

## Legal Consequences of Malpractice in the Medical World for Medical Personnel

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### Abstract

**Introduction:** This study examines the legal impact of medical accidents and malpractice on medical personnel. Through normative legal research on laws and regulations, court decisions, and related literature, this study shows that medical personnel can face various legal consequences, including civil, criminal, and administrative liability. In addition, this incident also has an impact on the reputation of the medical profession and causes fear in health workers in carrying out their duties.

**Purposes of the Research:** This study analyzes two main issues: the legal impact on the license of medical personnel who are found guilty of malpractice, and legal protection for medical personnel in malpractice cases. In addition, they may also face civil and criminal lawsuits.

**Methods of the Research:** Through normative legal research on laws and regulations, court decisions, and related literature, this study shows that medical personnel can face various legal consequences, including civil, criminal, and administrative liability. In addition, This study examines the legal impact of medical accidents and malpractice on medical personnel. Through normative legal research on laws and regulations, court decisions, and related literature, this study shows that medical personnel can face various legal consequences, including civil, criminal, and administrative liability.

**Results Main Findings of the Research:** Education that focuses on improving legal and public health literacy is an urgent solution to reduce the number of inaccurate lawsuits and strengthen the relationship of mutual trust between the community and medical personnel.

**Keywords:** Medical Accidents; Malpractice; Medical Personnel; Medical Risks.

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## INTRODUCTION

Health is the main factor for every person, activities that include situational factors can be achieved well if the health process can be maintained according to Shalsabila.<sup>1</sup> Meanwhile, in Agustina's research, the role of the medical team in the world of health is very crucial in providing optimal services to patients.<sup>2</sup> However, in carrying out their duties, the risk of medical accidents or malpractice always lurks for medical personnel. It is important for medical personnel to comply with the regulations and ethics of the medical profession in order to realize physical and spiritual well-being in health services.<sup>3</sup> A medical

<sup>1</sup> Shalsabila, Devi. 2022. "Final Assignment on the Evidential Strength of Medical Records as Evidence in Criminal Cases."

<sup>2</sup> Agustina, Zola, Achmad Hariri Muhammadiyah University of Surabaya Jl Raya Sutorejo, Dukuh Sutorejo, Surabaya City, and East Java. 2022a. "Criminal Liability for Negligence in Diagnosis by Doctors Resulting in Death of Children in the Womb." *IBLAM Law Review*. 2.

<sup>3</sup> Qodar, Al, Purwo Sulisty, and Kaharudin Putra Samudra. 2020. "The Role of the State Constitution in Monitoring the Revival of Citizens' Lives After the Covid-19 Virus Outbreak." <https://juridiksiam.unram.ac.id/index.php/juridiksiam>.

accident is an unexpected incident that occurs during the treatment process, even though medical personnel have carried out procedures in accordance with applicable standards. In contrast, malpractice occurs when medical personnel act negligently or make mistakes that are not in accordance with professional standards that cause harm to patients. Both of these events have serious legal implications for medical professionals.

The legal consequences faced by medical teams in cases of medical accidents and malpractice can include administrative sanctions, civil lawsuits, and even criminal ones. This not only affects the personal reputation of medical personnel, but also the health institutions where they work. According to Suryani & Pratamaa, increasing public awareness of patient rights and transparency in the legal system has led to an increase in the number of lawsuits against medical personnel.

As the legal system in the health sector develops, legal protection for medical teams is also becoming an increasingly important topic to be guaranteed from various criminal acts, discriminatory nature, and acts of exploitation.<sup>4</sup> Based on the regulations governing the difference between medical accidents and malpractice, it is very necessary for medical personnel to be able to carry out their duties with a sense of security without having to worry about unfounded claims. Wardhana's research (2022) shows that good education and understanding of standard operating procedures and professional ethics can reduce the occurrence of malpractice cases. A medical accident is an unintended incident that occurs during the process of providing health care, which is often unavoidable even though medical personnel have acted according to professional standards. According to the World Health Organization (WHO), a medical accident is an unintentional event that occurs in a health care setting, not always the result of medical error, and can arise due to factors such as unexpected body reactions or previously undiagnosed patient medical conditions.

Research conducted by Setiawan and Harahap identified that the difference between medical accidents and malpractice is not always clear in the eyes of the public.<sup>5</sup> This often results in lawsuits being filed against medical personnel even though the incident that occurred was not due to negligence, but rather an unavoidable medical accident. This study also highlights the importance of educating the public about the differences between medical accidents and malpractice to avoid inappropriate claims in the profession, resulting in injury or loss to patients. In previous research, Suryani and Pratama defined malpractice as a form of legal violation that occurs when medical personnel act carelessly or negligently in providing health services in accordance with established standards.<sup>6</sup> In their research, they revealed that medical malpractice can occur in various forms, including misdiagnosis, errors in administering medication, or inability to properly treat a patient's condition.

Research on similar malpractice cases has also been conducted by Aditya (2021), where the increase in malpractice is in line with the increasing public awareness of health rights and legal justice. In many cases, medical malpractice can lead to civil and criminal lawsuits, which not only affect individual medical personnel but also health institutions as a whole.<sup>7</sup>

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<sup>4</sup> Hariri, Achmad, Samsul Arifin, and Satria Unggul Wicaksana Prakasa. 2022. "Protection and Compliance of Human Rights of Residents Affected by the Semeru Eruption." *ACLJ* 3: 2022.

<sup>5</sup> Kurmaliasari, Agnesia, Efrin Susanti, Elsa Puspita, and Bunga Sari. 2024. "The Law of Excellence Dynamics of Medical Malpractice Cases Reviewed from the Perspective of Health Law." Vol. 06. <https://journalpedia.com/1/index.php/hde/index>.

<sup>6</sup> Sulaiman, Sumirahayu, Soni Fino Bahari, Denny Achsanul Hak, Tunjung Laksono Utomo, Heri Budianto, and Keywords. 2024. "Legal Consequences of Malpractice in Medicine Research Article." *Collaborative Journal of Science* 7 (6): 2194-99. doi:10.56338/jks.v7i6.5546.

