitimacy and fairness of the resolution, ensuring outcomes that balance both justice and compassion.

Different healthcare professionals face different risks. Doctors face substantial risks related to diagnosis, treatment, and decision-making. A misdiagnosis, delayed diagnosis, or prescribing incorrect treatment can lead to severe consequences, including patient harm or death, which may result in malpractice claims.²⁰ They are exposed to potential lawsuits if patients or families perceive negligence. Nurses are at the frontline of patient care and are often responsible for implementing doctors' orders and monitoring patient conditions. Risks include medication administration errors, failing to recognize critical changes in a patient's condition, and inadequate documentation, all of which can lead to liability claims.²¹ While midwives operate in a sensitive area of healthcare, assisting with childbirth and caring for mothers and newborns. Professional risks include handling emergencies like fetal distress, maternal hemorrhage, or complicated deliveries, where any delay or error can result in serious harm or death. Midwives may also face legal consequences if patients or families claim negligence in the management of prenatal or postpartum care.²² Furthermore, pharmacists face risks primarily related to the dispensing and management of medications. Errors in filling prescriptions, providing incorrect dosages, or failing to identify potential drug interactions can lead to severe harm to patients and legal liability.²³

²⁰ James M. Ringer, "Legal Consequences of the Misdiagnosed Patient," in *The Misdiagnosis Casebook in Clinical Medicine* (Cham: Springer International Publishing, 2023), 515–30, https://doi.org/10.1007/978-3-031-28296-6_69.

²¹ Fu-In Tang et al., "Nurses Relate the Contributing Factors Involved in Medication Errors," *Journal of Clinical Nursing* 16, no. 3 (March 27, 2007): 447–57, <https://doi.org/10.1111/j.1365-2702.2005.01540.x>.

²² Akram Peyman et al., "Legal Complaints about Midwives and The Impact on The Profession," *Nursing Ethics* 26, no. 1 (February 6, 2019): 148–60, <https://doi.org/10.1177/0969733016689816>.

²³ Tanya E. Karwaki, "Establishing a Patient-Pharmacist Relationship: Clarifying Duties and Improving Patient Care," *Baylor Law Review* 72, no. 3 (2020): 507–63.

Medical malpractice occurs when a healthcare provider fails to meet the accepted standard of care, resulting in harm to the patient.²⁴ This failure involves negligence, errors, or omissions that could have been avoided with reasonable care and skill. It reflects a breach of the healthcare provider's duty toward the patient.²⁵ These accidents are typically not the result of negligence, but are somewhat inherent risks associated with medical treatment.

Medical malpractice may lead to frivolous patient claims against medical practitioners, endangering the medical profession. Even if a frivolous claim is ultimately dismissed, the mere accusation of malpractice can tarnish a medical practitioner's reputation. This loss of trust may deter patients from seeking their care in the future and negatively impact their professional standing within the medical community.²⁶ Defending against frivolous lawsuits can be costly, requiring practitioners to spend considerable resources on legal fees, expert witnesses, and court proceedings. Even with malpractice insurance, prolonged litigation can lead to increased premiums or uncovered expenses, straining financial stability.²⁷ Practitioners may become overly cautious or suspicious, which could reduce open communication, empathy, and the quality of patient-centered care.²⁸ Fear of medical malpractice, medical accidents, and frivolous claims can profoundly affect medical practitioners, diminishing their confidence and ability to carry out their professional responsibilities. This fear creates a defensive mindset that can negatively impact both the quality of care and the healthcare system.²⁹ For example, they develop a lack of confidence. This lack of confidence can lead to hesitation in making critical decisions, potentially delaying treatments or reducing the effectiveness of care. Thus, it is important to provide medical practitioners with legal protection. Practitioners need a sense of security to make swift, confident decisions in critical situations. Legal protections can alleviate fear and enable them to focus on delivering the best care without undue

²⁴ Munir Fuady, *Sumpah Hippocrates Aspek Hukum Malpraktik Dokter* (Bandung: Citra Aditya Bakti, 2005).

²⁵ Clinical Excellence Commission, "What Is Patient Safety Incident," accessed January 28, 2025, https://www.cec.health.nsw.gov.au/__data/assets/pdf_file/0018/259011/what_is_a_patient_safety_incident.pdf.

²⁶ Choy Hew Hei and Aniza Ismail, "Indicators for Medical Mistrust in Healthcare—A Review and Standpoint from Southeast Asia," *Malaysian Journal of Medical Sciences* 24, no. 6 (December 29, 2017): 5–20, <https://doi.org/10.21315/mjms2017.24.6.2>.

²⁷ Tanya Albert Henry, "Nearly 30% of Medical Liability Insurance Premiums Rose in 2021," *American Medical Association*, March 23, 2022, <https://www.ama-assn.org/practice-management/sustainability/nearly-30-medical-liability-insurance-premiums-rose-2021>.

²⁸ James D. Reschovsky and Cynthia B. Saiontz-Martinez, "Malpractice Claim Fears and the Costs of Treating Medicare Patients: A New Approach to Estimating the Costs of Defensive Medicine," *Health Services Research* 53, no. 3 (June 26, 2018): 1498–1516, <https://doi.org/10.1111/1475-6773.12660>.

