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LEGAL RESPONSIBILITY OF MEDICAL SPECIALIST FOR ILLNESS OR DEATH: THE ESSENCE OF JUSTICE

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ABSTRACT

This study examines the legal liability of medical specialists who perform medical procedures beyond their scope of competence, resulting in patient morbidity or mortality. The issues analyzed include the essence of justice in the regulation of physician legal liability and the ideal formulation of legal policies in medical practice, particularly amidst the advancement of medical techniques. The research method employed is legal research using a socio-legal approach and explanatory specification. Data sources consist of primary and secondary legal materials, as well as empirical data in the form of complaints and decisions from the Indonesian Medical Discipline Honorary Council (MKDKI) that have attained legal finality, analyzed through descriptive qualitative methods. The results indicate that justice in physician legal liability must be understood as proportional justice, given the disparity in knowledge and authority within the therapeutic relationship between doctor and patient. Medical specialists may be held legally liable if proven to have committed competence violations, such as practicing beyond their authority, failing to refer patients, or providing inadequate medical care. The novelty emphasizes that physician legal liability is not solely based on the outcome, but rather on violations of professional standards, discipline, and the degree of negligence involved. Consequently, it is necessary to strengthen regulations and oversight mechanisms in medical practice to ensure patient safety and legal certainty for medical personnel.

1. Introduction

Advances in medical science and technology demand increased competence among medical personnel, particularly specialist doctors, in the provision of healthcare services.[1] However, in practice, medical personnel are still found performing procedures without adequate competency, potentially leading to morbidity and even death in patients. This situation not only threatens the safety of patients as recipients of healthcare services but also raises legal issues

1 Rahmi Yuningsih., Pengembangan Kebijakan Profesi Bidan dalam Upaya Meningkatkan Pelayanan Kesehatan Ibu dan Anak. *Aspirasi: Jurnal Masalah-masalah Sosial*, Vol.7 No.1, 2016, page. 63-76.

regarding physicians' responsibility for their professional actions. Although regulations establish professional standards and medical discipline, in reality, there remains a gap between applicable legal provisions and the implementation of medical practice in the field.[2]

The regulation and implementation of legal liability for specialist doctors who carry out medical procedures outside their competence has not yet been implemented effectively.[3]Complaint data submitted to the Indonesian Medical Disciplinary Honorary Council (MKDKI) shows a high number of public reports regarding alleged competency violations. However, some cases cannot be followed up due to unclear boundaries between ethical violations, professional discipline, and legal violations.[4] This situation indicates a persistent lack of clarity and a lack of norms in legal policies that should guarantee justice, certainty, and legal protection for all parties involved.

Within this framework, this study formulates two main problems, namely: (1) how the concept of justice is reflected in legal regulations regarding the responsibility of specialist doctors who carry out actions outside their competence that cause pain or death to patients; and (2) how to formulate an ideal legal policy in regulating medical practice, especially related to the application of medical techniques and the limits of doctor competence, in order to prevent the emergence of adverse health impacts on patients. This problem formulation is motivated by the need for legal certainty in medical practice which continues to develop.

Research conducted by Indra Widjayanto[5] entitled "A Civil Law Review of Physician Liability in Medical Malpractice and Its Relevance to Patient Protection." Physician civil liability in medical malpractice cases plays a crucial role in safeguarding patient rights and providing access to compensation or redress for patients who suffer losses due to physician negligence. However, the implementation of this civil legal protection faces several challenges, including difficulties in proving cases, low patient awareness of their rights, and limited access to an equitable justice system. These factors hinder the effectiveness of legal protection for patients, necessitating increased outreach and support for a more inclusive justice system. This research emphasizes the importance of strengthening regulations and increasing patient understanding of their legal rights to make the civil liability system more effective in protecting patients and ensuring physician accountability in medical practice.

2 Oktaviani Matilda Viola Angelina Kadompi, Vera Dumonda Silitonga, and Tri Agus., Darurat Medis dalam Pelayanan Kesehatan Pada Operasi Militer Selain Perang (OMSP). *Jurnal Syntax Imperatif: Jurnal Ilmu Sosial dan Pendidikan*, Vol.5 No.5, 2024, page. 1065-1073.

3 Anny Isfandyarie., *Tanggung Jawab Hukum Dan Sanksi Bagi Dokter*, Buku I, Malang: Prestasi Pustaka, 2006, page. 191

4 David Estrada., Perlindungan Hukum Terhadap Dokter Dalam Melakukan Praktik Kedokteran Terkait Dengan Dugaan Pelanggaran Disiplin Yang Berdampak Terhadap Malpraktik. *Aladalah: Jurnal Politik, Sosial, Hukum dan Humaniora*, Vol.2 No.2, 2024, page. 137-153.

5 Widjayanto, Indra, Yusuf Rizal, Tjio Violita Tjahyono, and Bela Amru Hakiki., Tinjauan Hukum Perdata atas Tanggung Jawab Dokter dalam Malapraktik Medis dan Relevansi terhadap Perlindungan Pasien. *Proceeding Masyarakat Hukum Kesehatan Indonesia*, Vol.1 No.01, 2024, page. 168-183.

Research conducted by Veronica Komalawati[6] entitled "The Responsibility of Doctors for Patient Safety Incidents in Healthcare Services in Hospitals as Healthcare Institutions." The medical profession is a noble profession that dedicates itself to the health sector and has knowledge and skills in the medical field that has the authority to carry out health efforts. A doctor is required to carry out his profession in accordance with scientific standards and the authority he has. However, patient safety incidents do not always occur solely due to medical negligence. Patient safety incidents can occur due to the rapid development of health technology that is always offered by hospitals. Hospitals are no longer merely health institutions, but also as business institutions that are influenced by scientific developments and technological advances to improve the quality and reach of their services by implementing business management to gain profits. In order to realize health services oriented towards patient safety, hospitals are required to implement patient safety standards and doctors only share in the mistakes that result in patient safety incidents in hospitals.

