

ANALYSIS OF LEGAL PROTECTION FOR MEDICAL PERSONNEL IN MALPRACTICE CASES: AN INDONESIAN LEGAL PERSPECTIVE

Andreas Harry

Doctoral Student Faculty of Law Universitas 17 Agustus 1945 Jakarta,
andreasharrylilisantosa1956@gmail.com

Gunawan Widjaja

Senior Lecturer Faculty of Law Universitas 17 Agustus 1945 Jakarta,
widjaja_gunawan@yahoo.com

Abstract

This study examines the legal protection for medical personnel in the face of malpractice cases in Indonesia, focusing on the applicable regulations, dispute resolution mechanisms, and implementation challenges. Through analysis of the Medical Practice Act and the Health Act, it is found that these regulations provide a sufficient legal framework for the protection of medical personnel. Malpractice dispute resolution can be done through mediation and arbitration as an alternative to litigation, which is expected to be faster and fairer. However, there are challenges in the understanding and implementation of the regulations by medical personnel, as well as the need for increased education and socialisation on their legal rights. This study emphasises the important role of medical professional bodies in providing legal support to ensure effective protection and maintenance of quality medical services in Indonesia.

Keywords: Analysis, Legal Protection, Medical Personnel, Malpractice Cases, Indonesian Law.

Introduction

In the era of globalisation and the rapid development of health technology, the role of medical personnel has become increasingly crucial in providing optimal health services to the community. Medical personnel play a role with the primary responsibility of providing diagnosis, care and treatment to patients. They are at the forefront of the treatment of various health problems, ranging from minor ailments to life-threatening conditions (Nguyen & Tran, 2023). In addition to technical skills and medical expertise, medical personnel are also expected to have an empathic and communicative attitude to build a good relationship with patients. This is important to ensure that patients feel comfortable and trust the services they receive, which in turn can affect treatment outcomes (Aditya, 2019).

In addition to their direct role in health care, medical personnel also play a role in health education to the community. They deliver accurate information and educate patients about disease prevention, the importance of maintaining a healthy lifestyle, and ways to manage long-term health conditions (Johnson, 2022). In a broader context, medical personnel contribute to health science research and development, help

formulate better health policies, and run public health programmes designed to improve quality of life. With this multifaceted role, medical personnel become the main pillar in ensuring the achievement of optimal health status for society (Silva & Pereira, 2023)

However, along with the increasing complexity in medical practice, cases of medical malpractice have also increased. Medical malpractice is an act of medical personnel that is not in accordance with applicable professional standards, which can cause serious harm to patients, both physically, psychologically, and financially. Medical malpractice is an act of negligence or error by medical personnel in providing health services that results in injury or loss to the patient (Sinaro, 2015) . It can occur due to various factors, such as misdiagnosis, medication errors, improperly performed medical procedures, or lack of necessary measures. Medical malpractice involves not only wrongful acts, but also failure to act or adhere to the applicable standard of care. In a legal context, malpractice can lead to lawsuits demanding compensation for aggrieved patients (Dewi, 2018) .

The costs of medical malpractice can be significant, both for the patient, the medical personnel involved, and the healthcare institution. For patients, malpractice can lead to increased physical and emotional suffering, permanent disability, or even death. Financial losses can also be significant due to the increased healthcare costs required to recover from malpractice (Anderson & Murphy, 2022) . For medical personnel, these incidents can damage their professional reputation, lower their confidence, and potentially lead to legal sanctions or cancellation of their licence to practice. Healthcare institutions can also suffer losses in the form of reduced reputation, public trust, and high litigation costs. In the long run, this can affect the overall quality of healthcare (Garcia, 2022) .

In Indonesia, medical malpractice cases have received significant attention in recent years. Publications in the media often highlight incidents of malpractice that have surfaced, raising concerns among the public and raising questions about the extent to which legal protections have been implemented to protect both parties: patients and medical personnel (Dimitrov & Petrov, 2023) .

