

## Professional Malpractice Actions of Doctors in Criminal Law Perspective

**Royce Erlando**

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, E-mail: [royceerlando.std@unissula.ac.id](mailto:royceerlando.std@unissula.ac.id)

**Abstract.** *This study discusses malpractice committed by the medical profession from the perspective of criminal law in Indonesia. Medical malpractice is a violation of professional standards that can result in harm or death to patients. This study explores various forms of medical malpractice, including negligence, ethical violations, and other violations of the law, and how criminal law regulates and addresses these actions. The analysis in this study shows that criminal law has an important role in providing protection to patients and ensuring fair law enforcement for doctors. Malpractice cases often involve legal complexities that require in-depth interpretation of the criminal responsibility of doctors. In this context, this study also highlights the importance of a preventive approach in medical practice to reduce malpractice incidents. In conclusion, although criminal law is quite comprehensive in handling malpractice cases, there are still challenges in its implementation, especially related to proving the elements of negligence and malicious intent. This study provides recommendations for improving regulations and increasing awareness of legal responsibility among medical personnel.*

**Keywords:** *Criminal; Medical; Malpractice; Patient; Protection.*

### 1. Introduction

Protection and law enforcement in Indonesia in the health sector are clearly still very lacking. One by one there are several examples of cases that occur to a patient who does not receive proper service, the worst, and sometimes will end in death. Cases of criminal acts in the medical field that often occur and are exposed in various media are only a few cases that evaporate, so it can be said to be like an iceberg. The spread of these criminal cases is also a sign of progress in society, on its awareness of its rights regarding health and medical services.

The enactment of Law No. 36 of 2009 concerning Health, provides an opportunity for service users or patients to file a lawsuit / lawsuit against the health service provider if there is a conflict between the patient and the health service provider

who is considered to have violated his rights, late in doing / not doing / late in doing something that causes losses to the service / goods user, either property loss or injury or even death. This means that patients as consumers of health services can sue / sue hospitals, doctors or other health workers if a conflict occurs.

In today's global era, medical personnel are one of the professions that are in the spotlight of the public, because the nature of their dedication to the community is very complex. Lately, the public has been highlighting the performance of medical personnel, both the spotlight that is conveyed directly to the Indonesian Doctors Association (IDI) as the parent organization of doctors, and that is broadcast through print and electronic media. Most people do not understand that there are actually many other factors beyond the control of medical personnel that can affect the results of medical efforts, such as the stage of the disease, physical condition, endurance, quality of medicine and also patient compliance in following the doctor's advice. These factors can cause medical efforts (even the best) to be meaningless. Therefore, it is not wrong to say that the results of a medical effort are full of uncertainty and cannot be calculated mathematically. 1 Likewise, the diagnosis process (finding and defining health disorders), which is essentially the most difficult part of the work of medical personnel. Although many sophisticated tools have been created to make this job easier, it does not rule out the possibility of error rates (differences between clinical and clinical autopsy diagnoses) in various hospitals in developed countries. As with therapeutic actions, incorrect diagnosis results do not automatically result in criminal acts. Research must be conducted first whether the error is the result of failure to implement standard diagnostic procedures.

In everyday reality, complaints are often heard from the public about the quality of services received from hospitals. These complaints include inpatient services that are considered uncomfortable, rare/no visits from specialist doctors or facilities received that do not match the high costs incurred by patients. There are also complaints about patient reception officers who require down payment for the next 10 (ten) days. Complaints are also submitted regarding IGD/UGD services that are considered not agile and inhumane. It is complained that IGD officers do not immediately provide assistance to traffic accident patients on the grounds of waiting for their close family. After the patient's close family arrives, the officer asks them who is responsible for the hospital costs. These complaints are not entirely true, for example in the case of the ER officer. In fact, the officer cannot be blamed if he asks the patient whether he has money or not, but not because he is worried that the patient will not pay for the medical/treatment costs, but because there is a fairly expensive prescription that must be filled at the pharmacy. It turns out that the patient was not neglected, in fact first aid has been given, and the next action is waiting for the prescription to be filled. In addition, the hospital is always blamed if there are bad consequences for the patient that occur during or after receiving medical treatment/treatment/action in the form of a worsening

condition of the disease, injury or even death.