<sup>7</sup> Munthe, Supriati, Reni Agustina Harahap, Riantania Sinaga, and Fauji Ariansyah Sitorus. 2024. "Literature Analysis on Legal Protection for Patients as Victims of Midwifery Malpractice in Indonesia." *Jurnal Kesehatan Unggul Gemilang*. Vol. 8.

The legal responsibilities faced by medical personnel in malpractice cases often affect their performance and create concerns in carrying out professional duties.

Legal protection for medical personnel has been regulated in various laws and regulations in Indonesia, such as Law Number 29 of 2004 concerning Medical Practice and Law Number 36 of 2009 concerning Health. These two laws provide a clear legal basis for medical personnel to carry out their duty without having to fear baseless lawsuits, as long as they have followed the procedures and code of ethics of the profession. Wardana (2022) stated that legal protection for medical personnel is highly dependent on the understanding and application of Standard Operating Procedures (SOP) and professional ethics. If medical personnel do not understand or ignore these standards, they risk facing serious legal consequences, both in the form of civil and criminal lawsuits. Therefore, it is important for medical personnel to receive continuous training in ethics and law, in order to minimize the risk of malpractice.

In addition to the judicial mechanism, the legal system in Indonesia also recognizes mediation as an effort to resolve disputes between patients and medical personnel. Wijaya (2021) emphasized the importance of mediation as an alternative to resolving disputes that is faster and more efficient than litigation. In the research conducted, mediation often resulted in agreements that were more satisfactory to both parties and reduced the psychological and financial burden faced by medical personnel when dealing with lawsuits.<sup>8</sup> Wijaya's research also shows that although mediation has been regulated in the Indonesian legal system, many medical personnel and patients still do not understand the benefits and procedures of mediation. Therefore, there is a need to increase awareness and socialization regarding this alternative dispute resolution among medical personnel and the community.<sup>9</sup>

In recent years, there has been an increase in the number of reported medical malpractice cases in Indonesia. This is due to various factors, including increased access to information by patients, increased public legal awareness, and changes in the system of supervision of medical personnel.<sup>10</sup> Many malpractice cases end in criminal charges, although most cases can be resolved through mediation or civil settlement mechanisms. Therefore, it is necessary to research and study the phenomenon of malpractice in medical personnel to find out the polarization of the phenomena that occur and answer questions while providing practical solutions, avoiding duplication of problems that occur in medical personnel practices.

## METHODS OF THE RESEARCH

This study uses a normative legal research method, namely an approach that focuses on the analysis of secondary legal sources such as applicable laws and regulations, journals, books, and theoretical studies of legal concepts relevant to medical accidents and malpractice in the world of health openly by examining a phenomenon without eliminating the normative nature of the law to answer a medical phenomenon.<sup>11</sup> This normative legal research aims to identify, understand, and evaluate legal regulations related to medical

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<sup>8</sup> Ardianto, Ari, and Achmad Hariri. 2021. "Legal Protection for Abortion of Rape Victims Reviewed from National Law." *Media of Law and Sharia* 2 (3). Muhammadiyah University of Yogyakarta: 218–37. doi:10.18196/mls.v2i3.11535.

<sup>9</sup> Pamungkas, Tareq Jati, and Achmad Hariri. 2022. "State Responsibility in Fulfilling Social Security from a Welfare State Perspective." *Media of Law and Sharia* 3 (4). Muhammadiyah University of Yogyakarta: 270–83. doi:10.18196/mls.v3i4.15198

<sup>10</sup> Flora, Sylva Tarigan, Suma, Juwita. 2023. "Socialization of Increasing Health Law Knowledge to Prevent Malpractice for Millennials." *Journal of Community Service of Pharmacy: Pharmacare Society* 2 (E-ISSN: 2829-5064)

<sup>11</sup> Wiwik, IA, and Sri Widiarty. 2024. "Legal Research Methods Textbook."

responsibility and its legal implications for medical personnel through certain situations or phenomena to address the impact and protection of medical personnel by presenting a clear and structured legal framework so as to find a more optimal solution so as to provide the preparation of a legal basis that is relevant to the needs of the medical profession and society.

## RESULTS AND DISCUSSION

### A. Legal Impact on the License of Medical Personnel Found Guilty of Malpractice

Practice where the Indonesian Medical Disciplinary Council (MKDKI) has the authority to conduct examinations, supervision and make decisions on sanctions given to health workers such as doctors, dentists and the Indonesian Medical Council. Temporary license suspension can also be imposed in accordance with Article 18 of the Regulation of the Minister of Health Number 11 of 2017 concerning Patient Safety, where an internal investigation can be carried out by the Patient Safety team to determine the degree of the incident based on Root Cause Analysis (RCA) to find the root of the problem in Doctors, Nurses, or other Health Workers.<sup>12</sup>

This license revocation aims to protect the public from potential harm that can be caused by medical personnel who do not meet professional and ethical standards.<sup>13</sup> Addition to license revocation, the medical personnel concerned may also be subject to other administrative sanctions, such as restrictions on the scope of practice, written warnings, or the obligation to take additional training and education to improve their competence.

#### 1. Legal Impact on the License of Nursing Professionals Found Guilty of Malpractice

The legal impact on the license of nursing staff who are proven guilty of malpractice is one of the serious legal consequences in the field of health services in Indonesia. As an effort to protect and provide legal certainty to patients, the legal impact on nursing staff can be in the form of revocation or freezing of the Registration Certificate (STR) or Practice License (SIP) in order to prevent the risk of malpractice from recurring as stipulated in Law Number 38 of 2014 concerning nursing.

