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Punishment of Medical Personnel and Health Workers in Malpractice Charges Based on Law Number 17 of 2023 Concerning Health

Yustinus Rurie Wirawan*, Yasmirah Mandasari Saragih, Gunawan Wdjaja, Jahidin Kuswanto, Moch Nagieb
Universitas 17 Agustus 1945 Jakarta, Indonesia
Email: ruriewirawan02@gmail.com*

ABSTRACT
This study discusses the criminal liability of medical personnel based on Law No. 17 of 2023 concerning health in Indonesia. The background of this research is the increasing number of lawsuits against medical personnel due to rising public awareness of patient rights, as well as the legal uncertainty faced by medical personnel regarding malpractice. The aim of this research is to analyze the criteria for criminal negligence in medical services and to understand the legal protection mechanisms through the Professional Disciplinary Council and mediation to prevent the criminalization of medical personnel. This research employs a normative juridical method with statutory and conceptual approaches. The findings show that Law No. 17 of 2023 provides a clearer framework for the criminal accountability of medical personnel, emphasizing gross negligence and adherence to professional standards. The study also found that the recommendation mechanism from the Professional Disciplinary Council, along with the requirement for mediation, can help prevent baseless criminalization. In conclusion, this law provides better legal protection for medical personnel and reduces legal uncertainty in medical practice.

Keyword: *Malpractice; Medical Personnel; Health Worker; Health Law; Criminalization.*

INTRODUCTION

The dynamics of health services often place medical personnel in legally vulnerable positions. Any failure of medical treatment, especially those with fatal consequences, tends to be immediately drawn into the realm of criminal law under allegations of negligence. This phenomenon of "criminalization" has contributed to the emergence of defensive medicine practices, in which medical personnel act more conservatively and cautiously when accepting patients and promptly refer them to other health facilities when encountering complex diagnoses. This practice is often carried out not solely for the clinical benefit of patients, but rather as a preventive measure to avoid potential lawsuits that could threaten the professional careers of medical personnel (Guyatt et al., 2012).

The ratification of Law Number 17 of 2023 concerning Health represents a legislative response to the need for health law reform in Indonesia. This law integrates various regulations that were previously scattered across several sectoral laws while providing a more comprehensive legal framework for regulating the practice of medicine and health services (Apriyani et al., 2024; Pițuru et al., 2015; Usemahu & Panjaitan, 2024). One important issue of concern is how the state provides legal certainty for medical personnel without neglecting the protection of patients' rights to obtain safe and high-quality health services (Meirosa, 2021). In this context, the latest regulations seek to clarify the distinction between inherent medical risks in clinical practice and medical malpractice that may give rise to legal liability (Aaron et al., 2025; Giesen, 2025).

The development of lawsuits against medical personnel in recent years has shown a significant increase, in line with growing public awareness of patients' rights (Guyatt et al., 2012). This condition presents challenges for the health law system, as not all adverse outcomes of medical treatment can be categorized as professional error. Many medical procedures follow established professional standards and operational protocols but still carry unavoidable risks. When the distinction between medical risk and malpractice is not properly understood, the potential for the criminalization of medical personnel increases significantly (Neill, 2024).

From the perspective of criminal law, the liability of medical personnel must be based on the existence of fault that can be legally attributed. Such fault is generally associated with negligence (culpa) that causes harm to the patient. However, not every act of negligence can be directly classified as a criminal offense. Modern criminal law requires proof of a serious degree of fault or gross negligence (culpa lata), which reflects a substantial deviation from the standard of care that medical personnel are expected to uphold in carrying out their professional duties.

Law Number 17 of 2023 introduces a new approach to regulating the legal liability of medical personnel by emphasizing the importance of professional standards, service standards, and Standard Operational Procedure as the primary parameters in assessing malpractice. This provision underscores that medical actions cannot be evaluated solely based on outcomes but must also be assessed based on whether the procedures were carried out in accordance with applicable professional standards. Thus, the law shifts its focus from purely outcome-based evaluation to include procedural and professional aspects of medical practice.

