

**LEGAL PROTECTION FOR HEALTHCARE WORKERS  
IN CRIMINAL MALPRACTICE CASES FROM THE PERSPECTIVE  
OF LAW NUMBER 17 OF 2023 ON HEALTH**

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**ABSTRACT**

Providing quality healthcare is a state responsibility as mandated by Article 34(3) and Article 28H of the 1945 Constitution of Indonesia. However, malpractice issues in the healthcare sector remain a critical concern. This study aims to analyze the legal protection for medical and healthcare professionals accused of malpractice under Law Number 17 of 2023 on Health. It also examines the role of professional organizations in assisting their members in facing malpractice allegations in accordance with Article 440 of the law. Case studies on three legal matters highlight the importance of adherence to Standard Operating Procedures (SOPs) to protect patients from medical negligence. The findings reveal that although the law provides legal protection, its practical implementation often falls short. Therefore, public education, enhanced oversight, and regulatory improvements are necessary. Legal protection is not only intended to safeguard healthcare professionals but also to ensure justice and legal certainty for all parties involved.

**Keywords:** *Legal protection, healthcare professionals, Medical malpractice, Health Law 2023*

**INTRODUCTION**

Efforts to improve healthcare services in Indonesia are based on Article 34, paragraph (3) of the 1945 Constitution, which states that the state is responsible for providing adequate healthcare facilities.<sup>1</sup> The right to a healthy life is also regulated in Article 28A and Article 28H, paragraph (1) of the 1945 Constitution. Additionally, Law Number 36 of 2014 on Health Workers emphasizes the crucial role of health workers in improving public health as an investment in human resource development. Health workers are required to have high competency, pursue continuous education, obtain certification, and adhere to ethical and moral standards.<sup>2</sup> According to Article 1 of Law Number 17 of 2023 on Health, medical and health professionals have the authority to carry out health efforts in accordance with their educational level, including through national competency certification. However, in practice, issues of malpractice frequently arise. Malpractice is defined as negligence or deviation in professional services that cause harm to patients. Although the term is not explicitly regulated

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<sup>1</sup> Undang-Undang Dasar Tahun 1945 Pasal 34 ayat 3

<sup>2</sup> Undang-Undang Nomor 36 Tahun 2014 Tentang Tenaga Kesehatan

in current laws, references can be found in Article 11 of the 1963 Health Workers Law (which has been repealed) and in the opinions of legal experts such as Dr. H. Syahrul Machmud. Malpractice includes failure to fulfill obligations, violations of professional oaths, or actions that do not comply with standard procedures. Health workers are required to perform their duties with caution and in accordance with standard operating procedures (SOPs). If harm occurs despite adherence to procedures, the public is encouraged to understand the inherent risks of medical procedures. Therefore, public education on the rights and responsibilities of health workers, along with strict supervision, is necessary to minimize malpractice cases.<sup>3</sup>

The imposition of criminal sanctions on health workers under Law No. 36 of 2014 includes imprisonment of up to five years and fines of up to IDR 100 million. However, legal protection for health workers who act in accordance with procedures remains inadequate, particularly in dealing with unexpected events. Legal protection aims to safeguard citizens' rights and ensure sanctions for violations.<sup>4</sup> The government has enacted the Health Law under the omnibus law framework to strengthen legal protection for health workers. Article 310 regulates medical dispute resolution through non-litigation channels before proceeding to court. However, this law has sparked controversy. Concerns include the repeal of professional laws, the criminalization of health workers, and restrictions on professional organizations. One controversial provision is Article 462, which prescribes criminal penalties for gross negligence by medical personnel and is perceived as potentially leading to criminalization. The Health Law also removes the requirement for recommendations from the Indonesian Doctors Association (IDI) for foreign doctors, which is seen as weakening professional standards. Although aimed at providing better protection, the implementation of the Health Law requires further review to ensure justice and legal certainty for health workers.