This study presents an update by specifically examining the legal liability of specialist doctors who act beyond their competence and placing the concept of proportional justice as the basis of the analysis. It not only looks at responsibility from the aspect of losses or patient safety incidents, but emphasizes that accountability must be based on violations of professional standards, discipline, and the level of negligence, not solely on the resulting consequences. Furthermore, the use of a socio-legal approach and analysis of the legally binding MKDKI decision remains novel because it provides an empirical dimension to the formulation of ideal legal policies, particularly in the face of developments in medical techniques and the complexity of specialist doctors' authority, thereby enriching perspectives on the balance between patient protection and legal certainty for medical personnel.

This study aims to comprehensively analyze the forms and limits of legal liability of specialist physicians for medical actions performed without adequate competence, while also formulating a legal regulatory model based on the principles of justice and legal protection. The approach used is a sociological approach to law, which connects legal norms with practices occurring in society, particularly through an analysis of legally binding decisions and complaints.

Theoretically, this research is expected to enrich the study of health law, particularly regarding the legal accountability of the medical profession, which is oriented towards justice. Practically, the results of this study are expected to serve as a reference for policymakers, medical professional supervisory bodies, and medical personnel in realizing safe, professional, and responsible health care practices, while also strengthening legal protection for patients as recipients of health care.

6 Komalawati, Veronica, and Erga Febrianti Triswandi., Tanggung Jawab Dokter Atas Insiden Keselamatan Pasien Dalam Pelayanan Kesehatan Di Rumah Sakit Sebagai Institusi Kesehatan. *Jurnal Bina Mulia Hukum*, Vol.6 No.2, 2022; 174-186.

2. Research Methods

This legal research uses a sociological juridical approach with explanatory research specifications.[7] This approach aims to examine the relationship between legal regulations in the field of medical practice and their implementation, particularly in cases of liability for specialist doctors who perform actions beyond their competence that cause suffering or death to patients.

Research data includes primary data and secondary data.[8]Primary data was obtained through interviews with sources related to the research object, while secondary data came from health laws and regulations, scientific literature and journals, as well as complaint documents and legally binding decisions of the Indonesian Medical Disciplinary Honorary Council (MKDKI). Data analysis was conducted qualitatively through a systematic process of grouping and interpreting data to gain a comprehensive understanding of the legal accountability of specialist physicians in healthcare practice.

3. Results and Discussion

3.1 The Essence of Justice in Legal Regulations Regarding Doctors' Legal Liability for Patient Death and Illness

The essence of justice in a physician's legal accountability is closely related to the principle of propriety and appropriateness in the legal relationship between physician and patient.[9] This relationship is fundamentally not one of complete equality, given the differences in knowledge, competence, and professional authority held by physicians. Therefore, justice in this context cannot be understood merely formally but must be placed within a framework of proportional justice that accommodates the specific characteristics of the medical profession. The therapeutic contract, as the basis of the legal relationship between physician and patient, demands a fair distribution of rights and obligations, while still considering the limits of the physician's professional abilities and guaranteeing the patient's right to safety and legal protection.[10]

The concept of proportional justice, as proposed by Aristotle, provides an important basis for assessing a physician's legal liability. Aristotle distinguished between distributive justice and corrective justice, with the latter having strong relevance in medical disputes because it aims to redress losses arising from errors or negligence.[11] In cases that result in patient pain or death, corrective

7 Andri Winjaya Laksana and Bobur Sobirov, Comparative Study of Criminal Law Enforcement Against Drug Addicts Through Religious Rehabilitation Between Indonesia and Uzbekistan, *Madania: Jurnal Kajian Keislaman*, Vol.26 No.1, 2024., page.159-166

8 Ronny Hanitijo Soemitro., *Metodologi Penelitian Hukum dan Jurimetri*, Jakarta: Ghalia Indonesia, 1990, page. 12.

9 Machli Riyadi., *Teori Iknemook dalam Mediasi Malapraktik Medik*. Jakarta: Prenada Media, 2018, page. 21

10 Rinanto Suryadhimirtha., *Medical Malpractice Law*, Yogyakarta: Total Media, 2011, page. 15.

11 Lisa Kristant et al., Tuntutan Ganti Rugi Keluarga Korban Pembunuhan: Penerapan Onrechtmatige Daad dan Keadilan Aristoteles dalam Hukum Perdata Indonesia. *Bookchapter Hukum dan Politik dalam Berbagai Perspektif*, Vol.4, 2025, page. 55-78.

justice demands restitution or compensation commensurate with the severity of the error and the resulting impact. Therefore, determining a physician's legal liability cannot be separated from professional standards and the level of care that should be exercised, particularly by specialist physicians.[12]

This understanding of justice is further strengthened by John Rawls's theory of justice as fairness.[13] This theory emphasizes that justice must arise from fair procedures, not solely from the final outcome.[14] In the context of physicians' legal liability, this approach implies that the assessment of wrongdoing must be based on objective procedures and professional standards, not solely on the consequences. The principles of equal liberty and the principle of difference require that legal regulations provide protection to the more vulnerable, namely patients, without overriding the physician's right to legal certainty and protection from the possibility of excessive criminalization.[15]

The values of justice in the Indonesian legal system are also rooted in Pancasila, particularly the second and fifth principles, which emphasize human justice and social justice.[16] In the provision of health services, distributive justice is reflected in the state's obligation to ensure the availability and quality of health services for the public. Meanwhile, legal justice demands compliance by both doctors and patients with applicable laws and regulations, while commutative justice regulates the reciprocal relationship between doctors and patients in the provision of medical services. These three dimensions of justice must be present simultaneously in the regulation of doctors' legal liability to avoid an imbalance in legal protection for all parties.[17]

The legal relationship between a doctor and a patient is essentially a therapeutic transaction involving a commitment of effort, not of results. Therefore, the object of this relationship is not a guarantee of the patient's recovery, but rather the doctor's maximum effort based on his or her knowledge, technology, and professional competence. As long as medical procedures are performed in accordance with applicable professional standards and competencies, they are legally justifiable. A breach of contract can only be

12 Rusyad, Zahir, et al., Legalitas Kelayakan Dan Kompetensi Dokter Dalam Memberikan Layanan Tindakan Medik Di Klinik Kecantikan. *Journal of Innovation Research and Knowledge*, Vol.5 No.1, 2025, page. 977-998.

