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LEGAL REVIEW ON CRIMINAL LIABILITY OF DOCTORS IN MEDICAL NEGLIGENCE

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ABSTRACT

Medical negligence is one of the most complex issues in Indonesia's criminal law system and healthcare services. This problem arises when medical actions do not meet professional standards, resulting in harm, serious injury, or patient death. This research aims to analyze criminal law regulations regarding doctors' liability in cases of medical negligence, identify juridical and normative constraints in proving it, and offer directions for legal reform to achieve a balance between legal protection for patients and legal certainty for medical personnel. This research uses a normative juridical method with statutory, conceptual, and case approaches. The research results show that the criminal liability of doctors has been regulated in the old Criminal Code (Articles 359 and 360), the new Criminal Code (Article 474 of Law Number 1 of 2023), and Law Number 17 of 2023 on Health. However, there is no lex specialis that clearly distinguishes between professional negligence and medical malpractice, resulting in overlaps between ethical, disciplinary, and criminal violations. The main obstacles in proving the element of fault (culpa) lie in the difficulty of determining the causal relationship between medical actions and their consequences, weak medical record documentation, and lack of synchronization between professional ethical mechanisms and criminal law processes. Therefore, legal reform is needed to clarify the boundaries of criminal liability for medical personnel through the implementation of alternative dispute resolution (ADR), restorative justice, and professional liability insurance systems. Comprehensive legal reform is expected to create a fair, balanced health law system that provides legal certainty for all parties.

KEYWORDS

Criminal Liability, Doctor, Medical Negligence, Proof of Culpa, Legal Reform

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1. Introduction.

Medical negligence is a complex issue in Indonesia's legal system and healthcare services. Medical actions that do not meet professional standards not only cause harm to patients but can also have criminal implications if proven to contain elements of fault or negligence causing serious injury or death. In practice, proving the element of criminal fault in medical negligence cases is not simple. Medical actions always carry risks, and undesired outcomes are not necessarily forms of legal negligence. Bal (2009) explains that there are four main elements that determine the existence of malpractice, namely duty of care, breach of duty, causation, and damage, where failure to prove just one element can negate criminal liability. Meanwhile, Vuletić (2019) emphasizes that in the continental European legal system, including Croatia, medical errors are qualified as separate criminal offenses, but proving them is often difficult because it requires in-depth involvement of medical experts. Similar conditions also occur in Indonesia. Based on research by Sidi (2023), approximately 60 to 70% of alleged malpractice reports end through mediation without court proceedings due to weak evidence and lack of synchronization between medical ethics mechanisms and applicable criminal law. The lack of clear boundaries between professional errors and criminal acts causes law enforcement authorities to often have difficulty determining whether a particular case falls under the ethical, civil, or criminal domain.

One case that illustrates this complexity is the Tangerang District Court Decision No. 1324/Pdt.G/2021/PN.Tng, where a patient experienced permanent paralysis after spinal anesthesia was performed repeatedly without adequate preoperative examination. Although the indication of negligence was quite strong, the panel of judges stated that the action was an unavoidable medical risk and therefore could not be qualified as a criminal act. Conversely, in the Surabaya District Court Decision No. 1551/Pid.B/2013/PN.SBY, a doctor was actually sentenced to imprisonment because he was deemed to have been clearly negligent to the point of causing serious injury to the patient. This difference in outcomes shows an inconsistency in the application of law that creates uncertainty for medical personnel. The main problem lies in proving the elements of culpa and causality. Radanović & Vukušić (2020) state that in the context of health criminal law, the cause-and-effect relationship between medical actions and the resulting consequences is non-deterministic, so it must be analyzed contextually based on professional standards and patient conditions. In many cases in Indonesia, evidence in the form of incomplete medical records and differences in expert assessments often hinder judges in assessing the existence of fault elements.

Weak coordination between professional disciplinary mechanisms and the criminal justice system also contributes to worsening the situation (Lazuardi & Marwiyah, 2023). Institutions such as the Indonesian Medical Discipline Honorary Council (MKDKI) often stop at ethical or administrative sanctions, while law enforcement authorities do not have clear guidelines for following up on disciplinary findings to the criminal realm. Ardi et al. (2023) emphasize that ethical and legal mechanisms should work synergistically to ensure justice for both patients and doctors. In addition, there is a tendency for doctors to practice defensive medicine, namely overly cautious or excessive medical practice to avoid legal risks, as a side effect of regulatory uncertainty. This phenomenon has the potential to harm patients because services become inefficient and costs increase.