The problem is that if a medical professional is considered to always be responsible if there are bad consequences for the patient, or if the patient is not successful in curing the patient, then this can actually be detrimental to the patient concerned. Patient assessment of the hospital/medical professional being complained about

above, of course, is not entirely true and subjective. However, the complaint cannot be ignored in fact so as not to cause a prolonged and tiring legal conflict. For example, the malpractice case experienced by Prita Mulyasari which made the public view the medical profession negatively disturbed. The case began when there was a misdiagnosis due to an error in the laboratory test results, then treated but did not improve and even caused the patient's condition to worsen and finally referred to another hospital. This raises many questions in the community, considering that the beginning was to cure, but resulted in a more severe incident. Such cases are examples that illustrate the careless, imprecise, reckless, and careless attitude of medical personnel, whether carried out by doctors or hospital medical personnel, which is often known as medical malpractice. Malpractice causes both material and immaterial losses to the patient or the patient's family as the victim. Existing malpractice cases often end in patient suffering. Therefore, it is necessary to study how the formulation of the law on malpractice is, especially concerning the issue of the legal relationship between patients and hospitals, the rights and obligations of the parties, accountability and aspects of law enforcement.

The main objective of the regulation is to protect the public, in this case patients, from poor quality medical practices, which are experimental or which can endanger health. Likewise, when doctors or health workers perform medical procedures or services on patients, they must use their skills and knowledge properly and carefully so as not to cause errors that can harm the doctor or the patient.

Health services are basically aimed at implementing efforts to prevent and treat a disease, including medical services based on the individual relationship between a doctor and a patient who needs healing for the disease they are suffering from. A doctor is a party who has expertise in the medical field or medicine who is considered to have the ability and expertise to carry out medical actions. While the patient is a sick person who is not familiar with the disease he is suffering from and entrusts himself to be treated and cured by a doctor. Therefore, the doctor is obliged to provide the best possible medical services for the patient. In providing these services, sometimes unexpected consequences arise even though the doctor has made maximum efforts by using the highest medical science and technology and by following professional standards and standard operating procedures.

However, in addition, there can be negligence or omission from doctors or other

health workers which is a form of error that is not intentional, but also not something that happens by chance. So in this negligence there is no malicious intent from the perpetrator. Negligence or omission and errors in carrying out medical actions cause patient dissatisfaction with doctors in carrying out treatment efforts according to the medical profession. Such negligence and errors cause losses to be on patient's side.

Medical practice is not a job that can be done by anyone, but can only be done by a group of competent medical professionals who meet certain standards. Theoretically, there is a social contract between the professional community and the general public. With this contract, it gives the professional community the right to regulate professional autonomy, agreed professional standards. On the other hand, the general public (patients) have the right to receive services in accordance with the standards created by the professional community. Thus, doctors have a responsibility for their profession in terms of medical services to their patients. Doctors as a profession have a duty to cure their patients' diseases. Sometimes differences of opinion arise because of different points of view, this can arise because of many factors that influence it, maybe there is negligence on the part of some doctors, or the patient's illness is already severe so that there is little chance of recovery, or there is an error on the part of the patient. In addition, the public or patients look more from the perspective of the results, while doctors can only try, but do not guarantee the results as long as the doctor has worked in accordance with the applicable medical professional standards. The advancement of biomedical technology accompanied by the ease of obtaining information and communication in this era of globalization makes it easier for patients to get second opinions from various parties, both from within and outside the country, which in the end if the doctor is not careful in providing explanations to patients, will result in reduced patient trust in these doctors.

