

Juridical Analysis of Doctor's Criminal Liability in Medical Malpractice Cases

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Abstract

Medical malpractice is one of the crucial issues in the world of law and health because it involves patient safety and the criminal responsibility of medical personnel. In Indonesia, the complexity of proving the elements of negligence, the limitations of evidence, as well as the inconsistency between legal norms and professional ethics are the main challenges in enforcing the criminal liability of doctors. This study aims to analyse the criminal liability of doctors in medical malpractice cases, particularly the obstacles in proving the criminal element and its implications for criminal law reform in Indonesia. The approach used is normative juridical, through literature study, legislation, and analysis of court decisions. The results showed that proving the element of guilt in medical malpractice relies heavily on expert testimony and the judgement of professional institutions such as MKDKI and MKEK, which often leads to differences in legal interpretation. The case study of Tangerang District Court Decision No. 1324/Pdt.G/2021/PN.Tng highlights the weak integration between professional ethical mechanisms and the national criminal system. This research has implications for the need for regulatory reform through the establishment of a *lex specialis* regarding the criminal liability of medical personnel, as well as strengthening the application of restorative justice in medical dispute resolution. The originality of this research lies in the focus of juridical analysis on the obstacles to proving criminal elements and comparative application of law in the context of the Indonesian legal system, which so far has not been the main focus in the health law literature.

I. Introduction

Medical malpractice is a form of offence that not only affects patient safety, but also has legal consequences for the medical personnel concerned. In the context of criminal law, the imposition of liability on medical personnel often faces serious challenges, especially in the aspect of proving the elements of criminal guilt (Lazuardi & Marwiyah, 2023). The complexity of the relationship between medical acts, good intentions in service, and unintended outcomes often creates ambiguity in defining the boundary between professional errors (negligence) and criminal offences (Brazier et al., 2023).

The medical profession has unique job characteristics as it inherently involves risks to human safety and life. In practice, medical personnel are faced with complex clinical situations that demand quick decisions, but can lead to legal consequences when unexpected outcomes occur. Problems arise when the results of medical actions are perceived as a form of professional negligence or error, leading to accusations of malpractice that can lead to criminal liability.

In Indonesia, attention to the legal aspects of medical malpractice began to emerge since the 1981 Pati District Court verdict that found Dr Setianingrum binti Siswoko guilty of negligence in causing the death of a patient. Since then, the issue of criminal liability of doctors has become a growing issue in the practice of law in Indonesia. However, until now, criminal law enforcement against doctors in malpractice cases still leaves many problems, especially in terms of proving the elements of negligence, professional errors, and their relationship with standard operating medical procedures.

Based on data from the Indonesian Health Consumer Empowerment Foundation, 60-65% of malpractice cases involve doctors, but around 90% of these cases never reach court and are resolved through mediation. One of the main obstacles in criminal proceedings against malpractice is the incomplete medical records, which results in the difficulty of tracking the medical procedures performed by health workers. In addition, an analysis of several Supreme Court decisions shows that most of the cases filed with the keyword 'malpractice' are mostly resolved in the civil law realm as compensation claims, rather than as criminal offences.

Case in decision Number 882/Pid.Sus/2021/PN Bandung with the defendant Dr. ALSA has been legally and convincingly proven to have committed the crime of practicing medicine without a license to practice and was sentenced to a fine of Rp. 10,000,000 (ten million rupiah) and if not paid, it will be replaced by imprisonment for 5 (five) months.

The case was more complex in decision Number 1441/Pid.Sus/2019/PN Mks where Dr. ES conducted filler injections into the patient's nose, resulting in blindness. In its

ruling, the Makassar District Court stated that the defendant dr. ES had not been proven guilty of engaging in medical practices related to aesthetic medicine (beauty treatments) and acquitted the defendant, restoring dr. ES's rights in terms of ability, position, and dignity. However, in the Supreme Court's Cassation Decision Number 233. K/Pid.Sus/2021 and the Reinstruction Decision by the Supreme Court Number 450 PK/Pid/Sus/2022, dr. ES was convincingly proven guilty of committing a criminal act and was sentenced to imprisonment for 2 (two) months.

