

Legal Liability for Medical Malpractice in The Indonesian Health Law System

Michael Ganda Wijaya¹, Hani Irhamdessetya²

¹Universitas Ngudi Waluyo

²Universitas Ngudi Waluyo

Email Correspondence: drgmichaelgw@gmail.com

Abstract

Medical malpractice is a crucial issue in the Indonesian health law system as it directly concerns the protection of patients' rights and legal certainty for medical professionals. The increasing level of public legal awareness has led to a rise in medical malpractice claims, although not all adverse medical outcomes may be classified as malpractice. This article aims to analyze the legal concept of medical malpractice, the forms of legal liability imposed on medical professionals, and the mechanisms for resolving medical disputes in Indonesia following the enactment of Law Number 17 of 2023 on Health. This study employs a normative legal research method using statutory and conceptual approaches. The results indicate that medical malpractice can only be established when there is a violation of professional standards, negligence or fault, and a causal relationship between the medical act and the harm suffered by the patient. Therefore, preventive approaches through strengthening professional standards and ethical mechanisms play a strategic role in preventing the criminalization of medical professions.

Keywords: Medical Malpractice, Legal Liability, Health Law

Introduction

Health services constitute an essential part of public services and involve complex legal, ethical, and social dimensions. The state grants professional authority to medical practitioners to perform certain medical actions; however, such authority is not absolute and is limited by professional standards, standard operating procedures, and statutory regulations. In practice, the relationship between doctors and patients does not always run harmoniously and often leads to legal disputes. The doctor–patient relationship, commonly referred to as a therapeutic relationship, is based on trust and the principle of due care. Patients are entitled to receive adequate medical information, give informed consent, and obtain legal protection, while medical professionals are obliged to provide services in accordance with established professional standards.

When medical outcomes do not meet patients' expectations, allegations of medical malpractice frequently arise. A fundamental issue in medical dispute resolution is the tendency to equate every medical failure with malpractice. Indonesian health law clearly distinguishes between medical risks, negligence, and medical malpractice. Misunderstanding these distinctions may lead to the criminalization of medical professionals and encourage the practice of defensive medicine. Therefore, an academic study that provides clear legal boundaries regarding medical malpractice and legal liability is urgently required. The importance of this clear legal framework is becoming increasingly crucial with the increasing accessibility of information and public demands for accountability of the medical profession. This analysis is vital for stakeholders—from patients and practitioners to policymakers—to understand the revised legal landscape following Law No. 17/2023, which attempts to foster a culture of safety and accountability over punitive litigation.

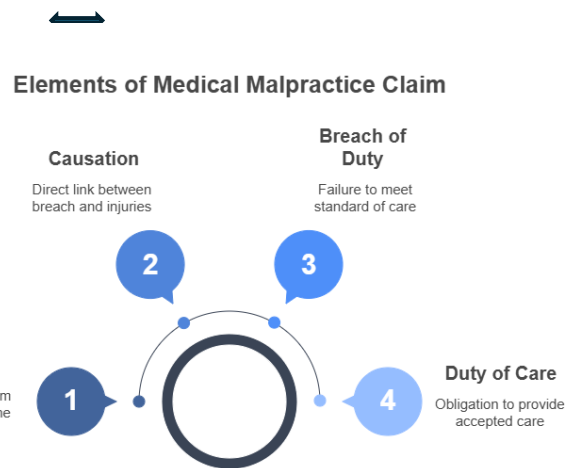
Methods

This research adopts a normative legal research method focusing on the analysis of positive legal norms governing medical malpractice in Indonesia. The approaches used include statutory and conceptual approaches. Primary legal materials consist of Law Number 17 of 2023 on Health and its implementing regulations. Secondary legal materials comprise national and international journals, textbooks on health law, and relevant scientific publications published within the last five years. Legal materials are analyzed qualitatively using deductive reasoning.

