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A LEGAL REVIEW OF CRIMINAL LIABILITY IN MEDICAL MALPRACTICE CASES IN INDONESIA

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The criminal liability of medical personnel in cases of malpractice is a crucial issue in health law, demanding legal certainty alongside the protection of patient rights and the preservation of professional standards. This paper aims to analyse the concept of criminal liability for medical personnel whose actions performed outside professional standards result in harm to patients. The study focuses on instances of medical malpractice that give rise to criminal legal consequences. The research method used is a normative juridical method with a statutory and conceptual approach. The findings indicate that medical personnel may be held criminally liable if an element of fault whether negligence or intentional misconduct is proven to have caused patient harm or death. This element of fault must be rigorously established by considering professional standards, the causal link between the medical action and the resulting outcome, and expert medical testimony. However, not all medical errors constitute criminal offenses; the application of criminal law to medical personnel must be selective and proportionate to maintain a balance between protecting patients and safeguarding responsible medical practice.

Keywords: criminal liability, malpractice cases, health law, medical personnel, Indonesia.

ЮРИДИЧЕСКИЙ ОБЗОР УГОЛОВНОЙ ОТВЕТСТВЕННОСТИ В ДЕЛАХ О ВРАЧЕБНОЙ ХАЛАТНОСТИ В ИНДОНЕЗИИ

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Уголовная ответственность медицинских работников за врачебные ошибки является важнейшим вопросом в сфере медицинского права, требующим правовой определенности наряду с защитой прав пациентов и сохранением профессиональных стандартов. Цель статьи – проанализировать концепцию уголовной ответственности медицинских работников, чьи действия,

не соответствующие профессиональным стандартам, привели к причинению вреда пациентам. Исследование сосредоточено на случаях врачебных ошибок, которые влекут за собой уголовно-правовые последствия. В качестве метода исследования использован нормативный юридический метод, основанный на законодательном и концептуальном подходе. Результаты исследования показывают, что медицинские работники могут быть привлечены к уголовной ответственности, если будет доказано, что их действия, повлекшие причинение вреда здоровью или смерть пациента, были совершены по неосторожности или умышленно. Факт наличия вины должен быть строго установлен с учетом профессиональных стандартов, причинно-следственной связи между действиями врача и наступившими последствиями, а также экспертных медицинских заключений. Однако не все врачебные ошибки являются уголовно наказуемыми. Применение уголовного законодательства к медицинским работникам должно быть избирательным и соразмерным, чтобы соблюсти баланс между защитой пациентов и обеспечением ответственного подхода к медицинской практике.

Ключевые слова: уголовная ответственность, врачебные ошибки, медицинское право, медицинские работники, Индонезия.

Introduction

Regarding medical malpractice, which can lead to criminal prosecution all parties acknowledge that doctors are merely human and capable of negligence; such negligence can result in breaches of the code of ethics or even violations of applicable health regulations. The medical profession is a noble one, as doctors are often the individuals in whom patients place their hopes for recovery from illness. However, in practice, it is undeniable that doctors may commit acts of negligence or misconduct, whether through error or intentional action collectively known as malpractice. Medical malpractice is defined as an error committed by a healthcare professional while practicing their profession that fails to adhere to professional standards and standard operating procedures [11, p. 1-11]. Public concern regarding

malpractice has led to complaints against hospitals, often stemming from issues with the quality of care or perceived deficiencies in the services provided by both the hospital and the physician

One malpractice case that has drawn significant attention is that of Mariana Sihombing, who suffered harm at the hands of Santa Elisabeth Hospital in Medan, North Sumatra; following surgery, she sustained a thumb-sized tear that caused persistent bleeding and resulted in a lifelong disability. The absence of patient medical records is just one aspect of the problem; numerous other incidents occur, such as wrong-site surgeries, the administration of expired medication, failure to follow standard injection protocols, and more. Although she lodged a complaint with the Indonesian Medical Disciplinary Honorary Council (MKDKI), the case has yet to reach a resolution or see any clear progress from the council [4, p. 1157-1168].