The Health Omnibus Law provides legal protection for medical and health professionals under Article 273, paragraph (1), which guarantees their rights while performing their duties according to professional and ethical standards. Several new provisions strengthen this protection, such as Article 306, paragraph (3), which prioritizes dispute resolution through restorative justice; Article 273, paragraph (2), which allows service suspension in cases of bullying; and Article 393, paragraph (1), which provides protection in emergency situations. Informed consent is also an essential aspect of healthcare services, as stipulated in Article 293 of Law No. 17 of 2023. Patients must provide consent after receiving complete information regarding medical procedures, risks, and alternatives. In emergencies, procedures can be performed without consent in the patient's best interest. Ministerial Regulation No. 290/MENKES/PER/III/2008 also defines informed consent as patient approval following a

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<sup>3</sup> Undang-undang Nomor 17 Tahun 2023 Tentang Tenaga Kesehatan

<sup>4</sup> Undang-Undang Nomor 36 Tahun 2014 tentang Tenaga Kesehatan

detailed explanation.<sup>5</sup> Furthermore, Law No. 29 of 2004 mandates doctors to maintain patient confidentiality, provide services according to standards, and administer emergency care. The Indonesian Medical Disciplinary Honorary Council enforces discipline and sanctions for violations, ensuring the professionalism of medical personnel remains upheld.<sup>6</sup>

This article discusses three medical cases involving doctor negligence. The first case involves Dr. Elisabeth Susana (Case No. 1441/Pid.Sus/2019/PN.Mks). On September 15, 2017, Agita Diora Fitri underwent a beauty treatment at Dr. Elisabeth Susana's clinic in Makassar. The doctor injected hyaluronic acid into the patient's nose, but the procedure resulted in complications, causing temporary blindness in the patient's left eye. The doctor failed to follow the Standard Operating Procedures (SOP) for filler injections, violating Article 50 of the Medical Practice Law No. 29 of 2004, as well as regulations from the Ministry of Health regarding medical service standards.

The second case involves Dr. Wida Parama Astiti (Case No. 590 K/Pid/2012). On April 29, 2010, a child patient named Dava Chayanata Oktavianto was treated for diarrhea at Krian Husada Hospital in Sidoarjo. Dr. Wida instructed a nurse to inject a potassium chloride (KCL) solution without direct supervision. This procedure was incorrect, as KCL injections should be administered slowly and mixed with intravenous fluids. The negligence led to seizures and ultimately the patient's death. The autopsy report confirmed that the death resulted from an electrolyte imbalance due to excessive potassium levels. Dr. Wida was charged under Articles 359 and 361 of the Criminal Code for negligence leading to death.

The third case involves Dr. Bambang Suprpto (Case No. 1110 K/Pid.Sus/2012). On October 25, 2007, Dr. Bambang Suprpto, a surgeon, performed a bowel tumor removal surgery at Level IV Hospital in Madiun without a valid medical practice license. This major operation was conducted without a team of specialist doctors, assisted only by four nurses. His actions violated professional standards and SOPs as stipulated in Article 51(a) of the Medical Practice Law No. 29 of 2004. Dr. Bambang failed to fulfill his duty to provide medical services in accordance with professional standards, posing significant risks to the patient.

## RESEARCH QUESTIONS

1. How does the legal protection for health workers accused of malpractice align with Law Number 17 of 2023?
2. What is the role of medical and health worker organizations when a health worker is suspected of committing malpractice according to Article 440 of Law Number 17 of 2023?

## RESEARCH METHODOLOGY

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<sup>5</sup> Undang-undang Nomor 17 Tahun 2023 Tentang Tenaga Kesehatan

<sup>6</sup> Undang-Undang Nomor 29 Tahun 2004 tentang Praktik Kedokteran

This study employs a normative juridical method with a qualitative approach. Normative juridical research is conducted through document studies, including primary, secondary, and tertiary legal materials. Secondary data consist of legislation, jurisprudence, official documents, and expert opinions. The research begins with an analysis of legal norms in Article 34 of the 1945 Constitution as the legal foundation. The approach includes statutory, conceptual, comparative, and case studies. The statutory approach analyzes regulations related to legal issues, while the case study approach examines malpractice cases involving health workers.