In addition, the law introduces a more systematic legal protection mechanism through the role of the Professional Disciplinary Council. This institution serves a strategic function by conducting an initial assessment of alleged violations of medical discipline before cases proceed to the criminal justice system. This mechanism is intended to ensure that allegations of malpractice are first examined professionally by competent authorities in the medical field, thereby minimizing misinterpretations of legally complex and technical medical practices.

Furthermore, the approach to resolving medical disputes under the latest Health Law prioritizes the principle of restorative justice. This approach positions mediation as a primary instrument in resolving conflicts between medical personnel and patients. Through this mechanism, dispute resolution is expected to emphasize the restoration of relationships, fair compensation, and more constructive outcomes compared to a purely punitive criminal approach.

The urgency of this research lies in the importance of understanding the new legal framework introduced in Law Number 17 of 2023, particularly concerning the limitations on the criminalization of medical personnel in malpractice cases. A comprehensive understanding of the parameters of criminal liability is necessary to ensure that law enforcement in the health sector operates proportionately and fairly, without creating excessive fear among medical personnel in the performance of their duties.

Thus, this study is relevant for an in-depth examination of how the concept of criminal liability for medical personnel is constructed under the latest regulations, as well as how existing legal protection mechanisms can prevent the criminalization of the medical profession. This study is expected to contribute academically to the development of health law in Indonesia

and serve as a reference for legal practitioners and medical personnel in understanding the dynamics of law enforcement in the field of health services.

The problem formulation in this study focuses on understanding the parameters of criminal liability for medical personnel and health workers in malpractice cases based on Law No. 17 of 2023, as well as examining the available legal protection mechanisms for medical personnel through the role of the Disciplinary Council and restorative justice processes in preventing criminalization.

Accordingly, this research aims to analyze in depth the criteria for criminal negligence in medical services and to understand the strategic function of disciplinary institutions and mediation as instruments of legal protection for medical personnel and health workers.

METHOD

This research employed a normative juridical approach, focusing on the analysis of positive legal norms, legal principles, and doctrinal sources concerning the criminal liability of medical personnel under Law No. 17 of 2023 on Health in Indonesia. The primary aim was to examine the parameters of criminal negligence in medical services and to explore the legal protection mechanisms available to medical personnel. This study was qualitative in nature, relying on the analysis of legal texts, statutory regulations, and relevant case law to identify legal frameworks governing the application of criminal liability in medical malpractice cases.

The data consisted of relevant legal materials, including the text of Law No. 17 of 2023, legal commentaries, scholarly articles, and case studies related to medical malpractice and health law in Indonesia. The sample was selected through purposive sampling, focusing on legal provisions and their application in malpractice cases, as well as expert opinions from legal and medical scholars. The selection prioritized sources that were relevant to the current legal framework. The primary research instrument was document analysis, through which legal texts and scholarly works were systematically reviewed.

To ensure validity and reliability, the research relied on credible legal sources, including peer-reviewed publications and relevant case law. Data were collected through documentary study and case law analysis. The procedure involved examining legislative provisions and their application in malpractice cases. Data analysis was conducted using qualitative content analysis to identify patterns in legal interpretation and application.

RESULTS AND DISCUSSION

1. Deconstruction of Criminal Articles in Law No. 17 of 2023

The latest Health Law regulates criminal sanctions for forgetfulness specifically in Article 440. The parameter used is "gross negligence" that causes serious injury or death. The emphasis on the word "weight" aims to make sure that not all human errors in complex medical procedures can be punished.