The procedure for imposing administrative sanctions on nursing staff found guilty of malpractice begins with a report or complaint from the public, patients, or health service institutions to relevant institutions, such as the Health Service, the Indonesian Nursing Discipline Honorary Council (MKDKI), or professional organizations such as the Indonesian National Nurses Association (PPNI). After the report is received, an examination and clarification of the alleged violation of discipline and professional standards is carried out. If it is proven that there has been a serious violation that violates standard operating procedures (SOP), code of ethics, or professional standards, then the MKDKI has the authority to provide recommendations for administrative sanctions in the form of written warnings, suspensions, or revocation of STRs to the Indonesian Health Workforce Council (KTKI) as the institution authorized to issue and revoke STRs. In line with that, the Health Service can revoke or suspend SIPs based on these recommendations. The revocation of STRs and SIPs is legal and final if it has gone through an official examination and determination process based on applicable laws and regulations. The

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<sup>12</sup> Perdoski. 2017. "The Guidebook of Compliance with Ethics and Discipline of the Medical Profession."

<sup>13</sup> Dony Irawan, Anang, Al Qodar, and Purwo Sulisty. 2022. "The Impact of the Pandemic in Creating Socio-Economic Inequality Between State Officials and the Community." *Journal of Citizenship Virtues* 2022 (1): 251-62.



purpose of this procedure is to ensure that only competent, professional, and highly integrated nursing staff can continue to practice nursing in Indonesia, for the sake of protecting patient safety and the quality of health services.<sup>14</sup>

Nursing malpractice from a criminal law perspective can be explicitly qualified as an unlawful act that gives rise to criminal consequences if it fulfills the elements of a crime and cannot be viewed as a mere violation of ethics, but rather as a form of professional negligence (*culpa profesionalis*) that has legal consequences.<sup>15</sup> Especially if the action or negligence violates professional standards, standard operating procedures (SOP), and code of ethics, resulting in harm to the patient, either physically, psychologically, or materially. In the context of criminal law, malpractice arising from negligence or carelessness (*culpa*) is included in formal crimes as stipulated in Articles 359 and 360 of the Criminal Code, and is aggravated by Article 361 of the Criminal Code if the act is committed in a professional capacity. In other words, a nurse who, due to negligence, causes serious injury or death to a patient, can be prosecuted as stipulated in the Criminal Code.

To change a malpractice incident into a criminal case, it must be proven that there is an element of error (*culpa*) and a causal relationship (*causal verband*) between the action or negligence and the resulting consequences. This proof is scientific and legal, involving a review of medical documents, expert testimony, and an audit of the implementation of nursing practice standards. Therefore, not every medical failure can be immediately considered a crime; there must be a clear professional error with legal consequences. The principle of prudence and good faith in carrying out the profession are important parameters in assessing whether an error is worthy of being held criminally responsible. However, if it is proven that the negligence is beyond the limits of professional tolerance, then the criminal legal process becomes a necessity.

Procedurally, the law enforcement mechanism against criminal malpractice starts from public reports, investigations by law enforcement officers, examinations by professional organizations such as the Indonesian Health Workers Council (KTKI), to the process of providing evidence in criminal trials. Judges can impose imprisonment, fines, or additional penalties in the form of revocation of the right to practice nursing as regulated in Article 35 of the Criminal Code. This provision makes it clear that criminal sanctions do not only target aspects of physical punishment, but also touch on professional and administrative rights. In this case, the revocation of the Registration Certificate (STR) and Practice Permit (SIP) is a logical consequence of the legal status that has permanent legal force (*inkracht van gewijsde*).

Criminal norms in the Criminal Code are strengthened by special provisions in Law Number 36 of 2009 concerning Health, especially Article 190, and Law Number 38 of 2014 concerning Nursing which explicitly regulates the legal responsibility of nursing personnel. Based on the principle of *lex specialis derogat legi generali*, sectoral laws in the health sector can be used as the primary legal basis in assessing and prosecuting malpractice incidents. Thus, the Indonesian criminal law system has provided a clear and firm legal space in handling malpractice by nursing personnel.

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<sup>14</sup> Qodar, Al, Purwo Sulisty, and Kaharudin Putra Samudra. 2020. "The Role of The State Constitution in Monitoring the Revival of Citizens' Lives After the Covid-19 Virus Outbreak." <https://juridiksiam.unram.ac.id/index.php/juridiksiam>.

<sup>15</sup> Rizqi, Alifa, and Fajriani1 Muridah Isnawati. 2022. "Criminal Supervision of Children in Conflict with the Law in The Criminal System in Indonesia."

Nursing malpractice that is carried out with serious negligence and results in real harm to patients can be subject to criminal liability through the instrument of the crime of culpa in the Criminal Code and health sectoral law. The legal process against nurses who commit malpractice must be carried out legally and professionally, by considering medical, ethical, and legal aspects in an integral manner. Enforcement of criminal law on malpractice is not only a means of individual correction, but also functions as an effort to protect the law for the community and strengthen the integrity of the nursing profession as a pillar in the national health service system.<sup>16</sup>

Other forms of health worker accountability are not only limited to administrative and criminal sanctions, but also include civil liability which also affects the license to practice the medical profession. In the civil context, the provisions of liability in therapeutics recognize the implementation of an agreement or informed consent based on the provisions of Article 1320 of the Civil Code concerning 4 (four) requirements for the validity of an agreement, namely an agreement between the parties who bind themselves to act in forming informed consent in therapeutic transactions to demand an achievement or work result (*resultaatverbodenis*) and an agreement that demands maximum effort or effort (*inspanningsverbodenis*) by the medical profession to the patient.<sup>17</sup>

Legal responsibility by nursing staff can be requested if there are losses arising from not carrying out agreed medical actions, not providing detailed patient information, and can also be due to negligence resulting in detrimental consequences for patients or malpractice. Informed consent can be evidence in court where there is a relationship containing the rights and obligations of both patients and doctors in carrying out mutually agreed therapeutics so that the consequences of their negligence can have an impact on the profession of medical personnel as per Article 46 Paragraph (1) of Law Number 36 of 2014 concerning Health Workers.<sup>18</sup>