Primary legal sources include the 1945 Constitution, Law Number 17 of 2023 on Health Workers, and jurisprudence. Secondary legal sources consist of books, journals, and research findings. Tertiary sources include legal dictionaries such as Black's Law Dictionary. Data collection is conducted through literature studies, where primary and secondary legal materials are gathered for analysis. The collected data are analyzed qualitatively using systematic, logical, and sequential descriptions to provide a comprehensive understanding. This study also explores the causal relationship between legal protection for health workers and alleged malpractice to address legal issues in depth.

## DISCUSSION

### Theoretical Review

Legal protection is an effort made by the government or authorities to protect the rights of individuals or groups through applicable laws and regulations, providing a sense of security and legal certainty.<sup>7</sup> According to Hans Kelsen, the theory of positive law explains law in its purest form, without influencing non-legal aspects, elaborating on what law is and how it functions. The elements of legal protection include government oversight of citizens, such as drafting and enforcing regulations, ensuring legal certainty, protecting fundamental rights, and applying sanctions strictly.<sup>8</sup> Legal certainty, as an element of protection, ensures recognition and fair legal treatment, including the protection of human rights, consumers, and criminal law, as outlined in Law Number 21 of 2007 on the Eradication of Human Trafficking. Citizens' rights, as regulated in the 1945 Constitution, include the right to fair legal certainty, the right to work, freedom of expression, access to education, and social security. Legal sanctions—whether criminal, civil, or administrative—are enforced to uphold justice. This concept aims to establish a just legal state free from discrimination, promoting security and public well-being.

Legal protection, in Dutch etymology referred to as *theorie van de wettelijke bescherming*, signifies that law is created to safeguard human interests. The function of law focuses on protecting individual rights while ensuring security, justice, and legal certainty for society.

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<sup>7</sup> KUHP Tentang Perlindungan Hukum

<sup>8</sup> Hans Kelsen, *Dasar-Dasar Hukum Normatif*, (Jakarta: Nusamedia, 2009), h. 343

Legal protection involves government oversight to support vulnerable parties by guaranteeing their rights through regulations, services, and law enforcement. Philipus M. Hadjon outlines two forms of legal protection:

1. Preventive: Aims to prevent disputes by ensuring careful decision-making by the government.
2. Repressive: Intended to resolve disputes through judicial mechanisms.<sup>9</sup>

Rafael La Porta describes legal protection as consisting of prevention (prohibited) and punishment (sanction). Wahyu Sasongko further explains that legal protection is implemented through: Regulations that guarantee rights, Administrative law enforcement to prevent violations, Criminal law to impose sanctions, Civil law to restore rights through compensation.<sup>10</sup>

Consumers, as the weaker party, are often the focus of legal protection. Sudaryatmo emphasizes the need for advocacy on behalf of consumers to strengthen their bargaining position. Legal protection also covers specific issues such as non-litigation dispute resolution, students' rights, anti-bullying measures, and protection in emergency situations, as outlined in newly proposed legal provisions by the government. For instance, medical personnel in emergencies are granted legal and security assurances while performing their duties. Likewise, students have the right to legal protection throughout their education. The law also ensures out-of-court dispute resolution for medical professionals accused of professional misconduct.

Legal liability is the consequence of a person's actions concerning ethical or moral norms. In Indonesia's Civil Code (KUHPerdata), there are three models of legal liability:

1. Fault-based liability (intentional acts and negligence), regulated under Article 1365.
2. Negligence-based liability, regulated under Article 1366.
3. Strict liability (liability without fault), regulated under Article 1367. For unlawful acts, compensation may include:
  - a. Nominal damages: Small compensation for non-material losses.
  - b. Compensatory damages: Actual compensation based on the victim's tangible losses.
  - c. Punitive damages: Large compensation imposed as a penalty for severe intentional misconduct.<sup>11</sup>

Legal certainty is one of the goals of a state of law, alongside justice and utility. According to Utrecht, legal certainty consists of general rules that provide security to individuals and prevent government arbitrariness. Law enforcement, based on norms and laws, is the responsibility of both authorities and society. Gustav Radbruch stated that law

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<sup>9</sup> Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indoensia*, (Surabaya : PT. Bina Ilmu, 1987), halaman 29.