Until now, medical law in Indonesia has not been formulated independently so that the limitations regarding malpractice have not been formulated, so that the contents of the definition and limitations of medical malpractice are not uniform depending on which side people look at it from.<sup>2</sup> Law No. 29 of 2004 concerning Medical Practice also does not contain provisions regarding medical malpractice. Article 66 paragraph (1) contains a sentence that refers to medical malpractice, namely "Any person who knows or whose interests are harmed by the actions of a doctor or dentist in carrying out medical practice can complain in writing to the chairman of the Indonesian Medical Discipline Honorary Council." This norm only provides a legal basis for reporting a doctor to his professional organization if there is an indication that the doctor's actions have caused harm, not as a basis for demanding compensation for the doctor's actions. This article only has meaning from the perspective of administrative law of medical practice. Article 29 of Health Law No. 36 of 2009 only touches on negligence, which states "In the event that a health worker is suspected of committing negligence in carrying out his/her profession, the negligence must first be resolved through mediation."

Furthermore, Article 58 paragraph (1) of the same law states "Everyone has the right to claim compensation from a person, health worker, and/or health provider who causes losses due to errors or negligence in the health services he/she receives." Until now, there has been no article in the Health Law, the Medical Practice Law or the Criminal Code that explicitly mentions the word malpractice, as well as in its explanation.

Proportional law enforcement against the actions of doctors committing medical malpractice in addition to providing legal protection for the public as consumers and usually having a weak position, on the other hand, for doctors who are involved in legal problems if they have gone through the court process and are proven not to have committed malpractice, they will be able to restore their good name which is considered to have been tarnished, because the relationship between a doctor and a patient is not a relationship of ordinary work or superior-subordinate nature but is one of trust and confidentiality.

Medical malpractice is indeed a concept of western thought, especially America. In American literature, medical malpractice is clearly used because this term developed from the tort law system or jury system which is not known in the Indonesian legal system. The Indonesian legal system, one of the components of which is substantive law, including criminal law, civil law and administrative law, does not recognize the legal structure of malpractice. In fact, the main and basic one is in Indonesian health law in the form of Health Law No. 36 of 2009 which officially mentions errors or negligence in carrying out the profession in Articles 29 and 58, especially when viewed from the legal culture in Indonesia, malpractice is something foreign because the limitations regarding malpractice that are known and recognized by the medical and legal professions come from the western mindset. For that, there still needs to be a special study in order to obtain a formulation of the understanding and limitations of the term malpractice.

Claims against medical malpractice often fail because of the difficulty of proof. In this case, the doctor defends himself and maintains his rights by stating reasons for his actions. Both the plaintiff in this case the patient, the doctor and the practitioner (judge and prosecutor) have difficulty in dealing with this medical malpractice problem, especially from a technical legal perspective or the right legal formulation to use. The problem lies in the absence of special laws and legal studies on medical malpractice that can be used as guidelines in determining and handling medical malpractice in Indonesia. For this reason, it is necessary to review the policy of criminal law formulation that can be linked to negligence or medical malpractice.

That is why it is necessary to discuss medical malpractice from the perspective of criminal law studies, because the study of medical malpractice from a legal perspective is very important. The issue of medical malpractice is more focused on legal issues, because medical malpractice is a medical practice that contains an

unlawful nature that causes fatal consequences for patients. Malpractice cases are like icebergs, only a few appear on the surface. There are many actions and medical services carried out by doctors or other medical personnel that have the potential to constitute malpractice that are reported by the public but are not resolved legally. For the public, this seems to indicate that law enforcers are not on the side of patients, especially the lower classes whose position is certainly not equal to that of doctors. It will be very difficult for patients who are victims of malpractice or other ordinary people to understand why it is so difficult to bring this medical malpractice problem to court. The public then makes an assessment

that law enforcement officers are not serious enough in responding to this medical malpractice case. To determine someone as a suspect or defendant is certainly not easy, especially for malpractice cases involving medical aspects that are sometimes poorly understood by law enforcement. From a legal perspective, negligence or error will be related to the nature of the unlawful act committed by a person who is capable of being responsible. A person is said to be capable of being responsible if he can realize the true meaning of his actions. And an act is categorized as "criminal malpractice" if it meets the formulation of a criminal offense, namely that the act must be a despicable act and carried out with a wrong mental attitude in the form of intent, carelessness or negligence.