Based on these conditions, there is an urgent need for law reform in the field of health criminal law. Lex specialis regulations are needed that clearly separate ethical professional errors from errors that can be criminally punished. In addition, a restorative justice approach can be an alternative to medical dispute resolution that is more humane and balanced between the interests of patients, doctors, and society. Thus, a study on the criminal liability of doctors in medical negligence is important to conduct normatively and juridically, to analyze the clarity of regulations, obstacles to proof, and the direction of national legal reform that is in line with the principles of justice and legal certainty. Based on the background description above, this study aims to examine three main issues. The first concerns the criminal law regulations in Indonesia that govern doctors' liability in cases of medical negligence. The second addresses the juridical and normative factors that hinder the process of proving the element of fault (*culpa*) in such cases. The third explores the forms of legal reform needed to achieve a balance between legal protection for patients and legal certainty for doctors in medical negligence cases.

2. Research Method

This research uses a normative juridical approach because its focus lies on legal norms that regulate the criminal liability of doctors in medical negligence cases. This approach aims to identify, interpret, and analyze the applicable positive legal provisions, both those that are general in the Criminal Code (KUHP) and those that are specific in the Medical Practice Law and Health Law. Normative research is relevant because the problem of medical negligence involves not only factual aspects but especially juridical issues regarding the boundaries of fault and criminal liability in medical practice.

In implementation, this research combines three types of approaches, namely the statutory approach, conceptual approach, and case approach. The statutory approach is used to examine the synchronization and effectiveness of criminal law regulations regarding the medical profession, especially in the context of negligence that creates legal consequences. The conceptual approach is used to examine criminal law principles such as the principle of fault (*geen straf zonder schuld*), the concept of negligence (*culpa*), causality (*causaliteit*), and professional responsibility in health law.

The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include national legislation and court decisions directly related to the criminal liability of doctors. Secondary legal materials include scientific literature, research results, and legal journal articles discussing similar themes at both national and international levels. Meanwhile, tertiary legal materials are used to strengthen the research context through legal dictionaries and legal encyclopedias.

The technique of collecting legal materials is done through library research by searching academic literature, online legal journal databases, and official regulatory sources. All legal materials are analyzed using descriptive-analytical methods, namely by describing the content of relevant legal norms, evaluating their application logically, and interpreting the compatibility between legal norms, medical professional ethical principles, and judicial practice. The analysis is conducted qualitatively, emphasizing legal arguments and coherence between theory and the reality of norm application in court decisions.

Through this method, the research is expected to provide a comprehensive picture of patterns of criminal liability of doctors in medical negligence cases, identify obstacles in proving it, and offer directions for legal reform that balance protection of patient rights with legal certainty for medical personnel.

3. Result and discussion

3.1. Criminal Law Regulations in Indonesia Regarding Doctors' Liability in Cases of Medical Negligence

According to research by Nugraha et al. (2023), doctors can be held criminally liable in two main categories which are intent (*dolus*) and negligence (*culpa*). Forms of negligence that can be criminally punished include actions causing injuries, actions causing death, and violations of medical obligations. Criminal law regulations regarding medical negligence by doctors are regulated in several laws and regulations:

1) Criminal Code (KUHP):
a. Article 359: Negligence causing death
b. Article 360: Negligence causing serious injury
c. Article 362: Related to violations of medical obligations
2) Health Laws:
a. Article 84 of Law No. 36 of 2014 on Health Workers
b. Article 46 of Law No. 44 of 2009 on Hospitals (for institutional liability)

Based on the wording of the negligence articles, Soesilo (1980) argues that death in the context of Article 359 of the Criminal Code is not intended at all by the perpetrator. Because the death is only the result of the perpetrator's lack of care or negligence. Meanwhile, if death is actually desired by the perpetrator, then the applicable articles are Articles 338 or 340 of the Criminal Code and Articles 458 or 459 of the Republic of Indonesia Law Number 1 of 2023 on the Criminal Code.