²⁹ Reschovsky and Saiontz-Martinez, "Malpractice Claim Fears and the Costs of Treating Medicare Patients," 1502.

hesitation. Protecting medical practitioners from unwarranted legal risks ensures they remain willing to treat high-risk cases and work in underserved areas.³⁰

Using arbitration or other ADR methods as a first step in resolving medical disputes can help filter out frivolous claims. ADR allows disputes to be resolved early in the process, often before they escalate into formal litigation. A good-faith effort during *sulh*, *wasta*, and *tahkim* can help determine whether a claim has merit. If a claim is determined to be frivolous during the ADR process, it can be dismissed or resolved without proceeding to court, saving time and resources for all parties.³¹

III. Exploring the Principle of Good Faith in Secular Law and Islamic Jurisprudence

Conventional ADR, including arbitration, is based on secular principles of party autonomy, non-antagonistic resolution, and fairness.³² It aims to provide an alternative to litigation by fostering voluntary and impartial resolution methods, focusing on pragmatism and enforceability³³ rather than religious or ethical considerations. On the other hand, in Islam, the procedural aspect of dispute resolution is grounded in the fundamental principles of a fair trial, which are inherently tied to the obligation to act in good faith.³⁴ The doctrine of *Maqāṣid al-Shari'ah* emphasizes *adl* (justice) and *maṣlahah* (public welfare). All ADR methods, including arbitration, that prioritize equitable resolutions and minimize harm align with these objectives. Much research has been done showing that ADR in Islam has brought *maṣlahah*. Syed Khalid Rashid states that a speedy, inexpensive settlement of disputes through ADR aligns with *maṣlahah* by ensuring that justice is accessible, efficient, and does not impose unnecessary financial or emotional burdens on the parties.³⁵

In Islam, all ADR decisions are bound by Shariah principles, ensuring adherence to Islamic law and ethics. Thus, settlement or compensation must align with Shariah principles, meaning they cannot allow what is prohibited (*haram*) or forbid what is permitted (*halal*).³⁶ This is, for example, because *ribā* (excessive interest) is prohibited;

³⁰ Daria Litvina, Anastasia Novkunskaya, and Anna Temkina, "Multiple Vulnerabilities in Medical Settings: Invisible Suffering of Doctors," *Societies* 10, no. 1 (December 25, 2019): 5, <https://doi.org/10.3390/soc10010005>.

³¹ Nadja Alexander, "The Mediation Meta-Model—the Realities of Mediation Practice," *ADR Bulletin* 12, no. 6 (2011).

³² Wilfred Abraham and Thayananthan Baskaran, "Main Features of Arbitration," in *Arbitration in Malaysia: A Practical Guide*, 2017, p. 2.

³³ Abraham and Baskaran, "Main Features of Arbitration," 21.

³⁴ N. Majeed, "Good Faith and Due Process: Lessons from the Shari'ah," *Arbitration International* 20, no. 1 (March 1, 2004): 97–112, <https://doi.org/10.1093/arbitration/20.1.97>, p. 106.

³⁵ Syed Khalid Rashid, "Alternative Dispute Resolution in the Context of Islamic Law," *The Vindobona Journal of International Commercial Law and Arbitration* 8, no. 1 (2004), p. 118.

³⁶ Majeed, "Good Faith and Due Process: Lessons from the Shari'ah."

dispute settlement that requires medical practitioners to pay excessive interest is prohibited. Also, a settlement involves compensation in exchange for a promise of future medical treatment, without clearly defined terms such as when or how the treatments will be delivered. This creates uncertainty (*gharar*), which is prohibited in Shariah. In cases where a patient demands excessive compensation far beyond the actual harm caused, such as claiming millions for a minor inconvenience, this may be considered a violation of the Shariah principles of *adl* and *gharar*. Compensation must be just and reflective of the actual harm suffered. The principles ensure that settlements are not only fair and just but also free from religiously impermissible elements, reinforcing the broader goals of justice and ethical compliance in Islamic law.

In conventional ADR arbitration, practices deemed impermissible under Islamic law may be acceptable because Shariah principles do not bind them. For instance, a settlement requiring medical practitioners to pay *riba* as part of financial compensation is permitted in conventional ADR and arbitration, provided it aligns with the governing contract laws or local legal frameworks. Similarly, agreements involving compensation through vague promises of future medical treatments, without clearly defined terms or timelines, are often acceptable in conventional systems despite the uncertainty (*gharar*) they introduce. Additionally, conventional arbitration may allow patients to demand excessive compensation, even if it far exceeds the actual harm suffered, as long as it complies with the terms negotiated between the parties. Unlike Islamic arbitration, which prohibits *riba* and *gharar*, conventional ADR and arbitration focuses primarily on legal enforceability and mutual agreement, irrespective of religious considerations. This divergence highlights the distinct frameworks underpinning the two approaches to dispute resolution.

The principle of good faith is crucial to dispute resolution. The provisions of the World Trade Organization (WTO) that address good faith, particularly in the context of WTO disputes, include Article 3.10 of the Dispute Settlement Understanding (DSU), which states that “if a dispute arises, all Members are required to participate in these procedures with the intention of resolving the dispute in good faith.”³⁷ Article 4.3 states “If a request for consultations is made pursuant to a covered agreement, the Member to which the request is made shall, unless otherwise mutually agreed, reply to the request within 10 days after the date of its receipt and shall enter into consultations in good faith within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution.”³⁸ Another mention of good faith can

³⁷ World Trade Organization, “Understanding on Rules and Procedures Governing the Settlement of Disputes,” accessed January 2, 2025, https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm.