The case described above is one of many instances of malpractice in Indonesia. Victims in this instance the patients often feel that justice is not served; while they may wish to take legal action against the doctor responsible for the malpractice, Law No. 29 of 2004 concerning Medical Practice (hereinafter referred to as the Medical Practice Law) contains no specific provisions regarding medical malpractice. Article 66, Paragraph (1) of the Medical Practice Law addresses only “errors in medical practice”, stating that “any person who is aware of, or whose interests have been harmed by, a doctor's actions in the conduct of medical practice may file a written complaint with the Chairperson of the Indonesian Medical Disciplinary Honorary Council”. This article merely provides a legal basis for reporting a doctor to their professional organization when there are indications of harmful conduct; it does not serve as a basis for litigation regarding the doctor's actions. Meanwhile, the Criminal Code (KUHP) also fails to clearly outline the mechanism for criminal liability regarding doctors who commit medical malpractice; it contains only a few articles that indirectly address acts resulting from such malpractice [6, p. 775-783].

Only a small fraction of suspected malpractice cases actually come to light; in reality, the public reports numerous medical procedures performed by healthcare professionals or doctors that potentially constitute malpractice, yet these cases often

fail to reach a legal resolution. This is due to the public's limited knowledge of medical science and the absence of specific, clear regulations defining the criteria for malpractice.

Methodology

Type of research

This research is a normative juridical study using a statute approach and a conceptual approach. Normative juridical research was used because the primary focus is on the study of laws and regulations, and court decisions relevant to malpractice committed by medical personnel [q.v.: 5].

Data sources

This research uses secondary [q.v.: 7], consisting of: primary legal materials:

1. The 1945 Constitution of the Republic of Indonesia.
2. The Criminal Code.
3. Law No. 29 of 2004 concerning Medical Practice.
4. Law No. 17 of 2023 concerning Health.

Secondary legal materials: books, journals, articles, and previous research on malpractice by doctors and nurses.

Tertiary legal materials: legal dictionaries, encyclopaedias, and other supporting sources.

Data collection techniques

Data were collected through library research, exploring relevant literature from both print and digital sources, including national and international law journal databases.

Data analysis techniques

Data were analysed qualitatively using the descriptive-analytical method.

The analysis steps included:

1. Inventory of Islamic legal norms and laws related to malpractice by doctors and nurses.
2. Classification of legal issues arising from malpractice.

3. Interpretation of legal norms using malpractice theory and legal certainty theory.

4. Evaluation by comparing the reality of malpractice in society with the public demand for health services.

Research approach

In addition to the normative approach, this study also uses a comparative approach by comparing how malpractice occurs with the demand for health services and the public's need for health [q.v.: 1].

Results and discussion

Regulation of healthcare personnel in patient healthcare services

Under Health Law No. 17 of 2023, healthcare workers are legal subjects who exercise professional authority to provide health services to patients. Consequently, any act or omission by a healthcare worker while providing health services may give rise to legal liability including criminal liability, if the elements of a criminal offense are met. Healthcare workers may be held criminally liable if proven to have committed an unlawful act whether intentional or negligent that results in serious harm to the patient, such as death or severe injury. The regulations concerning healthcare workers in Law No. 17 of 2023 are closely linked to general criminal provisions in the Criminal Code (KUHP) and do not operate in isolation. Healthcare workers may face criminal liability under the following general criminal provisions in cases of alleged malpractice resulting in patient injury or death: Article 359 of the Criminal Code addresses negligence causing death, while Article 360 addresses negligence causing severe or ordinary injury [8, p. 146-164]. The obligation to obtain consent for medical procedures known as informed consent is a crucial component of the regulatory framework regarding healthcare worker liability [q.v.: 9]. Informed consent provides legal protection for both patients and healthcare workers; performing a medical procedure without valid consent may be deemed an unlawful act. Factors that can lead to a doctor facing malpractice allegations include:

1. Lack of a Medical Practice License (SIP). The SIP is a mandatory administrative requirement demonstrating that a doctor has met the legal prerequisites to practice medicine.