In the old Criminal Code, acts causing death due to negligence are regulated in Article 359 of the Criminal Code, which reads “Whoever through his fault (negligence) causes another person to die shall be punished with imprisonment of at most five years or confinement of at most one year.”

This provision serves as the legal basis for prosecuting perpetrators, including medical personnel, who through their negligence cause patient death. This article emphasizes the element of negligence (*culpa*), namely actions carried out without proper care, but without intent to kill.

Meanwhile, in the new Criminal Code (Law No. 1 of 2023) which will come into effect in 2026, similar regulations are contained in Article 474 paragraph (3), which reads “Everyone who through their negligence causes another person to die shall be punished with imprisonment of at most 5 years or a fine of at most category V.”

This article substantially has similarities with Article 359 of the old Criminal Code, namely both emphasize the element of negligence without intent (non-intentional negligence). However, the new Criminal Code introduces a category system of fines to provide flexibility in sentencing. Category V in Law No. 1 of 2023 includes fines up to IDR 500,000,000, which shows modernization in the criminal sanction system to adjust to economic developments and proportionality of punishment.

Moreover, it is necessary to distinguish between this article and the provisions of Articles 338 and 340 of the old Criminal Code. Article 338 of the Criminal Code regulates ordinary murder, namely acts with the element of intent to take another person's life, while Article 340 of the Criminal Code regulates premeditated murder carried out with prior planning. In the context of medical negligence, the element of intent as referred to in Articles 338 and 340 is not fulfilled because the doctor does not intend to take the patient's life but is negligent in implementing professional standards or medical procedures.

Thus, if a doctor causes a patient's death due to lack of care or negligence in performing medical duties, then his action is not qualified as murder or premeditated murder but is included in criminal acts due to negligence resulting in death as regulated in Article 359 of the old Criminal Code or Article 474 paragraph (3) of the new Criminal Code. This provision reflects the principle of justice in Indonesian criminal law that distinguishes between acts with elements of intent (*dolus*) and acts due to negligence (*culpa*), so that sentencing can be carried out proportionally according to the level of the perpetrator's fault.

In the context of criminal law, negligence or carelessness known as culpa is one form of fault (schuld) that can create criminal liability even though the perpetrator does not have evil intent (mens rea) to commit a criminal act. Referring to Lamintang (2014), *culpa* describes a situation when someone commits an act that creates criminal consequences due to lack of care, thoroughness, or self-control that should be possessed by a reasonable person in similar situations. In other words, the perpetrator does not intentionally violate the law, but the consequences of their carelessness or negligence cause harm or danger to others.

Meanwhile, according to Widowati (2023) negligence can be understood as a form of fault that arises because the perpetrator fails to predict or anticipate the consequences of their actions, even though objectively they were capable and should have been able to calculate the risk. Therefore, in criminal law, someone who commits an act with the element of negligence can still be held legally accountable, even though they did not have the intent to create the prohibited consequences.

Regarding criminal provisions, negligence causing certain consequences such as death or serious injury can be threatened with a category V fine, with a maximum amount of IDR 500 million, as regulated in the fine sanction classification system in Law Number 1 of 2023 on the Criminal Code (new KUHP). This provision shows that modern Indonesian criminal law not only focuses on the element of intent (*dolus*) but also provides strict sanctions for actions carried out without care that create serious consequences. Thus, the concept of negligence functions to uphold the principles of care and social responsibility in every legal action, including in medical practice and professions.

However, as explained by Wahyuni (2017), the concept of negligence (*culpa*) in Indonesian criminal law can be classified into two main forms, namely negligence in action (*culpa in faciendo*) and negligence in result (*culpa in causando*). First, negligence in action is a form of negligence where an action performed by someone is already considered a criminal act without requiring proof of the resulting consequences. In other words, the focus of responsibility lies on the violation of legal obligations or norms of care that should have been complied with by the perpetrator. This provision is regulated among others in Article 205 of the Criminal Code and Article 343 of Law Number 1 of 2023 on the Criminal Code (new KUHP). In this context, negligent action is sufficient to create criminal liability because the perpetrator failed to fulfill the legal obligations attached to their position or profession, for example a doctor who does not perform medical procedures according to applicable operational standards.