³⁸ World Trade Organization, “Understanding on Rules and Procedures Governing the Settlement of Disputes.”

be found in the Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade (GATT) 1994, which addresses, among other things, the requirement for compensatory adjustments when increasing bound tariffs during the creation of a customs union or free trade area. Members are expected to engage in negotiations. “These negotiations will be entered into in good faith with a view to achieving mutually satisfactory compensatory adjustment.”³⁹ Good faith is also referenced in several provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). Article 24 of the TRIPS Agreement, which concerns negotiations to enhance the protection of individual geographical indications, includes three references to good faith. These references emphasize that parties involved in these negotiations are expected to act with honest intentions and collaborate fairly and transparently. The principle of good faith ensures that negotiations are conducted with a focus on achieving mutually beneficial outcomes and upholding the integrity of intellectual property protections for geographical indications.⁴⁰ Together, the WTO, GATT, and TRIPS Agreement underscore the vital role of good faith in fostering cooperation, fairness, and the resolution of disputes in a mutually beneficial manner during negotiation.

In the legal context, good faith means an honest intention to abstain from taking any unconscientious advantage of another.⁴¹ The core of good faith lies in honesty, which reflects a subjective mindset; however, the principle also encompasses concepts of fairness and reasonableness, which are based on an objective perspective.⁴² The principle of good faith carries substantial normative significance and is broadly acknowledged by scholars as a key component across various legal systems.⁴³ Civil law systems typically mandate that contracts be both established and executed in good faith.⁴⁴ In Indonesian ADR, good faith is mentioned in Article 6. Article 6 (1) Law No 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Arbitration and ADR Law) stipulates that “Civil disputes or disagreements can be resolved by the parties through alternative dispute resolution based on good faith, bypassing litigation in the District Court.”

Furthermore, article 6 (7) of the Law states that “a written agreement for dispute or disagreement resolution is final and binding on the parties, to be carried out in good faith,

³⁹ World Trade Organization, “The Original Mandate,” accessed January 2, 2025, https://www.wto.org/english/tratop_e/region_e/region_art24_e.htm.

⁴⁰ World Trade Organization, “Agreement on Trade-Related Aspects of Intellectual Property Rights,” accessed January 2, 2025, https://www.wto.org/english/docs_e/legal_e/27-trips.pdf.

⁴¹ Black’s Law Dictionary, “Good Faith,” accessed January 20, 2025, https://blacks_law.en-academic.com/30316/good_faith.

⁴² Andrew D. Mitchell, “Good Faith in WTO Dispute Settlement,” *Melbourne Journal of International Law* 7, no. 2 (October 2006), p. 340.

⁴³ Mitchell, “Good Faith in WTO Dispute Settlement,” 340.

⁴⁴ Article 1338 paragraph (3), “Indonesian Civil Code” (n.d.); Article 242, “German Civil Code” (n.d.).

and must be registered with the District Court within no later than 30 (thirty) days from the date of signing.” Unfortunately, there is no explanation of the meaning of good faith in the Arbitration and ADR Law. Mariam Darus states that good faith refers to an action performed in a reasonable and appropriate manner. Such an action is carried out without deceit, without causing harm to others, and with trust between the parties involved.⁴⁵ Meanwhile, Ismijati Jeni points out that the principle of good faith has two meanings: subjective good faith and objective good faith. Subjective good faith refers to honesty, as outlined in Article 530 of the Civil Code regarding the position of authority (*bezit*).

Meanwhile, objective good faith refers to propriety, as defined in Article 1330, Paragraph (3) of the Civil Code.⁴⁶ Thus, in Indonesia, the application of good faith in ADR, including arbitration, requires both honest intention and adherence to reasonable, fair, and proper conduct. Based on the discussion, it is clear that the principle of good faith in Indonesia overlaps substantially with its international application, encompassing honesty, fairness, and reasonableness.

In Islam, trade practice is strictly governed by good faith.⁴⁷ Islamic law emphasizes that trade should always involve a fair exchange of benefits, ensuring that profits are made without imposing any unlawful pressure on another party or engaging in fraudulent practices. This principle reflects the Islamic commitment to justice, equity, and integrity in all commercial dealings.⁴⁸ The concept of good faith in an agreement is clearly illustrated in a Hadith narrated by Abu Dawud: “From Abu Hurairah, who reported from the Prophet, he said: ‘Indeed, Allah says: I am the third party between two people who are in partnership, as long as one of them does not betray the other. If one betrays the other, then I will leave them.’” (HR. Abu Dawud).⁴⁹ This Hadith explains that when two people are in partnership, as long as neither betrays the other, their partnership will be blessed. However, if one of them betrays the other, Allah will withdraw from their partnership, thereby rendering the blessing lost. This explains that betrayal in a partnership constitutes bad faith.

Many Islamic jurists cite the following Quranic verses concerning good faith: QS. Al-Maidah (5:1): “O you who have believed, fulfill [all] contracts. Lawful for you (for food)

⁴⁵ HukumOnline, “Profesor FH USU Bedah Definisi Asas ‘Iktikad Baik,’” January 11, 2014, <https://www.hukumonline.com/berita/a/profesor-fh-usu-bedah-definisi-asas-iktikad-baik-lt52d150ceef12a/>.

⁴⁶ Teguh Puji, “Pengukuhan Prof Ismijati Jeni: Itikad Baik Sebagai Asas Hukum,” Universitas Gadjah Mada, September 11, 2007.