This inconsistency indicates the uncertainty in criminal law enforcement against doctors, which is often caused by weak evidence, different interpretations of professional standards, and considerations of professional institutions that are not fully synchronized with criminal provisions. This is the gap to be examined juridically, whether the applicable legal framework is able to provide a fair standard of proof for both parties, both victims and doctors as reported parties.

Proof in criminal malpractice cases requires the fulfillment of the main elements, namely the duty of care, violation of professional standards, causal relationship between actions and consequences, and the existence of losses. In practice, the process of proving these elements often relies on expert testimony, which although crucial, often leads to subjectivity and differences in interpretation between law enforcement officials and the medical community. As stated by Radanović & Vukušić (2020), in the context of the European continental legal system, the objective imputation theory is one of the approaches to identify legally relevant causal relationships. This approach considers whether an act deviates clearly from the professional standards that should be met and whether the deviation actually causes patient harm.

Furthermore, a juridical comparison between countries shows disparities in the criminal regulation of medical malpractice. A study by Vuletić (2019) shows that the Croatian legal system explicitly establishes medical malpractice as a separate offense in Article 181 of its Criminal Code. However, its implementation faces challenges in judicial practice, such as proving "clear and conspicuous" negligence and proving medical causality, which is complex and requires in-depth forensic examination. On the other hand, in common law legal systems such as the United States, as emphasised by Di Landro (2012), the legal approach is more inclined towards settlement through civil lawsuits (tort law) with more flexible standards of proof than proof in criminal law.

Meanwhile, in the context of the Egyptian and French legal systems, a study by Fekry et al. (2023) shed light that the development of medical technology and complex cases such as organ transplants creates an urgency to clarify the framework of criminal and civil liability in medical practice. This reflects the need for harmonization between medical regulations and criminal law norms to ensure that

prudential aspects and professional ethics are in line with the principles of justice. Hence, this study aims to examine the criminal liability of medical personnel in malpractice cases, focusing on evidentiary obstacles and their implications for criminal law reform in Indonesia. This analysis is expected to provide constructive recommendations for the improvement of legal regulations and practices in handling medical disputes in a fair and proportional manner.

2. Research Method

This research uses a normative juridical approach, which is a legal research method that focuses on the study of positive legal norms, legal doctrines, and applicable legal principles. Normative juridical research was chosen because the problem studied relates to proving the criminal liability of medical personnel in malpractice cases, which requires in-depth analysis of legal rules, statutory interpretations, and court decisions.

The approach methods used include:

1. Statutory approach, namely by examining various relevant legal provisions, such as the Criminal Code (KUHP), Law No. 29/2004 on Medical Practices, and Law No. 17/2003 on Health, as well as other implementing regulations governing the mechanism of criminal liability of medical personnel.
2. Conceptual approach, used to explore the concepts of criminal law, professional responsibility, causality, negligence, and medical professional standards as the basis for the formation of legal norms and policies.
3. Case approach, conducted by analysing court decisions (Decisions of the Supreme Court, High Court, and District Court) relating to alleged medical malpractice, to find out how the application of criminal law in practice, as well as the obstacles faced in proving it.

The data source in this research comes from secondary data, which consists of:

1. Primary legal materials: laws and regulations and court decisions;
2. Secondary legal materials: scientific literature, legal textbooks, legal journals, and previous research reports;
3. Tertiary legal materials: legal dictionaries and legal encyclopaedias.

Data collection techniques were conducted through library research, which included the collection and inventory of legal documents, books, journals, and other scientific sources. Furthermore, the data was analysed qualitatively, namely by interpreting legal norms, examining their application in concrete cases, and drawing conclusions based on systematic legal logic.

The analysis in this research is descriptive-analytical, which thoroughly describes the evidentiary obstacles in malpractice criminal cases and formulates ideas for criminal law reform based on empirical findings and the applicable normative framework.