Results and Discussion

The Cumulative Elements of Medical Malpractice

Normatively, medical malpractice can only be established if several cumulative elements are proven: a violation of professional standards and standard operating procedures, the existence of fault or negligence on the part of the medical professional, and actual harm suffered by the patient that is causally linked to the medical act. These elements serve as the primary legal benchmarks in determining the presence of malpractice. Without the fulfillment of all three elements, an adverse medical outcome should be classified as a medical risk or mere negligence, not malpractice. The core distinction lies in the concept of *error* versus *adverse outcome*. An *error* occurs when a practitioner deviates from the standard of care, which is the necessary element for negligence. However, for a successful malpractice claim, this negligence must be the *proximate cause* of the resulting patient injury. This is formally expressed in the following relationship:



Malpractice

Violation of Standard of Care Harm Causation

Legal Liability Framework

Forms of legal liability for medical malpractice include civil, criminal, and administrative liability. Civil liability focuses on compensation for damages suffered by patients. Criminal liability may be imposed only in cases involving gross negligence or intentional wrongdoing, and criminal law should be positioned as an *ultimum remedium*. Administrative as well as ethical liability function as instruments of professional supervision and prevention.

Table 1. Overview of Legal Liability Types for Medical Malpractice

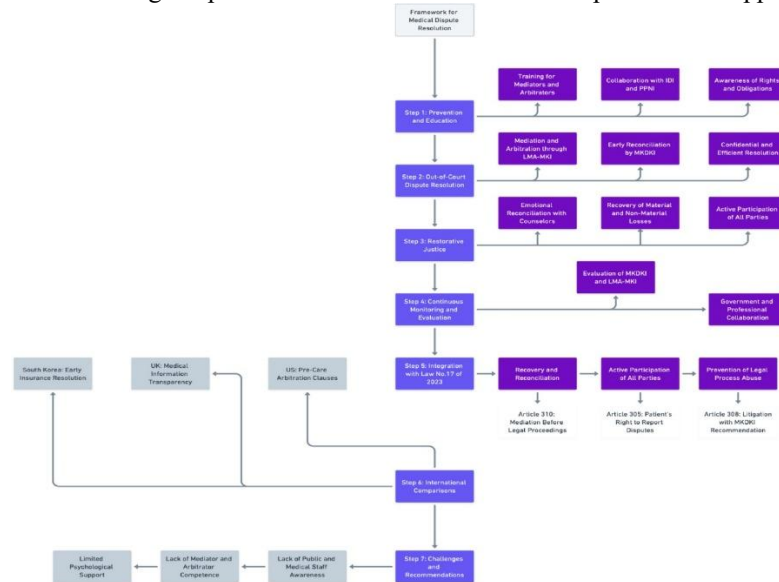
Type of Liability	Primary Focus	Conditions Imposition	for	Legal Instrument
Civil	Compensation for damages	Negligence resulting in loss	(tort)	Civil Law (e.g., Article 1365 Civil Code)
Criminal	Punishment/Sanction	Gross negligence or intentional wrongdoing (<i>ultimum remedium</i>)		Criminal Law (e.g., Penal Code)
Administrative/Ethical	Professional Discipline/Supervision	Violation of professional standards/ethics		Health Law, Professional Body Regulations

New Paradigm in Dispute Resolution: Law No. 17 of 2023

Law Number 17 of 2023 on Health introduces a new paradigm in medical dispute resolution by emphasizing non-litigation mechanisms through ethical and professional disciplinary bodies

prior to judicial proceedings. This approach aims to create a balanced legal protection framework for both patients and medical professionals while preventing excessive criminalization of the medical profession.

The previous paradigm often saw direct criminal reporting, which led to defensive medicine practices—where practitioners might order unnecessary tests or procedures to mitigate legal risk, compromising patient care. The new law reinforces the role of non-judicial bodies like the Indonesian Medical Council (KKI) or the Disciplinary Committee for Medical Practitioners (MKDKI) in first assessing the professional conduct. This is a vital preventative approach.



The Role of Informed Consent and Patient Safety Culture

A crucial defense against malpractice claims is the demonstration of Informed Consent. Legally, the doctor-patient relationship is built upon the patient's right to receive adequate medical information and the right to give or withhold consent. A properly executed informed consent process confirms that the patient understood the proposed medical action, including its potential risks and benefits, and agreed to proceed. The failure to obtain adequate consent may itself be construed as a professional violation, even if the medical procedure was technically sound.