⁴⁷ Mahmoud Fayyad, “Measures of the Principle of Good Faith in European Consumer Protection and Islamic Law, a Comparative Analysis,” *Arab Law Quarterly* 28, no. 3 (September 23, 2014): 205–30, <https://doi.org/10.1163/15730255-12341283>, p. 219.

⁴⁸ Fayyad, “Measures of the Principle of Good Faith,” 219.

⁴⁹ Bambang Santoso, Muhammad Arifin, and Ramlan, “Legal Protection of Compensation for Victims of Investment Crime in the Perspective of Islamic Law,” in *Proceeding International Seminar on Islamic Studies* (Medan, 2023), p. 1182.

are the animals of grazing livestock, except for what is recited to you, [except for] hunting while you are in the state of pilgrimage.⁵⁰ In addition, An-Nisa (4:29) states: “O you who believe! Do not consume your wealth among yourselves unjustly, but let there be trade by mutual consent.” This verse highlights the importance of fairness, honesty, and mutual agreement in trade and economic transactions.⁵¹ Indeed, Allah decrees what He intends.” QS. Al-Isra (17:14): “... and fulfill the promise; indeed, the promise will be asked about.” These three verses are interpreted in the practice of contract law in Islamic law in Indonesia, specifically in Article 21 of the Compilation of Sharia Economic Law, which is enforced pursuant to the Supreme Court Regulation of the Republic of Indonesia No. 02 of 2008 on the Compilation of Sharia Economic Law. It states that the principles of a contract (agreement) include voluntariness, trust, caution, mutual benefit, equality, transparency, and good faith.⁵²

The doctrine of *Maqasid al-Shariah* centers on promoting *maslahah* (the welfare and well-being of humanity in both this world and the hereafter). Al-Syatibi’s recognition of *maṣlahah* as the ‘illah (underlying rationale) for Islamic law underscores that the ultimate purpose of legal rulings is to ensure the betterment of human life.⁵³ In contrast, Imam Al-Ghazali defines *maslahah* as the pursuit of what is beneficial (*manfa’a*) and the removal of what is harmful (*mudārat*). In its essential meaning, *maṣlahah* serves as a guiding principle in Islamic law, ensuring that actions and decisions promote the well-being of individuals and society. It emphasizes the balance between promoting good and preventing harm, aligning with the objectives of Sharia.⁵⁴ In this context, the principle of good faith (*ḥusn al-niyyah*) becomes indispensable in Islamic jurisprudence. In Islam, good faith is considered an important principle in ADR.⁵⁵ While Islamic law does not explicitly define good faith, its meaning can be inferred from practical applications and the doctrines of Islamic scholars. To establish Islamic rules and principles, the Quran, the traditions of the Prophet Muhammad, and Sharia doctrines must be examined. The Quran explicitly prohibits fraudulent practices in transactions, stating: “Woe to the

⁵⁰ Abdulla Hamad Al Mulla, “The Principle of Good Faith in Contracts: Qatari Law Perspective,” *Asian Business Lawyer* 19 (2017), p. 117.

⁵¹ Al Mulla, “The Principle of Good Faith in Contracts,” 117

⁵² Eko Yulian Isnur, “Tolok Ukur Asas Iktikad Baik Dalam Kontrak Kerja Konstruksi” (Fakultas Hukum Universitas Islam Indonesia, 2017), p. 69-70.

⁵³ Hifdhotul Munawaroh, “Restorative Justice in Settling Minor Criminal Disputes in Ponorogo, East Java: An Islamic Law Perspective,” *Mazahib*, January 2, 2020, 167–200, <https://doi.org/10.21093/mj.v18i2.1632>, p. 179.

⁵⁴ Nur Asiah Kudaedah, “MASLAHAH MENURUT KONSEP AL-GHAZALI,” *DIKTUM: Jurnal Syariah Dan Hukum* 18, no. 1 (July 12, 2020): 118–28, <https://doi.org/10.35905/diktum.v18i1.663>, p. 121.

⁵⁵ Nasrudin, “Analisis Implementasi Mediasi Perspektif Hukum Islam Dan PERMA No 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan” (Fakultas Hukum Universitas Islam Negeri Raden Intan, 2019), p. 74.

fraudulent dealers, who exact full measure from others, but give less than due to others in weight and measure; do they not know that they will be called to account, on a mighty day?”⁵⁶ Additionally, the Prophet Muhammad condemned deceptive practices, as illustrated when he encountered a seller attempting to conceal the wet part of a heap of wheat and remarked that a merchant engaging in deception does not belong to his followers.

The principle of good faith has evolved alongside the rise of mandatory ADR, emphasizing the need for clearer behavioral standards and conduct requirements.⁵⁷ In Indonesia, mandatory ADR is implemented through court-annexed mediation, as governed by Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Courts (SC on Mediation). Article 7 of the SC on Mediation mandates that mediation be conducted in good faith. Further, it stipulates that the mediator may deem parties and/or their representatives to be acting in bad faith in certain circumstances.⁵⁸ This Supreme Court Regulation emphasizes that mediators also play a vital role in upholding good faith. If a party is found to be acting in bad faith, the regulation provides the mediator with mechanisms to report such behavior to the court, which may then influence the case’s progression.⁵⁹ The mediator is responsible for monitoring the parties’ behavior and assessing whether they are acting in good faith.⁶⁰ Thus, the mediator acts as a supervisor, reporter, and facilitator, ensuring that the mediation process proceeds fairly and responsibly.⁶¹ Based on the above discussion, it can be concluded that good faith in dispute resolution, whether in Islam or in conventional ADR, shares key similarities. In all contexts, good faith in ADR is defined by honesty, transparency, fairness, a commitment to the parties’ well-being, and sincerity throughout the process.