Yasmirah Mandasari Saragih argued that the enforcement of Article 440 must be very selective. According to him, criminalization can only be carried out if the actions of the medical personnel objectively deviate far from Professional Standards, Service Standards and/or Standard Operational Procedure (SOP), this is disclosed in Article 273 of Law no. 17 of 2023

(Saragih, 2019). The unlawful nature of medical negligence arises because medical personnel violate **their professional obligations** as stipulated in Article 273 of Law No. 17 of 2023. Medical personnel are required to work in accordance with:

1. Professional Standards
2. Service Standards
3. Standard Operational Procedure (SOP)

In the absence of evidence of violation, the patient's loss is categorized as a medical risk that eliminates the criminal element.

2. The Role of the Professional Disciplinary Assembly as a Judicial "Filter" (Article 308)

One of the most significant updates is Article 308. This article requires law enforcement officials (APH) to ask for recommendations from the Professional Disciplinary Council before conducting an investigation into medical personnel. Gunawan Widjaja highlighted that this mechanism is the state's recognition of the autonomy of the medical profession (Widjaja, 2015). The Professional Disciplinary Council acts as a collective expert witness who assesses whether an act is criminal malpractice or simply a disciplinary dispute. If the recommendation states that there is no violation of the standard, then juridically the unlawful element in the criminal case becomes eliminated.

3. Implementation of Restorative Justice in Medical Disputes

Article 304 of Law No. 17 of 2023 mandates the use of mediation. This is in line with *the theory of Ultimum Remedium*, where criminal law is the last resort. Syahrul Machmud argued that medical mediation is more beneficial to patients because it focuses on restoring rights and compensation, compared to criminal proceedings that only punish the perpetrator without providing financial solutions for the victim (Machmud, 2012).

4. *Informed Consent* as a Basis for Forgiveness

In surgical procedures, informed *consent* is the main basis of legality. Gunawan Widjaja emphasized that without legal consent, even the correct medical action can be considered criminal persecution (Widjaja, 2019). On the other hand, if the patient has signed an agreement for the risks that have been described in detail, then the doctor is protected from prosecution if the risk actually occurs, in accordance with the doctrine of *volenti non fit injuria* (the person who agrees to the risk is not considered to be harmed) (Chazawi, 2017).

5. Synchronization with the New Criminal Code (Law No. 1 of 2023)

The enforcement of the malpractice law must also be synchronized with Article 474 of the National Criminal Code which regulates the crime of forgetfulness. However, because the Health Law is *Lex Specialis*, the provisions in Law No. 17 of 2023 must take precedence (*Lex Specialis Derogat Legi Generali*). Komariah Emong Sapardjaja emphasized that the uniqueness of the medical profession requires a non-rigid legal handling, where the element of legal usefulness must be more dominant than just textual certainty.

6. Parameters of Proving Malpractice in the Perspective of Criminal Law

Proof in medical malpractice cases has different characteristics compared to criminal acts in general. This is because medical procedures are professional activities that have a high level of complexity and contain risks that cannot be completely eliminated. In judicial practice, proving the wrongdoing of medical personnel must consider aspects of professional standards and Standard Operational Procedure that apply at the time the medical action is performed. In

other words, the measure of error is not solely seen from the consequences that arise, but from whether the action has deviated from the professional standards that should be adhered to.

In this context, the concept *of culpa lata* or gross forgetfulness is an important element in determining criminal liability. Gross forgetfulness reflects a condition in which medical personnel do not carry out the duty of care that every professional in the same field should be aware of. If a medical procedure has been carried out in accordance with applicable professional standards and procedures, then the loss experienced by the patient is more appropriately categorized as a medical risk that cannot be punished.

In addition, proof of malpractice also relies heavily on expert testimony from the medical profession. Experts have an important role in explaining whether the actions taken by medical personnel are still within the limits of the reasonableness of medical practice or have exceeded the permissible standards. Therefore, the existence of experts is an important instrument in maintaining the objectivity of the law enforcement process for medical personnel.