In general, legal protection for medical personnel in Indonesia is regulated by several laws and regulations, including Law No. 29/2004 on Medical Practices and various Minister of Health regulations. Nonetheless, there are various challenges in the implementation of these legal protections, such as the lack of legal awareness among medical personnel, the potential for abuse of the law, and the mental stress faced by medical personnel due to the threat of litigation (Jackson & Harper, 2022) .

Effective legal protection is needed to provide assurance to medical personnel so that they can perform their duties professionally without unnecessary fear of excessive lawsuits. In addition, this legal protection also serves to ensure that patients

who are victims of malpractice get justice and proper compensation (Williams & Thompson, 2022).

As such, this study aims to analyse the legal protection for medical personnel in malpractice cases from the perspective of Indonesian law. Against this backdrop, the research is expected to provide a deeper insight into the existing legal protection framework, as well as identify areas that require improvement to reduce the incidence of malpractice and enhance safety and fairness for all parties involved in the healthcare system.

Research Methods

The review in this study uses the literature method. The literature research method, or often called literature review, is a research approach used to collect, analyse, and synthesise concepts and research findings from various relevant sources. This method involves examining various types of literature, including scientific journals, books, dissertations, research reports, and online materials, with the aim of gaining an in-depth understanding of a particular topic (Torraco, 2005); (Gough et al., 2012). The process involves identifying credible sources, screening relevant information, organising findings within a cohesive theoretical framework, and evaluating and summarising results. Literature research is essential in forming the theoretical basis of a study, identifying research gaps, and helping formulate hypotheses for further research (Webster & Watson, 2002).

Results and Discussion

Concept of Medical Malpractice

Medical malpractice is a complex phenomenon involving professional errors by healthcare personnel that result in injury or harm to patients. By understanding this concept in depth, we can create a safer healthcare system and ensure that patients receive high-quality care. Medical malpractice typically involves actions that deviate from established healthcare standards, where negligence or carelessness in medical care leads to adverse outcomes for patients (Walter, 2017).

Basically, medical malpractice occurs when a medical professional commits an error or omission that is not in accordance with the applicable standard of care. In a legal context, an aggrieved patient can file a lawsuit against the healthcare provider. To prove medical malpractice, it is usually necessary to prove that the standard of care was not adhered to and that this directly caused injury or harm to the patient (Müller & Schmidt, 2022).

Standards of care refer to the level of competence and expertise expected of healthcare providers in similar situations. Typically, this standard relies on practices recognised by the medical community and established through consensus among

healthcare professionals. Deviations from this standard, whether due to action or lack of action, may form the basis of a medical malpractice claim (Chen & Wang, 2023).

Medical malpractice can take many forms, including misdiagnosis, medication errors, improperly performed surgeries, failure to monitor a patient's condition, or not providing enough information about the risks of a medical procedure. Misdiagnosis often includes patients being diagnosed with the wrong disease or being diagnosed too late. Medication administration errors can include the wrong dose, the wrong drug, or the wrong method of administration (Smith & Brown, 2023).

The impact of medical malpractice on patients can be significant, ranging from minor discomfort to serious injury or death. In addition to the physical consequences, patients may also experience psychological trauma, loss of income, and increased financial burden due to additional medical expenses. In many cases, the psychological impact of injuries from medical malpractice can be more severe than the physical impact experienced due to loss of trust in the Healthcare system (Lopez & Sanchez, 2022).

Medical malpractice also has a negative impact on medical personnel and healthcare institutions. Medical personnel involved in malpractice cases can face serious consequences, including disciplinary action, loss of licence, and damage to professional reputation. The healthcare institutions involved may experience a decline in public trust, which in turn may affect future ratings and patient confidence. The cost of litigation and settling claims can also be a significant financial burden for healthcare institutions (O'Neil, 2023).

Prevention of medical malpractice requires a comprehensive approach, including continuous education and training for healthcare providers, implementation of appropriate protocols and practice guidelines, use of health information technology to improve the accuracy of medical records, and a work culture that encourages constructive reporting and management of medical errors. Ensuring effective communication between medical personnel and patients is also an important step to reduce the risk of malpractice (Lee & Kim, 2023).

Thus, by understanding and addressing the factors that contribute to medical malpractice, health systems can improve the quality of care and ensure patient safety. This requires collaboration between healthcare providers, policymakers, and the public to create a safer and more trustworthy medical environment.

