

An Analysis of Medical Dispute Resolution in Cases of Medical Personnel Negligence From an Administrative Law Perspective

Sagala Parluhutan¹, Erni Rianti Hardjoko², Lianawati³,
Maulidina Kurniawati⁴, Ahmad Jaeni⁵, Arief Fahmi Lubis⁶

jpsagala@gmail.com, dr.erni77@gmail.com, lianawati.docr@gmail.com,
dinadtst@gmail.com, jaini@sthmahmpthm.ac.id, arieffahmilubis0@gmail.com

^{1,2,3,4,5,6} Military Law College (AHM-PTHM)

Article Info

Received: 2024-01-22

Revised: 2024-07-30

Accepted: 2025-02-28

Keywords:

Medical Disputes,
Medical Negligence,
Medical Personnel,
Administrative Law.

Abstract

Hospital service standards are closely linked to a hospital's ability to provide healthcare services following its qualifications. This study aims to demonstrate how declining public trust in doctors has led to rising lawsuits, often associated with perceived failures in medical treatment. This qualitative research employs a descriptive approach to systematically and factually collect data promptly based on the conditions during the study. The findings indicate that doctors who commit medical negligence can be held legally accountable through both professional and non-professional institutions. Furthermore, non-professional dispute resolution can occur outside the court (non-litigation) or within the court system (litigation).

1. Introduction

Hospitals are obligated to provide optimal healthcare services with the assistance of competent medical professionals. These professionals perform their duties according to their respective areas of expertise. The specific responsibilities of each role are outlined in job descriptions prepared by the hospital, which acts as a legal entity and provider of employment.¹ In addition to

¹ Moh. Hatta, *Health Law and Medical Disputes*, 1st ed. (Yogyakarta: Liberty, 2013), p. 55.

maintaining a legal relationship with healthcare professionals, hospitals also have a legal relationship with the community, particularly with patients. This legal relationship is established through the hospital's commitment to offering healthcare services by providing medical facilities, infrastructure, and human resources. Individuals in need of medical treatment can access these services at the hospital.² Hospital liability in Indonesia is governed by Article 46 of Law No. 44/2009 on Hospitals, which states that hospitals are legally responsible for any losses resulting from negligence committed by healthcare professionals within the hospital.³ Furthermore, hospital service standards directly relate to a hospital's ability to provide healthcare services following its qualifications.

When a patient's illness falls within the hospital's area of expertise, the hospital must provide the best healthcare services per the patient's rights. However, suppose the patient's condition exceeds the hospital's capacity to provide adequate care. In that case, the hospital must refer the patient to a facility equipped with the necessary infrastructure and medical resources to address the illness appropriately.⁴ One notable medical negligence case occurred in 2017 and involved a pediatrician identified by the initials "AO" at a regional hospital in Bekasi. The case was reported to the Polda Metro Jaya police department on Tuesday, March 28, 2017, by the patient's family. Dr. "AO" was accused of negligence, which allegedly led to the death of a three-month-old child. Ira's lawyer, Afrizal, stated that Dr. "AO" was suspected of committing a criminal offense by violating Article 359 of the Criminal Code in conjunction with Article 84, Paragraph 2 of Law No. 36/2014 on Health Workers.⁵ Based on this background, the authors formulate the research problem into the following question: "How are medical disputes involving hospital liability due to medical

² Sri Praptaningsih, *Legal Position of Nurses in Health Service Efforts in Hospitals* (Jakarta: Raja Grafindo Pustaka, 2006), p. 12.

³ Indonesia, *Law No. 44/2009 concerning Hospitals*, Article 46, *State Gazette of 2009*, Number 153, TLN Number 5072.

⁴ Sri Praptaningsih, *Op. Cit.*, p. 13.

⁵ Nursita Sari, "Her Baby Died in the Hospital," accessed August 19, 2024, <https://megapolitan.kompas.com/read/2017/03/28/15185181/bayinya.meninggal.di.rs.ibu.ini.lapor-kan.dokter.di.bekasi.ke.polisi?page=all>.

personnel negligence resolved?”

The declining public trust in doctors has led to an increasing number of lawsuits, often associated with perceived failures in medical treatment. However, doctors, relying on their scientific expertise, strive to cure patients, and the failure of medical procedures does not necessarily equate to negligence or misconduct. Various legal measures have been implemented to provide comprehensive protection for the public (as recipients of healthcare services) and doctors (as service providers). However, the existing regulatory framework for medical practice remains inadequate, as it has primarily been influenced by formal and governmental interests rather than focusing on balanced and practical solutions.