Second, negligence in result is a form of negligence that is only considered a criminal act if the action creates consequences prohibited by law, such as death or serious injury. The main element in this form is not only the negligent action but also the consequences that actually arise from that action. Regulations regarding this are contained in Article 359 of the Criminal Code, which regulates negligence resulting in death, and in Article 474 paragraph (3) of Law Number 1 of 2023, which is an updated provision from the previous Criminal

Code. Meanwhile, Articles 360 and 361 of the Criminal Code and Article 474 paragraphs (1) and (2) juncto Article 475 of Law 1/2023 regulate negligence causing serious injury, illness, or certain disturbances to others.

From the perspective of criminal law doctrine, this division has practical significance in determining the degree of fault and the appropriate form of criminal liability. In cases of medical negligence, for example, the distinction between negligence in action and negligence in result becomes important to assess whether the doctor only violated professional obligations without creating direct consequences, or actually created legal consequences in the form of patient death or serious injury. Therefore, the distinction of this concept functions as a normative basis for judges and law enforcement authorities in assessing the element of fault (culpa) and determining proportional criminal sanctions for medical personnel suspected of being negligent in performing their profession.

In the context of proving criminal medical negligence, there are several important criteria that must be fulfilled for a doctor to be declared guilty. First, there must be a deviation from professional standards or applicable operational procedures. That is, the doctor performed actions not in accordance with competency standards or clinical guidelines recognized by the medical profession. Second, the element of negligence must be proven, namely lack of care or carelessness in making medical decisions. Third, a causal relationship between the doctor's actions and the harm suffered by the patient must be proven. Without this cause-and-effect relationship, it is difficult to establish criminal liability. Legal research shows that proving the element of negligence in medical cases is very complex because it involves medical and legal considerations simultaneously (Nugraha et al., 2023).

Meanwhile, in the context of proving criminal medical negligence, several fundamental criteria must be met: first, there must be a deviation from professional standards or recognized medical protocols such as SOPs or clinical guidelines. Second, the element of negligence, namely that the doctor did not act with the care or reasonableness expected in that condition; and third, a causal relationship between the doctor's deviant actions and the harm arising to the patient. If there is no clear cause-and-effect relationship, it is difficult to link the doctor's actions as the direct cause of the harm (Azriyani et al., 2023). In addition, in court decisions arguments often emerge that proving negligence in medical cases faces high challenges due to medical complexity, conflicts between medical and legal evidence, and limitations of judges' expertise in assessing technical clinical aspects (Syarifudin, 2024).

Additionally, in criminal medical law it is important to distinguish between medical risk and medical negligence. According to Kolib (2020), medical risk is a consequence that cannot be avoided even though the doctor has acted according to professional standards and medical procedures. This risk is a natural consequence of medical action, for example drug side effects or unpredictable postoperative complications. Meanwhile, medical negligence occurs when a doctor makes an error that should have been avoided, such as misdiagnosis due to lack of examination or not following applicable clinical guidelines. Thus, not all adverse outcomes from medical actions can be categorized as malpractice or negligence.

Conceptually, institutional responsibility in medical practice is often associated with the doctrine of corporate negligence, which is a standard where the institution (for example a hospital) is also responsible due to failure in supervision, selection of competent staff, provision of safe facilities, and arrangement of internal quality systems. Hidayat et al. (2025) state that hospital institutions can be held accountable, both from civil and criminal aspects, if it can be proven that the institution failed in systemic control over medical practice (whether in terms of protocols, supervision, or service standards). Likewise, Harry & Widjaja (2025) show that this new law provides a clearer framework so that hospitals can be held accountable when violations of medical service standards occur.

The mechanism for resolving medical disputes with potential criminal dimensions does require a gradual and cross-sectoral approach so that resolution efforts do not immediately go through criminal channels, especially for cases that are more in the nature of professional disputes or communication failures. According to Jayantara & Arief (2024) although Law 17/2023 introduces regulations on criminal sanctions for malpractice, in practice dispute resolution is often carried out through non-criminal mechanisms first to avoid the impact of stigma or prolonged law enforcement processes.