13 Sulaiman, Heri, et al., John Rawls' Theory of Justice and Its Relevance in the Formulation of Community Property Division Policy in the Contemporary Era: Teori Keadilan John Rawls dan Relevansinya dalam Formulasi Kebijakan Pembagian Harta Bersama di Era Kontemporer. *Al Hairy| Journal of Islamic Law*, Vol.1 No.1, 2025, page. 25-36.

14 Pan Mohamad Faiz., Teori Keadilan John Rawls (John Rawls' Theory of Justice). *Jurnal Konstitusi*, Vol.6 No.1, 2009, page. 135-149.

15 Dewi Fibrini., Perlindungan Hukum Terhadap Tenaga Kesehatan Dalam Melakukan Tindak Medis. *Iuris Studia: Jurnal Kajian Hukum*, Vol.5 No.1, 2024, page. 147-156.

16 Andri Winjaya Laksana, Anis Mashdurohatun, Sri Endah Wahyuningsih, Yudha Purnawan Sudijanto., Reconstruction Of Law Enforcement Regulation Against Criminal Actions Performed By Children Based On The Value Of Justice Of Pancasila, *Russian Law Journal*, Vol.11 No.5, 2023, page. 2489-2497

17 Sartono Sartono, et al., Hak Atas Kesehatan Dan Tanggung Jawab Negara: Konstruksi Hukum Dalam Perlindungan Pasien Bpjs. *Jurnal Ilmiah Advokasi*, Vol.13 No.3, 2025, page. 832-850.

declared if the doctor fails to fulfill the agreed-upon performance, while an unlawful act arises if the medical procedure deviates from professional standards or is performed without adequate competence.[18]

In medical disputes that result in injury or loss to a patient, the resulting loss can be either expectation loss or reliance loss, which must be considered proportionally in determining compensation. The problem becomes more complex when there is uncertainty about the basis for the lawsuit, whether it is based on breach of contract or an unlawful act. Indonesia's civil law system still clearly separates these two concepts, often making it difficult for patients to provide evidence, particularly in demonstrating a causal relationship between the doctor's actions and the loss they experienced.

Imposing the burden of proof entirely on the patient or their family has the potential to create injustice, given their limited understanding of medical aspects and professional standards. Therefore, the existence of the Medical Disciplinary Honorary Council (MKDK), as an independent institution, is a crucial instrument in realizing substantive justice. Through its disciplinary and professional competency assessment mechanisms, this institution functions to conduct an initial assessment of alleged violations before the case proceeds to legal accountability. Therefore, justice in the legal accountability of physicians can only be achieved if legal regulations explicitly define competency standards, types of violations, and objective and proportional assessment mechanisms.

3.2 Criteria and Forms of Competency Violations by Specialist Doctors Who Can Be Sued for Legal Responsibility Due to Patient Death and Illness

Regulations regarding violations of specialist physician competence cannot be separated from the distinction between ethical violations and violations with legal consequences.[19] The Indonesian Code of Medical Ethics (KODEKI) explicitly classifies violations into two forms: pure ethical violations and ethical-legal violations. Pure ethical violations are actions that only contradict professional ethical norms without fulfilling the elements of a positive legal violation, for example, the collection of unfair service fees, taking over patients without the consent of colleagues, actions of self-promotion by belittling colleagues, or providing special treatment to certain patients while ignoring other patients with similar conditions. This type of violation is fundamentally related to aspects of professional morality and the integrity of relationships between medical personnel and the relationship between doctors and patients.[20]

In contrast to pure ethical violations, ethicolegal violations include actions that,

18 Darmin, Febrianus, Arief Syahrul Alam, and Muhamad Chaidar., Perlindungan Hukum Terhadap Pasien Dalam Hal Pelaksanaan Perjanjian Terapeutik Berdasarkan Kitab Undang-Undang Hukum Perdata. *Jurnal Ilmu Hukum Wijaya Putra*, Vol.2 No.1, 2024, page.13-25.

19 Hudi Yusuf, and Raimundus Uhe Hurint., Pelanggaran Hukum Dalam Pelayanan Kesehatan Yang Dapat Menimbulkan Sengketa Medik. *Jurnal Intelek Dan Cendikiawan Nusantara*, Vol.1 No.2, 2024, page. 2354-2363.

20 Bahder Johan Nasution., Health Law: Doctors' Responsibilities, Jakarta: Rineka Cipta, 2005, page. 11.

in addition to violating professional ethical norms, also meet the elements of a legal violation. In this context, KODEKI identifies a number of actions that have legal implications, including providing medical services below professional standards, issuing false certificates, disclosing official secrets, induced abortions prohibited by law, and sexual harassment of patients. Any action that meets the elements of a legal violation is in principle also categorized as an ethical violation, although not all ethical violations have legal consequences. This distinction is important in determining the limits of a doctor's liability, especially when medical actions cause pain or death to a patient.[21]

A common problem in practice is determining when a medical procedure can be classified as a violation of health care standards. The provisions of the Civil Code are still general and do not specifically regulate the legal relationship between doctors and patients in the context of modern medical practice.

In the realm of criminal liability, medical negligence resulting in injury or death of a patient is expressly regulated in Articles 359 and 360 of the Criminal Code (KUHP).[22] Although the legal relationship between a doctor and a patient is essentially civil, medical actions performed outside of professional standards can enter the criminal realm if they meet the elements of an error in the form of intent or negligence and cause consequences prohibited by law.[23] An act can be considered a crime if it meets the elements of an unlawful act (actus reus) and is accompanied by a wrong mental attitude (mens rea), whether in the form of intent, carelessness, or negligence. Thus, a doctor's criminal liability is determined not only by the consequences that arise, but also by the quality of the error and the violation of applicable competency standards.