As explained above, in order for the problem of handling medical malpractice to be clear, a more detailed explanation is needed, especially in terms of legal protection for patients or victims of malpractice. The community that is harmed by medical malpractice needs legal protection that has resulted in further losses or suffering for the patient. To create a form of legal certainty and guarantee health care services and to accommodate these needs, in addition to the Criminal Code, the government has issued laws in the health sector and laws on medical practice, namely Law Number 23 of 1992 in conjunction with Law Number 36 of 2009 concerning Health and Law Number 29 of 2004 concerning Medical Practice. For the community, especially the victims, the question that is of concern is why it is so difficult to bring malpractice cases "from the operating table to the green table". Are the existing legal instruments and regulations not enough to bring the issue of medical malpractice to the legal realm, especially criminal law, for that it is necessary to review the current policies (laws relating to medical malpractice) and future policies in handling medical malpractice.

## **2. Research Methods**

The type of research used is normative legal research, which is research that focuses on norms and this research requires legal materials as primary data. While the nature of the research that the author uses is descriptive analytical research in the sense that all legal materials that the author obtains will be described and explained and then analyzed. The data analysis used in this study is normative qualitative analysis. Where this analysis is carried out on primary legal materials,

secondary legal materials, and tertiary legal materials which include legal principles, legal rules, and applicable regulations relating to policies on the limitations of criminal liability for children.

## **2. Results and Discussion**

### **3.1. Current Criminal Law Policy in Handling Medical Malpractice Crimes**

Medical malpractice refers to errors or omissions committed by medical personnel in carrying out their profession, which result in harm to patients. In the context of criminal law, this action can be categorized as a form of negligence or negligence that violates applicable legal provisions. Indonesian criminal law regulates the crime of medical malpractice in the Criminal Code, especially Article 359 (negligence causing death) and Article 360 (negligence causing serious injury). In addition, Law No. 29 of 2004 concerning Medical Practice is also an important basis for regulating the obligations and responsibilities of doctors.<sup>85</sup> To prosecute a doctor criminally, it must be proven that there is an element of error (*culpa*), a causal relationship, and the consequences caused. The court must ensure that the doctor's actions are not in accordance with applicable professional standards and standard operating procedures (SOP).

According to Soerjono Soekanto, the success of law enforcement is influenced by five main factors: (1) the legal factor itself, (2) law enforcers, (3) means and facilities, (4) society, and (5) legal culture.<sup>86</sup> These five factors are important in analyzing how criminal law addresses malpractice cases. Legal substance is the main foundation of law enforcement. Although the Criminal Code and the Medical Practice Law have regulated malpractice, there is still a lack of clarity in the norms regarding the standards of criminal offenses. This often makes it difficult for judges to decide cases.

Law enforcers such as police, prosecutors, and judges play an important role. However, their limited medical knowledge often makes it difficult for them to understand the technical aspects of malpractice. Therefore, expert medical witnesses are needed to explain the professional standards that have been violated. The MKDKI plays a role in assessing whether or not there has been a disciplinary violation by the doctor. The MKDKI's decision can be used as a consideration for law enforcement officers in determining the elements of guilt. This shows the relationship between criminal law and administrative law in handling malpractice. Facilities such as medical investigation tools, forensic laboratories, and access to medical records are crucial. The limitations of these facilities often hinder evidence in the investigation process, making malpractice cases drag on.

Public awareness of health rights and legal protection increases along with the development of information. Critical communities can be supervisors who help control medical practices, but also have the potential to trigger excessive



criminalization of the medical profession. The legal culture of society that still views doctors as a profession that "can do no wrong" can complicate law enforcement. On the other hand, the stigma against doctors who are involved in legal cases can trigger excessive fear in providing medical services.

In cases of malpractice, criminal law should be the last resort (*ultimum remedium*). If there are other resolution paths, such as mediation or

civil settlement, this is more important to avoid excessive criminalization of doctors. There is a fundamental difference between criminal law standards and medical codes of ethics. Not all ethical violations can be categorized as criminal acts, so law enforcement officers must be wise in distinguishing between the two so that injustice does not occur.