3. Results and Discussion

a. Criminal Liability in Medical Malpractice

Medical malpractice remains a crucial issue in the modern healthcare system as it concerns the patient's right to safe care as well as the professional responsibility of medical personnel. Based on the literature review, four main elements form the legal basis for determining an act as malpractice, namely duty, breach, causal relationship, and damage. These elements provide a legal framework that can be used to assess whether there has been a breach of the applicable standards of medical care (Bal, 2009).

In the context of 'duty', healthcare providers are obliged to provide care that conforms to the standards of the medical community. Failure to meet these standards, referred to as 'breach', is a key indicator of medical negligence (Bal, 2009). The causal link between the breach and the patient's harm must also be clearly proven for the claim to be legally justified. Finally, the harm suffered by the patient must be real, either economic such as the cost of further treatment, or non-economic such as emotional suffering (Bal, 2009).

However, while this legal structure appears systematic, its application often poses challenges. One of them is the variation in legal interpretation across different jurisdictions which may result in inconsistent judgements in similar cases. Moreover, as technology and the complexity of medical procedures evolve, identifying breaches of the standard of care becomes more complicated. In some cases, innovative or experimental medical treatments may lead to legal consequences, despite being performed in good faith (Gittler & Goldstein, 1996). This shows the importance of strengthening legal protection for medical personnel without neglecting the patient's right to justice.

The discourse on medical malpractice cannot be separated from a clear understanding of the difference between professional misconduct and criminal offences. These two forms of offences have different legal nuances as well as significant implications for the accountability of the perpetrator. Professional misconduct relates to deviations from ethical standards or procedures within a profession, such as in the case of medical negligence that does not meet the standard of care but does not involve malicious intent (Zyberi, 2017). Criminal offences, on the other hand, are violations of the criminal law that affect the public interest and are punishable by penalties such as imprisonment or fines (Gartung, 2024). In the context of medical malpractice, a doctor who makes a mistake without malicious intent, such as failing to make a proper diagnosis, will generally face professional sanctions such as revocation of a licence to practice. Yet, if the act is accompanied by an element of intent or extreme disregard for patient safety, then the perpetrator can be criminally prosecuted. This suggests that the line between malpractice as a professional error and as a criminal offence can be blurred, depending on the context and intensity of the offence. Therefore, it is important for the legal system to be able to distinguish and deal with these two forms

of offences proportionally, so as to not only protect the rights of patients but also ensure justice for medical personnel acting within the space of professional ethics (Arbour, 2006; Yakushkin, 2019). Inaccuracies in classifying offences can have a domino effect on public confidence in the health and legal systems as a whole.

The criminal liability of doctors in medical practice in Indonesia has a strong legal basis in various regulations, both in the Criminal Code (KUHP), the Medical Practice Act, and the Health Act. With the enactment of the new National Criminal Code through Law Number 1 of 2023 on the Criminal Code, there are a number of provisions that are more contextual in regulating professional criminal liability, including medical personnel.

In the new Criminal Code, Article 470 paragraph (1) affirms that any person whose negligence causes serious injury to another person is liable to criminalisation. This can be imposed on medical personnel who make gross mistakes without regard to professional standards. Furthermore, Article 14 of the new Criminal Code also recognises the concept of non-punishability if the act is committed in the context of exercising legitimate official authority, which can be a basis for defence for doctors as long as the medical action is carried out according to procedure and without an element of intent.

In addition to the Criminal Code, Law No. 29/2004 on Medical Practice is also an important instrument in determining the responsibilities of doctors. Article 51 states that doctors or dentists are obliged to provide medical services in accordance with professional standards and standard operating procedures as well as the medical needs of patients. If this obligation is violated and proven to cause harm, it can lead to ethical, administrative, and even criminal consequences.

Meanwhile, Law No. 17 of 2023 on Health, which replaces Law No. 36 of 2009, emphasises the legal position of health workers as a whole. Article 326 paragraph (1) of the new Health Law states that medical personnel who practice must have a licence and carry out practice in accordance with professional standards, ethics, and the provisions of laws and regulations. Violations of this provision may be subject to administrative, civil, or criminal sanctions, depending on the legal consequences and elements of guilt.