3.2. Juridical and Normative Factors that Become Obstacles in Proving the Element of Fault (*culpa*) in Medical Negligence Cases in Indonesia

The biggest challenge is often in distinguishing between medical risk (inherent complications) and medical negligence. In research, Kolib (2020) emphasizes that although health service outcomes do not match patient expectations, this is not necessarily negligence, it could be a reasonable medical risk that cannot be avoided even though the doctor has acted according to standards. In another study, Siregar (2025) distinguishes malpractice and medical complications from a health law perspective: malpractice is identified when there is a professional deviation that causes harm, while complications are medical risks that can occur even though procedures are carried out according to standards and informed consent already exists.

However, in the implementation of criminal law enforcement against medical malpractice, there are a number of structural and conceptual challenges that cannot be ignored. The main problem is the absence of medical professional standards that clearly define malpractice in the context of criminal law, making it difficult to distinguish between malpractice, ordinary medical negligence, unexpected medical risks, or therapeutic failure. Soge (2023) states that although the new law has strengthened protection for medical personnel, there are still provisions that are multi-interpretable and can cause harm to both service providers and healthcare recipients. Another weakness is the tendency for a high burden of proof on the patient or prosecutor, as well as the lack of capacity of law enforcement institutions (including police and prosecutors) in handling complex medical cases that require clinical understanding. This is reinforced by the juridical analysis of Rohadi et al. (2024) that criminal medical norms in Law 17/2023 still open wide room for interpretation, which can harm both the medical profession and legal certainty.

In the framework of Law Number 17 of 2023 on Health, this legislation is expected to become a more comprehensive legal foundation to clarify patient rights, doctors' obligations, and health institution responsibilities. The law repeals several old laws such as the Medical Practice Law and the previous Health Law and attempts to unite regulations related to medical responsibility under one new legal umbrella. In line with the statement by Harry & Widjaja (2025) that Law Number 17 of 2023 on Health provides a basis for hospitals to be responsible for harm due to negligence, including obligations for civil compensation and criminal consequences in cases of serious violations. Nevertheless, Wibowo (2024) criticizes that implementing regulations (derivative regulations) and administrative mechanisms as well as professional interpretation are still inadequate, so the potential for legal uncertainty remains high.

Empirical research also shows that medical negligence as a criminal basis is often difficult to prove. Research by Lisangan et al. (2024) notes hundreds of medical malpractice cases between 2018-2022, but not all cases resulted in criminal convictions due to lack of evidence and the influence of institutional factors such as hospital support and access to defense. In addition, regulatory changes such as the latest Health Law create new challenges in adjusting the definition of malpractice and its enforcement mechanisms (Jayantara & Arief, 2024).

Proving the element of fault (*culpa*) in medical negligence cases in Indonesia still faces quite significant juridical and normative obstacles. Juridically, the main difficulty lies in proving the existence of a causal relationship between medical personnel's actions and the resulting consequences. Judges must assess whether the action is part of an acceptable medical risk or includes professional negligence that can be criminally punished.

Proof obstacles are also evident in Supreme Court Decision Number 515 PK/Pdt/2011 related to a malpractice case at Pondok Indah Hospital, where the plaintiff successfully obtained compensation after the court assessed that the doctor had acted outside applicable professional standards. However, that case became an exception because most other cases failed to prove concrete standard deviations due to weak medical documentation. Medical records that are incomplete, inconsistent, or not made according to legal provisions often become a hindering factor in revealing the element of negligence. Utami et al. (2022) emphasize that medical records have a vital position as medico-legal evidence, but in practice they often cannot be used effectively due to administrative and professional ethical constraints in their provision.

Other obstacles arise from the lack of synchronization between professional ethical mechanisms and criminal law processes. The Indonesian Medical Discipline Honorary Council (MKDKI) is often used as an initial reference to determine whether there is a violation of medical discipline, so formal legal processes are often delayed waiting for ethical examination results. This phenomenon shows a dualism in law enforcement between the ethical and criminal realms, which ultimately weakens the effectiveness of proving *culpa*. Atmadja et al. (2025) assess that differences in assessment results between ethical institutions and courts create legal uncertainty and slow down the resolution of medical negligence cases.