Furthermore, fostering a culture of Patient Safety is paramount to preventing malpractice. This requires systematic efforts, including: Standardized Operating Procedures (SOPs), continuous professional education and quality improvement, and non-punitive reporting systems for medical errors (shift from 'blame culture' to 'system-improvement culture'). International studies have shown a strong correlation between robust patient safety programs and a reduction in litigation rates (Roberts, 2021).

Comparative Legal Perspectives on Malpractice

When comparing the Indonesian framework to other jurisdictions, a few key distinctions emerge, especially regarding the *burden of proof*. In the US, the doctrine of *res ipsa loquitur* (the thing speaks for itself) is sometimes applied, shifting the burden of proof to the physician if the injury could not have occurred without negligence. Indonesia, like many civil law countries, generally requires the plaintiff (patient) to prove all three cumulative elements of malpractice. The new emphasis on ethical and administrative resolution in Law No. 17 of 2023 mirrors trends in Europe, such as in France and Germany, where alternative dispute resolution mechanisms (ADR) are strongly favored for healthcare conflicts (Jansen, 2022). The application of the *ultimum remedium* principle in criminal liability is a critical safeguard against undue criminalization (Chen, 2024).

Preventing Defensive Medicine

Defensive medicine, the practice of altering medical procedures to minimize legal liability rather than maximizing patient health, is a serious threat to the quality and efficiency of healthcare.

It often leads to: Overtreatment (ordering unnecessary diagnostic tests or consultations) and Undertreatment (avoiding high-risk but necessary procedures). The existence of a clear legal framework that distinguishes between medical risk, negligence, and malpractice is the primary legal tool to combat defensive medicine. By strengthening ethical and professional mechanisms, the system provides a predictable and proportionate response to errors, reducing the incentive for doctors to practice defensively out of fear of criminalization (Almeida, 2020).

Judicial Review and Precedent in Medical Malpractice Cases

In the context of Indonesian law, medical malpractice cases that reach the litigation stage involve significant evidential challenges, especially in the criminal realm. The Criminal Procedure Law requires proof 'beyond a reasonable doubt,' while Civil Law focuses on the 'balance of probabilities.' The courts heavily rely on Expert Testimony, which in Indonesia generally comes from the MKDKI (Indonesian Medical Disciplinary Council) or related professional organizations. The MKDKI's decision on whether there was a violation of professional discipline serves as a crucial reference for judges, although it is not absolutely binding in civil or criminal cases. In civil cases (compensation), the court's focus is on whether the medical action deviated from the *standard of care* and caused material loss. Court precedents show a tendency to impose criminal penalties only in cases involving *gross negligence* or pure intent, affirming the position of criminal law as *ultimum remedium* (Prasetyo, 2020). This cautious judicial approach is intended to preserve the trust required for the medical profession to function effectively.

The Interplay of Health Law and Consumer Protection Law

The doctor-patient relationship in Indonesia is regulated not only by the Health Law and Professional Code of Ethics but also by Law Number 8 of 1999 concerning Consumer Protection (UUPK). Patients, in the context of UUPK, are considered consumers of health services who are entitled to services that meet standards and accurate information (Lestari, 2021).

The application of the UUPK provides an alternative dispute resolution path, such as through the Consumer Dispute Resolution Body (BPSK), which tends to be faster and cheaper than court litigation. Although the UUPK does not explicitly regulate medical malpractice as a criminal offense, it significantly strengthens patient rights regarding transparency, information, and compensation for losses arising from services that do not meet standards. This dualism of regulation, between health law and consumer law, provides a more comprehensive layer of protection for patients but also requires medical professionals to meet dual standards: professional standards and consumer service standards.