The need for support for health workers in the form of permits to practice and professional standards that are met is very important for health professionals based on special formal education and an idealistic work foundation with the aim of focusing their attention on activities motivated by community service. Informed consent recognizes the relationship of agreement between the first party (health workers) and the second party (patients/community) to obtain information or explanations between the two parties as rights and obligations that are mutually agreed upon so that regulations or rules are needed that regulate and protect the parties concerned, especially protecting health wMedical malpractice is an event that not only has ethical and professional impacts, but also has serious legal implications, especially related to the license of medical personnel. The normative approach to this malpractice case aims to ensure legal certainty and protection for both patients and competent medical personnel. Click or tap here to enter text. Therefore, the process of monitoring and imposing sanctions on doctors who are proven to have committed malpractice is regulated in detail in the applicable legal regulations, taking into account the principle of fair law enforcement (due process of lawworkers as highly specialized intellectual professionals).<sup>19</sup>

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<sup>16</sup> Khidri Alwi, Muh. "Professional Ethics and Health Behavioral Science," 2022.

<sup>17</sup> Putra, Tri. 2024. "Medical Risks in Civil Legal Responsibility in Hospitals According to Health Law Perspective Thesis."

<sup>18</sup> Depera Senja Belantara, Mega Orceka. 2024. "Obligation of Practice License for Doctors in Health Based on Law 17 of 2023 Concerning Health."

<sup>19</sup> Agustina, Reni Harahap, SST., MKes. 2021. "The Book of Health Ethics and Law."

## 2. Legal Impact on the License of Medical Personnel Found Guilty of Malpractice

Medical malpractice is an event that not only has ethical and professional impacts, but also has serious legal implications, especially related to the license of medical personnel. The normative approach to this malpractice case aims to ensure legal certainty and protection for both patients and competent medical personnel.<sup>20</sup> Therefore, the process of monitoring and imposing sanctions on doctors who are proven to have committed malpractice is regulated in detail in the applicable legal regulations, taking into account the principle of fair law enforcement (due process of law).<sup>21</sup>

Procedurally, when there is an allegation of malpractice by medical personnel, the initial stage begins with a complaint or official report submitted by the patient, the patient's family, or other interested parties to professional institutions such as the Indonesian Doctors Association (IDI) and the Indonesian Medical Discipline Honorary Council (MKDKI). Furthermore, a verification process and preliminary examination are carried out to assess whether the report meets the elements of an indication of a violation of the code of ethics and standards of the medical profession. If the results of the examination indicate sufficient evidence of a violation, the MKDKI will hold an administrative ethics hearing to determine the level of error and recommend disciplinary sanctions. The sanctions that can be imposed are tiered, starting from verbal or written warnings, temporary suspension of the Registration Certificate (STR), to permanent revocation of the STR as an administrative consequence. This provision refers specifically to Law Number 29 of 2004 concerning Medical Practice, which provides a strong legal basis for the revocation of medical personnel's practice permits as a form of administrative law enforcement (administrative sanction) in order to maintain the quality and integrity of the profession.

The phenomenon of malpractice in the medical world not only has administrative impacts, but can also be criminal, such as gross negligence resulting in serious injury, permanent disability, or death of the patient, then the case can be continued to the criminal realm. In this case, law enforcement officers can conduct investigations and inquiries based on the provisions of Article 359 and Article 360 of the Criminal Code (KUHP) which regulate criminal acts due to negligence (*culpa*). Sectoral laws, such as Law Number 36 of 2009 concerning Health, especially Article 190, are also the legal basis for handling criminal cases for health workers who do not provide services according to professional standards. In the criminal justice process, proof is carried out by assessing the element of error (*culpa*), the causal relationship between action and effect (*causaliteit*), and the existence of losses experienced by the victim. Evidence in the form of medical records, expert medical opinions, and standard procedure documentation are important instruments in determining whether or not there is criminal liability for medical personnel.<sup>22</sup> The results of the criminal decision that has been imposed on the perpetrator of malpractice, in this case a medical worker, the criminal decision has permanent legal force (*inkracht van gewijsde*), then the decision can be the basis for the revocation or freezing of the doctor's practice license by the relevant institution, so that the effects of administrative and criminal law run side by side. This procedure guarantees comprehensive legal protection while enforcing the accountability of

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<sup>20</sup> Nurcahyani, Meiliana, and Anang Dony Irawan. 2022. "Protection of Children Involved in Online Prostitution Cases in Terms of Law of Children Protection." *ILREJ* 2 (2). doi:10.24114/jas.v17i2.22493.

<sup>21</sup> Nur Solikin, Dr. H. 2021. *Introduction to Legal Research Methodology*. Vol. 1. Pasuruan, East Java: Qiara Media Publisher IKAPI Publisher No. 237/JII/2019. [www.google.com](http://www.google.com).

<sup>22</sup> Munthe, Supriati, Reni Agustina Harahap, Riantania Sinaga, and Fauji Ariansyah Sitorus. 2024. "Literature Analysis On Legal Protection For Patients As Victims Of Midwifery Malpractice in Indonesia." *Jurnal Kesehatan Unggul Gemilang*. Vol. 8.

the medical profession in Indonesia. Thus, the revocation or freezing of a practice license is not only a formal administrative sanction, but also part of a systemic effort to enforce health law that upholds the principles of justice, legal certainty, and protection of the community as recipients of health services.

Malpractice in the medical world can also have an impact on civil law by recognizing the implementation of informed consent in therapy as in the Civil Code regarding the 4 (four) requirements for the validity of an agreement, namely an agreement between the parties who bind themselves to act in forming informed consent which is not by looking at the results, but lies in the maximum efforts of medical personnel to save their patients.<sup>23</sup> To state that medical personnel have committed malpractice that can give rise to legal liability, there are several elements that must be met. First, there must be an unlawful act (*onrechtmatige daad*), namely the actions or negligence of medical personnel that are not in accordance with professional standards, service standards, or applicable legal obligations. Second, there is a loss experienced by the patient due to the action, either in the form of material losses (such as additional medical costs) or immaterial (such as physical and mental suffering). Third, there must be a clear causal relationship between the actions of the medical personnel and the losses experienced by the patient. Fourth, there is an element of error (*schuld*), namely that medical personnel can be considered responsible for their negligence or failure to comply with applicable professional standards.