2. Research Method

This study was legal research that employed multiple approaches to address the issues under investigation, namely (1) the statutory approach, (2) the conceptual approach, (3) the comparative approach, and (4) the historical and philosophical approach. In addition, data analysis was conducted qualitatively. Collected legal materials were systematically organized following the research problems. These materials were then examined and interpreted using relevant theoretical frameworks. To provide well-founded answers to the research questions, the systematized legal materials were analyzed to accurately determine their meaning, legal standing, and implications.

3. Results and Discussion

In establishing effective and efficient legal objectives, it is essential to ensure that both patients and doctors receive their respective rights. As medical professionals, doctors must be granted the rights and protections necessary to perform their duties. The medical profession has distinct characteristics and ethical responsibilities like other professional fields. According to Article 1, Number 11 of

Indonesia's Law No. 29/2004 on Medical Practice, the medical or dental profession refers to medical or dental work carried out based on scientific knowledge, competence acquired through tiered education, and adherence to a professional code of ethics in service to the public. Fundamentally, the medical profession is a vocation dedicated to serving humanity. This commitment is rooted in education and must be undertaken with sincerity, integrity, and a deep sense of responsibility.⁶ The principle of imposing sanctions on individual actions solely based on their harmful consequences and malicious intent is not entirely embraced in modern legal systems. Under the law, individuals are held accountable when objectively harmful consequences arise from intentional misconduct and in cases where such consequences were foreseen, even without wrongful intent. Additionally, liability may still apply when harm occurs unintentionally or without prior planning by the perpetrator.

The provision of healthcare services must be carried out responsibly, safely, with high quality, equitably, and without discrimination. In this regard, the government plays a crucial role in ensuring the quality and accessibility of healthcare services while maintaining established standards. Law No. 36/2009 on Health clearly states the government's responsibility to protect patients' rights as recipients of healthcare services.⁷ Abdul Kadir Muhammad asserts that healthcare professionals must provide their services professionally, maintaining accountability to themselves and the public.⁸ Similarly, Komalawati describes the essence of a profession as a lifelong vocation dedicated to humanity, rooted in education, and carried out with sincerity and full responsibility. Several key characteristics define a profession, as follows.⁹

1. It is a highly esteemed occupation, requiring expertise in systematically applying

⁶ Veronika D. Komalawati, *Law and Ethics in Medical Practice* (Jakarta: Pustaka Sinar Harapan, 1989), p. 115.

⁷ Indonesia, *Law No. 36/2009*, Article 5.

⁸ Abdulkadir Muhammad, *Indonesian Civil Law* (Bandung: Citra Aditya Bakti, 2000), p. 9.

⁹ D. Veronika Komalawati, *The Role of Informed Consent in Therapeutic Transactions*

knowledge;

2. It involves exclusive competence in specific knowledge and skills;
3. It is based on intensive education within a particular discipline;
4. Professionals have a responsibility to continuously develop their knowledge and skills while upholding their professional integrity;
5. It adheres to a distinct code of ethics that serves as a benchmark for evaluating professional conduct;
6. It tends to operate with minimal external control from society or individuals;
7. Its practice is influenced by societal factors, special interest groups, and other professional organizations, particularly in maintaining professional independence.

As professionals, doctors possess expertise and skills in medical science, enabling them to meet the community's healthcare needs independently. Additionally, doctors must be capable of making autonomous decisions regarding the appropriate course of action in their practice and bear personal responsibility for the quality of the services they provide. The reasons for exempting doctors suspected of committing medical malpractice from punishment include the following.

1. Treatment Risks

According to Danny Wiradharma, treatment risks fall into the following categories.

- a. Inherent risks

Every medical procedure carries inherent risks, so doctors must adhere to established standards of practice. For example, chemotherapy with cytostatics can lead to hair loss.

- b. Hypersensitivity reactions

The body's excessive immune response to foreign substances (medications) is often unpredictable.

c. Sudden complications

In some cases, a patient's prognosis may initially appear favorable, yet their condition may suddenly deteriorate or result in death without a known cause.

2. Medical Accidents

Medical accidents are often mistakenly equated with medical negligence because both can harm patients. However, these two concepts must be distinguished, as the primary intent of medical professionals is to heal rather than cause harm. In the case of a medical accident, a doctor's liability depends on how the incident occurred, and the doctor must provide evidence regarding the circumstances of the accident.