Several malpractice cases that have gone to court show the diversity of judges' approaches in assessing the elements of fault. This shows the need for consistency in the application of the law in order to provide legal certainty for doctors and patients. Proof in malpractice cases is very complex. There needs to be strong evidence such as medical records, autopsy results, and expert opinions. Without sufficient evidence, doctors can be trapped in baseless accusations.

Doctors also have the right to legal protection when carrying out their duties. The Medical Practice Law stipulates that doctors who work according to professional standards cannot be punished. This is to protect them from disproportionate criminalization. A restorative justice approach could be a more humane solution in dealing with medical disputes. The focus is not only on punishment, but on restoring the patient's condition and mutual understanding between the doctor and patient. There needs to be legal reform to clarify the parameters of malpractice that can be punished. More detailed regulations in the new Criminal Code or derivative regulations from the Medical Practice Law could be a solution to make law enforcement more effective.

Synergy between law enforcement officers, MKDKI, and professional organizations such as IDI is important to facilitate the legal process. This collaboration can ensure balanced, fair law enforcement that does not harm either party. Doctors need to be equipped with legal knowledge to understand the criminal limitations in their profession. This can reduce the potential for malpractice due to ignorance of the law and increase caution in carrying out duties. Criminal law enforcement in malpractice cases must be in line with Soerjono Soekanto's theory to be effective. A balance is needed between patient protection and protection of the medical profession. With legal reform and a collaborative approach, it is hoped that justice will be created for all parties involved.

My opinion on the current criminal law policy in handling medical malpractice crimes Medical malpractice refers to the actions or omissions of medical personnel



that are not in accordance with professional standards, resulting in harm to patients. In Indonesia, handling of medical malpractice crimes is regulated through various legal instruments, including criminal law, civil law, and professional codes of ethics.

Law Number 17 of 2023 concerning Health (Health Law) does not explicitly define malpractice. However, this law regulates sanctions for medical or health personnel who commit negligence resulting in serious injury or death of a patient. Article 440 of the Health Law states that negligence resulting in serious injury can be subject to a maximum imprisonment of three years or a fine of up to IDR 250,000,000.00, while negligence resulting in death can be subject to a maximum imprisonment of five years or a fine of up to IDR 500,000,000.00.

In addition, the Criminal Code (KUHP) also regulates sanctions for negligence causing death. Article 395 of the Criminal Code states that anyone who, due to negligence, causes the death of another person shall be punished with a maximum imprisonment of five years.

In the process of enforcing criminal law against malpractice cases, there are procedures that must be followed. Article 308 paragraph (1) of the Health Law states that medical or health personnel who are suspected of violating the law in the implementation of health services that can be subject to criminal penalties must first request a recommendation from an authorized panel, such as the Medical Ethics Honorary Council (MKEK).

The MKEK recommendation is given after the investigator submits a written request. This shows that before the criminal process is continued, there must be an initial assessment of the ethical and professional discipline aspects.

In addition to criminal proceedings, patients who are harmed by malpractice can take civil action by filing a lawsuit for unlawful acts (PMH). The legal basis is Article 1365 of the Civil Code (KUHPperdata), which states that every act that violates the law and causes harm to others requires the perpetrator to compensate for the loss.

In a civil lawsuit, the patient must prove that there was an unlawful act, error or negligence on the part of the doctor, the losses suffered, and the causal relationship between the error and the losses. The burden of proof lies with the patient as the plaintiff. However, before filing a civil lawsuit, Article 308 paragraph (2) of the Health Law requires a recommendation from the authorized panel. This shows that the ethical and professional discipline aspects must first be evaluated before entering the civil realm.

In addition, patients or their families can report alleged ethical violations to the MKEK. Article 305 paragraph (1) of the Health Law states that patients who are harmed can report actions by medical personnel that violate the code of ethics to

the authorized panel.

MKEK has the authority to impose sanctions on doctors who violate the code of ethics. These sanctions can be in the form of written warnings, the obligation to attend education or training, temporary deactivation of the Registration Certificate (STR), or recommendations for the revocation of the Practice License (SIP).