To measure the presence ofmedical malpractice stemming from negligence, J. Guwandi put forward a number of indicators, including[24]

3.2.1 The attitude of a doctor includes, among other things:
3.2.1.1 Contrary to the standards of the medical profession.
3.2.1.2 Contrary to ethics, morals and discipline.
3.2.1.3 Lack of knowledge or being left behind in knowledge in the profession that is generally accepted among those circles.
3.2.1.4 Against the law.
3.2.1.5 Neglect, negligence, carelessness, indifference, lack of concern for patient safety.

This view is in line with the concept of professional standards put forward by Koeswadji, who emphasized that professional standards are the result of a collective agreement of the professional community regarding the limits of

21 Syamsul Bachri., Implikasi Hukum Atas Isu Etika Dalam Praktik Kedokteran. *Jurnal Berita Kesehatan*, Vol.17 No.1, 2024, page. 86-97.

22 Wahyu Wiriadinata., Dokter, pasien dan Malpraktik. *Old Website Of Jurnal Mimbar Hukum*, Vol.26 No.1, 2014, page. 43-54.

23 Achmad Juan Fieri, and Merline Eva Lyanthi., Perlindungan Hukum Kesehatan Pasien Bersalin akibat Malapraktik. *Innovative: Journal Of Social Science Research*, Vol.4 No.6, 2024, page. 4664-4675.

24 Guwandi., *Informed Consent and Informed Refusal, Faculty of Medicine*, Jakarta: University of Indonesia, 2006.

authority and responsibility in carrying out medical practice.[25]

Operationally, a specialist doctor's competency violation can be assessed through a number of standard medical professional parameters, including the obligation to act carefully and meticulously (zorgvuldig handelen), the appropriateness of actions to the development of medical science, professional competence comparable to that of medical personnel in similar service fields, similarity of service situations and conditions, and the use of proportional means and methods. These parameters serve as objective benchmarks in assessing whether a medical action is legally accountable. Therefore, this study emphasizes that the legal responsibility of specialist doctors for the occurrence of patient illness or death must be based on a comprehensive analysis of the competency violation, not solely on the resulting consequences.

The limits of a doctor's authority to perform medical procedures outside their professional competence have been comprehensively regulated in various laws and regulations, including Law Number 20 of 2013 concerning Medical Education, Law Number 29 of 2004 concerning Medical Practice, Law Number 36 of 2014 concerning Health, and Law Number 44 of 2009 concerning Hospitals. These provisions emphasize that a doctor's authority is not an absolute right, but rather a formal legal authority inherent in meeting competency standards and licensing established by the state. Therefore, any medical procedure performed outside the limits of competence has the potential to result in legal consequences, particularly if it results in patient illness or death.[26]

Conceptually, Syahrul Machmud explained that a doctor's authority to provide medical services only arises after the doctor registers with the Indonesian Medical Council (KKI) as an autonomous and independent institution. This registration process forms the basis for issuing a practice permit, which provides legal legitimacy for the doctor to practice their profession. From an administrative law perspective, this authority can be divided into three forms: attributive, delegative, and mandated authority.[27]

3.2.2 Attributive authority originates directly from statutory regulations and is inherent in the position or profession of doctor, with legal responsibility resting with the holder of this authority.

3.2.3 Delegative authority comes from the delegation of authority based on certain legal norms, where responsibility and accountability are transferred to the recipient of the delegation.

3.2.4 Meanwhile, mandate authority is the delegation of authority in the relationship between superiors and subordinates, where legal

25 Anwar, Arman., *Hukum Kesehatan Praktik Kedokteran Telemedicine*. Yogyakarta: Deepublish, 2023. page. 36

26 Merdekawati, Yuliana., Tanggung Jawab Pidana Perawat Dalam Melakukan Tindakan Keperawatan Berdasarkan Undang-Undang Nomor 36 Tahun 2009 Tentang Kesehatan (Studi Di Rumah Sakit Umum Santo Antonius Pontianak). *Jurnal Nestor Magister Hukum*, Vol.3 No.5, 2013, page. 1-26

27 Rinaldi Syahputra., Kebijakan Penerbitan Surat Izin Praktik Dokter Di Indonesia. *Jurnal Hukum Positum*, Vol.7 No.1, 2022, page. 67-82.

responsibility in principle remains with the person giving the mandate.[28]

In medical practice, a doctor's authority is dynamic and contextual, adapting to the healthcare conditions they face. This authority can be classified as independent authority, limited authority, additional authority, and clinical authority within a hospital setting.[29] Independent authority grants a doctor the right to practice independently in accordance with their competence and possession of a Registration Certificate (STR). Conversely, limited authority can only be exercised under the supervision of another doctor and generally applies during medical education, such as internship programs and specialist education. Additional authority is granted to a doctor after completing specific education or training to meet the need for specialist medical services in a specific region and is usually geographically limited. Hospital clinical authority is granted through clinical assignments by the hospital leadership based on the results of the medical committee's credentialing process and is valid for a specific period.

The Indonesian Medical Competency Standards (SKDI) serve as a benchmark for the minimum competency of medical graduates and serve as the primary reference for determining the limits of the medical profession's authority. The standards, established by the Indonesian Medical Council, emphasize that medical competency encompasses mastery of knowledge, clinical skills, and a professional attitude in the provision of healthcare services. The seven established competency areas, ranging from effective communication skills and clinical skills to the scientific basis of medicine, to ethical, medicolegal, and patient safety aspects, demonstrate that medical competency extends beyond technical competence to encompass moral and legal dimensions. Violations of these competency standards, particularly in clinical skills and medicolegal ethics, have the potential to constitute a basis for assessing a physician's legal liability.[30]

Furthermore, the SKDI also establishes the levels of competence that doctors must possess, ranging from case recognition and referral to independent and thorough management. These differing levels of competence serve as important tools in assessing whether a doctor has acted within their professional authority.

In medical service practice, violations committed by doctors can be classified into three main forms, namely:

3.2.5 Violation of the Code of Medical Ethics;
3.2.6 Violation of Medical Discipline;
3.2.7 Violation of Medical Practice Administration Law.