3. Contributory Negligence

A doctor cannot be held responsible for failure or an unsuccessful treatment outcome if the patient does not provide an honest account of their medical history, including past illnesses and medications used, or if the patient fails to follow the doctor's instructions and prescribed treatment. This is considered patient error or contributory negligence, where the patient is also at fault. Honesty and adherence to medical advice are fundamental responsibilities of the patient, both to the doctor and to themselves.

4. Respectable Minority Rule and Error in Judgment

The medical field is highly complex, and differences in opinion regarding appropriate treatment approaches are common. In many cases, no universally accepted therapy for a particular medical condition exists. Medicine is both an art and a science, refined through experience and technological advancements. As a result, different doctors may adopt varying approaches to the same disease. However, these approaches must always be grounded in scientifically supported medical knowledge that can be justified.

Based on these conditions, a legal theory has emerged in court known as the

respectable minority rule. It states that doctors are not considered negligent if they choose one of several widely recognized treatment methods. If a doctor makes an incorrect choice among alternative medical treatments, a related theory known as an error in judgment (also referred to as medical judgment or medical error) applies. This concept acknowledges that the chosen course of action may still be incorrect even when a doctor selects a treatment based on established professional standards.

5. Volenti non fit iniuria (Assumption of Risk)

The principle of volenti non fit iniuria (assumption of risk) is an established legal doctrine that applies to medical law. This doctrine asserts that if a patient is fully informed about the potential risks of a medical procedure and voluntarily consents (informed consent), the doctor cannot be held liable if the anticipated risk materializes. Additionally, this doctrine extends to cases of forced discharge – when a patient leaves the hospital against medical advice – thereby absolving the doctor and hospital from legal liability.¹⁰

6. Res ipsa loquitur

The doctrine of res ipsa loquitur is directly related to the burden of proof (onus probandi), specifically the shifting of the burden of proof from the plaintiff (the patient or their family) to the defendant (the medical professional). In clear negligence, where the error is apparent even to a layperson – or is commonly understood by both laypeople and medical professionals – it is presumed that the injury, disability, or harm resulted from medical negligence. In such instances, the plaintiff must not provide further proof of negligence; instead, the defendant must demonstrate that their actions were not negligent or wrongful.¹¹

The procedure for handling cases by the Indonesian Honorary Council of Medical Discipline (Indonesian: Majelis Kehormatan Disiplin Kedokteran Indonesia [MKDKI]) is regulated under the Regulation of the Indonesian Medical Council No.

¹⁰ *Ibid.*, p. 286.

¹¹ *Ibid.*, p. 287.

2/2011 concerning Procedures for Handling Cases of Alleged Disciplinary Violations by Doctors and Dentists. The process begins after a formal complaint is filed. The requirements for filing a complaint are outlined in Article 3 of the regulation. Once a complaint is registered with the MKDKI or MKDKI-P (for the provincial level), the complainant must provide supporting data, including available evidence and a statement verifying the validity of the complaint. Following this, a designated officer from the MKDKI/MKDKI-P conducts an initial clarification. The case proceeds to the initial examination stage, as outlined in Articles 13–18 of Council Regulation No. 2/2011.

During this stage, the MKDKI determines whether the complaint is accepted, not accepted, or rejected. If the complaint is accepted, the Chairperson of the MKDKI establishes the Disciplinary Examination Council (Indonesian: Majelis Pemeriksa Disiplin [MPD]), whose members are drawn from the MKDKI. The MPD has the authority to reject the complaint, deem it inadmissible, or terminate the examination. If the investigation proceeds, the MPD conducts a formal inquiry to collect relevant information and evidence regarding the reported incident. After the investigation, a disciplinary hearing will be conducted. Upon the completion of the hearing, the MPD will issue a ruling regarding the accused doctor or dentist. The decision may take one of the following forms.