In the context of liability imposition, Supreme Court Decision Number 3004 K/Pdt/2014 emphasizes that hospitals can be held legally responsible for the negligence of medical personnel under their supervision.

However, judges also underline that proving such responsibility must be based on violations of operational standard procedures and supervisory obligations that can be clearly proven. Similar matters appear in Makassar District Court Decision Number 1441/Pid.Sus/2019/PN MKS, where the defendant cosmetic doctor was acquitted because the court assessed that the complications experienced by the patient were medical risks that could occur even though the action had been performed according to procedures. These considerations show that courts are still careful in interpreting the boundaries between professional errors and reasonable medical risks (Daeli, 2023).

From a normative perspective, law reform through Law Number 17 of 2023 on Health does emphasize criminal sanctions for medical personnel who are negligent to the point of causing serious injury or death. However, implementation of these provisions still faces obstacles because there are no clear technical guidelines regarding professional standards, levels of fault, and causality boundaries. Kurniawan (2013) states that unclear norms and differences in interpretation between professional ethical institutions and law enforcement authorities cause proof of the culpa element to still be weak systematically and inconsistent in courts. Therefore, proving fault in medical negligence cases in Indonesia not only faces technical constraints in terms of evidence but also normative weaknesses in regulations and ethical mechanisms that have not been effectively integrated with the criminal justice system.

Regulations related to institutional responsibility and medical resolution mechanisms in Indonesia have developed through Law 17/2023, which attempts to bridge the interests of patients and medical personnel through a more specific legal framework. However, challenges in norm interpretation, proof, capacity of law enforcement institutions, and formulation of supporting regulations have not been fully resolved. Therefore, to realize the goals of balanced legal protection and accountability of medical practice, strengthening of technical regulations, clearer professional guidelines, legal education for medical personnel and law enforcement authorities, as well as effective and fair medical dispute resolution mechanisms are needed.

3.3. Forms of Law Reform to Achieve Balance Between Legal Protection for Patients and Legal Certainty for Doctors in Medical Negligence Cases

The main problem in law enforcement regarding medical negligence in Indonesia lies in the unclear norms that distinguish between negligence and medical malpractice. Doctrinally, negligence is a form of fault caused by lack of care in carrying out professional obligations, while malpractice reflects more serious deviations from professional standards established ethically and legally. The absence of firm juridical boundaries results in overlaps between ethical, disciplinary, and criminal violations, creating legal uncertainty for medical personnel. As a result, actions that should be qualified as ethical or disciplinary violations are often processed as criminal acts based on Articles 359 and 360 of the Criminal Code (KUHP). Research by Santoso & Suhariningsih (2017) emphasizes that assessment of doctors' faults should be based on standard of care and medical guidelines, not solely on the consequences arising from the act.

Besides terminological unclear definitions, criminal and administrative accountability mechanisms for doctors also do not have an adequate system. To date, there are no legal provisions that explicitly regulate the pre-adjudication stage, namely a stage that requires assessment first by the Indonesian Medical Discipline Honorary Council (MKDKI) before law enforcement authorities process suspected criminal medical acts. This condition opens opportunities for criminalization of the medical profession, as highlighted by Sidi (2023), who explains that many legal processes against doctors are carried out without regard to *lex specialis* principles in the health field but directly use general provisions of the Criminal Code. On the other hand, hospital responsibility for the actions of its medical personnel (vicarious liability) has also not been consistently regulated. The legal relationship between doctors and health service institutions, especially for non-employee doctors, does not have clear legal certainty regarding the division of responsibility in medical negligence cases (Budiman et al., 2023).