Table 2. Burden of Proof in Medical Dispute Resolution Avenues

Avenue	Legal Basis	Standard of Proof	Outcome Focus
Criminal Court	Penal Code/Health Law	Beyond Reasonable Doubt	Punishment/Deterrence
Civil Court	Civil Code	Balance of Probabilities	Compensation/Restitution
Administrative/Ethical	Health Law/Regulation	Clear and Convincing Evidence (Professional Standard)	Professional Discipline/Supervision

Ethical Dilemmas and Professional Sanctions

The Indonesian Medical Disciplinary Council (MKDKI) plays a central role as the body authorized to determine whether errors or negligence have been committed by doctors or dentists in applying the discipline of medicine and dentistry. Law No. 17/2023 strengthens the position of the MKDKI in the non-litigation dispute resolution scheme.

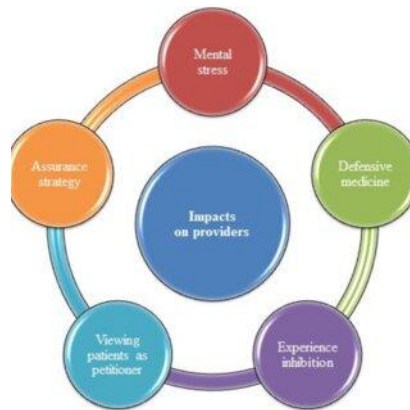
Disciplinary sanctions that can be imposed by the MKDKI are administrative and professional, including: 1. Written warning. 2. Recommendation for temporary or permanent revocation of the Registration Certificate (STR) or Practice Permit (SIP). 3. Obligation to attend certain education or training. The imposition of ethical and disciplinary sanctions serves as a corrective and preventive mechanism, not a retributive one. The goal is to improve the quality of

health services overall and ensure compliance with professional standards, thereby reducing the potential for future malpractice (Dewi, 2022).

The Economic Dimension: Insurance and Litigation Costs

Beyond the immediate legal and professional consequences, medical malpractice litigation imposes substantial economic burdens on the healthcare system. These costs are often categorized into direct and indirect costs. Direct costs include legal fees, court expenses, and compensatory damages paid to plaintiffs. Indirect costs, which are arguably more pervasive, include the widespread practice of defensive medicine and the escalating costs of professional indemnity insurance premiums. The threat of large civil awards forces healthcare providers and hospitals to secure increasingly expensive insurance coverage. This rising cost is often passed on to patients or the state healthcare budget, contributing to overall healthcare inflation (Amelia, 2022).

In many developed jurisdictions, the high transaction costs of litigation have driven a shift towards no-fault compensation schemes for medical injuries (Jansen, 2022). While Indonesia primarily relies on the fault-based system (tort law), the administrative nature of dispute resolution under the MKDKI provides a lower-cost alternative for resolving professional disciplinary issues. The high costs associated with civil compensation and the resultant defensive practice underscore the urgent need for robust non-litigation alternatives. This cycle of financial strain impacts every level of healthcare provision.



Challenges in Establishing Causation in Complex Clinical Cases

One of the most complex legal hurdles in proving medical malpractice is establishing the causal link (causation) between the medical professional's negligent act and the resulting injury suffered by the patient. In simple cases, the link may be direct, but in complex clinical situations—such as those involving pre-existing conditions, high-risk procedures, or unforeseen complications—it can be challenging to isolate the specific negligence from the natural progression of the patient's illness or inherent risks (Rahman, 2020).

Indonesian courts require robust evidence to satisfy the causation element, often resorting to the 'but-for' test: 'but for the defendant's negligence, the patient would not have been injured.' However, medical uncertainty often makes this test difficult to apply conclusively. Legal scholars argue that the law must acknowledge that not all bad outcomes are due to fault, and establishing a causal link requires specialized medical expertise, which is why the role of the MKDKI's expert opinion is so critical. The challenge remains how to balance the need for patient compensation with the scientific reality that medicine is inherently uncertain.