2. Performing procedures beyond competence and authority doctors are permitted to perform medical procedures only within the scope of their competence, training, and authorized authority.

3. Violation of professional standards and standard operating procedures (SOPs). Every medical procedure must be carried out in accordance with professional standards, service standards, and standard operating procedures (SOPs).

4. Failure to obtain informed consent performing a medical procedure without valid patient consent may be considered a violation of patient rights and an unlawful act.

5. Negligence (Culpa) in medical care doctor negligence whether minor or severe, such as failing to conduct adequate examinations, disregarding a patient's condition, or delaying treatment can result in serious harm to the patient.

6. Violation of medical ethics breaches of the medical code of ethics, such as failing to maintain patient confidentiality or engaging in conduct contrary to professional values can lead to allegations of malpractice.

7. Practicing medicine without complete medical records.

In the healthcare sector, medical records serve as crucial legal documents. Under Law No 17 of 2023 concerning Health, doctors who practice medicine without meeting professional and legal requirements may be held legally accountable. This responsibility may encompass administrative sanctions as well as civil and criminal liability. Therefore, the primary way to prevent malpractice and provide legal protection for both doctors and patients is to comply with medical practice regulations.

The criminal provisions contained in Law No. 17 of 2023 concerning Health are formulated in Chapter XVIII (criminal provisions) regarding medical malpractice; these are all set forth in Articles 428, 429, 430, 431, 432, 433, 434, 435, 438, 439, and 440 [2, p. 1-20].

The legal process for filing claims by the public in healthcare service disputes

Medical negligence is an error or omission committed by a healthcare professional due to a failure to adhere to professional standards, standard operating procedures (SOPs), or principles of due care, resulting in harm to the patient. The legal process for filing a claim is as follows:

1. Alternative dispute resolution (APS) is an out-of-court dispute resolution mechanism that prioritizes deliberation and consensus. The goal of APS is to maintain good relationships between patients and healthcare professionals while resolving issues quickly, easily, and cost-effectively. This method adheres to the *ultimum remedium* principle, meaning that criminal resolution is a measure of last resort.

2. Professional ethics and disciplinary process. If APS fails to yield an agreement, the public may utilize professional disciplinary and ethical mechanisms. At this stage, complaints are submitted to the relevant healthcare professional organization, disciplinary committee, or authorized board. The purpose of this process is to determine whether the healthcare professional has violated professional discipline or the professional code of ethics. Examples of administrative and ethical sanctions include reprimands, guidance/remedial training, practice restrictions, and recommendations to revoke practice licenses.

3. Administrative process. In addition to ethical mechanisms, the public may also pursue administrative legal processes. Complaints can be submitted to the district/city or Provincial Health Office, or the agency responsible for issuing healthcare professional practice licenses. The objective of this process is to determine whether there have been violations regarding practice licensing, service standards, or administrative regulations governing hospital operations.

4. Civil process. The public may file a civil lawsuit in the District Court if they have suffered material or non-material losses resulting from healthcare services.

5. Criminal process (first instance). If a healthcare professional's actions are deemed to constitute a criminal offense, such as negligence resulting in serious injury or the patient's death, the public may report the incident to the police. At this stage,

inquiries and investigations are conducted by investigators; prosecution is handled by public prosecutors; and the case is heard in the District Court as the court of first instance. If other avenues fail to provide justice for the victim, criminal proceedings are typically pursued.

6. Further legal recourse. If a party is dissatisfied with the decision of the court of first instance, they have the option to pursue further legal remedies, such as an appeal to the High Court, an appeal to the Supreme Court, or a judicial review if the statutory requirements are met.

7. Normative analysis from a health law perspective

According to Law No 17 of 2023 concerning Health, non-litigation mechanisms, such as APS and professional mechanisms, are prioritized for the resolution of healthcare service disputes.