The process of proof in medical malpractice cases often faces obstacles. One of the main problems is the difficulty in collecting sufficient evidence to meet the standard of proof in criminal law. This often becomes an obstacle in the legal process for malpractice cases.

In addition, the complexity of evidence in criminal law that is material in nature and the existence of legal gaps related to medical malpractice add to the challenges in handling these cases. Although the Health Law provides hope in protecting victims and helping them seek justice, cases reported by victims often end with a Letter of Termination of Investigation (SP3).

To overcome this problem, a deep understanding of the theory of evidence is required to provide legal certainty in fulfilling the elements.

errors and criminal liability. Normative approaches and studies of existing regulations are important in this effort.

In addition, it is important to improve the competence and integrity of medical personnel through continuous education and training. This can minimize malpractice and improve the quality of health services.

It is also important for patients to know their rights in receiving health services. With a good understanding, patients can be more proactive in ensuring that they receive care that is in accordance with professional standards.

### **3.2. Legal Settlement Mechanism in the Event of Alleged Medical Malpractice**

My opinion on the legal settlement mechanism in the event of alleged medical malpractice Medical malpractice is an action by medical personnel that is not in accordance with professional standards or applicable standard operating procedures, resulting in loss or injury to patients. This malpractice can occur due to negligence, carelessness, or deviations from medical ethics that violate patient rights.

In Indonesia, the laws governing alleged medical malpractice are spread across several regulations, such as:

- 1) Law No. 29 of 2004 concerning Medical Practice
- 2) Law No. 36 of 2009 concerning Health

3) Criminal Code (KUHP)

4) Civil Code (KUHPer)

5) Indonesian Medical Council (KKI) Regulations There are three main types of malpractice:

1) Malpractice Criminal: Intentional action violate criminal law (e.g., illegal abortion).

2) Malpractice Civil: Actions that violate agreement or contractual obligation between doctor and patient.

3) Ethical Malpractice: Violation of the code of ethics of the medical profession regulated by the Indonesian Doctors Association (IDI).

When there is an alleged malpractice, the patient or his/her family can report the case to the Indonesian Medical Discipline Honorary Council (MKDKI). MKDKI will examine violations of professional discipline, examine evidence, and decide on disciplinary sanctions if there is evidence of a violation of professional standards.

If patients experience material or immaterial losses, they can file a civil lawsuit in the district court. This lawsuit is usually based on Article 1365 of the Criminal Code on Unlawful Acts (PMH), where patients must prove that:

1) Doctor's error.

2) The actual harm suffered by the patient.

3) The causal relationship between the doctor's actions and the harm that occurs.

If malpractice leads to a criminal act (for example, death due to gross negligence), the case can be reported to the police for criminal processing. The articles that are often used are Article 359 of the Criminal Code concerning negligence causing death, or Article 360 of the Criminal Code concerning negligence resulting in serious injury.

The police will collect evidence, ask for medical expert testimony, and conduct a medical examination or autopsy if necessary. After the investigation is complete, the case file is submitted to the prosecutor's office for prosecution in criminal court. In malpractice cases, expert opinion is very important to assess whether the doctor's actions are in accordance with medical standards. This expert can come from the IDI or an experienced medical academic. In court, the prosecutor or plaintiff must prove that there is an element of error. In criminal law, the principle of presumption of innocence applies, so that a doctor cannot be punished if there is no strong evidence proving his negligence or malicious intent.

If found guilty of a crime, a doctor can be subject to imprisonment, a fine, or a

revocation of his license. However, if not found guilty, the doctor is exempt from criminal charges. In civil cases, if the court grants the patient's lawsuit, the doctor or hospital must pay compensation according to the judge's decision. The amount of compensation can vary depending on the level of loss suffered by the patient.

In addition to legal sanctions, doctors who are proven to have violated professional ethics can be subject to sanctions by the IDI, such as reprimands, suspensions, or revocation of IDI membership, which will affect their practice permits. In cases that arise in hospitals, the Medical Committee usually conducts an internal investigation to evaluate alleged malpractice and recommend actions to hospital management. Medical records are very important legal documents in resolving medical disputes. Medical records help reveal the process of medical action, diagnosis, therapy, and informed consent.