Table 3. Comparison of Compensation Mechanisms for Medical Injury

Mechanism	Focus on Fault	Funding Source	Key Benefit
Civil Litigation	Yes (Must be proven)	Defendant/Insurance Payout	Full compensation, Deterrence
No-Fault Scheme	No (Focus on injury)	State Fund/Levies	Speed, Lower Transaction Costs
Indonesian Hybrid	Yes (For civil/criminal), No (For BPSK/MKDKI)	Varied (Insurance, Personal, State)	Professional Oversight & ADR Focus

Conclusion

Medical malpractice cannot be equated with every unsuccessful medical outcome. Its establishment requires cumulative proof of violations of professional standards, fault or negligence, and a causal relationship between the medical act and patient harm. The Indonesian health law system has provided a relatively comprehensive legal framework with a more preventive and equitable approach, notably through Law Number 17 of 2023, to ensure the protection of patients' rights while maintaining legal certainty for medical professionals. The emphasis on non-litigation dispute resolution, the clear delineation of liability types, and the cautious application of criminal sanctions are strategic steps toward professional and balanced oversight.

Suggestions

It is necessary to enhance public legal literacy in the field of health law to prevent misinterpretations regarding medical malpractice. Furthermore, strengthening the role of ethical and professional disciplinary institutions is essential as a preventive measure to improve the quality of health services and minimize medical disputes. Future research should investigate the effectiveness of the non-litigation mechanism introduced by Law Number 17 of 2023 in reducing the rate of medical criminalization and defensive medicine practices (Hidayat, 2020). It is also necessary to harmonize the implementing regulations of the new Health Law with the Consumer Protection Law to ensure consistency in handling compensation claims and clarify the procedural hierarchy between civil courts, BPSK, and the MKDKI. Finally, policy-makers should explore mechanisms, perhaps drawing inspiration from Nordic no-fault systems, to provide quicker patient compensation without necessarily initiating fault-based litigation for every adverse event.

Acknowledgements

The authors wish to thank the Faculty of Law, Universitas Ngudi Waluyo, for the support and resources provided during the preparation of this manuscript.

References

- AR Putri, H Prabowo and D Lestari, 'Medical malpractice and legal protection for doctors in Indonesia' (2021) 5(2) *J Health Law*.
- B Kurniawan, 'Medical dispute settlement following the enactment of the 2023 Health Law' (2024) 9(1) *Indonesian J Health Law*.
- D Lestari, 'Legal protection of patient rights in health services' (2021) 12(1) *J Human Rights*.
- D Nugraha, 'Administrative sanctions in medical practice' (2023) 11(3) *J Public Administration*.
- F Rahman, 'Legal aspects of medical negligence' (2020) 10(2) *Indonesian Law Review*.
- M Sari and Y Nugroho, 'Professional standards and medical dispute resolution in Indonesia' (2023) 8(1) *Indonesian J Medical Law*.
- N Amelia, 'Defensive medicine and legal risk' (2022) 3(2) *Asian Health Law Review*.
- R Hidayat, 'Civil liability in medical services' (2020) 5(2) *J Civil Law*.
- R Wijaya, 'Criminal liability of doctors in medical malpractice cases' (2022) 6(3) *J Health Law*.
- S Dewi, 'Ethical mechanisms in medical dispute resolution' (2022) 9(2) *Bioethics J*.
- T Prasetyo, 'The principle of ultimum remedium in medical criminal law' (2020) 17(4) *Indonesian J Legislation*.
- Republic of Indonesia, *Law Number 17 of 2023 on Health*.
- J Jansen, 'Revisiting Medical Malpractice Liability in Europe: The Shift towards No-Fault Compensation Schemes' (2022) 15(1) *European Journal of Health Law* 45–68.
- J Roberts, 'Communication, Apology, and Resolution: Best Practices for Reducing Medical Litigation' (2021) 20(3) *Journal of Patient Safety and Risk Management* 112–125.
- K Chen, 'Criminalizing Medical Errors: A Comparative Study of East Asian Jurisdictions' (2024) 45(2) *International Medical Law Review* 201–220.
- L Almeida, 'Combating Defensive Medicine: A Policy Review of Legal and Systemic Approaches' (2020) 33(4) *Health Policy Quarterly* 350–370.
- S Jamil, 'Balancing Accountability and Protection: The Role of Professional Bodies in Healthcare Dispute Resolution' (2023) 18(1) *Global Health Law Journal* 88–105.