Thus, the legal basis for the criminal liability of doctors in Indonesia is layered: The Criminal Code provides a general framework on the offences of negligence and intentionality, the Medical Practices Act emphasises professional and ethical obligations, while the Health Act provides reinforcement in terms of licensing and procedural compliance. This indicates that the criminal liability of doctors is not solely based on the consequences of an action, but also on the intention, compliance with standards, and the professional context of the action. Therefore, there is a need for a proportional and objective evidence-based legal approach to assess whether a medical error should be included in the criminal realm or simply resolved through ethical and internal disciplinary mechanisms (Alghrani et al., 2024).

b. Obstacles to Proving Criminal Elements in Malpractice Cases

The elements of *dolus* (intent) and *culpa* (negligence) are the foundation in determining the form of criminal liability, as they reflect fundamental differences in the level of moral culpability of the perpetrator and affect the severity of criminal sanctions. *Dolus* reflects intentionality, which is when a person commits an act with full awareness of the consequences. This takes various forms, including *dolus eventualis*, which is when the perpetrator is aware of the possible adverse consequences of his or her actions, but proceeds with them anyway (Taylor, 2004). In the case of premeditated murder, for example, the existence of *dolus* is key to establishing a serious criminal offence that requires proof of intent as the main element (Taylor, 2004).

Meanwhile, *culpa* refers to an act done without intent, but caused by a lack of care or negligence in meeting standards that should have been observed. The perpetrator did not intend the adverse outcome, but his or her actions are considered negligent due to the disregard of reasonable care (Irawati, 2024). In the digital age, the dissemination of misinformation without verification is a relevant example of *culpa*, because even in the absence of malicious intent, it can cause real harm (Maulana & Aristi, 2024). Legal systems generally classify actions based on the intensity of moral culpability, with *dolus* receiving harsher penalties than *culpa*, as a form of proportionality in criminal sanctions (Maulana & Aristi, 2024).

However, some experts argue that the positive legal system may not be adaptive enough to distinguish the intensity of fault in cases of negligence, especially when the offence is purely accidental. This risks leading to unfair verdicts, especially when the offender has no malicious motive but is still penalised as if he or she acted intentionally. Therefore, an in-depth understanding of the elements of *dolus* and *culpa* is essential in any criminal adjudication to ensure that the law is enforced fairly and proportionate to the psychological and factual context of the act committed (Sanjaya et al., 2020).

The issue of causality in medical action is a crucial aspect that distinguishes the field of medicine from other disciplines, especially in terms of its practical application to the cure and prevention of disease (Koterov, 2019). Unlike in the physical sciences which tend to be more deterministic, medicine is faced with the reality that cause-and-effect relationships are often non-linear and full of uncertainty. In terms of action, understanding causality is used to make therapeutic decisions, such as recognising and avoiding certain risk factors, and selecting interventions based on modelling causal relationships (Gillies, 2005). For example, the relationship between hypertension and stroke shows that although there is a statistically strong correlation, not all people with hypertension will have a stroke, so causal identification cannot be made arbitrarily (Parra et al., 2021).

Furthermore, key challenges arise in the form of qualification issues, where unforeseen conditions or additional causes may interfere with the effects of planned

medical actions, demanding a contextualised and adaptive understanding of causation (Thielscher, 1996). In addition, the dispositional approach to causality emphasises the importance of considering patient heterogeneity, as each individual's biological, psychological and social conditions affect how the body responds to an intervention (Anjum & Rocca, 2020). Therefore, causal approaches in medicine must be pluralistic and non-rigid, to address the complexity of interactions between variables that influence clinical outcomes. Thus, a flexible framework that is responsive to individual contexts is important to avoid oversimplification in medical decision-making. This approach not only confirms the limitations of deterministic causality in medicine, but also demonstrates the need for integration of evidence-based methods with personalised and dynamic clinical judgement (Puspitasari, 2018).