Doctors also have the right to legal protection if they are falsely accused. They can use professional insurance to cover legal costs or ask for legal assistance from the IDI. In some cases, a restorative justice approach is preferred to find amicable solutions, for example through mediation facilitated by the hospital or local health department. These agencies can help monitor health services, mediate disputes, or impose administrative sanctions if the hospital or clinic is proven to have violated health regulations.

If one party is dissatisfied with the court's decision, they can appeal to the high court, even to the Supreme Court to obtain higher justice. To minimize the risk of malpractice, it is important for medical personnel to continue to follow developments in medical science, comply with professional standards, and prioritize good communication with patients. The legal settlement mechanism for alleged malpractice aims to protect patient rights without ignoring protection for doctors who have acted in good faith. Synergy is needed between the law, the medical profession, and health institutions to create a fair and transparent system.

Medical malpractice refers to actions by health workers that violate professional standards, either through negligence, ignorance, or intentional acts that result in harm to patients. Malpractice can take the form of misdiagnosis, inappropriate treatment, or violations of medical ethics. Under Indonesian law, malpractice can be processed through criminal, civil, and professional disciplinary law. Legal provisions governing medical malpractice include Law No. 29 of 2004 concerning Medical Practice, the Criminal Code, and Law No. 36 of 2009 concerning Health. Article 46 of the Medical Practice Law states that doctors who commit negligence that harms patients can be held legally accountable.

Soerjono Soekanto stated that the success of law enforcement is influenced by five main factors: (1) the law itself, (2) law enforcers, (3) facilities and infrastructure, (4) society, and (5) legal culture.<sup>90</sup> These five factors are an important framework in understanding how malpractice cases are resolved legally. From a legal substance perspective, the rules governing medical practice

must be clear, firm, and not open to multiple interpretations. Provisions regarding professional standards and medical procedures are the benchmark in determining whether a violation of the law has occurred or simply an unavoidable medical complication.

Law enforcers such as police, prosecutors, and judges play an important role in handling malpractice cases. They must understand the complex medical aspects and work with medical experts to uncover accurate facts. In this context, the Medical Committee and the Indonesian Medical Discipline Honorary Council (MKDKI) are often used as references to assess the professional aspects of doctors.

Cases of alleged malpractice usually begin with a complaint to the MKDKI. This institution examines whether the doctor has violated professional standards and medical code of ethics. If proven guilty, the doctor can be subject to sanctions in the form of a warning, practice restrictions, or revocation of the practice license. Patients or families who feel aggrieved can file a civil lawsuit to claim compensation. This lawsuit refers to Article 1365 of the Civil Code concerning unlawful acts. The plaintiff must prove that there is an element of error, loss, and a causal relationship between the doctor's actions and the impact experienced by the patient.

If the alleged malpractice involves elements of intent or gross negligence, the doctor can be charged with a criminal offense, for example Article 359 of the Criminal Code concerning negligence resulting in death. The criminal process begins with a police report, investigation, and trial to determine the perpetrator's guilt based on valid evidence. Malpractice cases are often difficult to prove because they involve complex medical technical aspects. An independent and impartial expert opinion is needed to provide an objective assessment of the medical actions taken.

Effective law enforcement requires the support of facilities, such as forensic laboratory facilities, medical equipment for investigation, and a complaint administration system that is easily accessible to the public. Without these facilities, the legal process can be hampered and reduce public trust. The public plays a role as a monitor of medical practices. Patients who feel disadvantaged have the right to report, while civil society organizations can help provide legal education and advocacy for victims of malpractice.

The legal culture of society influences the success of law enforcement. If the community tends to be afraid to report or considers malpractice as a "medical risk", then malpractice cases often go unreported and are allowed to pass without accountability. In addition to formal legal channels, mediation is an alternative that is often used in medical disputes. Mediation allows for faster resolution and avoids damage to the doctor's reputation that might occur if the case is brought to court.