The legal consequence of fulfilling these elements is that medical personnel can be subject to civil liability to pay compensation to the injured party. This compensation can be material, including medical expenses, financial losses, and replacement of damaged goods, as well as immaterial compensation related to suffering or non-financial losses. In the context of civil law, this responsibility aims to restore the victim's position as before the malpractice occurred, in accordance with the principle of *restitutio in integrum*.

Normatively, the principle of civil liability for medical malpractice is regulated in Article 1365 of the Civil Code which states that "Every act that violates the law and causes loss to another person, requires the person whose fault causes the loss, to compensate for the loss." In practice, proving these elements requires the support of medical evidence and expert opinion to ensure that the actions of medical personnel deviate from professional standards and thus cause legal consequences that must be accounted for.

Thus, from a civil law perspective, medical malpractice is not only an ethical or administrative issue, but also creates financial legal liability, which must be met to provide justice for victims while maintaining professional accountability in medical practice. All of these impacts aim to ensure that medical personnel continue to practice their profession in accordance with applicable ethical, legal and professional standards. With strict regulations and clear sanctions, it is hoped that a sense of security and public trust in health services can be created. This was also conveyed by also as a reminder to all medical personnel that the implementation of their duties must be carried out with full responsibility by prioritizing patient safety, and complying with applicable operational standards.<sup>24</sup>

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<sup>23</sup> Isnawati, Muridah, and Fety Khosianah. 2022. "Legal Counseling: For Students of Muhammadiyah 7 High School Surabaya in Preventing Protection Against Sexual Harassment and Violence Against Adolescents." *Borobudur Journal on Legal Services* 3 (1). Muhammadiyah University of Magelang: 8-15. doi:10.31603/bjls.v3i1.7428.

<sup>24</sup> Hasanuddin, Asni, SKM., Kes. 2023. "Professional Ethics and Health Behavioral Science." Jatinangor, Sumedang Regency, West Java 45363.



As personnel who have a major role in ensuring the health of the wider community, health workers also need to routinely maintain their competence and practice license by registering, or re-competency tests to protect and prevent medical accidents or malpractice in the future. This step is not only mandatory for medical personnel, doctors, or health workers who are still actively practicing their medical profession, but must also be followed by medical personnel who are not proven to have committed malpractice or because of violation cases that are not classified as fatal or unintentional so that they are tolerated by the Indonesian Health Workforce Council (KTKI) and the Indonesian Medical Discipline Honorary Council in order to provide a balance between patient protection and opportunities for medical personnel to improve their performance without eliminating their protection to return to their profession after meeting the applicable rehabilitation requirements.

## **B. Legal Protection for Medical Personnel in Malpractice Cases**

Legal protection for medical personnel facing malpractice cases is very important to create a balance between the rights of medical personnel and patient protection. In practice, medical personnel are vulnerable to lawsuits due to pure negligence, different reactions to certain patient conditions and lack of public education. Therefore, protection for medical personnel is also needed to build comfort in the rights and obligations between patients and medical personnel in carrying out their profession by outlining the form of preventive legal protection (through compliance with standard medical procedures and good documentation) and repressive (through legal assistance when facing legal processes) so that the rights of medical personnel are protected from criminalization and focus on providing medical services.<sup>25</sup>

Legal Protection is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims, legal protection for victims of crime as part of community protection, can be realized in various forms, such as providing restitution, compensation, medical services, and legal assistance. Article 28D paragraph (1) of the 1945 Constitution states that everyone has the right to recognition, guarantees, protection, and certainty of fair law and equal treatment before the law. And it is stated in Article 5 paragraph (1) of Constitution No. 39/1999 concerning Human Rights which states that everyone is recognized as a human being who has the right to demand and obtain equal treatment and protection in accordance with his human dignity before the law.<sup>26</sup> Legal protection for medical personnel as stated in Article 50 of Law Number 29 of 2004 concerning Medical Practice while carrying out their duties in accordance with professional standards and operational procedures. This protection is provided to ensure that medical personnel are not punished for incidents that cannot be avoided or that are not the result of gross negligence. In this case, complete and accurate medical records are the main evidence to show that the procedure has been carried out in accordance with applicable standards.

### **1. Legal Protection for Nursing Personnel in Malpractice Cases**

Nursing staff is one of the vital elements that has direct responsibility for the safety, comfort, and recovery of patient conditions. This strategic role places nurses in a position

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<sup>25</sup> Ervin, Andi, Novara Jaya, Mulyadi A Tajuddin, Zegovia Parera, Nurul Widhanita, Y Badilla, and Rudini Hasyim Rado. 2022. "Legal Protection of The Doctoral Profession in Dealing With Medical Disputes." *Journal of Yustisia Communication*, Ganesha University of Education, Department of Law and Citizenship. Vol. 5

<sup>26</sup> Depera Senja Belantara, Mega Orceka. 2024. "Obligation of Practice License for Doctors in Health Based on Law 17 Of 2023 Concerning Health."

that is very vulnerable to legal risks, especially when medical results are not as expected or there is alleged negligence in carrying out their professional duties. As public legal awareness and patient rights increase, lawsuits against nursing staff have increased, including in the form of civil lawsuits and criminal reports related to malpractice. Therefore, comprehensive legal protection for nursing staff is very important, not only as a form of respect for the rights of health workers, but also as a foundation in ensuring the quality of medical services as a whole.<sup>27</sup> Legal protection for nursing staff is important because nurses are an integral part of medical services that are directly involved in patient care, and therefore also have a high risk of facing malpractice accusations. Legal protection for nursing staff can be divided into two main forms, namely preventive protection and repressive protection. Preventive protection is realized through compliance with standard operating procedures (SOP), the code of ethics of the nursing profession, and complete documentation of medical actions in medical records. By complying with professional procedures and standards, nursing staff have a strong legal basis if in the future a lawsuit or accusation of malpractice arises. Meanwhile, repressive protection is provided when nurses have or are facing legal proceedings, in the form of legal assistance, assistance by professional organizations, such as the Indonesian National Nurses Association (PPNI), and legal defense in court, so that the process runs fairly and does not deviate from the principles of procedural law.

