# Judicial Review of Criminal Liability of Doctors for Malpractice

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### Abstract

This study aims to determine the liability of medical malpractice by doctors. This research was conducted with a qualitative approach, using descriptive analysis; the aim is to study and find facts to be used for further investigation. This research was conducted at Hapsah Hospital, Bone Regency. Data analysis by concluding inductively. The study results show that the hospital's responsibilities and sanctions if proven professional wrongdoing can be punished by revocation of practice licenses and must provide compensation to patients and family members, but from a legal point of view. The general laws and regulations related to criminal acts, namely the Code of Criminal Law Number 29 of 2004 concerning Medical Practice and various other laws and regulations, including the Decree of the Minister of Health of the Republic of Indonesia Number 434 / MEN.KES / SK / X / 1993 concerning the Ratification and Implementation of Indonesian Medical Law.

### 1. Introduction

Indonesia is known as a state of the law; thus, every action or activity of Indonesian public officials and individuals must be based on applicable regulations and legally held accountable. The term law also implies guidelines that must be obeyed; if they are violated, they will get sanctions and depend on the legal authorization. In general, the law also intends to function as regulating and building society, a means of social control in a system that applies the rules regarding correct behavior, a means of bringing about community change, a means of public order and order, a means of realizing social justice, as a means of creating social justice. In the development movement, as a critical function in supervising the supervisory apparatus, implementing apparatus, and law enforcement apparatus, as a tool to rid the community of cases that disturb the community by providing criminal, civil, and administrative sanctions and community sanctions (Mustafa et al., 2020; Tamsan & Yusriadi, 2022; Zacharias, Rahawarin, et al., 2021). As a tool to carry out allocation of authority and decisions to government bodies and as a means of social stimulation, the law is not a tool that is only used to control the community but also lays down the legal foundations that can stimulate and facilitate interaction between people in an orderly and amicable manner. Some elements of law, namely law, are a regulation that regulates human behavior in an association in the community, authorized official bodies make regulations, rules are coercive, and sanctions for violations are firm.

Law is a set of rules or actions in an activity carried out by both individuals and the community, both what should not be done and what can be done by the community in public activities, which stipulates what may and may not be done by the community as citizens in general conditioning, which begins with the state and the regions themselves from different sources (Misnawati et al., 2019; Umi Farida et al., 2020). In other words, the law is closely related to human life, which refers to the system as essential

in implementing a series of law enforcement powers by law enforcement institutions because all human life is limited by law.

Society is an actor, not a tool or object, with interests and demands expected to be carried out correctly. In other words, society is a group of living things closely intertwined because of specific systems, certain traditions, conventions, and laws that are the same and lead to collective life. system in society that is interconnected between one human and another human that forms a unity. The following are the objectives of the law, namely, the rule of law has the aim of protecting human interests from threats that threaten, Regulating the relationship between fellow humans so that order is created and is expected to prevent conflicts between humans, The law protects human interests both individually and in groups which are human beings (Awaluddin A et al., 2019; Rijal et al., 2019; Tamsah et al., 2021; Umar, Hasbi, et al., 2019; Zacharias, Yusriadi, et al., 2021). Creatures who also need the protection of goods so that their interests can be protected from threats around them, the law has the goal of realizing the greatest happiness for all people and not only providing a living but also providing abundant food and protection and achieving togetherness, the law is a means to maintain and ensure order.

Health is a condition that is generally expected and desired by everyone in everyday life; in other words, health is a condition of complete physical, mental and social well-being and not simply the absence of disease or weakness. The understanding of health has shifted over time. A person is said to be healthy if he is physically, socially, and mentally fit. Therefore, humans generally try to live decent lives, such as activities and sports and consuming healthy food and drinks. As if it has become a trend for every human being, health becomes the main thing by implementing a healthy lifestyle which at first was just a fad or trial and error, turned into a routine. By adopting a healthy lifestyle, we can get many positive benefits physically and mentally. Many people say that health is expensive. A healthy lifestyle's purpose is to maintain a healthy body so that it does not get sick quickly. Paying attention to all aspects ranging from food, drink, and our daily behavior, be it in an exercise routine to adequate rest. The benefits of implementing a healthy lifestyle are maintaining the body's immune system, increasing stamina and energy, prolonging life, maintaining ideal body weight, being suitable for mental health, and increasing self-confidence.