<sup>10</sup> Wahyu Sasongko, *Ketentuan-Ketentuan Pokok Hukum Perlindungan Konsumen*, (Bandar Lampung : Universitas Bandar Lampung, 2007), halaman 32

<sup>11</sup> Ismail Koto, Erwin Asmadi "Pertanggungjawaban Hukum Terhadap Tindakan Malpraktik Tenaga Medis di Rumah Sakit" *Volksgeist*, Vol. 4 No. 2 Juli- Des 2021

must balance justice, certainty, and utility. The process of law enforcement demands good morals from authorities, as well as an example of state compliance with the law. When the public sees that the law is enforced fairly, they are more likely to adhere to the prevailing norms.

As a state of law, Indonesia must ensure that the law serves as a foundation for creating an orderly and just society. This includes protection against greed, the imposition of fair sanctions, and the formation of a system oriented toward social contracts. Responsive and fair law enforcement can create a more harmonious society, free from chaos.

### **Elements of Malpractice in Criminal Malpractice Based on Law No. 17 of 2023 on Health and Legal Foundations**

Malpractice comes from the word malpractice, which refers to poor practice by a professional. This term carries a negative connotation, encompassing negligence or mistakes in carrying out professional duties, such as those of doctors, lawyers, or accountants. In the medical field, malpractice is known as medical malpractice, which includes errors in procedure, actions below professional standards, or violations of regulations. Antonius P. S. Wibowo defines malpractice as medical actions that deviate from professional standards.<sup>12</sup>

Malpractice occurs if a healthcare professional:

1. Performs actions that do not meet professional standards.
2. Neglects duties or fails to perform necessary actions.
3. Violates laws or professional codes.

The main cause of medical malpractice is negligence, such as lack of caution or performing actions below the required standards. Other factors include errors due to lack of observation, abuse of authority, or intentional actions for personal gain.

The elements of malpractice include:

1. The duty of the medical professional towards a specific patient.
2. Deviation from duty (dereliction of duty).
3. Harm (damage) suffered by the patient.
4. A direct causal relationship between the mistake and the harm.

Malpractice can be categorized into three areas of law: criminal, civil, and ethical, each with different legal foundations.

1. Criminal Malpractice:
  - a. Negligence: Resulting in death or injury (Articles 359-361 of the Penal Code).
  - b. Provoked Abortion: Done intentionally (Articles 299, 347-349 of the Penal Code).
  - c. Morality: Violating morality (Articles 285, 286, 290 of the Penal Code).
  - d. Medical Confidentiality: Disclosing patient secrets (Article 322 of the Penal Code).

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<sup>12</sup> Yosua David Mantiri, "Pertanggungjawaban Perdata Tenaga Medis Terhadap Kasus Malpraktik Ditinjau Dari Sudut Pandang Medicolegal" *Lex Privatum*, Vol. VII/No. 7/Okt-Des/2019

- e. Forgery: Fake certificates (Articles 263, 267 of the Penal Code).
- f. Conspiracy: Committing a crime together (Articles 221, 304, 351 of the Penal Code).
- 2. Civil Malpractice:
  - a. Negligence: Causing harm to another party (Articles 1366, 1367 of the Civil Code).
  - b. Misdiagnosis: The doctor incorrectly diagnosing a patient.
- 3. Ethical Malpractice:
  - a. Violation of Medical Ethics: Examples include over-utilization of medical equipment for personal gain, under-treatment of underprivileged patients, or refusal of critical patients to maintain the hospital's reputation.
  - b. Ethico-legal Violations: For example, disclosing official secrets (Article 13 of the Medical Ethics Code and Article 322 of the Penal Code), issuing false certificates, or failing to meet medical service standards.