Legal consequences of malpractice committed by medical personnel

Criminal liability is defined as the accountability arising from an objective incident involving a doctor's adherence to legal provisions in the practice of their profession; it constitutes a legal obligation that a doctor must fulfil, specifically regarding criminal liability as regulated in the Criminal Code, namely:

– Article 359 of the Criminal Code: “Whoever, due to their fault (negligence), causes the death of another person shall be liable to imprisonment for a maximum term of five years or confinement for a maximum term of one year” [3, p. 7-12].

– Article 360 of the Criminal Code (KUHP):

1) Any person who, due to their fault (negligence), causes another person to suffer serious injury shall be liable to imprisonment for a maximum term of five years or confinement for a maximum term of one year.

2) Any person who, due to their fault (negligence), causes another person to suffer injuries resulting in illness or an inability to perform the duties of their office or occupation for a certain period shall be liable to imprisonment for a maximum term of nine months, confinement for a maximum term of six months, or a fine of up to four thousand three hundred rupiah.

– Article 361 of the KUHP: “If the crime described in this chapter is committed in the course of exercising an office or occupation, the penalty shall be increased by one-third, and the offender may be deprived of the right to exercise the occupation in which the crime was committed, and the judge may order the judgment to be made public”. Regarding Law No. 29 of 2004 concerning Medical Practice, the amendments to the articles contained in said Law are as follows:

Article 75 Paragraph (1) reads: “Any doctor or dentist, who intentionally engages in medical practice without possessing a registration certificate as referred to in Article 29 (1) shall be liable to imprisonment for a maximum term of three years or a fine of up to Rp 100,000,000.00 (one hundred million rupiah)”.

Paragraph (2) reads: “Any Doctor or Dentist who is a citizen registration certificate as referred to in Article 31 paragraph (1) shall be liable to imprisonment for a maximum term of three years or a fine of up to Rp 100,000,000.00 (one hundred million rupiah)”.

Paragraph (3) reads: “Any foreign national doctor or dentist who intentionally engages in medical practice without possessing a conditional registration certificate as referred to in Article 32 paragraph (1) shall be punished with imprisonment for a maximum term of three years or a fine of not more than Rp100,000,000.00 (one hundred million rupiah)”.

Article 76 reads: “Any doctor or dentist who intentionally engages in medical practice without possessing a medical practice license as referred to in Article 36 shall be punished with imprisonment for a maximum term of three years or a fine of not more than Rp100,000,000.00 (one hundred million rupiah).”

Article 79 states: “Any doctor or dentist shall be liable to a maximum term of imprisonment of one year or a maximum fine of Rp 50,000,000.00 (fifty million rupiah) if they: intentionally fail to display a nameplate as referred to in Article 41 paragraph (1); intentionally fail to create medical records as referred to in Article 46 paragraph (1); or intentionally fail to fulfill obligations as referred to in Article 51 letter a, b, c, d, or e”.

Law No. 36 of 2009 concerning Health. Regarding negligence, the Health Law stipulates that in the event a health worker is suspected of negligence in the practice of their profession, such negligence must first be resolved through mediation.

Patient protection

– Article 56

1) Every person has the right to accept or refuse some or all medical assistance measures to be administered to them after receiving and fully understanding information regarding said measures.

2) The right to accept or refuse as referred to in paragraph (1) does not apply to:

a) Persons suffering from a disease that can rapidly spread to the wider community;

b) Persons who are unconscious; or

c) Persons with severe mental disorders.

3) Provisions regarding the right to accept or refuse as referred to in paragraph (1) shall be regulated in accordance with statutory regulations.

– Article 57

1) Every person has the right to the confidentiality of their personal health condition disclosed to a health service provider.

2) Provisions regarding the right to the confidentiality of personal health conditions as referred to in paragraph (1) do not apply in the event of:

a) A statutory mandate;

b) A court order;

c) The consent of the person concerned;

d) The public interest; or e. the interest of the person concerned.