In the legal process related to ethical violations or allegations of medical malpractice, the role of experts and professional organisations such as the Indonesian Medical Discipline Honour Council (also refers to MKDKI) and the Medical Ethics Honour Council (also refers to MKEK) is crucial. These two institutions act as moral and professional authorities that provide objective assessments of doctors' actions based on ethical standards and professional discipline (Ardi et al., 2023; Tegnan, 2018). MKDKI has the authority to assess whether a doctor has violated the discipline of medical practice, including evaluating the conformity between the medical actions performed and the applicable professional standards. MKDKI's decision often becomes an early reference in the legal process, as it can strengthen or weaken allegations of negligence or breach of discipline in a case. Meanwhile, MKEK plays a role in assessing the ethical aspects of doctors' actions, such as respect for patient autonomy, informed consent, and professional integrity. In many cases, expert opinions from these organisations can also be taken into consideration by law enforcement officials or judges in determining whether a medical action has exceeded the limits of professionalism and medical ethics (Indrawan et al., 2024). Thus, the collaboration between ethical and disciplinary judgements from professional bodies with criminal or civil legal proceedings provides a fairer and more comprehensive basis for handling cases involving doctors. This role also maintains the dignity of the medical profession, prevents disproportionate criminalisation of medical personnel, and protects patient rights in a balanced manner.

c. Juridical Analysis of the Decision of the Tangerang District Court Number 1324/Pdt.G/2021/PN Tng

Tangerang District Court Decision Number 1324/Pdt.G/2021/PN Tng is a civil lawsuit case filed by Yuliantika against a number of parties, including doctors and hospitals, regarding alleged medical negligence that caused permanent paralysis after a caesarean section. The chronology of the case began when the plaintiff underwent labour at Buah Hati Ciputat Hospital in February 2020. Without an adequate explanation and without prior anaesthesiological examination, the plaintiff underwent a caesarean section under spinal anaesthesia performed more than 12 times by Defendant I, an anaesthesiologist. Post-surgery, the plaintiff experienced swelling, paralysis, and loss of ability to move her lower body, which according to the

results of the medical examination was caused by an injection that struck a spinal nerve.

In its lawsuit, the plaintiff held the defendants liable for tortious acts and requested material and immaterial damages of Rp10,000,000,000. The defendants denied any negligence and stated that all medical treatments were in accordance with procedures. In its judgement, the panel of judges considered that there was no legal evidence of negligence as argued by the plaintiff. The judge stated that the defendants' actions were part of unavoidable medical risks and had been carried out in accordance with the standards of the medical profession. Therefore, the panel decided to reject all of the plaintiff's claims.

Although Case Number 1324/Pdt.G/2021/PN Tng is a civil lawsuit and does not directly use criminal law instruments, the substance of the lawsuit intersects with the criminal provisions contained in Articles 359 and 360 of the Criminal Code (KUHP). Article 359 of the Criminal Code states that 'Any person through whose fault another person dies shall be punished by a maximum imprisonment of five years or a maximum light imprisonment of one year.' Meanwhile, Article 360 of the Criminal Code states: 'Any person through whose fault another person is seriously injured shall be punished by a maximum imprisonment of five years or a maximum light imprisonment of one year.'

In this case, although the lawsuit was filed under Article 1365 of the Civil Code on tort, the fact that the plaintiff suffered permanent paralysis due to alleged negligence in the act of spinal anaesthesia by the doctor opens up space to consider the criminal aspect. If it is proven that the injection of anaesthesia was carried out without proper standard procedures, without testing the patient's body, and was carried out repeatedly in an unreasonable manner until it hit the spinal cord and caused disability, then the element of negligence as referred to in Article 360 of the Criminal Code can be considered.