#### Types of Malpractice:

1. Civil Malpractice: Occurs when healthcare professionals violate a therapeutic agreement (breach of contract) or commit unlawful acts, such as providing substandard medical services.
2. Criminal Malpractice: Occurs when a doctor's actions cause death or disability to a patient due to negligence. It must meet the mental element (intent/negligence), the wrong medical procedure, and actual harm.
3. Administrative Malpractice: Violations of administrative procedures, such as failing to undergo professional training.

Dalam periode 2012 hingga 2024, sejumlah kasus malpraktik medis mencuat, memperlihatkan kelalaian dalam pelaksanaan tindakan medis yang berdampak fatal bagi pasien. Salah satunya terjadi pada tahun 2012, di mana dr. Wida Parama Astiti meminta perawat Setyo Mujiono untuk menyuntikkan KCL 12,5 ml kepada pasien Dava Chayanata Oktavianto tanpa pengawasan yang memadai. Tindakan tersebut menyebabkan pasien mengalami kejang-kejang hingga akhirnya meninggal dunia. Pengadilan menjatuhkan hukuman penjara selama 10 bulan terhadap terdakwa.

Between 2012 and 2024, several medical malpractice cases emerged, demonstrating negligence in medical procedures that had fatal consequences for patients. One example occurred in 2012, where Dr. Wida Parama Astiti instructed nurse Setyo Mujiono to inject 12.5 ml of KCL into patient Dava Chayanata Oktavianto without adequate supervision. This action caused the patient to suffer seizures and eventually die. The court sentenced the defendant to 10 months in prison.

Another case in 2017 involved Dr. Suharto AMd.RO., who performed a medical procedure on the victim's eye without explaining the procedure or obtaining prior consent from the patient. This action resulted in pain and vision impairment for the victim. As a

consequence, Dr. Suharto was sentenced to 1 year and 8 months in prison and required to pay compensation of IDR 22,577,974.

In the same year, Dr. Trifena binti Yusuf was involved in the distribution of medical devices that did not meet the required safety, efficacy, and quality standards. Due to her actions, Dr. Trifena was sentenced to 6 months in prison and fined IDR 50,000,000. Meanwhile, Dr. Rudy Eko Fitranto and Dr. Arif Mustika Jufriansyah were charged with practicing medicine without a license, but the court only imposed a fine of IDR 100,000,000 on each defendant, with a subsidiary 6-month imprisonment.

Also in 2017, Dr. Elisabeth Susana, M.Biomed, performed a cosmetic procedure by injecting hyaluronic acid into the nose of patient Agita Dora Fitri. This procedure caused the patient to lose vision in her left eye. However, Dr. Elisabeth was acquitted of all charges by the court, as it was not proven beyond a reasonable doubt that she had committed a criminal offense. These cases illustrate various types of negligence and actions that do not comply with medical standards, posing risks to patient safety and demanding legal accountability for the medical professionals involved. The court imposed sanctions in the form of imprisonment, fines, and compensation obligations as an effort to uphold professionalism in the medical field.

### **Analysis of Legal Protection for Healthcare Workers Suspected of Committing Medical Malpractice Under Law Number 17 of 2023 on Health**

The resolution of disputes involving healthcare professionals suspected of committing medical malpractice can be carried out through various litigation and non-litigation methods. Medical disputes typically occur between healthcare professionals and patients regarding medical treatment or care, caused by medical errors, violations of ethical codes, or poor communication. Mediation is often the first step taken in resolving medical disputes. In mediation, a neutral third party helps both parties reach an agreement without involving a lengthy legal process. For example, in a case where a patient experiences complications after surgery, mediation can be conducted with the hospital to reach an agreement, such as compensation and continued care for the patient.<sup>13</sup>

If mediation is unsuccessful, reporting to the Indonesian Medical Disciplinary Honorary Council (MKDKI) can be the next option. MKDKI conducts investigations into alleged malpractice and provides recommendations regarding disciplinary actions. An example of this is a case where a patient experiences paralysis after a cesarean section, which is reported to MKDKI. After conducting an investigation, MKDKI found negligence in the anesthesia procedure and recommended disciplinary action against the involved doctor.