– Article 58

1) Every person has the right to claim compensation from an individual, a health worker, and/or a healthcare provider that caused loss or harm due to error or negligence in the healthcare services received.

2) The claim for compensation referred to in paragraph (1) shall not apply to health workers who perform life-saving measures or actions to prevent disability in an emergency situation.

3) Provisions regarding the procedure for filing a claim as referred to in paragraph (1) shall be regulated in accordance with the provisions of laws and regulations.

Penal provisions

Article 190 Paragraph (2) states:

(2) In the event that the act referred to in paragraph (1) results in disability or death, the head of the healthcare facility and/or the health worker concerned shall be punished with imprisonment for a maximum of 10 (ten) years and a maximum fine of Rp1,000,000,000.00 (one billion rupiah).

Criminal liability for medical malpractice under Indonesian law

Malpractice refers to a deviation in the handling of health issues by healthcare personnel that results in adverse effects for the patient under their care. Specifically regarding medical practitioners (physicians), malpractice constitutes an act or an instance of negligence in the treatment of a patient. Negligence is defined as conduct or action characterized by a lack of due care and a departure from the prevailing standards of the profession. It is also understood as performing medical procedures that fall below the established standards of medical care or professional medical practice [11. P. 1-11].

Culpability is the most crucial element in establishing criminal liability [4, p. 1157-1168]. In criminal law, the imposition of punishment requires not only the commission of a prohibited act but also adherence to the principle that there is no punishment without culpability; therefore, it is essential to determine whether culpability exists regarding the act committed by the defendant.

Malpractice constitutes negligence committed by healthcare professionals in the course of their duties that fails to meet medical service standards, resulting in the patient suffering injury, disability, or death. The elements of malpractice are as follows:

1. The presence of negligence. Negligence constitutes an error arising from a lack of caution, understanding, or professional knowledge on the part of the healthcare worker despite the requirement for them to continuously develop their expertise.

2. Committed by a healthcare worker. Pursuant to Article 2 paragraph (1) of Government Regulation of the Republic of Indonesia No. 23 of 1996 concerning healthcare workers, the category of healthcare workers comprises medical personnel, nursing personnel, pharmaceutical personnel, public health personnel, nutritionists, physical therapy personnel, and medical technical personnel. The term “medical personnel” refers to doctors or medical specialists.

3. Non-compliance with medical service standards. The medical service standards in question refer to service standards in a broad sense, encompassing both professional standards and standard operating procedures.

4. The patient suffers injury, disability, or death. There is a causal link establishing that the harm suffered by the patient resulted from the healthcare worker's negligence. The harm experienced by the patient whether injury (including severe injury), disability, or death—is a direct consequence of the healthcare worker's negligence [10, p. 59-71].

By nature, every human being bears responsibility for their actions and conduct. In this context, “responsibility” implies being bound; thus, in a legal sense, it signifies an obligation or liability. Legal responsibility here refers specifically to criminal liability. Such criminal liability is fundamentally determined by the presence of fault whether in the form of intent) or negligence [6, p. 775-783].

There are several types of malpractice:

1. Criminal malpractice

Criminal malpractice occurs when a patient dies or suffers a disability due to a lack of caution or care by a healthcare professional during the provision of treatment.

There are three forms of criminal malpractice.

a) Criminal malpractice involving intentional acts: a medical professional fails to provide aid in an emergency case despite knowing that no one else is available to

help, or issues a false certificate. Example: performing an abortion without a valid medical procedure.

b) Criminal malpractice involving recklessness: performing an action that is not in accordance with established medical standards or acting without obtaining informed consent for the medical procedure. Examples: a doctor's carelessness in inserting an IV line, causing the patient's hand to swell due to infection; performing an organ transplant using incompatible blood types, etc.

c) Criminal malpractice involving negligence: a patient suffers a disability or death as a result of a healthcare professional's careless or negligent actions. Example: a three-month-old infant's finger is severed when a doctor removes the splint used to secure an IV line.