IV. Implementing Good Faith in Mediation/Conciliation (*ṣulh*) and Arbitration (*Tahkīm*) in Sharia-Compliant Hospitals

The handling of legal disputes related to hospital services is the hospital’s responsibility. This is explicitly stated in Article 189, Paragraph (1) of Law Number 17 of 2023 on Health, which states that “Every hospital has the obligation to protect and provide legal assistance to all hospital staff in carrying out their duties.” Furthermore, hospitals also

⁵⁶ Fatima Akaddaf, “Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) to Arab Islamic Countries: Is the CISG Compatible with Islamic Law Principles?,” *Pace International Law Review* 13, no. 1 (April 1, 2001): 1, <https://doi.org/10.58948/2331-3536.1203>, p. 31.

⁵⁷ Tania Sourdin, “Good Faith, Bad Faith?: Making an Effort in Dispute Resolution,” *Victoria University Law and Justice Journal* 2, no. 1 (June 15, 2012), <https://doi.org/10.15209/vulj.v2i1.10>, p. 24.

⁵⁸ Article 7 paragraph (2), “Supreme Court Regulation No 1 of 2016” (n.d.).

⁵⁹ Article 23 paragraph (2) and (3), “Supreme Court Regulation No 1 of 2016” (n.d.).

⁶⁰ Article 23 paragraph (2), “Supreme Court Regulation No 1 of 2016” (n.d.).

⁶¹ Article 23 paragraph (3), “Supreme Court Regulation No 1 of 2016” (n.d.).

bear responsibility for any losses caused by their human resources, as stated in Article 193 of Law Number 17 of 2023 on Health: “Hospitals are legally responsible for all losses arising from negligence committed by the hospital’s healthcare human resources.” Based on this, hospitals need proper governance and organization to handle legal disputes within their own walls. Thus, hospitals play a pivotal role in facilitating dispute settlement between patients and healthcare professionals by providing structured mechanisms and a supportive environment to address grievances efficiently and fairly. One common approach is the establishment of internal complaint mechanisms, often through patient relations offices or dedicated complaint resolution teams, which serve as initial points of contact for grievances.⁶²

The Indonesian Hospital Association (Persatuan Rumah Sakit Seluruh Indonesia - PERSI) is a national organization that represents hospitals across Indonesia, including Islamic hospitals. It was established to support hospital management, improve healthcare services, and advocate for hospital-related policies. PERSI works closely with the government, healthcare professionals, and other stakeholders to enhance hospital operations, maintain medical standards, and address legal and ethical issues in the healthcare sector.⁶³ It also provides guidance on dispute resolution, accreditation, and hospital governance. The PERSI plays a key role in guiding ADR in medical disputes by providing hospitals with frameworks and best practices for resolving conflicts efficiently and fairly. Recognizing that litigation can be time-consuming and costly, PERSI promotes ADR, such as mediation and negotiation, to resolve disputes among patients, healthcare providers, and hospitals.

PERSI guidelines in ADR resolution of legal disputes in hospital services include the following steps: First, the hospital management invites the complainant to discuss the disputed case. The management acts as a listener to understand the complainant’s information and expectations, while providing the accused party an opportunity to give a brief explanation. The management also considers potential obstacles or risks in direct meetings between the complainant and the accused. Second, if direct negotiation is deemed unlikely to succeed, the hospital may propose mediation facilitated by the Health Office and/or the Hospital Association, as mutually agreed upon. Finally, any resolution achieved through negotiation or mediation is documented in a Peace Agreement signed by all parties and the mediator. If necessary, this agreement can be notarized or registered with the district court.⁶⁴

⁶² Edi Sumarwanto, “Pedoman Penanganan Kasus Pelayanan Medik Berpotensi Sengketa Hukum Di Rumah Sakit ‘Sengketa Antara Pasien Dan Rumah Sakit,’” p. 15-16.

⁶³ “Perhimpunan Rumah Sakit Indonesia (PERSI),” accessed January 2, 2025, <https://www.persi.or.id/>.

⁶⁴ Sumarwanto, “Pedoman Penanganan Kasus Pelayanan Medik Berpotensi Sengketa Hukum Di Rumah Sakit ‘Sengketa Antara Pasien Dan Rumah Sakit,’” p. 22-23.