Legal Regulations Governing Medical Malpractice in Indonesia

Medical malpractice is a serious issue in healthcare that involves negligence or errors of medical professionals that cause harm to patients. In Indonesia, there are several legal aspects governing medical malpractice contained in various laws and regulations (Suparmi, 2020).

First, Law No. 29/2004 on Medical Practice provides a legal basis for the implementation of medical practice in Indonesia. This law regulates the obligation of

doctors and dentists to provide medical services according to professional standards and standard operating procedures, including upholding the medical code of ethics (Novak & Kraljic, 2023).

Secondly, there is also Law No. 36/2009 on Health which sets out the rights and obligations of patients and health workers. This law emphasises the importance of quality health services and the protection of patients from harmful practices (Wulandari, 2020).

Third, other aspects of medical malpractice are regulated under the Criminal Code (KUHP) articles relating to negligence resulting in injury or death. Doctors proven to have committed malpractice may be subject to criminal sanctions under the Criminal Code if their negligence fulfils the criminal elements (Junadi ., 2019)

Fourth, the Hospital Supervisory Board (BPRS) plays a role in overseeing health services in hospitals. BPRS can follow up reports of medical malpractice and provide recommendations for administrative sanctions for those deemed guilty (Baker & Martin, 2023).

Fifth, ethically, the Indonesian Doctors Association (IDI) functions as a professional institution that formulates the Indonesian Code of Medical Ethics. This code of ethics serves as a guideline for doctors to practice with integrity and professionalism. Violations of the code of ethics may be subject to ethical sanctions by the IDI, which can be in the form of reprimands to revocation of practice licences (Jones & Walker, 2022).

Finally, patients who feel aggrieved by medical malpractice can sue through civil channels. This lawsuit can be filed to the court with a claim for compensation for the losses suffered. The court will assess whether there was an unlawful act that caused the loss and decide the amount of compensation that is appropriate (Fernandez & Rodriguez, 2022).

As such, in Indonesia medical malpractice is regulated through various regulations and laws that aim to protect patients and ensure the responsibility of medical professionals. Law No. 29/2004 on Medical Practice and Law No. 36/2009 on Health are the two main regulations that cover the liability and protection aspects of medical practice. The Criminal Code (KUHP) also provides a legal basis for prosecuting fatal medical negligence. In addition, the Hospital Supervisory Board (BPRS) and the Indonesian Doctors Association (IDI) play a role in the supervision and enforcement of the health profession's code of ethics. Patients have the right to file a civil lawsuit as a way to obtain compensation for losses suffered due to medical malpractice. All of these legal and regulatory frameworks create a system that is expected to ensure safe and quality healthcare for the people of Indonesia.

Legal Protection for Medical Personnel in the Perspective of Indonesian Law

In Indonesia, medical personnel receive legal protection through various laws and regulations. Law No. 29 of 2004 on Medical Practice and Law No. 36 of 2014 on Health Workers define the rights and obligations of medical personnel and provide legal protection aimed at ensuring safe and quality practice activities (Al-Zahrani & Al-Ali, 2022).

Medical personnel have legal protection from malpractice claims through the regulation of medical dispute handling and resolution procedures that must follow professional mechanisms. This includes the obligation to follow the professional code of ethics overseen by professional organisations such as the Indonesian Doctors Association (IDI) and the Medical Ethics Honor Council (MKEK), which has the authority to handle alleged violations in practice (Kumar & Patel, 2023).

The Criminal Code also regulates criminal aspects when medical personnel are suspected of committing negligence that causes harm to patients. However, criminal law also takes into account good faith and certain conditions that may be taken into consideration in the law enforcement process, with the aim of preventing the criminalisation of medical actions carried out with good intentions and according to standards (*Law Number 29 of 2004 concerning Medical Practice*., 2004)

In the civil realm, medical personnel may face claims for damages from patients. Alternative dispute resolution systems, such as mediation and arbitration, are often encouraged to resolve disputes amicably and more quickly. This provides room for medical personnel to defend themselves before the matter goes to court (Nguyen & Tran, 2023).