Law No. 36 of 2009 concerning health (Health Law) is a healthy condition, both physically, spiritually, mentally, and socially that allows everyone to live socially and economically productive. That "everyone has the right to health and welfare. In addition, every human being has the same rights in quality and good health services, who are experts in their fields such as medical personnel; medical personnel can also be known as people who devote themselves to the health sector and have the ability that can be obtained in education such as coaching in the field of health. The health workers in question are (doctors, specialist doctors, dentists, veterinarians' clinical staff)

There is a saying, 'Doctors are also human,' meaning that as humans, doctors also sometimes make mistakes. That expression is indeed true. But if you look at the cases of malpractice that have occurred as a layperson, not a doctor, it must be unfortunate. For example, when listening to malpractice claims in the medical world so far. In Indonesia, for example, there are cases of babies who cut their fingers wrong, wrong blood transfusions, wrong injections, a wrong diagnosis that leads to death, sinful heart and lung transplantation so that they die, bad testicular surgery, and post-metal surgery left behind. In this growing era, there have been many cases that have damaged the reputation of Medicine. Some of them may be caused by the mentality and behavior of a doctor who does not manage and serve his patients well. In addition, the importance of a doctor must pay attention or provide direction following is an agreement given to the patient or the patient's closest family to explain in full and in detail for the course of the actions taken by the patient. And then many of them are doctors who abuse their profession as material to carry out illegal practices or violate the medical code of ethics, which is also called malpractice due to negligence in their approach, so doctors must be held accountable for their actions.

Malpractice is an act based on the failure or error of a doctor in carrying out his profession, practice, knowledge, and skills commonly used in treating patients, causing damage or loss to the health or life of the patient because it is not following the standards of the medical profession and uses expertise to personal interests (Hasbi et al., 2019; Ilyas et al., 2022; Yusriadi, Sahid, et al., 2019). The elements of malpractice are as follows, negligence, carried out by health workers, not according to medical service standards, the patient who has a disability or dies.

In terms of professional ethics and law, malpractice can be divided into two forms, namely ethical malpractice and juridical malpractice. Ethical malpractice is when health workers take actions that are contrary to their professional ethics as health workers. Juridical malpractice is divided into three, namely civil malpractice (civil malpractice), criminal malpractice (criminal malpractice), and administrative malpractice (administrative malpractice).

## 2. Method

Positive in the legal system that regulates human life. Following the issues raised in this review, the type of method to be used is normative juridical, namely by reviewing/analyzing secondary data in the form of legal materials, mainly primary and secondary legal materials, by understanding law as a set of rules or norms. The population in this study is a hospital set by the researcher, the Hapsah Hospital. The sample is a sample that really (represents) the number of the population. The author will appoint several examples, such as the Director/Head of the Hospital and General Physician.

## 3. Result

### Profile and structure of the Hapsah hospital, Bone Regency

Hapsah hospital was established on May 20, 2014, with the address at Jalan Urip Sumoharjo No 10, Bone Regency, South Sulawesi. The basis for the construction of the Hapsah hospital is due to the increasing need for the community for health facilities. Along with the demand for quality health, it is integrated with complete facilities. Hapsah Hospital is committed to increasing 33% of health care facilities in Bone Regency. Hapsah hospital is the first private hospital in Bone Regency that always prioritizes discipline to achieve our services in the health industry and will continue to strive for healing and patient satisfaction. With the vision of "Being a place of choice for treatment/healing and the hope of the community," Hapsah Hospital strives to provide quality professional health services with excellent service standards based on humanitarian principles. Following the hospital culture, by always prioritizing cleanliness, integrity, smartness, safe, and trustworthiness, the establishment of the Hapsah Hospital is expected to provide health facilities that all levels of the Bone community can access.

# The form of medical malpractice liability for criminal acts committed by the doctor at the regency hospital

The form of legal liability for criminal acts committed by doctors, commonly referred to as laws and regulations, does not explicitly regulate negligence; the rule in the Criminal Code is more about the consequences of the malpractice action. Still, when viewed from a legal perspective in general, several laws and regulations The invitation are very closely related to this crime, namely the Criminal Code. Health Law no. 36 of 2009 (Health Law/UUK), Medical Practice Law no. 29 of 2004, and various other laws and regulations, including the Minister of Health of the Republic of Indonesia Number: 434/Men.Kes/SK/X/1993 concerning the Indonesian Medical Code of Ethics Ratification and Application. The law gives independent authority to medical personnel to carry out and be responsible for carrying out medical science according to part or all of its scope and power.

According to dr.H.Rizalul Umar, Sp. B, MARS Director of the Hapsah Bone Hospital as well as a specialist surgeon, that in a medical action carried out by a medical worker such as (Doctor) it is necessary to know the location of the error or negligence such as not meeting standards operational procedure (SOP) or the occurrence of complications (Interview 20 June 2022).

If there is an error or the doctor does not work correctly, the victim's lawsuit can be legally processed and examined by specific Ministry of Health officials. The latter has special powers separately as investigators as regulated in the Act. Number 8 of 1981 concerning Criminal Procedure Code (State Organization of the Republic of Indonesia of 1981 Number 76. And the hospital submitted this case to the court.