The non-litigation process involves conducting a comprehensive legal analysis of the dispute, forming an integrated hospital advocacy team or strengthening the Hospital Legal Department with the Health Profession Committee, facilitating mediation with professional methods and experts, and involving competent advisors without ethical or disciplinary sanctions. Internal hospital coordination includes identifying persuasive approaches, such as negotiation or mediation, through accessible negotiators, and ensuring the preparation of supporting evidence, including informed consent, medical records, and relevant witnesses, for dispute resolution.⁶⁵ External hospital coordination is carried out by hospital leadership through collaboration with the Hospital Association (PERSI) at both regional and central levels for strategic disputes, engaging with relevant healthcare professional organizations for support, input, or legal assistance, and consulting various parties to identify certified professional mediators. After completing the above steps, hospital leadership must determine a negotiator—either an individual or a team—and establish negotiation parameters to address patient or legal representative demands. If the allegations lack merit, the negotiation should focus on clarifying the facts and emphasizing the absence of wrongdoing, directing the discussion toward rejecting the claims.⁶⁶ Conversely, if errors or mistakes are identified, considerations should include whether the patient suffered death, severe disability, or minor disability. In cases of death with proven errors by the healthcare facility, negotiations should focus on providing condolences or goodwill payments. In disability cases, the negotiation should aim to offer compensation. However, the resolution approach may vary, prioritizing healthcare services over monetary compensation alone.⁶⁷ The PERSI guidelines do not distinguish between ADR practices for Islamic and non-Islamic hospitals, providing a uniform framework for resolving medical disputes across all healthcare institutions. However, this general approach may not fully address the unique ethical and procedural considerations rooted in Islamic values.

Therefore, Islamic hospitals should make adjustments to align ADR practices with Shari'ah principles, such as ensuring the involvement of mediators familiar with Islamic law, emphasizing values as the principles of sincerity of intent (*niyyah*), honesty and transparency (*sidq*), fairness and justice (*adālah*), respect for rights (*huqūq*), responsibility and accountability (*amānah*), and avoiding harm (*ḍarar*) in healthcare and dispute resolution can help prevent the occurrence of *riba* (usury or unjust gain) and *gharar*

⁶⁵ Sumarwanto, "Pedoman Penanganan Kasus Pelayanan Medik yang Berpotensi Sengketa Hukum di Rumah Sakit: Sengketa antara Pasien dan Rumah Sakit," 47-49.

⁶⁶ Sumarwanto, "Pedoman Penanganan Kasus Pelayanan Medik yang Berpotensi Sengketa Hukum di Rumah Sakit: Sengketa antara Pasien dan Rumah Sakit," 47-49 .

⁶⁷ Sumarwanto, "Pedoman Penanganan Kasus Pelayanan Medik yang Berpotensi Sengketa Hukum di Rumah Sakit: Sengketa antara Pasien dan Rumah Sakit," 47-49.

(uncertainty or ambiguity), both of which are prohibited in Islam.⁶⁸ These adjustments are essential to uphold the trust of patients and stakeholders in Islamic hospitals while remaining compliant with both legal and religious standards. Mediation processes are guided by Islamic values, ensuring that mediators possess knowledge of both healthcare practices and Islamic jurisprudence to provide balanced and informed recommendations. Practicing sincerity ensures that medical practitioners and patients approach the relationship with the genuine intent of achieving fair and just outcomes, rather than pursuing personal gain or exploiting the situation. This prevents the exploitation of vulnerable patients for financial profit (*ribā*) or engaging in transactions based on uncertainty (*gharar*). Transparency in providing accurate information about diagnoses, treatments, and potential risks prevents deceptive practices, reducing the likelihood of unjust financial gain or agreements based on misleading or ambiguous information.⁶⁹ Clear communication ensures that both parties understand their rights, obligations, and the consequences of their actions, preventing unfair financial arrangements. Ensuring fairness and justice in the resolution of disputes prevents exploitation by preventing patients from being subjected to unfair or excessive charges and by ensuring that unclear terms do not mislead either party. In the context of ADR, the focus on justice ensures an equitable, clear outcome that protects both parties from harmful practices.⁷⁰ Respecting the rights of both patients and medical practitioners ensures that both parties are treated fairly and justly. Upholding *huquq* means that no one is deprived of their rightful dues or coerced into unfavorable financial transactions, which prevents the exploitation associated with *ribā*.

Additionally, patients' rights to informed consent and clarity about treatment help prevent decisions based on *gharar*. *Amānah* ensures that both medical practitioners and patients are held accountable for their actions. Practitioners are responsible for providing proper care, and patients are expected to give accurate information and follow advice. This mutual accountability eliminates the risk of *ribā* or *gharar*, as all parties are held to clear and honest standards. By avoiding harm, both *ribā* and *gharar* are mitigated. Ethical conduct and care in medical practice must ensure that no party suffers unjust enrichment or ambiguous financial obligations. Practicing harm avoidance means that healthcare transactions and resolutions are clear, transparent, and fair, without hidden fees or uncertainties.⁷¹ By embedding these values into their dispute resolution practices, Islamic

⁶⁸ Mumtaz Hussain, Asghar Shahmoradi, and Rima Turk, "An Overview of Islamic Finance," June 2015, <https://www.imf.org/external/pubs/ft/wp/2015/wp15120.pdf>, p. 6.

⁶⁹ Majeed, "Good Faith and Due Process: Lessons from the Shari'ah."

⁷⁰ Law Reform Commission, "Alternative Dispute Resolution: Mediation and Conciliation," November 2010.

⁷¹ World Health Organization, "Global Patient Safety Action Plan 2021-2030: Towards Eliminating Avoidable Harm in Health Care," 2021.

hospitals not only resolve conflicts effectively but also reinforce their commitment to serving patients and professionals in a manner consistent with Islamic teachings.⁷²

To comply with Sharia principles, the mediator in Islamic hospitals must first establish a foundation of trust and transparency, ensuring that both parties understand the importance of good faith as a guiding principle. In Islamic law, good faith reflects honesty, integrity, and a commitment to fulfilling obligations. The mediator explains to both parties the significance of good faith in their relationship, emphasizing that both the patient's rights and the healthcare provider's professional dignity should be honored. For example, patients are entitled to receive proper care and be treated with respect, while healthcare professionals must be able to perform their duties without fear of undue liability or unjust accusations.