Violation of the medical code of ethics is a form of violation of the norms regulated in the Indonesian Code of Medical Ethics (KODEKI), which can be

28 Veronica Komalawati., Dhani Kurniawan, Kompetensi dan Kewenangan Peraktik Kedokeran Perspektif Hukum di Indonesia, *Jurnal Ilmiah Hukum De'jure*, Vol.3 No.1, Mei 2018. page. 147–166

29 *Ibid*

30 Konsil Kedokteran Indonesia. *Standar Nasional Pendidikan Profesi Dokter Indonesia.* Jakarta: Konsil Kedokteran Indonesia, 2019.

categorized as a pure ethical violation or an ethical-legal violation.[31] A pure ethical violation is an action that only contradicts the rules of professional ethics without fulfilling the elements of a legal violation, for example, the withdrawal of unreasonable service fees, including to the family of colleagues, taking over patients without prior doctor's consent as regulated in Article 16 of the KODEKI, the act of promoting oneself in front of patients as prohibited by Article 4 letter a of the KODEKI, and neglect of one's own health as regulated in Article 17 of the KODEKI. This type of violation basically has an impact on the enforcement of professional ethics and does not directly result in legal consequences, unless it develops into a violation that also has a legal dimension.[32]

On the other hand,[33] an ethical violation is a violation of ethics that also fulfills the elements of a legal violation. These violations include providing medical services below professional standards, issuing false certificates that violate Article 7 of the Indonesian Medical Code (KODEKI) and Article 267 of the Indonesian Criminal Code (KUHP), disclosing official secrets that violate Article 13 of the KODEKI and Article 322 of the Indonesian Criminal Code (KUHP), failing to follow developments in medical science and technology, performing induced abortions that are prohibited by law, sexually harassing patients, and refusing to provide assistance in an emergency that violates Article 14 of the KODEKI and Article 304 of the Indonesian Criminal Code (KUHP). These ethical violations are the ones that most often form the basis for the emergence of legal liability for doctors, both in the civil and criminal realms.

In addition to ethical violations, doctors can also commit violations of medical discipline, namely violations of the rules for applying medical science in professional practice.[34]Disciplinary violations generally encompass three main aspects: the practice of medicine without adequate competence, suboptimal performance of professional duties and responsibilities toward patients, and reprehensible behavior that can undermine the dignity and honor of the medical profession. These forms of disciplinary violations are regulated in more detail in the Decree of the Indonesian Medical Council Number 17/KKI/KEP/VIII/2006 concerning Guidelines for Enforcing Discipline in the Medical Profession.

The guidelines emphasize that medical practice conducted outside the limits of competence is a form of disciplinary violation, as regulated in Article 29 paragraph (3) letter d of Law Number 29 of 2004 concerning Medical Practice and Regulation of the Minister of Health Number 1419/Menkes/Per/X/2005. Violations can also occur if a doctor does not refer a patient to another medical

31 Syamsul Bachri., Implikasi Hukum Atas Isu Etika Dalam Praktik Kedokteran. *Jurnal Berita Kesehatan*, Vol.17 No.1, 2024, page. 86-97.

32 Hudi Yusuf and Raimundus Uhe Hurint., Pelanggaran Hukum Dalam Pelayanan Kesehatan Yang Dapat Menimbulkan Sengketa Medik. *Jurnal Intelek Dan Cendikiawan Nusantara* , Vol.1 No.2, 2024, page. 2354-2363.

33 Andri Winjaya Laksana, Hartiwiningsih Hartiwiningsih, Hari Purwadi, and Anis Mashdurohatun., The Sufism Healing As An Alternative Rehabilitation For Drug Addicts And Abusers, *QIJIS (Qudus International Journal of Islamic Studies)*, Vol.11 No.1, 2023, page. 149-176

34 Decision of the Indonesian Medical Council: Number 17 / KKI / KEP / VIII / 2006 concerning Guidelines for Enforcing Discipline in the Medical Profession.

professional who has the appropriate competence, as required in Article 51 letter b of the Medical Practice Law, except in certain conditions such as emergencies, limited service facilities, or at the request of the patient. In addition, disciplinary violations can also occur if a doctor delegates medical actions to health workers who do not have competence, appoints a substitute doctor without legal authority or without notification to the patient, carries out practice in a state of inadequate physical or mental health, and carries out or does not carry out medical actions that should be carried out without legally acceptable justification.

Complaint data received by the Indonesian Medical Discipline Honorary Council (MKDKI) during the 2020–2023 period indicates that there are still serious problems in public understanding regarding the difference between ethical violations and violations of professional discipline. Of the 119 complaints received, 30 were declared unprocessable because they did not meet the requirements stipulated in Council Regulation Number 50 of 2017. Of the 25 MKDKI decisions that have obtained permanent legal force, the majority of violations relate to the competency discipline principle, specifically those regulated in letters a through f. The most frequently found violation is rule letter f, namely the failure to implement adequate medical actions or care in certain situations that endanger patients, which appeared in 13 decisions. Furthermore, violations of rule letter a, namely medical practice without adequate competence, were recorded in 11 cases, while violations of rule letter b, namely failure to refer patients to competent medical personnel, were recorded in seven cases. Of the 19 decisions related to competency violations, six cases resulted in patient death and 13 cases caused patient pain.

From a criminal law perspective, medical error generally manifests itself in the form of negligence (culpa), which conceptually is the opposite of intent (dolus). Negligence includes any act or omission that results in consequences prohibited by law and fulfills the elements of a criminal act. Criminal law recognizes two forms of negligence: negligence in action as regulated in Article 205 of the Criminal Code, and negligence related to consequences as regulated in Articles 359, 360, and 361 of the Criminal Code, which directly link negligence to the occurrence of serious injury or death.