Medical personnel in Indonesia are often protected through professional liability insurance, which can help them deal with the financial consequences of lawsuits. This insurance provides coverage so that medical personnel can focus on their practice without being burdened by the financial risks of potential malpractice claims (Aditya, 2019).

Regulations also provide administrative protection for medical personnel, including continuing training and licences to practice. Governments and professional organisations routinely evaluate standards of practice and training schemes to ensure medical personnel update their knowledge and skills in line with advances in medical science (Johnson, 2022).

Professional organisations also play a crucial role in providing legal and professional support for their members. The advocacy function is one of the ways that organisations such as IDI protect the interests of their members and ensure a fair and effective health system (Silva & Pereira, 2023).

As such, legal protection for medical personnel in Indonesia is a combination of statutory regulation, support from professional organisations, and fair dispute resolution mechanisms. The whole framework is expected to optimise the role of

medical personnel by providing a sense of security in carrying out their professional duties, without overriding the rights of patients to obtain safe and quality medical services.

Conclusion

In the Indonesian legal system, medical personnel have legal protection regulated in various regulations and laws, such as Law No. 29 of 2004 on Medical Practice and Law No. 36 of 2009 on Health. These regulations provide clear guidelines on medical practice standards as well as the rights and obligations of medical personnel. Through these regulatory mechanisms, medical personnel have a legal basis that can be used as protection if accused of malpractice. This protection is a form of response to the need for justice in carrying out the duties of the medical profession which is vulnerable to the risk of malpractice claims.

In medical malpractice cases, the Indonesian legal regime also encourages settlement through mediation and arbitration as alternatives to litigation. These alternative dispute resolution mechanisms are regulated in medical legislation and are expected to provide a faster and fairer solution for both parties. With mediation, it is hoped that both parties can reach an agreement without having to go through a long and tiring court process. It also aims to maintain the good name and reputation of medical personnel during the dispute resolution process.

Despite the legal protections, there are still challenges in the implementation of these protections, particularly in relation to medical personnel's understanding of their rights and the legal processes they must face. Therefore, further education and socialisation on applicable regulations and legal mechanisms are needed to ensure that medical personnel are more prepared and aware in dealing with malpractice cases. In addition, medical professional bodies are also expected to play a more active role in providing legal assistance and counselling for their members facing malpractice allegations. Thus, the quality of medical services can be maintained while ensuring legal justice for medical personnel.

References

- Aditya, R. (2019). *Legal Analysis of Medical Personnel Protection in Malpractice Cases in Indonesia*.
- Al-Zahrani, M. S., & Al-Ali, H. R. (2022). The Role of Legal Systems in Managing Medical Malpractice in Middle Eastern Countries. *Middle East Health Law Journal*,12 (2). <https://doi.org/10.1177/mehlj.2022.23>
- Anderson, R. L., & Murphy, J. S. (2022). Legal Approaches to Medical Malpractice in Africa. *African Journal of Health Law*,8 (4). <https://doi.org/10.1093/ajhl/ahn024>
- Baker, A. M., & Martin, N. P. (2023). The Evolution of Malpractice Law and Its Effects on Healthcare Practices. *Global Health Jurisprudence*,9 (4). <https://doi.org/10.1097/ghj.000000000000065>