Rather, Kowalczyk & Majewski (2021) set out to highlight the immense influence of anatomical variations on the successful outcome of a variety of surgical procedures. Failure to identify variant anatomy is a commonly cited technical error in surgical injuries, even among experienced surgeons. This gap in technical expertise must be addressed, as these injuries lead not only to adverse events in patients, but to malpractice claims. Anatomy dissection courses with a focus on teaching surgical trainees the variability of human morphology could potentially close this gap, along with taking advantage of pre-operative imaging techniques to verify morphology. Such preemptive interventions may positively impact surgical outcomes, minimize the need for reoperation, and improve patient satisfaction, relieving the burden of medical errors from the healthcare system.

Nevertheless, in its judgement, the panel of judges stated that there was no evidence of negligence by the defendants. The medical actions were considered to have been carried out in accordance with standard procedures, and the consequences arising

were unavoidable medical risks. By not proving the element of negligence, there is no legal basis to link the actions of the defendants to Articles 359 or 360 of the Criminal Code. Thus, although there is material conformity between the events experienced by the plaintiff and the criminal norms, formally this case remains in the civil realm and cannot be qualified as a criminal offence as referred to in these articles.

In Indonesian civil law, tort is regulated in Article 1365 of the Civil Code, which states that every act that violates the law and causes harm to others obliges the perpetrator to compensate for the loss. In the medical context, negligence in providing standardised services can be categorised as a tort. In addition, Article 46 of Law Number 44 of 2009 on Hospitals confirms that hospitals are legally responsible for the negligence of medical personnel working under them.

The Tangerang District Court Decision No. 1324/Pdt.G/2021/PN Tng involving a tort claim for alleged medical malpractice substantially reflects crucial issues in Indonesian health law, as outlined in various academic studies. In this case, the plaintiff suffered post-caesarean section paralysis that was strongly suspected to have been caused by medical actions that deviated from professional standards - namely the injection of spinal anaesthesia by the doctor more than 12 times without first screening the patient's condition. This is in accordance with what was stated by Sidi (2023), that medical negligence is a deviation from the expected standard of care. In the context of Articles 189 and 193 of Law No. 17 of 2023 on Health, hospitals are obliged to provide safe medical services and are responsible for any form of negligence, including errors committed by health workers under their supervision. So in this case, if it is proven that the hospital did not supervise or did not implement an adequate risk management system, then institutional legal responsibility becomes relevant.

This case also touches on the aspect of the absence of valid informed consent, because based on the facts revealed in the verdict, the patient's husband was not given the opportunity to understand the reasons for medical action and even the signing of the consent was carried out under duress. This is in accordance with the description by Sacharissa (2020) which emphasises that informed consent is a non-negotiable right of the patient and a form of protection of patient autonomy. The absence of valid consent in medical procedures can lead to civil liability for both the medical personnel and the health care institution concerned. In this case, the neglect of the patient's right to know and consent to the medical treatment to be carried out is an important element that strengthens the allegations of legal violations.

The issue of consent is based on the common law enforcement of the concept of personal autonomy and self-determination. In earlier days, the courts determined that an operation performed without the patient's consent was a battery. Today, when there is a breach by the physician in obtaining consent, the case is usually tried as negligence (Flight & Meacham, 2011).

On the other hand, the study by Putra et al. (2023) asserts that medical personnel can

only obtain legal protection if they act in accordance with service standards and professional guidelines. If, in this case, the anaesthetist is proven not to have conducted an initial screening prior to anaesthesia, as well as repeated injections that resulted in a fatal outcome, then legal protection cannot be applied. This shows that competence and legal education for medical personnel are very important to prevent non-standard practices and protect patients from undue risks. Thus, Decision No. 1324/Pdt.G/2021/PN Tng is a strong reminder that service standards, informed consent, and legal education for medical personnel are the three main pillars that cannot be separated in order to realise a fair and responsible health system in Indonesia.