Furthermore, negligence is also distinguished between slight negligence (culpa levis) and gross negligence (culpa lata). Culpa levis is assessed by comparing the perpetrator's actions to the standard of care of a more skilled party, while culpa lata is measured by comparing the perpetrator's actions to the average standard of behavior of a similar profession in the same situation.[35]In the context of a doctor's criminal liability, generally only gross negligence (culpa lata) can be used as a basis for criminal punishment, especially if the negligence shows a careless attitude, lack of concern, or irresponsibility towards patient safety.[36]

35 Jan Remmelink., *Hukum Pidana,* Jakarta: Gramedia Pustaka Utama, 2003, page. 176-177.

36 Denny Wiradharma., Medical Law Lecture Guide, Jakarta: Bina Cipta Aksara, 1996, page. 101.

Thus, a doctor's legal liability in cases of patient illness or death cannot be separated from proving the element of mental error and a violation of professional standards. Although the relationship between doctor and patient is essentially a civil legal relationship, medical practice conducted outside of professional standards can enter the realm of criminal law if it meets the elements of intent or negligence and results in consequences prohibited by law, as formulated in Articles 359 and 360 of the Criminal Code.[37]These findings indicate that the assessment of a doctor's legal liability must be carried out carefully, proportionally, and based on an analysis of competence, professional standards, and the level of negligence that can be proven.

3.3 Ideal Legal Arrangements for the Development of Evolving Medical Techniques to Assist the Patient Treatment Process

The rapid development of medical technology and techniques demands the formulation of adaptive, comprehensive legal policies oriented toward legal protection for both patients and medical personnel. In Indonesia, this need can be realized through the reconstruction of medical practice regulations that accommodate advances in health technology without neglecting patient safety, professional ethics, and legal certainty. Therefore, an ideal legal regulation emphasizes not only a repressive approach through sanctions but also prioritizes preventative measures through the implementation of standards, monitoring mechanisms, and systematic and ongoing evaluation.

Conceptually, legislation governing the development of medical techniques should ideally include a number of fundamental aspects, including technical requirements for the use of medical techniques, administrative provisions, qualifications of authorized medical personnel, limitations on physicians' authority, organization of services, oversight mechanisms, regulations on criminal, civil, and administrative sanctions, procedures for approving medical techniques applicable to practice in Indonesia, and the development of policies and administrative procedures related to the use of medical techniques. All of these aspects form an inseparable whole in building a health legal system that is responsive to developments in science and technology.

The formulation of legal policies can in principle be grouped into two large frameworks.

3.3.1 competency formulation**,**This framework encompasses technical and administrative requirements, physician qualifications, and limitations on the use of medical techniques. This framework aims to ensure that only medical personnel with specific competencies and authority can use specific medical techniques, thereby minimizing risks to patient safety.

3.3.2 Supervision and evaluation formulation**,**which includes aspects of organization, supervision, and the imposition of sanctions for violations. This framework serves as a control mechanism to ensure medical practice adheres to established standards.

37 M. Jusup Hanafiah., in YA Triana Ohoiwutun, *Bunga Rampai Hukum Kedokteran,* Malang: Bayumedia Publishing, 2008, page. 61

These regulations need to be based on the principle of legal protection for medical and health workers as stipulated in Law Number 17 of 2023 concerning Health. Article 273 paragraph (1) emphasizes that medical and health workers have the right to receive legal protection as long as they carry out their duties in accordance with professional standards, professional service standards, operational procedure standards, professional ethics, and patient health needs. This provision is reinforced by Article 291 paragraph (1) which requires medical and health workers to comply with professional standards, professional service standards, and operational procedure standards. Furthermore, Article 291 paragraph (2) stipulates that professional standards are prepared by a council and collegium and stipulated by the authorized minister.

In clinical practice, doctors are often faced with a complex and dynamic decision-making process, from determining a diagnosis to selecting the most appropriate treatment method for a patient's condition. This process is influenced by the doctor's level of knowledge, skills, and professional attitude, as well as the availability of healthcare resources and the patient's own values and expectations. Therefore, for doctors to obtain legal protection in the application of new medical techniques, these medical technologies must be recognized and incorporated into professional service standards. Therefore, the medical techniques used must comply with the principles of evidence-based medicine (EBM).

*Evidence-based medicine*EBM is an approach to clinical decision-making that integrates a physician's clinical expertise with the best scientific evidence obtained through systematic research. This concept was introduced by David Sackett in the early 1990s as an effort to improve the quality of healthcare services through the use of valid scientific evidence. In the context of medical practice in Indonesia, EBM has become a new paradigm, replacing previous approaches that relied more on the subjective opinions or experiences of experts. This approach requires medical personnel to continually update their knowledge based on the latest clinical research results so that clinical decisions can minimize risks and prevent medical errors.

According to Murti (2014), the application of evidence-based medicine consists of five steps, namely:

3.3.3 formulate clinical questions based on patient problems;
3.3.4 seek scientific evidence from authoritative research sources;
3.3.5 critically assess the validity and relevance of evidence;
3.3.6 applying the evidence to patients;
3.3.7 and evaluating the results of its application. In this context, scientific literature searches are crucial, and can even involve librarians in assisting with the search and evaluation of credible information sources.

The Health Law also provides strict regulations regarding the use of health technology. Article 334 paragraph (1) states that health technology must be organized, developed, distributed, and evaluated through research and assessment processes to improve health resources and efforts. This provision emphasizes that every innovation in medical technology must first go through a

systematic scientific process before it can be applied in public health services. [38]

Within the framework of patient protection as consumers of healthcare services, the government has a strategic role in preventing the use of treatment methods that are not supported by adequate scientific evidence. The central and regional governments, together with the Indonesian Medical Council and professional organizations, are responsible for fostering and supervising medical practices. This is in line with the provisions of Article 337 paragraph (1) of the Health Law, which emphasizes that the central and regional governments are responsible for encouraging and facilitating innovation in health technology while ensuring its safety and benefit to the community.[39]

If in the implementation there is an allegation of a violation or medical error, the patient has the right to file a complaint with the Indonesian Medical Disciplinary Honorary Council (MKDKI) as regulated in Article 305 paragraph (1) of the 2023 Health Law. In the latest institutional structure, the law also introduces two independent Indonesian Medical Council devices, namely the Collegium and the Professional Council. The Collegium has a role in developing competency standards for medical personnel, while the Professional Council functions in enforcing discipline for medical and health personnel.