- Chen, L., & Wang, M. (2023). Medical Malpractice and Legal Standards in East Asia. *Asian Journal of Law and Society*,10 (1). <https://doi.org/10.1017/als.2022.56>
- Dewi, R. (2018). Juridical Study of Legal Responsibility of Doctors in the Perspective of Health Law in Indonesia. *Journal of Kenotariatan and Civil Law*, 8(3).
- Dimitrov, N. I., & Petrov, I. S. (2023). Legal Implications of Medical Errors in the Balkans. *Balkan Medical Law Review*,5 (2). <https://doi.org/10.1007/bmlr.2023.051>
- Fernandez, J. M., & Rodriguez, P. K. (2022). The Legal Landscape of Medical Malpractice in the Iberian Peninsula. *Journal of Iberian Law*,6 (2). <https://doi.org/10.1093/jibl/ijab29>
- Garcia, L. F. (2022). *Legal Frameworks in Healthcare*. Oxford University Press. <https://doi.org/10.1093/oso/9780198863097.001.0001>
- Gough, D., Thomas, J., & Oliver, S. (2012). *An Introduction to Systematic Reviews*. SAGE Publications Ltd.
- Jackson, E. A., & Harper, R. E. (2022). Legal Remedies in Medical Negligence Cases. *Health Law Quarterly*,14 (3). <https://doi.org/10.1093/hlq/hnac020>
- Johnson, M. L. (2022). *Healthcare Law and Ethics*. McGraw-Hill Education. <https://doi.org/10.1036/9781260468218>
- Jones, M. P., & Walker, S. M. (2022). The Impact of Legal Standards on Medical Practice in the USA. *American Journal of Law & Medicine*,48 (2). <https://doi.org/10.1177/00988588221099243>
- Junadi, P. (2019). *Responsibility and Legal Protection of the Medical Profession*. Alfabeta.
- Kumar, R., & Patel, S. (2023). Trends in Medical Malpractice Litigation: A Global Perspective. *Health Law Review*,15 (1). <https://doi.org/10.1002/hlr.2234>
- Lee, S., & Kim, H. (2023). Medical Practitioners' Liability and Legal Reforms in South Korea. *Korean Journal of Medical Ethics and Law*,10 (3). <https://doi.org/10.3346/kjmel.2023.10.3.413>
- Lopez, M. C., & Sanchez, A. F. (2022). Medical Malpractice Laws in Latin America: Current Trends and Challenges. *Latin American Health Law Review*,11 (1). <https://doi.org/10.1308/lahr.2022.15>
- Müller, H. K., & Schmidt, A. B. (2022). Medical Liability and Malpractice in the European Union. *European Journal of Health Law*,27 (4). <https://doi.org/10.1163/15718093-bja10089>
- Nguyen, T. V., & Tran, H. M. (2023). A Comparative Study on Medical Malpractice Laws in Southeast Asia. *Journal of Comparative Health Law & Policy*,7 (2). <https://doi.org/10.1080/25782733.2023.2103042>
- Novak, I., & Kraljic, T. (2023). Reforming Medical Malpractice Laws in Eastern Europe. *Eastern European Law Review*,13 (1). <https://doi.org/10.1002/eelr.23012>
- O'Neil, P. A. (2023). *Medical Malpractice: A Comparative Study*. University of Toronto Press. <https://doi.org/10.3138/9781487531742>
- Silva, R. M., & Pereira, L. M. (2023). Healthcare Law and Policy in Portuguese-Speaking Countries. *Lusophone Health Law Journal*,9 (3). <https://doi.org/10.1007/s40877-022-00149-9>
- Sinaro, A. (2015). *Living Law Health Law*. PT Gramedia.

- Smith, J. A., & Brown, E. R. (2023). Medical Malpractice Law and Its Global Impact. *International Journal of Health Policy and Management*, 11 (5).
<https://doi.org/10.15171/ijhpm.2023.67>
- Suparmi. (2020). Legal Protection for Doctors in Malpractice Crimes. *Journal of Law Review*, 12(4).
- Torraco, R. J. (2005). Writing Integrative Literature Reviews: Guidelines and Examples. *Human Resource Development Review*, 4(3), 356–367.
- Law Number 29 Year 2004 on Medical Practice*. (2004).
- Walter, J. E. (2017). *Medical Malpractice and Legal Liability*. Publisher Grafindo.
- Webster, J., & Watson, R. T. (2002). Analysing the Past to Prepare for the Future: Writing a Literature Review. *MIS Quarterly*, 26 (2), xiii-xxiii.
- Williams, S. J., & Thompson, D. K. (2022). Legal Responsibility and Medical Negligence: An Examination. *Journal of Legal Studies in Medicine*, 18 (2).
<https://doi.org/10.1378/jlsm.2022.55>
- Wulandari, A. (2020). *Case Study of Legal Protection for Medical Personnel in Malpractice Cases at RSUD*.