Second, to avoid *riba* and *gharar*, the mediators shall promote open communication to help clarify each party's expectations and guide them toward a mutually agreeable resolution.⁷³ This may involve educating both the patient and the healthcare professional about the ethical and legal responsibilities they each bear under Islamic principles. In practice, the mediator ensures that solutions proposed are in line with both the legal framework and Islamic values. For instance, any settlement reached should not involve anything that contradicts Islamic ethics, such as compensating for harm in a manner that violates Shariah. Throughout the process, the mediator maintains a neutral stance, fostering an atmosphere of cooperation rather than adversarial conflict.⁷⁴ They encourage both the patient and healthcare provider to engage in constructive dialogue, focusing on finding a resolution that not only addresses the immediate issue but also upholds the broader goals of *Maqāṣid al-Sharīah*, including the preservation of life, intellect, and justice. Ultimately, the mediator's role is to help the parties reach a fair and ethical resolution, ensuring that both patients and healthcare professionals feel their rights are respected and that the solution is grounded in the principles of Islamic law, particularly the concept of good faith.⁷⁵

⁷² Muhammad Maksum et al., "The Complexity of Sharia and the Implementation of Islamic Ethics in Establishing Sharia Standards for Hospital," in *Proceedings of the 1st International Conference on Recent Innovations* (SCITEPRESS - Science and Technology Publications, 2018), 140–47, <https://doi.org/10.5220/0009919801400147>.

⁷³ Rory Macmillan, "A Practical Guide for Mediators," accessed November 22, 2024, https://www.researchgate.net/profile/Rory-Macmillan/publication/325745962_A_Practical_Guide_for_Mediators/links/5b2163540f7e9b0e37403b67/A-Practical-Guide-for-Mediators.pdf.

⁷⁴ Rory Macmillan, "A Practical Guide for Mediators," accessed November 22, 2024, https://www.researchgate.net/profile/Rory-Macmillan/publication/325745962_A_Practical_Guide_for_Mediators/links/5b2163540f7e9b0e37403b67/A-Practical-Guide-for-Mediators.pdf.

⁷⁵ Rory Macmillan, "A Practical Guide for Mediators," accessed November 22, 2024, https://www.researchgate.net/profile/Rory-Macmillan/publication/325745962_A_Practical_Guide_for_Mediators/links/5b2163540f7e9b0e37403b67/A-Practical-Guide-for-Mediators.pdf.

For patients, good faith ensures that their rights to receive proper care, dignity, and respect are upheld. It establishes the expectation that healthcare providers will offer treatment with competence, transparency, and honesty. When disputes arise, applying good faith means that healthcare professionals are expected to engage with patients in an open, honest, and empathetic manner.⁷⁶ Applying good faith in the healthcare context involves demonstrating trust, honesty, and cooperation between patients and healthcare professionals.⁷⁷ It means that patients should approach their interactions with healthcare providers with transparency, providing accurate and complete information regarding their health conditions, medical history, and symptoms. Furthermore, patients should act reasonably during medical disputes, refraining from making exaggerated claims or demanding unreasonable compensation. This ensures that the process remains fair and just, in line with the principles of Islamic law.⁷⁸

On the other hand, good faith also protects healthcare professionals from unjust accusations and excessive liability. In an Islamic context, this protection is rooted in the concept of justice (*adl*) and fairness.⁷⁹ Healthcare providers must be able to practice their profession without fear of unreasonable repercussions, especially when they have acted in accordance with established medical standards and Islamic ethical guidelines. The application of good faith ensures that complaints against healthcare professionals are handled fairly, with a focus on evidence and ethical considerations rather than assumptions or biases. Good faith plays a crucial role in safeguarding healthcare professionals from unjust accusations and excessive liability, particularly within the Islamic framework, which emphasizes *adl* and fairness. They should not be exposed to disproportionate legal risks or moral condemnation for acting in accordance with those standards.⁸⁰

The principle of good faith ensures that when disputes arise, the process remains balanced and just, protecting healthcare professionals from baseless or exaggerated

Macmillan/publication/325745962_A_Practical_Guide_for_Mediators/links/5b2163540f7e9b0e37403b67/A-Practical-Guide-for-Mediators.pdf.

⁷⁶ Aaliyah Eaves-Leanos and Edward J. Dunn, "Open Disclosure of Adverse Events: Transparency and Safety in Health Care," *Surgical Clinics of North America* 92, no. 1 (February 2012): 163–77, <https://doi.org/10.1016/j.suc.2011.11.001>.

⁷⁷ Stein Conradsen, Henrik Vardinghus-Nielsen, and Helge Skirbekk, "Patient Knowledge and Trust in Health Care. A Theoretical Discussion on the Relationship Between Patients' Knowledge and Their Trust in Health Care Personnel in High Modernity," *Health Care Analysis* 32, no. 2 (June 9, 2024): 73–87, <https://doi.org/10.1007/s10728-023-00467-7>.

⁷⁸ Sourdin, "Good Faith, Bad Faith?: Makingan Effort in Dispute Resolution."

⁷⁹ Mohd Lotpi Yusob and Abdul Karim, "Purposive and Literal Approaches in the Judicial Application of Maṣlaḥah: An Overview," *Italianisc* 12, no. 1 (2022): 201–8.