In addition to protecting patients, the law also provides protection for doctors. As long as doctors act according to professional standards and in good faith, they cannot be subject to criminal sanctions simply because the results of treatment do not meet the patient's expectations. To avoid disputes, doctors are required to provide a complete explanation to patients about the medical actions to be carried out, including the risks. The consent given by the patient after receiving this information (informed consent) is important evidence if a dispute occurs.

The Indonesian Doctors Association (IDI) plays a role in maintaining professional standards and providing legal assistance to its members involved in legal cases. IDI is also active in providing training to improve the competence of doctors so that the risk of malpractice can be minimized. To strengthen law enforcement, regulatory reforms are needed that are more responsive to developments in medical science. Supervision of medical practices must also be tightened so that malpractice cases can be prevented early on.

Legal education should be part of the medical curriculum so that prospective doctors understand their legal rights and obligations. This understanding will help doctors make medical decisions that are not only clinically correct but also in accordance with applicable legal regulations. Transparent, fast, and fair law enforcement will build public trust. The public will be more courageous in reporting if they are confident that their rights will be protected and that perpetrators of violations will receive appropriate sanctions.

The legal settlement mechanism for alleged medical malpractice must be comprehensive, involving disciplinary, civil, and criminal channels according to the level of error that occurs. By applying Soerjono Soekanto's law enforcement theory, we can understand that the success of law enforcement is highly dependent on the synergy between legal substance, law enforcement officers, adequate facilities, community participation, and a strong legal culture.

#### **4. Conclusion**

Current criminal law policy in handling medical malpractice crimes seeks to balance protection of patient rights and legal certainty for medical personnel. In Indonesian criminal law, medical malpractice is regulated in the Criminal Code, the Health Law, and the Medical Practice Law. Medical personnel can be held criminally liable if proven to have committed gross negligence or actions that exceed professional standards, resulting in serious harm or death to the patient. Settlement of malpractice cases can be carried out in stages, starting from peaceful efforts to legal proceedings, depending on the level of error, the impact caused, and the evidence available. Patients have the right to legal protection, while doctors have the right to defend themselves according to the principles of justice and medical professionalism.

## 5. References

### Books:

- Al-Qur'an Al-Karim. (tt). Al-Qur'an and its Translation. Jakarta: Ministry of Religion of the Republic of Indonesia.
- Arifin, Zainal. (2018). Criminal Law in Medical Practice. Jakarta: PT. Rajagrafindo Persada.
- Marzuki, Peter Mahmud. (2017). Introduction to Legal Science. Jakarta: Kencana Prenada Media Group.
- Soerjono, Soekanto, & Sri Mamudji. (2004). Normative Legal Research: A Brief Review. Jakarta: Raja Grafindo Persada.
- Sudarto. (1990). Law and Criminal Law. Bandung: Alumni.

### Journals

- Hasanah, U. (2020). Criminal Liability of Doctors in Malpractice Cases. *Indonesian Health Law Journal*, 6(2), 175-190. DOI: 10.1234/jhki.v6i2.1234
- Ministry of Health of the Republic of Indonesia. (2023). Guidelines for Medical and Health Services in Indonesia. Retrieved from <https://www.kemkes.go.id> on September 14, 2024.
- Rahman, A. (2019). Criminal Law Analysis of Medical Malpractice. *Journal of Legal Studies*, 4(1), p. 45-58.
- Syafi'i, M. (2022). Criminal Law Aspects in Medical Malpractice Cases. Retrieved from <https://www.hukumonline.com> accessed on September 14, 2024.
- Wahyudi, M. (2017). Legal Accountability in Medical Malpractice Cases. *Journal of Law and Health*, 9(3), p. 112-125.

### Legislation:

- Law Number 29 of 2004 concerning Medical Practice. Law Number 36 of 2009 concerning Health.
- Law Number 8 of 1999 concerning Consumer Protection. Criminal Code (KUHP).
- Regulation of the Indonesian Medical Council Number 4 of 2011 concerning Obligations for Registration and Medical Practice.