2. Administrative malpractice

Administrative malpractice occurs when a healthcare. Professional violates applicable state administrative laws. Examples include: practicing midwifery without a license or permit; performing actions outside the scope of one's license or permit; practicing with an expired permit; and practicing without maintaining medical records.

Conclusion

Criminal liability for doctors involved in medical malpractice often arises from acts of negligence. A doctor's actions constituting medical malpractice may be subject to liability if the elements of culpability are met. Under the Criminal Code (KUHP), a doctor committing medical malpractice can also be held indirectly liable if their negligence results in a person's death or specific consequences such as severe injury or permanent physical disability. Meanwhile, the Health Law stipulates that if a healthcare professional is suspected of negligence in the practice of their profession, the matter must first be resolved through mediation. However, these regulations do not specifically or clearly define medical malpractice. Consequently, it can be said that medical malpractice in Indonesia still lacks a clear legal framework or basis, making it difficult to resolve issues related to such cases.

Bibliography:

1. Ibrahim J. Teori dan Metodologi Penelitian Hukum Normatif. Malang: Bayumedia Publishing, 2006. X, 467 p.
2. Jayantara I.M.D., Arief H. Analisis Pertanggungjawaban Pidana dan Penyelesaian terhadap Tenaga Medis yang Melakukan Malpraktik Medis Ditinjau dari Perspektif Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan // *Rewang Rencang: Jurnal Hukum Lex Generalis*. 2024. Vol. 5. No 7. P. 1-20.
3. Lajar J.R., Dewi A.A.S.L., Widyantara I.M.M. Akibat Hukum Malpraktik yang Dilakukan oleh Tenaga Medis // *Jurnal Interpretasi Hukum*. 2020. Vol. 1. No 1. P. 7-12.
4. Litania F., Tawa E., Hukum F., Tarumanagara U. Penegakan Hukum Kesehatan Terhadap Kegiatan // *Sibatik Journal*. Vol. 1. No 7. P. 1157-1168.
5. Marzuki P.M. Penelitian Hukum. Edisi Revisi, Revisi. Jakarta: Prenada Media Group, 2016. X, 260 p.
6. Putra L.L., Yustia D.A. Kajian Hukum Terhadap Kasus Malpraktik Dokter Yang Melakukan Tindakan Medis Tanpa Persetujuan Pasien (Informed Consent) // *Jurnal Ilmu Hukum, Humaniora Dan Politik*. 2025. Vol. 6. No 1. P. 775-783.
7. Soekanto S. Suatu Pegantar Sosiologi. Jakarta: Rajawali Pers, 2017. XIV, 412 p.
8. Soge A.D. Analisis Penanganan Kesalahan Profesi Medis Dan Kesehatan Dalam Uu Nomor 17 Tahun 2023 Tentang Kesehatan Menurut Perspektif Hukum Kesehatan // *Jurnal Hukum Caraka Justitia*. 2023. Vol. 3. No 2. P. 146-164.
9. Sumardiyanto M.E. Pertanggungjawaban Tindak Pidana Malpraktek Oleh Tenaga Kesehatan Terhadap Pasien (Study Kajian Undang-Undang Nomor 17 Tahun 2023) // *Jurnal Pengabdian Masyarakat dan Riset Pendidikan*. 2026. Vol. 4. No 4. P. 21622-21627.
10. Suwardi B.A., Hanjaya R., Jati H.P., Girsang O.T., Hartanto. Hukum Perlindungan Konsumen Terhadap Malpraktik (Studi Kasus Tentang Ibu Lumpuh Usai Melahirkan) // *Legalitas: Jurnal Ilmiah Ilmu Hukum*. 2023. Vol. 8. No 1. P. 59-71.

11. Yudyaningarum C.P., Hukum F., Muhammadiyah U. Pertanggung Jawaban Pidana Pelaku Malpraktik Medis // *Academos Jurnal Hukum dan Tatahan Sosial*. 2022. Vol. 1. No 2. P. 1-11.

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