It is different if the hospital as a cooperative and management body is proven negligent in carrying out its administrative duties and the hospital management "orders," "allows," or "participates in the work," the hospital cannot be separated from the legal process.

Doctors can be protected by law as long as they carry out their duties correctly and under standard operating procedures (SOP); this aims to provide a sense of security for the parties because of the relationship formed between patients and doctors, and other health workers, and for two reasons to eliminate doctor's mistakes, namely rational justification and defense according to the provisions of the law. The Criminal Code in the doctor-patient relationship must be a partnership. Doctors are not to blame if the patient is dishonest. Therefore, so that the medical record (Medical record) and (informed ) consent) Excellent and correct approval must be met. A medical record or medical record is a file containing notes and documents about a patient's identity, examination, treatment, and other medical actions at health service facilities for outpatient and inpatient, both managed by the government and private (Permenkes number 209/MENKES/PER/III/ 2008). Medical Records or Medical Records are helpful as a basis and guide for planning and analyzing diseases and planning treatment, care, and medical actions that must be given to patients. Organizing Medical Records is a process of activities that begins when the patient is admitted to the hospital.

The stages of the protection mechanism for doctors suspected of committing criminal acts or Malprektek are in the form of an institution, namely the Indonesian Medical Discipline Honorary Council (MKDKI), in collaboration with the Indonesian National Police (POLRI) based on law and mutual respect for the professional community. The Indonesian Medical Discipline Honorary Council (MKDKI) is the institution authorized to determine whether or not doctors and dentists have made mistakes in the application of medical and dental disciplines and to impose sanctions.

Suppose the case is handed over to the police at the investigation level. In that case, the doctor suspected of committing medical malpractice has the right to defend his rights under Articles 52, 54, 55, 57, paragraph 1, Article 65, Article 68, and Article 70, paragraph 1 of the Criminal Procedure Code. And if the case is transferred to the court level, then the evidence of the alleged malpractice can sue the medical record (Medical record) in the form of legal evidence (Article 184 Verse 1 KUHAP)

### Medical malpractice criminal liability as regulated in (Health Law and Legislation)

Criminal acts (malpractice) in the medical field. Accountability act criminal in the medical field can have subject law individual (doctor) or a business entity convicted of a crime in the medical field. The existing legislation in the field of medicine makes a company criminally related, but the law in question does not contain criminal provisions or criminal liability against the company. Even under (Law No. 36 of 2009) and the Criminal Code as the parent of illegal law regulations, businesses are not subject to criminal activities. In addition, in Law no. 36 of 2009, the system of Criminal responsibility for errors (Liability based on fault), Especially for companies, becomes an obstacle to proving criminal acts and legal wrongdoing.

The formulation of criminal and criminal enforcement in the Criminal Code is positive, and the responsibility of medical personnel (Doctors) should be better understood as "abstract liability" or indirect responsibility (KUHP). Even though Law no. 29 of 2004 stipulates sanctions as "disciplinary actions," which do not expressly state the nature of criminal sanctions in the form of "compensation" (compensation) directly to victims. 29 of 2004.

However, based on the basic idea or principle of the idea, the accountability/benefit balance of medical crime perpetrators (doctors) and victims of medical crimes has the policy to protect victims from groups in the medical field so that they can provide a sense of justice to victims and create a deterrent effect, this can be done through criminal mediation constituent policy under Indonesian criminal law reform. This is possible for international developments in the context of criminal law reform. However, one act is excluded from the Criminal Code and does not always have to be punished. For example, the

prohibition of injuring someone with a sharp object. This happens daily in the Surgery Clinic (basically not against the law).

As you can see, there are significant differences between ordinary crimes and medical crimes, which are: 1) common crimes are mainly about consequences, but medical crimes are not about consequences but causes. The result is indeed fatal, but there is no element of negligence/negligence, and it cannot be blamed on the doctor; 2) in ordinary crime, it's usually apparent so that you can draw a straight line between cause and effect. For example, it was stabbed with a knife to open the stomach. In medical crime, it is very different. For example, a surgeon performing surgery can only try to treat a patient. For a medical procedure similar to surgery, there is always a risk of something wrong. Therefore there is a provision that before a surgeon performs surgery, he must first explain the nature and purpose of the surgery, the risks that may arise, and which must be borne by the patient. If the patient agrees, they must confirm by signing the consent form.

The enactment of Law no. 36 years of Health Workers 2014 was just promulgated on October 17, 2014, and subsequently covers health workers, including doctors, pharmacists, psychologists, nurses, and others; there are many changes to regulations that can protect various professions in the field of health that require medical personnel to be more disciplined.