7. The Importance of Medical Records as Legal Evidence

Medical records have a very important position in medical disputes because they serve as official documentation of the entire process of health services provided to patients. This document contains information about the diagnosis, medical measures taken, medications given, and the development of the patient's condition during the treatment period. In the legal context, medical records can be the main evidence to assess whether medical personnel have carried out their duties in accordance with applicable professional standards (Saragih & Rahmansyah, 2021).

If the medical records are compiled completely and accurately, then the document can be a form of legal protection for medical personnel when facing allegations of malpractice. On the other hand, medical records that are incomplete or not properly documented can cause difficulties in the proof process, and can even lead to allegations of negligence in medical services. Therefore, medical personnel are required to improve the quality of medical record recording, including through the use of a more systematic and transparent electronic medical record system.

In addition to serving as legal evidence, medical records also have important value in improving the quality of health services. Through good documentation, medical personnel can evaluate the medical actions that have been carried out so that they can improve service standards in the future

8. Legal Protection for Medical Personnel in a Professional Perspective

Legal protection for medical personnel is one of the important aspects in maintaining the sustainability of quality health services. Without adequate legal protection, medical personnel can experience excessive psychological pressure in carrying out their profession, thus potentially reducing the quality of services provided to patients. Law Number 17 of 2023 tries to answer this problem by providing a clearer and more systematic legal protection mechanism.

One form of legal protection is the strengthening of the role of the Professional Disciplinary Council as an institution that has the authority to assess alleged disciplinary violations by medical personnel (Ulfany et al., 2025). With this mechanism, every allegation of malpractice is not necessarily processed in the criminal justice system, but is first evaluated

through a professional discipline mechanism. This approach aims to ensure that every case related to the practice of medicine is assessed by parties with relevant professional competence.

In addition, legal protection is also provided through recognition of the principle of professional judgment. This principle recognizes that medical personnel have professional freedom in determining the medical action that is considered most appropriate based on the patient's condition and the development of medical science. Therefore, the law should not rigidly assess medical procedures without considering the complexity of the clinical decisions faced by medical personnel in the field.

9. Implications of the Implementation of Law No. 17 of 2023 on Health Service Practices

The implementation of Law Number 17 of 2023 has significant implications for health service practices in Indonesia. One important implication is the increasing awareness of medical personnel on the importance of adherence to professional standards and operational procedures in every medical procedure performed. Compliance with these standards is the main key in preventing medical disputes and lawsuits.

On the other hand, this new regulation also provides clearer legal certainty for medical personnel in carrying out their profession. With a stricter boundary between medical risk and malpractice, medical personnel are no longer in a situation of legal uncertainty that can cause fear in providing services to patients. This is expected to improve the quality of health services because medical personnel can carry out their duties more professionally and confidently.

Furthermore, the application of mediation and restorative justice mechanisms in the resolution of medical disputes can create a more harmonious relationship between medical personnel and patients (He & Qian, 2016; Liu et al., 2022; Nie et al., 2018; Pakpahan et al., 2021). This approach not only focuses on the punishment aspect, but also emphasizes on restoring relationships and fulfilling the rights of patients more equitably. Thus, the health legal system in Indonesia can evolve towards a more humane, proportional, and substantive justice oriented system.

CONCLUSION

Based on the results of this study, it can be concluded that Law No. 17 of 2023 provides a more proportional framework for criminal accountability of medical personnel, with an emphasis on gross negligence that causes serious injury or death as the main criterion for malpractice. Additionally, the recommendation mechanism from the Professional Disciplinary Council and the requirement for mediation in resolving medical disputes represent progressive steps in legal protection for medical personnel to prevent baseless criminalization. However, it is important to continue monitoring the implementation of this law to ensure that each case is viewed proportionally and fairly, considering the complexity of the medical field. As a suggestion for future research, further evaluation is needed on the effectiveness of mediation mechanisms in medical practice and its impact on the relationship between medical personnel and patients, especially regarding the application of restorative justice principles in resolving medical disputes.

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