1. A declaration stating that no violation of medical or dental discipline was committed;
2. The imposition of disciplinary sanctions, which may include the following:
 - a. A written warning;
 - b. A requirement to undergo education or training, which can take the form of as follows:
 - 1) Formal re-education at an accredited medical or dental educational institution;
 - 2) Non-formal re-education, conducted under the supervision of a designated

doctor or dentist at an accredited medical or dental educational institution, a healthcare facility and its network, or another designated healthcare facility. This training must last between a minimum of two (2) months and a maximum of one (1) year.

c. A recommendation for the revocation of a Registration Certificate (Indonesian: Surat Tanda Registrasi [STR]) or Practice License (Indonesian: Surat Izin Praktik [SIP]), which may be as follows:

- 1) Temporary, for a maximum period of one (1) year;
- 2) Permanent, meaning the license is revoked indefinitely;
- 3) A restriction on certain medical procedures within a specific medical or dental practice area.

Legal liability for doctors who commit medical negligence can be addressed through professional and non-professional institutions. Non-professional liability can be resolved outside the court (non-litigation) or through legal proceedings (litigation). The Medical Ethics Honorary Council (Indonesian: Majelis Kehormatan Etika Kedokteran [MKEK]) is a specialized body for medical professionals and applies specifically within the medical community. The legal foundation for the establishment of the MKEK dates back to 1979, based on Article 16, Paragraph (1) of the Indonesian Doctors Association (Indonesian: Ikatan Dokter Indonesia [IDI]) Bylaws. MKEK operates as an autonomous body within the IDI organization and consists of three levels: the central MKEK, the regional MKEK (at the provincial level), and the branch MKEK (at the regency/municipality level). The composition of MKEK members includes a Chairperson, Deputy Chairperson, Secretary, and up to seven (7) permanent and non-permanent members. The MKEK's primary functions are to provide guidance, supervision, and evaluation regarding doctors' adherence to medical ethics. Its unique role is to handle complaints and investigate alleged violations of medical ethics.

The stages of the complaint handling process by MKEK begin with receiving

a complaint letter from the complainant, which may be submitted to the regional MKEK, delegated by the central MKEK or PB IDI, the regional IDI management, or the Ministry of Health. If the complaint is made verbally, the complainant must submit it in writing. The MKEK Chair then convenes a meeting with permanent MKEK members to conduct an internal trial. The complaint letter is reviewed during the MKEK hearing to determine whether it meets the following requirements:

A complaint letter with a clear name and signature;

A clearly stated complainant's address;

Identification of the doctor being reported, including a clear name and address, along with a clear statement that the complaint is directed to IDI – whether through the main board, regional board, or directly to MKEK.

If the requirements are met, the MKEK Chairman determines whether the complaint is valid and issues a determination letter. A notification letter is also sent to the complainant, confirming that MKEK has received the complaint. A copy of this letter is also sent to the regional IDI management, PB IDI, the central MKEK Chairman, and the regional MP2A Chairman. If the requirements are unmet, the MKEK Chairman returns the complaint to the complainant with a request to fulfill the requirements. The MKEK then appoints two non-permanent members either by direct appointment or through a professional organization (such as a specialist association) related to the doctor's field of expertise.

Based on the type of violation, MKEK issues a written recommendation to the authorized government official to revoke the doctor's practice permit for three months (for minor violations), six months (for moderate violations), or twelve months (for serious violations). The Head of MKEK submits a report to the Head of the Regional IDI detailing the type of case, the doctor's initials in question, the initial date of the trial and decision-making, and the abbreviation of the KODEKI violation (if applicable). If the case has been resolved, it is considered closed and not classified as ethical unless an appeal is filed. The MKEK decision regarding the complaint is

processed by the secretariat, which includes numbering, scheduling, sealing files to ensure confidentiality, and archiving records for five years. The decision is then submitted to the Head of the Regional IDI, with copies sent to the Head of the Central MKEK, the Head of PB IDI, and the Head of the Regional MP2A. If the complainant or the accused doctor is dissatisfied with the decision, they may appeal to the MKEK at a higher level.

In principle, the process is similar to a civil court proceeding but includes an additional “Dismissal Process.” In this stage, the judge evaluates whether the dispute between the two parties can be forwarded to the State Administrative Court (Indonesian: *Pengadilan Tata Usaha Negara*). In addition, the judge takes an active role in examining the case. According to Law No. 5/1986 concerning State Administrative Courts, as amended by Law No. 9/2004 and last amended by Law No. 51/2009, state administrative disputes refer to conflicts in the field of state administration that arise between an individual or civil legal entity and a state administrative agency or official—whether at the central or regional level—as a result of the issuance of a state administrative decision. This also includes personnel disputes based on applicable laws and regulations. As a result of the state administrative dispute process, a state administrative decision is issued. This decision is written by a state administrative body or official, outlining legal actions following applicable laws and regulations. It is concrete, individual, and final, carrying legal consequences for a person or a civil legal entity. An example of such a decision includes terminating or revoking a practice permit.