Meanwhile, repressive protection is provided when nursing staff face legal proceedings due to allegations of ethical violations or alleged malpractice. In this situation, nursing staff have the right to obtain legal assistance and assistance from legal counsel, professional organizations such as the Indonesian National Nurses Association (PPNI), and support from the Indonesian Nursing Discipline Honorary Council (MKDKI) to ensure that the legal process is fair and does not deviate from the principle of due process of law. Article 50 of Law Number 29 of 2004 concerning Medical Practice states that medical personnel including nurses cannot be subject to criminal or civil sanctions for medical service results that do not meet expectations, as long as the actions are carried out in good faith and in accordance with professional standards. In addition, Article 28D paragraph (1) of the 1945 Constitution and Article 5 paragraph (1) of Law Number 39 of 1999 concerning Human Rights guarantee that every citizen, including health workers, has the right to recognition, guarantees, and fair and equal legal protection before the law.

Legal protection for nursing staff must be optimized as part of the implementation of the principles of a democratic state of law, as well as the fulfillment of the constitutional rights of health workers in carrying out their professional duties. This protection not only functions as a form of legal defense for nurses individually, but also as an effort to maintain the continuity of quality, ethical health services, and free from fear of criminalization for professional actions that have been in accordance with procedures. When legal protection is enforced proportionally, nurses will be able to provide the best nursing services with a sense of security and full responsibility.<sup>28</sup> Legal protection for nursing staff in facing malpractice allegations aims to prevent legal disputes through compliance with standard operating procedures (SOP), application of the nursing professional code of ethics, and implementation of practices based on nursing service standards stipulated in Law Number

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<sup>27</sup> Novira, Maya. 2022. "Legal Protection for Consumers Over Fried Food Shortage Reviewed from Law Number 8 1999 Concerning Consumer Protection."

<sup>28</sup> Lajar, Julius Roland, Anak Agung Sagung, Laksmi Dewi, I Made, and Minggu Widyanantara. 2020. "Legal Consequences of Malpractice Committed by Medical Personnel."

38 of 2014 concerning Nursing. Nurses are also required to have a Registration Certificate (STR) and Practice Permit (SIP) as a form of legality to carry out nursing practice legally as stipulated in Article 17 of Law Number 38 of 2014 concerning Nursing. Accurate documentation of medical actions in medical records is an important component because it functions as the main legal evidence in the event of a lawsuit, as stipulated in Permenkes Number 269/Menkes/Per/III/2008 concerning Medical Records.

Nursing personnel also have the right to receive legal protection when nurses have been reported or are undergoing legal proceedings, whether ethically, civilly, or criminally. In this condition, nurses have the right to legal assistance and assistance from professional organizations such as the Indonesian National Nurses Association (PPNI), which will help nurses face the process before the Indonesian Nursing Disciplinary Honorary Council (MKDKI) as mandated in Articles 54–59 of the Nursing Law. If the alleged malpractice leads to a court process, nurses are still guaranteed the legal right to defend themselves with the assistance of legal counsel, and cannot be subject to criminal or civil sanctions if they are proven to have carried out their duties in good faith and in accordance with professional standards, as guaranteed in Article 50 of Law Number 29 of 2004 concerning Medical Practice. This legal protection is also strengthened by the constitutional principle stated in Article 28D paragraph (1) of the 1945 Constitution and Article 5 paragraph (1) of Law Number 39 of 1999 concerning Human Rights which states that everyone has the right to fair treatment and equal protection before the law, including nursing staff in carrying out their profession. Through this procedure, legal protection not only guarantees the individual rights of nurses, but also maintains the quality and sustainability of a professional and equitable health service system.

## **2. Legal Protection for Medical Personnel in Malpractice Cases**

The Indonesian Medical Discipline Honorary Council (MKDKI) has a central role in providing objective assessments of alleged disciplinary violations committed by medical personnel. MKDKI is tasked with distinguishing between unavoidable medical accidents and malpractice that violates the code of ethics. In the world of health, health law recognizes medical ethics as a complementary discipline because sometimes a phenomenon can allow the law to be violated to carry out unethical actions. The law tends to be rigid, takes a long time in the legalization process and is less comprehensive, then ethical norms complement the weaknesses of legal norms in order to carry out rescue actions on patients. Thus, medical personnel accused of malpractice can obtain justice in their profession as a medical error that is human (to err is human, to forgive is divine). The right of medical personnel to receive legal assistance is also guaranteed by Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP). Legal counsel assists medical personnel in developing defense strategies, presenting expert witnesses, and ensuring that all their rights are protected during the legal process. In many cases, this legal assistance is crucial to provide a sense of security for medical personnel in facing the often long and complex litigation process by Satria Unggul WP.<sup>29</sup> In addition to litigation, alternative dispute resolution such as mediation is also available for medical personnel and patients. Article 29 paragraph (1) of Law Number 36 of 2009 concerning Health states that mediation can be used to resolve disputes peacefully and efficiently. The mediation process provides an opportunity for both parties to reach a mutually beneficial agreement without having to go through the courts. With this option,

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<sup>29</sup> Hariri, Achmad, Samsul Arifin, and Satria Unggul Wicaksana Prakasa. 2022. "Protection and Compliance of Human Rights of Residents Affected by the Semeru Eruption." *ACLJ* 3: 2022.

medical personnel can avoid the psychological and financial burdens that often accompany the litigation process. With clear legal protection and a fair dispute resolution mechanism, it is hoped that medical personnel can carry out their profession with more confidence, without fear of the threat of baseless lawsuits. Supportive regulations, ongoing education, and transparent law enforcement are key elements in creating a health system that balances the interests of medical personnel and patient rights