From a law reform perspective, restructuring the medical dispute resolution system becomes an urgent need to create a balance between legal protection for patients and legal certainty for doctors. The litigation mechanism currently in place, both in criminal and civil realms, is considered inefficient because it requires long time, high costs, and is confrontational. Therefore, legal reform needs to be directed toward implementing alternative dispute resolution (ADR), such as medical mediation, arbitration, or establishment of independent health tribunals. Such resolution models have proven effective in various jurisdictions because they are oriented toward restorative justice, restoration of patient rights, and legal protection for medical personnel. Herningtyas et al. (2025) emphasize that implementation of a no-fault compensation system as in New Zealand can be a more just resolution model, because its focus is not on proving fault but on recovery and compensation

for patients who experience harm. Besides reform in the dispute resolution aspect, the restorative justice approach can also be integrated into the health law system for medical negligence cases that do not contain elements of intent. This approach emphasizes restoring the relationship between patients and medical personnel through mechanisms of apology, compensation, and improvement of medical services. According to Hendradiana (2024), application of restorative justice in the context of medical negligence can reduce the burden of criminalizing health workers while increasing public trust in the medical profession.

In the preventive aspect, it must also be an integral part of health law reform. Strengthening obligations for informed consent and documentation of medical actions needs to be made a firm legal foundation. Based on research by Wijaya (2022), most medical disputes in Indonesia arise due to weak communication and documentation in the process of providing consent for medical actions. Therefore, there need to be rules that clarify standards and formats for informed consent as well as obligations for storing medical documents as a form of legal protection for both patients and doctors. Thus, law reform in the health field must be directed at several main aspects, namely clarification of legal norms regarding boundaries of medical negligence and malpractice, establishment of independent medical dispute resolution institutions, implementation of mediation and restorative justice mechanisms, strengthening of administrative aspects through documentation and informed consent, and implementation of professional liability insurance and no-fault compensation. Comprehensive and integrated legal reform will create a fair, balanced health law system capable of ensuring legal protection for patients without sacrificing legal certainty for doctors.

4. Conclusions

Criminal law regulations regarding medical negligence in Indonesia basically already have a clear normative basis through Articles 359 and 360 of the Criminal Code, Article 474 of Law Number 1 of 2023 on the new Criminal Code, and Law Number 17 of 2023 on Health. All these provisions emphasize that doctors can be held criminally liable if through their negligence they cause serious injury or patient death. However, the national legal system still faces conceptual constraints because there are no firm boundaries between professional negligence and medical malpractice. As a result, overlaps still often occur between ethical, disciplinary, and criminal violations that create legal uncertainty for medical personnel.

The main obstacles in proving the element of fault (*culpa*) lie in the difficulty of determining the causal relationship between medical actions and the resulting consequences, weak medical record documentation, and differences in interpretation between ethical institutions such as MKDKI and law enforcement authorities. Dualism in law enforcement mechanisms between ethical and criminal realms often slows down the case resolution process, while limitations in law enforcement authorities' understanding of clinical aspects cause court decisions to often be inconsistent. This condition shows that legal certainty and protection for both doctors and patients are still not balanced.

In the context of law reform, reconstruction of the health criminal law system is needed through the establishment of *lex specialis* that explicitly regulates the boundaries of doctors' criminal liability and the distinction between acceptable medical risks and negligence that can be criminally punished. In addition, implementation of dispute resolution mechanisms based on alternative dispute resolution (ADR) such as medical mediation or independent health tribunals needs to be developed as an initial resolution step before cases are brought to the criminal realm. The restorative justice approach can also be applied to balance patient rights with protection of medical personnel. On the other hand, preventive aspects such as strengthening informed consent, completeness of medical records, and implementation of professional liability insurance systems must be made an integral part of the national health law system to prevent disputes and protect both parties.

Based on the results of this research, it is recommended that the government immediately formulate implementing regulations for Law Number 17 of 2023 on Health that detail professional standards, boundaries of negligence that can be criminally punished, and coordination mechanisms between MKDKI and law enforcement authorities to prevent overlapping jurisdictions. Law enforcement authorities also need to be provided with training and capacity building in understanding medical and ethical aspects of the medical profession so that law enforcement can be carried out objectively and proportionally. On the other hand, medical personnel and health service institutions need to strengthen documentation systems and informed consent as legal evidence tools as well as forms of protection for patients. Implementation of professional liability insurance systems also needs to become mandatory policy to provide financial and legal protection for medical personnel. In addition, academics are expected to continue developing comparative and empirical research on the effectiveness of implementing restorative justice in resolving medical negligence cases as part of efforts to realize fair, balanced, and humanity-oriented health law reform.

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