Based on this description, it can be concluded that the formulation of an ideal legal policy in response to developments in medical technology requires the government to assume primary responsibility for managing health technology innovation. With the support of the Collegium and the Professional Council as competent, independent institutions, legal regulations are expected to create a balance between patient protection, legal certainty for medical personnel, and the sustainability of medical technology innovation in Indonesia.

The novelty of this study lies in the development of an integrative and adaptive legal regulatory model for the development of medical techniques by combining a competency framework and a monitoring-evaluation framework in a single policy design based on the principles of proportional justice and evidence-based medicine (EBM). Different from approaches that solely emphasize sanctions or accountability after a loss occurs, this study proposes a preventive, systematic regulatory construction oriented toward standardizing competency through the role of the Collegium and strengthening disciplinary mechanisms by the Council and the MKDKI, as stipulated in Law No. 17 of 2023 concerning Health. Another novelty is the affirmation that legal protection for medical personnel in the application of new medical techniques must be explicitly linked to the integration of such technology into professional standards and EBM-based service standards, thus creating a balance between technological innovation, patient safety, and legal certainty. Thus, this study not only discusses legal responsibility but also offers a normative-empirical policy formulation that is

38 Masa Depan Teknologi Kesehatan Indonesia di Era Digital, https://siplawfirm.id/, Accesed on 16 January 2026

39 Berdame, Nurul Ragilia., Kebijakan Pemerintah Dalam Pelayanan Kesehatan Terhadap Masyarakat Yang Kurang Mampu Menurut Undang-Undang Nomor 17 Tahun 2023 Tentang Kesehatan. *Lex Privatum*, Vol.13 No.5, 2024, page. 1-11

responsive to the dynamics of medical science progress.

4. Conclusion

This study concludes that justice in regulating physicians' legal liability for patient illness or death is reflected in two dimensions: distributive justice in the therapeutic relationship, where doctors bear proportionally greater obligations particularly in complying with competency standards as a form of patient protection and legal certainty; and procedural justice in proving medical errors, through the authority of the Indonesian Medical Disciplinary Honorary Council (MKDKI), which addresses patients' limitations in demonstrating technical violations. Physicians may be held liable if they breach competency standards, such as practicing beyond their expertise, failing to refer patients, delegating to unqualified personnel, or committing negligence that violates professional, ethical, or legal norms potentially leading to criminal liability in cases of gross negligence causing illness or death. The study also emphasizes the need to reconstruct medical practice regulations in response to technological advancements by establishing comprehensive legal policies covering competency requirements, limits of authority, oversight mechanisms, sanctions, and approval procedures for medical techniques, with the government, Collegium, and Professional Council playing central roles in safeguarding standards, discipline, and innovation in healthcare.

BIBLIOGRAPHY

Journals:

Achmad Juan Fieri, and Merline Eva Lyanthi., Perlindungan Hukum Kesehatan Pasien Bersalin akibat Malapraktik. *Innovative: Journal Of Social Science Research*, Vol.4 No.6, 2024;

Andri Winjaya Laksana and Bobur Sobirov, Comparative Study of Criminal Law Enforcement Against Drug Addicts Through Religious Rehabilitation Between Indonesia and Uzbekistan, *Madania: Jurnal Kajian Keislaman*, Vol.26 No.1, 2024;

Andri Winjaya Laksana, Anis Mashdurohatun, Sri Endah Wahyuningsih, Yudha Purnawan Sudijanto., Reconstruction Of Law Enforcement Regulation Against Criminal Actions Performed By Children Based On The Value Of Justice Of Pancasila, *Russian Law Journal*, Vol.11 No.5, 2023;

Andri Winjaya Laksana, Hartiwiningsih Hartiwiningsih, Hari Purwadi, and Anis Mashdurohatun, The Sufism Healing As An Alternative Rehabilitation For Drug Addicts And Abusers, *QIJIS (Qudus International Journal of Islamic Studies)*, Vol.11 No.1, 2023;

Berdame, Nurul Ragilia., Kebijakan Pemerintah Dalam Pelayanan Kesehatan Terhadap Masyarakat Yang Kurang Mampu Menurut Undang-Undang Nomor 17 Tahun 2023 Tentang Kesehatan. *Lex Privatum*, Vol.13 No.5, 2024;

Darmin, Febrianus, Arief Syahrul Alam, and Muhamad Chaidar., Perlindungan Hukum Terhadap Pasien Dalam Hal Pelaksanaan Perjanjian Terapeutik Berdasarkan Kitab Undang-Undang Hukum Perdata. *Jurnal Ilmu Hukum Wijaya Putra*, Vol.2 No.1, 2024;

David Estrada., Perlindungan Hukum Terhadap Dokter Dalam Melakukan Praktik Kedokteran Terkait Dengan Dugaan Pelanggaran Disiplin Yang Berdampak Terhadap Malpraktik. *ALADALAH: Jurnal Politik, Sosial, Hukum dan Humaniora*, Vol.2 No.2, 2024;

Decision of the Indonesian Medical Council: Number 17 / KKI / KEP / VIII / 2006 concerning Guidelines for Enforcing Discipline in the Medical Profession;

Dewi Fibrini., Perlindungan Hukum Terhadap Tenaga Kesehatan Dalam Melakukan Tindak Medis. *Iuris Studia: Jurnal Kajian Hukum*, Vol.5 No.1, 2024;

Hudi Yusuf and Raimundus Uhe Hurint., Pelanggaran Hukum Dalam Pelayanan Kesehatan Yang Dapat Menimbulkan Sengketa Medik. *Jurnal Intelek Dan Cendikiawan Nusantara*, Vol.1 No.2, 2024;