4. Conclusion

The settlement of medical disputes in hospitals due to the negligence of medical personnel is carried out through the implementation of internal regulations. These regulations include work agreement clauses between hospitals and doctors, hospital staff bylaws, medical staff bylaws, the internal hospital

medical committee, standard operating procedures (SOPs), and detailed instructions for implementing medical services in each hospital. To prevent medical negligence, hospitals must enforce strict compliance with these regulations. Hospitals are responsible for monitoring and evaluating medical personnel to ensure that all doctors adhere to external and internal regulations. These internal regulations serve as guidelines for implementing medical services (Indonesian: Pelayanan Medis [YANMED]) and provide a structured framework for doctors and other medical personnel to follow, reducing the risk of negligence within the hospital environment. Furthermore, hospitals bear legal responsibility for any losses resulting from the negligence of medical personnel. This liability is explicitly stated in Article 46 of Law No. 44/2009 concerning Hospitals.

A joint regulation should be established between the Indonesian Ministry of Health, the Indonesian Medical Association (IDI), the Indonesian Medical Council (KKI), the Hospital Association, the Supreme Court, and the Chief of Police to govern the resolution of medical disputes through professional institutions and legal processes, whether litigation or non-litigation. If a medical dispute arises, it should first be resolved amicably. If no consensus is reached, the case should be referred to professional institutions such as the Medical Ethics Honorary Council (MKEK) and the Indonesian Honorary Council of Medical Discipline (MKDKI). If the dispute remains unresolved, alternative dispute resolution methods (non-litigation) or court proceedings (litigation) may be pursued.

The Medical Ethics Honorary Council (MKEK) and the Indonesian Honorary Council of Medical Discipline (MKDKI) are expected to carefully consider the capabilities and responsibilities of the medical profession when resolving medical disputes through their institutions. Suppose MKEK and MKDKI prove a medical violation, and the negligence committed by a doctor is categorized as minor, moderate, or severe. In that case, the case should not necessarily be subject to criminal or civil proceedings. This is because the doctor has already been

subjected to administrative sanctions, which may include the revocation of the Medical Registration Certificate (STR) and the Practice License (SIP).

References

A. Books

- Abdulkadir Muhammad. *Indonesian Civil Law* [Indonesian: *Hukum Perdata Indonesia*]. Bandung: Citra Aditya Bakti, 2000.
- Moh. Hatta. *Health Law and Medical Disputes* [Indonesian: *Hukum Kesehatan dan Sengketa Medik*]. 1st ed. Yogyakarta: Liberty, 2013.
- Sri Praptaningsih. *Legal Position of Nurses in Health Service Efforts in Hospitals* [Indonesian: *Kedudukan Hukum Perawat dalam Upaya Pelayanan Kesehatan di Rumah Sakit*]. Jakarta: Raja Grafindo Pustaka, 2006.
- Veronika D. Komalawati. *Law and Ethics in Medical Practice* [Indonesian: *Hukum dan Etika dalam Praktek Dokter*]. Jakarta: Pustaka Sinar Harapan, 1989.
- _____. *The Role of Informed Consent in Therapeutic Transactions: Legal Perspectives on Doctor-Patient Agreements* [Indonesian: *Peranan Informed Consent dalam Transaksi Tarapeutik: Persetujuan dalam Hubungan Dokter dan Pasien, Suatu Tinjauan Yuridis*]. Bandung: Citra Aditya Bakti, 2002.

B. Laws

- The 1945 Constitution of the Republic of Indonesia
- Civil Code (*Burgerlijk Wetboek*)
- Law No. 29/2004 on Medical Practice
- Law No. 17/2023 on Health
- Decree of the Minister of Health of the Republic of Indonesia No. 772/Menkes/SK/VI/2002 on Guidelines for Internal Hospital Regulations (Hospital Bylaws)
- Indonesian Code of Medical Ethics, 2012

C. Website

- Nursita Sari. "Her Baby Died in the Hospital." [Indonesian: *Bayinya Meninggal di RS*]. Accessed August 19, 2024.

<https://megapolitan.kompas.com/read/2017/03/28/15185181/bayinya.meninggal.di.rs.ibu.ini.laporkan.dokter.di.bekasi.ke.polisi?page=all>.