⁸⁰ Bevinahalli N Raveesh, Ragavendra B Nayak, and Shivakumar F Kumbar, "Preventing Medico-Legal Issues in Clinical Practice," *Annals of Indian Academy of Neurology* 19, no. 5 (2016): 15, <https://doi.org/10.4103/0972-2327.192886>.

claims. In cases where a complaint is made, good faith dictates that the accusation be substantiated with evidence rather than driven by assumptions, hearsay, or emotional responses. This helps prevent the exploitation of the dispute resolution process for personal gain or vengeance, ensuring that healthcare professionals are not unjustly penalized for factors beyond their control, such as medical complications inherent to treatment.⁸¹

The Islamic concept of justice requires that healthcare providers be given the benefit of the doubt unless there is clear evidence of wrongdoing.⁸² For example, if a medical professional followed the standard of care but a patient's condition did not improve or even worsened due to unforeseen complications, good faith ensures that this situation is evaluated fairly, without immediately attributing blame. The resolution process should focus on ethical considerations, such as whether the healthcare professional acted with competence and diligence, and in accordance with the principles of Islamic ethics, including honesty, transparency, and the duty to act in the patient's best interest. In the Islamic context, this protection is intertwined with the broader concepts of *adl* and *ihsan* (benevolence). Islamic law recognizes the importance of upholding the dignity and rights of healthcare professionals, much as it does those of patients, fostering a harmonious and just healthcare environment. In the event of a dispute, the Islamic hospital should encourage honest and empathetic discussions to resolve the issue before it escalates.⁸³ Islamic hospitals can also appoint qualified mediators, trained in both Islamic law and healthcare ethics, to facilitate dispute resolution. These mediators should act impartially and with sensitivity to the cultural and religious context, ensuring that the process respects both the patient's rights and the healthcare professional's dignity.

Furthermore, ensuring fair compensation practices that align with Islamic law is essential. Compensation should be proportional to the harm caused⁸⁴ and should adhere to Shariah principles, avoiding practices such as *ribā* or *gharar*. By ensuring that the compensation process aligns with Islamic ethics, hospitals can maintain fairness and avoid exploitation. The hospital needs to ensure that the mediator is trained in both Islamic legal principles and the specifics of medical disputes, ensuring fairness and transparency in the process. Both parties should be honest, sharing all relevant

⁸¹ Young-Kyun Kim, "Malpractice and Complications," *Journal of the Korean Association of Oral and Maxillofacial Surgeons* 43, no. 1 (2017): 1, <https://doi.org/10.5125/jkaoms.2017.43.1.1>.

⁸² Puteri Nemie Jahn Kassim, "Medical Negligence in Islamic Law," *Arab Quarterly* 20, no. 4 (2006): 400–410.

⁸³ Jeremy Howick et al., "How Does Communication Affect Patient Safety? Protocol for a Systematic Review and Logic Model," *BMJ Open* 14, no. 5 (May 27, 2024): e085312, <https://doi.org/10.1136/bmjopen-2024-085312>.

⁸⁴ Aby Maulana, Chrisna Bagus Edhita Praja, and Muhammad Luthfie Hakim, "Compensation as Hospital Liability for Negligence in Medical Services Harming Patients: Empirical Study of Several Peace Agreements," *Varia Justicia* 19, no. 2 (2023): 153–67.

information and addressing issues openly, reflecting the Islamic value of *al-amānah*. The hospital also ensures that any compensation or settlement is free from *riba* and *gharar*, ensuring that financial arrangements are clear and specific. This includes avoiding any agreement that involves interest-based payments or ambiguous terms regarding future treatments or compensation. The resolution must also align with Shariah principles, meaning that no impermissible actions, such as dealing with *harām* (forbidden) activities, are involved. To facilitate such mediations, Islamic hospitals should train mediators in Islamic ethics and the legal requirements of medical practice. Clear hospital policies should be established to guide dispute resolution,⁸⁵ emphasizing fair and transparent processes while adhering to Islamic finance principles.

V. Conclusion

The operationalization of the principle of good faith (*ḥusn al-niyyah*) in ADR, including arbitration within Sharia-compliant hospitals, is not only a legal and ethical obligation but also a reflection of their foundational commitment to Islamic values in healthcare delivery. Upholding good faith requires these institutions to ensure transparency, honesty, compassion, and accountability in all interactions with patients, staff, and the broader community. To comply with Sharia, any ADR conducted in Islamic hospitals must implement the principles of sincerity of intent (*niyyah*), honesty and transparency (*ṣidq*), justice (*adl*), respect for rights (*ḥuqūq*), responsibility and accountability (*amānah*), and avoidance of harm (*ḍarar*). ADR methods such as arbitration, mediation, or negotiation rooted in Islamic ethics offer a more harmonious and faith-consistent approach to resolving conflicts, preserving relationships, and fostering community trust. Ultimately, Islamic hospitals must function not only as centers for physical healing but also as institutions that embody spiritual and moral integrity. By embedding the principle of good faith and utilizing Sharia-compliant ADR in dispute resolution, they contribute to a healthcare system that is both ethically grounded and religiously authentic.

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⁸⁵ K Amirthalingam, "Medical Dispute Resolution, Patient Safety and the Doctor-Patient Relationship," *Singapore Medical Journal* 58, no. 12 (December 2017): 681–84, <https://doi.org/10.11622/smedj.2017073>.

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