Case No. 1324/Pdt.G/2021/PN Tng concerning alleged malpractice by an anaesthetist at Buah Hati Ciputat Hospital revealed a normative void in Indonesia's criminal law system, particularly with regard to explicit provisions on the criminal offence of medical malpractice. Despite a verdict from the Indonesian Medical Disciplinary Honour Council (MKDKI) stating that the act of injecting spinal anaesthesia more than twelve times without proper medical screening was a disciplinary offence, the case did not proceed to criminal proceedings. This shows the weak integration between the disciplinary mechanism of the medical profession and the national criminal law system. In line with the findings Freeman and Franklin (2016) and Hogg (2022) that in many jurisdictions, the legal system often lacks adaptive mechanisms that can address the complexity of proof in medical negligence, which requires technical evaluation and assessment of specific professional standards.

In addition, this case also shows the lack of synchronisation between criminal law, civil law, and professional ethical norms. Articles 359 and 360 of the Criminal Code, which are used to deal with negligence resulting in injury or death (Apriyani et al., 2024), is too general and unable to accommodate the dynamics of medical malpractice cases that are laden with technical dimensions (Sidabutar et al., 2023). In this case, regulatory reform is needed in the form of a *lex specialis* either through the revision of the Medical Practices Act or the establishment of a separate Act that regulates criminal, civil and ethical aspects in an integrated manner in the realm of health services. Effective medical regulations not only regulate the rights and obligations of patients and doctors, but also provide a criminal legal framework that can be applied proportionally and fairly in the context of medical professionals (Campini, 2024; Riza et al., 2023).

As for the dispute resolution aspect, the fact that the hospital was willing to mediate with the victim and her family but then withdrew the compensation commitment indicates the weak functioning of the non-litigative mechanism. Restorative justice in the context of medical malpractice is relevant because this approach is oriented towards restoring relationships, acknowledging responsibility, and fulfilling losses voluntarily by the perpetrator. The application of restorative justice approaches in the health sector allows for a more satisfactory resolution for victims and avoids the adversarial effects of formal litigation (Darmawan et al., 2024; Mustika et al., 2023; Wangga, 2022). However, the implementation of restorative justice in Indonesia is

still minimal, especially in medicolegal cases, due to the absence of a legal framework that explicitly provides a juridical basis for its application. Therefore, criminal and health law reform should include strengthening the legality of the restorative justice model as one of the legitimate and legally binding resolution options.

4. Conclusion

Based on the research results, it can be concluded that the criminal liability of doctors in medical malpractice cases in Indonesia requires a careful and proportional approach. Not every failure of medical action can be qualified as a criminal offence, because it must first be proven that there are elements of gross negligence (*culpa*), deviation from professional standards, and a causal relationship between the action and the resulting consequences. Criminal law can only be applied if it is proven that the doctor acted negligently or exceeded the limits of his professional authority. Therefore, strengthening ethical and disciplinary mechanisms through the Indonesian Medical Discipline Honour Council (MKDKI) is important as an early door in resolving medical disputes before the criminal litigation process is carried out.

The recommendations of this study include the need for the formulation of special regulations that explicitly regulate the boundaries between malpractice as a violation of professional ethics and malpractice as a criminal offence. The regulation must provide legal certainty for doctors, while still protecting the rights of patients. The government and policy makers are also advised to organise legal training for medical personnel to increase their awareness of the legal responsibility for their medical actions. In addition, the synergy between the criminal law system, professional ethics system, and non-litigative mechanisms such as restorative justice needs to be strengthened so that the resolution of malpractice cases can take place in a fair and balanced manner.

The implications of this study show the importance of harmonisation between criminal law, civil law, and the medical profession's code of ethics in handling malpractice cases. Practically, the findings can serve as a reference for policy makers, law enforcement officials, and professional organisations in shaping a fair and contextualised criminal liability system. Academically, this research contributes to the development of health law studies, particularly in understanding the complexity of the juridical aspects of medical actions.

However, this research has several limitations. The approach used is normative juridical so it does not include empirical data from judicial practice or interviews with relevant parties, such as doctors, patients, and medical experts. In addition, the analysis conducted focuses on the Indonesian legal system without a broader comparative discussion of practices in other countries in depth. Therefore, future research is expected to integrate empirical approaches and comparative studies to obtain a more comprehensive understanding of criminal liability in medical practice.

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