Injured plaintiffs can claim compensation. To be eligible for malpractice compensation, the plaintiff must demonstrate the existence of a doctor's obligation to the patient; the doctor violates the Commonly Used Medical Service Standards; this Medical Service Standard is a law that binds parties who work in the health sector and prevents medical staff negligence in carrying out medical actions. If the doctor only acts contrary to medical ethics, then he is only committing an ethical violation. In Indonesia, doctors' criminal liability in the Criminal Code includes liability due to intentional or negligence/negligence. Articles 369 and 360 of the Criminal Code cover errors based on intent. While the basis for negligence/negligence in Article 267 verbal warning; a). written notice, b) administrative sanction, and C ) the license is revoked.

### 4. Discussion

Acts against the law in the form of DOLUS (intentional) or CULPA (negligence), in DOLUS (purposeful), the inner attitude of the person who does it is different. The internal perspective of the person who does it is against the prohibition. In contrast, in CULPA (negligence), the person who does it does not heed the ban, so he is not careful in carrying out an objective causal action that causes a prohibited condition; further action can be taken if any and if negligence can prove and can be subject to criminal activity. Concealment of information is not allowed unless the doctor/midwife deems the information harmful to the patient's health interests. In this case, the doctor can inform the patient's closest family (Ahdan et al., 2019; Gani et al., 2019; Sahabuddin et al., 2019; Sahid et al., 2020; Setiawan et al., 2021; Tamsah et al., 2020; Yusriadi, Farida, et al., 2019). To provide information to the patient's immediate family, the presence of the midwife/other medical staff is an important witness. There is a direct relationship between a breach of duty and injury to health, which must undergo a careful and thorough examination to prove the presence of an element of DOLUS (Intentional) or CULPA (Obtention) performed by the doctor. The information includes the advantages and disadvantages of the planned medical action, whether diagnostic, therapeutic or palliative. Data is usually given orally but can also be in writing (related to information).

Formulating sanctions for Law no. 29 2004 is cumulative/imperative, giving judges no discretionary choice and guilty of crimes as legal entities/corporations rather than "acting as regulators or leaders." When making decisions, it is challenging to apply Law no. 29 of 2004 does not regulate how to implement a judgment against the Company if the Company does not want to use a fine and disciplinary action.

Based on the study results, criminal liability for medical crimes is still lacking, and it is necessary to provide legal certainty and more justice to victims of crime in the criminal medical discipline; in my

opinion, it needs to be updated. Criminal liability is determined based on the maker's fault and not only on fulfilling all elements of the crime. Most of the malpractice cases that occurred in Indonesia, as an alternative for resolving issues in the medical field, ended only with criminal mediation. In addition, only those who end up with compensation for the victim's family from a crime in the medical area, even though there are still many families of the victim who still feel it is inappropriate to pay compensation only because the perpetrators of medical crimes do not get criminal sanctions, do not provide a deterrent effect on the perpetrators but the victims must sue (Ansar et al., 2019; Ilyas et al., 2021; la Kamalussin et al., 2021; Mislia et al., 2021; Nellyanti et al., 2021; Prakoso et al., 2021; Sawitri et al., 2019; Umar, Amrin, et al., 2019; Usman et al., 2020; Yusriadi et al., 2020; Zamad et al., 2021).

## 5. Conclusion

Based on the results of the research and the results of discussions related to criminal liability, it can be stated as follows: 1) provisions regarding the criminal liability of medical personnel (doctors) due to their negligence have not been regulated in law. Still, from a legal perspective, several relevant statutes and regulations are closely related to this crime, particularly the Criminal Code, Law no. Law Number 36 of 2009 concerning Health, Law Number 36 of 2014 concerning Health Workers, Law Number 29 of 2004 concerning Medical Practice, Law Number 20 of 2013 concerning Medical Education, and many other laws and regulations stakeholders, including the Ministry of Health. RI Health Decree No: 434/Menkes/SK/X/1993 concerning the Indonesian Medical Code of Ethics Ratification and Application; 2) medical malpractice accountability in Indonesia is carried out in various ways, namely responsibility through the imposition of sanctions for revocation of practice licenses, rehabilitation, and the provision of civil, criminal, and administrative sanctions for doctors who commit professional errors. Crime. In Indonesia, the criminal liability of doctors in the Criminal Code, including criminal liability due to intentional negligence, is regulated in Article 359 360 of the Criminal Code, which includes deliberate wrongdoing. A person convicted of medical malpractice is covered by sections 75, 76, 77, 78, and 79 of the Medical Practice Act. The government's efforts to ensure the accountability of victims of medical malpractice are substantial by introducing various rules that every doctor can consider before taking action, only to that extent. Law enforcement in Indonesia is still very inefficient, as evidenced by the many cases of negligence and no retaliation from competent judicial authorities. Most of them are resolved through mediation.

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