Legal protection for medical personnel in cases of malpractice is a very important aspect to ensure that they can carry out their professional duties without fear of unfounded lawsuits. Law Number 29 of 2004 concerning Medical Practice, especially Article 50, provides a guarantee that medical personnel who work according to professional standards and operational procedures have legal protection. This means that if an undesirable incident occurs due to factors beyond their control, medical personnel cannot be held legally responsible for inappropriate actions.<sup>30</sup>

The Indonesian Medical Disciplinary Honorary Council (MKDKI) plays a major role in assessing and deciding on alleged disciplinary violations committed by medical personnel. MKDKI is tasked with distinguishing between unavoidable medical accidents and malpractice resulting from serious negligence or violations of standards. Decisions made by MKDKI are objective and based on facts, thus providing additional protection to medical personnel who are unfairly accused. This process also serves to maintain a balance between the rights of medical personnel and the interests of patients.

The right of medical personnel to receive legal assistance is also guaranteed by Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP). Legal counsel not only provides assistance in formulating defense strategies but also helps medical personnel to present expert witnesses, submit supporting evidence, and ensure that all their legal rights are protected during the litigation process. This is very important considering that the legal process, especially in cases of malpractice, can be long and take a lot of energy, both psychologically and financially.<sup>31</sup>

Not only litigation, medical personnel also have the option to resolve disputes through mediation mechanisms. According to Article 29 paragraph (1) of Law Number 36 of 2009 concerning Health, mediation can be used to resolve conflicts between patients and medical personnel peacefully. This process offers various advantages, including faster resolution and lower costs compared to court proceedings. In addition, mediation often produces more satisfactory solutions for both parties due to its more personal and flexible approach. According to Unggul Wicaksana Prakasa.<sup>32</sup> The effectiveness of mediation is highly dependent on the understanding and awareness of medical personnel and patients regarding the procedure and its benefits. Therefore, a doctor must provide services to the community based on the principle of humanity and benefit many people as a "chosen" person by honoring his profession as part of the medical personnel. To strengthen legal protection for medical personnel, education regarding standard operating procedures (SOP), codes of ethics, and legal regulations needs to be continuously improved. In addition, support from professional organizations such as the Indonesian Doctors Association (IDI)

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<sup>30</sup> Putra Simamora, Tri, Sonya Airini Batubara, Indra Efrianto, Robinson Sitorus, Sekip Street, Seikambing Intersection, and North Sumatra. 2020. "Legal Protection for Patients in Medical Services in Public Hospitals."

<sup>31</sup> Bickenbach, Jerome. 2022. "Legal Protection for Medical Personnel and in Emergency Measures." In *Handbook of the Philosophy of Medicine*, 1-14. Springer Netherlands. doi:10.1007/978-94-017-8706-2\_48-1.

<sup>32</sup> Unggul Wicaksana Prakasa, Satria, Sagung Ngurah Indradewi, and Al-Qodar Purwo. 2021. "Analysis of Universal Health Coverage Principles for Indonesian Peoples During the Covid-19 Pandemic."



is needed to provide advocacy and legal training to medical personnel. With a strong legal protection system, clear regulations, and effective dispute resolution mechanisms, it is hoped that medical personnel can carry out their profession with confidence without excessive fear of unfounded legal threats. This step will not only protect the rights of medical personnel, but also improve the overall quality of health services based on Nurul Hidayatullah.

## CONCLUSION

Medical malpractice is an issue that has serious legal consequences for medical personnel, both in terms of professional responsibility and the impact on the practice license. The legal impact experienced by medical personnel can be in the form of revocation or freezing of the practice license, as well as the obligation to undergo competency rehabilitation. Through Law Number 29 of 2004 and Law Number 36 of 2009, legal protection for medical personnel is provided as a basis for them to carry out their duties without fear of unfounded legal threats, as long as they work in accordance with standard operating procedures (SOP) and the professional code of ethics. The distinction between medical accidents and malpractice is a key element that must be communicated to the public. Medical accidents refer to events that are unavoidable even though medical personnel have acted according to procedure, while malpractice involves violations caused by negligence or violations of professional standards. Unfortunately, public misunderstanding often blurs this distinction, leading to irrelevant lawsuits that have a negative impact on the psychology and reputation of medical personnel. Therefore, education that focuses on improving public legal and health literacy is an urgent solution. This education not only serves to reduce the number of inaccurate lawsuits but also strengthens the relationship of mutual trust between the public and medical personnel. With legal protection through Law Number 29 of 2004 concerning Medical Practice, the role of the MKDKI, legal counsel assistance, and mediation mechanisms, the Indonesian legal system seeks to create a balance between the rights of medical personnel and patient protection. The combination of clear regulations, ongoing education, and effective dispute resolution mechanisms can increase the trust of all parties in the health system in Indonesia.

## REFERENCES

- Dony Irawan, Anang, Al Qodar, and Purwo Sulisty. 2022. "The Impact of the Pandemic in Creating Socio-Economic Inequality Between State Officials and the Community." *Journal of Citizenship Virtues* 2022 (1): 251-62.
- Flora, Sylva Tarigan, Suma, Juwita. 2023. "Socialization of Increasing Health Law Knowledge to Prevent Malpractice for Millennials." *Journal of Community Service of Pharmacy: Pharmacare Society* Volume 2 (E-ISSN: 2829-5064).
- Hariri, Achmad, Samsul Arifin, and Satria Unggul Wicaksana Prakasa. 2022. "Protection and Compliance of Human Rights of Residents Affected by the Semeru Eruption." *ACLJ* 3: 2022.
- Kurmaliasari, Agnesia, Efrin Susanti, Elsa Puspita, and Bunga Sari. 2024. "The Law of Excellence Dynamics of Medical Malpractice Cases Reviewed from the Perspective of Health Law." Vol. 06. <https://journalpedia.com/1/index.php/hde/index>.