Hudi Yusuf, and Raimundus Uhe Hurint., Pelanggaran Hukum Dalam Pelayanan Kesehatan Yang Dapat Menimbulkan Sengketa Medik. *Jurnal Intelek Dan Cendikiawan Nusantara*, Vol.1 No.2, 2024;

Komalawati, Veronica, and Erga Febrianti Triswandi., Tanggung Jawab Dokter Atas Insiden Keselamatan Pasien Dalam Pelayanan Kesehatan Di Rumah Sakit Sebagai Institusi Kesehatan. *Jurnal Bina Mulia Hukum*, Vol.6 No.2, 2022;

Lisa Kristant et al., Tuntutan Ganti Rugi Keluarga Korban Pembunuhan: Penerapan Onrechtmatige Daad dan Keadilan Aristoteles dalam Hukum Perdata Indonesia. *Bookchapter Hukum dan Politik dalam Berbagai Perspektif*, Vol.4, 2025;

Masa Depan Teknologi Kesehatan Indonesia di Era Digital, https://siplawfirm.id/teknologi-kesehatan/;

Merdekawati, Yuliana., Tanggung Jawab Pidana Perawat Dalam Melakukan Tindakan Keperawatan Berdasarkan Undang-Undang Nomor 36 Tahun 2009 Tentang Kesehatan (Studi Di Rumah Sakit Umum Santo Antonius Pontianak). *Jurnal Nestor Magister Hukum*, Vol.3 No.5, 2013;

Oktaviani Matilda Viola Angelina Kadompi, Vera Dumonda Silitonga, and Tri Agus. Darurat Medis dalam Pelayanan Kesehatan Pada Operasi Militer Selain Perang (OMSP). *Jurnal Syntax Imperatif: Jurnal Ilmu Sosial dan Pendidikan*, Vol.5 No.5, (2024);

Pan Mohamad Faiz., Teori Keadilan John Rawls (John Rawls' Theory of Justice). *Jurnal Konstitusi*, Vol.6 No.1, 2009;

Rahmi Yuningsih., Pengembangan Kebijakan Profesi Bidan dalam Upaya Meningkatkan Pelayanan Kesehatan Ibu dan Anak. *Aspirasi: Jurnal Masalah-masalah Sosial*, Vol.7 No.1, 2016;

Rinaldi Syahputra., Kebijakan Penerbitan Surat Izin Praktik Dokter Di Indonesia. *Jurnal Hukum Positum*, Vol.7 No.1, 2022;

Rusyad, Zahir, et al., Legalitas Kelayakan Dan Kompetensi Dokter Dalam Memberikan Layanan Tindakan Medik Di Klinik Kecantikan. *Journal of Innovation Research and Knowledge*, Vol.5 No.1, 2025;

Sartono Sartono, et al., Hak Atas Kesehatan Dan Tanggung Jawab Negara: Konstruksi Hukum Dalam Perlindungan Pasien Bpjs. *Jurnal Ilmiah Advokasi*, Vol.13 No.3, 2025;

Sulaiman, Heri, et al., John Rawls' Theory of Justice and Its Relevance in the Formulation of Community Property Division Policy in the Contemporary Era: Teori Keadilan John Rawls dan Relevansinya dalam Formulasi Kebijakan Pembagian Harta Bersama di Era Kontemporer. *Al Hairy| Journal of Islamic Law*, Vol.1 No.1, 2025;

Syamsul Bachri., Implikasi Hukum Atas Isu Etika Dalam Praktik Kedokteran. *Jurnal Berita Kesehatan*, Vol.17 No.1, 2024;

Syamsul Bachri., Implikasi Hukum Atas Isu Etika Dalam Praktik Kedokteran. *Jurnal Berita Kesehatan*, Vol.17 No.1, 2024;

Veronica Komalawati, Dhani Kurniawan, Kompetensi dan Kewenangan Peraktik Kedokeran Perspektif Hukum di Indonesia, *Jurnal Ilmiah Hukum De'jure*, Vol.3 No.1, Mei 2018;

Wahyu Wiriadinata., Dokter, pasien dan Malpraktik. *Old Website Of Jurnal Mimbar Hukum*, Vol.26 No.1, 2014;

Widjayanto, Indra, Yusuf Rizal, Tjio Violita Tjahyono, and Bela Amru Hakiki., Tinjauan Hukum Perdata atas Tanggung Jawab Dokter dalam Malapraktik Medis dan Relevansi terhadap Perlindungan Pasien. *Proceeding Masyarakat Hukum Kesehatan Indonesia*, Vol.1 No.01, 2024.

Books:

Anny Isfandyarie., 2006, *Tanggung Jawab Hukum Dan Sanksi Bagi Dokter*, Buku I,, Prestasi Pustaka, Malang;

Anwar, Arman., 2023. *Hukum Kesehatan Praktik Kedokteran Telemedicine*. Deepublish, Yogyakarta;

Bahder Johan Nasution., 2005, *Hukum Kesehatan Pertanggungawaban Dokter*, Rineka Cipta, Jakarta;

Denny Wiradharma., 1996, *Medical Law Lecture Guide*, Bina Cipta Aksara, Jakarta;

Guwandi., 2006. *Informed Consent and Informed Refusal*, Faculty of Medicine, University of Indonesia, Jakarta;

Jan Remmelink., 2003, *Hukum Pidana,* Gramedia Pustaka Utama, Jakarta;

Konsil Kedokteran Indonesia., 2019, *Standar Nasional Pendidikan Profesi Dokter Indonesia.* Konsil Kedokteran Indonesia, Jakarta;

M. Jusup Hanafiah, in YA Triana Ohoiwutun., 2008, *Bunga Rampai Hukum Kedokteran,* Bayumedia Publishing, Malang;

Machli Riyadi., 2018, *Teori Iknemook dalam Mediasi Malapraktik Medik*. Prenada Media, Jakarta;

Rinanto Suryadhimirtha., 2011, *Medical Malpractice Law*, Total Media, Yogyakarta;

Ronny Hanitijo Soemitro., 1990, *Metodologi Penelitian Hukum dan Jurimetri*, Ghalia Indonesia, Jakarta.