- Munthe, Supriati, Reni Agustina Harahap, Riantania Sinaga, and Fauji Ariansyah Sitorus. 2024. "Literature Analysis on Legal Protection for Patients as Victims of Midwifery Malpractice in Indonesia." *Jurnal Kesehatan Unggul Gemilang*. Vol. 8.
- Nurchayani, Meiliana, and Anang Dony Irawan. 2022. "Protection of Children Involved in Online Prostitution Cases in Terms of Law of Children Protection." *ILREJ* 2 (2). doi:10.24114/jas.v17i2.22493.
- Pamungkas, Tareq Jati, and Achmad Hariri. 2022. "State Responsibility in Fulfilling Social Security from a Welfare State Perspective." *Media of Law and Sharia* 3 (4). Muhammadiyah University of Yogyakarta: 270–83. doi:10.18196/mls.v3i4.15198
- Qodar, Al, Purwo Sulisty, and Kaharudin Putra Samudra. 2020. "The Role of The State Constitution in Monitoring the Revival of Citizens' Lives After the Covid-19 Virus Outbreak." <https://juridiksiam.unram.ac.id/index.php/juridiksiam>.
- Rizqi, Alifa, and Fajriani1 Muridah Isnawati. 2022. "Criminal Supervision of Children in Conflict with the Law in the Criminal System in Indonesia."
- Shalsabila, Devi. 2022. "Final Assignment on The Evidential Strength of Medical Records as Evidence in Criminal Cases."
- Sulaiman, Sumirahayu, Soni Fino Bahari, Denny Achsanul Hak, Tunjung Laksono Utomo, Heri Budianto, and Keywords. 2024. "Legal Consequences of Malpractice in Medicine Research Article." *Collaborative Journal of Science* 7 (6): 2194–99. doi:10.56338/jks.v7i6.5546.
- Agustina, Reni Harahap, SST., MKes. 2021. "The Book of Health Ethics and Law."
- Agustina, Zola, Achmad Hariri Muhammadiyah University of Surabaya Jl Raya Sutorejo, Dukuh Sutorejo, Surabaya City, and East Java. 2022a. "Criminal Liability for Negligence in Diagnosis by Doctors Resulting in Death of Children in the Womb." *IBLAM Law Review*. Vol. 2.
- Ardianto, Ari, and Achmad Hariri. 2021. "Legal Protection for Abortion of Rape Victims Reviewed from National Law." *Media of Law and Sharia* 2 (3). Muhammadiyah University of Yogyakarta: 218–37. doi:10.18196/mls.v2i3.11535.
- Bickenbach, Jerome. 2022. "Legal Protection for Medical Personnel and in Emergency Measures." In *Handbook of the Philosophy of Medicine*, 1–14. Springer Netherlands. doi:10.1007/978-94-017-8706-2\_48-1.
- Depera Senja Belantara, Mega Orceka. 2024. "Obligation of Practice License for Doctors in Health Based on Law 17 Of 2023 Concerning Health."
- Ervin, Andi, Novara Jaya, Mulyadi A Tajuddin, Zegovia Parera, Nurul Widhanita, Y Badilla, and Rudini Hasyim Rado. 2022. "Legal Protection of the Doctoral Profession in Dealing with Medical Disputes." *Journal of Yustisia Communication*, Ganesha University of Education, Department of Law and Citizenship. Vol. 5.
- Hasanuddin, Asni, SKM., Kes. 2023. "Professional Ethics and Health Behavioral Science." Jatinangor, Sumedang Regency, West Java 45363.
- Isnawati, Muridah, and Fety Khosianah. 2022. "Legal Counseling: For Students of Muhammadiyah 7 High School Surabaya in Preventing Protection Against Sexual

Harassment and Violence Against Adolescents." *Borobudur Journal on Legal Services* 3 (1). Muhammadiyah University of Magelang: 8–15. doi:10.31603/bjls.v3i1.7428.

Khidri Alwi, Muh. "Professional Ethics and Health Behavioral Science," 2022.

Lajar, Julius Roland, Anak Agung Sagung, Laksmi Dewi, I Made, and Minggu Widyantara. 2020. "Legal Consequences of Malpractice Committed by Medical Personnel."

Novira, Maya. 2022. "Legal Protection for Consumers Over Fried Food Shortage Reviewed from Law Number 8 1999 Concerning Consumer Protection."

Nur Solikin, Dr. H. 2021. *Introduction to Legal Research Methodology*. Vol. 1. Pasuruan, East Java: Qiara Media Publisher IKAPI Publisher No. 237/JTI/2019. www.google.com

Perdoski. 2017. "The Guidebook of Compliance with Ethics and Discipline of The Medical Profession."

Purwo, Al Qodar. 2020. "Protection of The Civilian Population as The Implementation of The Principle of Discrimination."

Putra, Tri. 2024. "Medical Risks in Civil Legal Responsibility in Hospitals According to Health Law Perspective Thesis."

Putra Simamora, Tri, Sonya Airini Batubara, Indra Efrianto, Robinson Sitorus, Sekip Street, Seikambing Intersection, and North Sumatra. 2020. "Legal Protection for Patients in Medical Services in Public Hospitals."

Senja Belahtera, Mega Orceka Depera. 2024. "Obligation of Practice License for Doctors in Health Services Based on Law Number 17 Of 2023 Concerning Health."

Unggul Wicaksana Prakasa, Satria, Sagung Ngurah Indradewi, and Al-Qodar Purwo. 2021. "Analysis of Universal Health Coverage Principles for Indonesian Peoples During the Covid-19 Pandemic."

Unggul Wicaksana Prakasa, Satria, Lilik Puja Rahayu, Mualimin Mochammad Sahid, and Asri Wijayanti. 2022. "Responsibility of States for the COVID-19 Pandemic: *International Law Review*" 13 (2): 158–70.

Wiwik, IA, and Sri Widiarty. 2024. "Legal Research Methods Textbook."

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