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<sup>13</sup> Muhenri Sihotang, Zainal Arifin Hoesein, "Standar Profesionalisme Dokter dan Hak Pasien dalam Proses Penyelesaian Sengketa Medik Melalui Mediasi" *Jurnal Retentum*, Volume: 07, No: 01, 2025

Additionally, the patient or their family can file a civil lawsuit in court to seek compensation for damages suffered due to medical negligence. This lawsuit requires strong evidence to support the patient's claim. Resolving disputes through legal proceedings generally takes longer and incurs higher costs compared to mediation or reporting to MKDKI.

In resolving medical malpractice disputes, several mechanisms can be used, including civil lawsuits, criminal actions, and recommendations from a council established by the Minister of Health. Each of these resolution methods has different processes, but the ultimate goal remains the same: ensuring justice for patients and accountability for medical professionals who commit negligence.<sup>14</sup>

One example of resolving a medical malpractice dispute through a civil lawsuit occurred at the Palembang District Court. Ny. Fahmi Wati, the mother of the late Derby Adi Diansyah, sued R.K. Charitas Hospital Palembang after her son passed away following treatment at the hospital. The family believed that Derby's death was caused by negligence in medical treatment by the hospital.

The lawsuit process began with the filing of a civil lawsuit in court, demanding both material and immaterial compensation. During the trial, both parties presented medical evidence, expert witnesses, and relevant documents to support their claims. The burden of proof required evidence showing negligence or medical errors that led to the patient's death.

Ultimately, the Palembang District Court ruled that the hospital was proven to have been negligent in medical treatment and ordered it to pay compensation to the patient's family. This case demonstrates how civil lawsuits serve as a means for families to seek compensation for harm caused by medical malpractice.

Moreover, medical malpractice can also be resolved through criminal proceedings if negligence or intent results in serious harm or death. Another example is the case of Dr. Ayu, who made an error in administering anesthesia. A patient named Budi suffered serious complications that led to paralysis after surgery, allegedly due to negligence in anesthesia administration by Dr. Ayu. Budi's family reported the case to the police, accusing Dr. Ayu of medical negligence. The police conducted an investigation and named Dr. Ayu as a suspect. The case was then brought to court, where the public prosecutor presented evidence and expert witnesses. After a series of trials, the court found Dr. Ayu guilty and sentenced her to prison, also ordering her to pay compensation to the patient's family. This case demonstrates that medical malpractice causing serious harm can be prosecuted criminally, emphasizing medical evidence and expert testimony.

In addition to resolution through civil lawsuits and criminal proceedings, there is also a recommendation mechanism from a council established by the Minister of Health, in accordance with Law No. 17 of 2023 on Health. An example of such a case is the alleged

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<sup>14</sup> Florentina Dewi Pramesuari "Analisis Kebijakan Negara Indonesia dalam Penyelesaian Sengketa Medis" *Jurnal Hukum dan HAM Wara Sains*, Vol. 03, No. 01, Februari 2024

malpractice at a Regional General Hospital (RSUD), where a patient named Siti experienced complications after undergoing surgery. Her family reported the alleged malpractice to the hospital and the council formed by the Minister of Health. The council conducted an investigation by reviewing medical records and gathering additional evidence. Based on the investigation results, the council issued recommendations regarding whether negligence was present in the medical treatment. If negligence was found, these recommendations could serve as the basis for further legal action, either criminal or civil. In this case, the council recommended that the doctor involved be subject to disciplinary sanctions and that the hospital provide compensation to the patient. This process ensures that medical professionals are held accountable and that justice is served for affected patients.

The resolution of medical disputes through mediation is also often considered a beneficial option. Mediation allows both parties, the patient and the medical professional, to reach an agreement without having to go through a lengthy and public legal process. Mediation focuses on restoring a good relationship between the patient and the medical professional, which is crucial for maintaining public trust in healthcare services. This makes mediation an effective alternative, especially in cases where a peaceful settlement is preferred over a prolonged legal process.<sup>15</sup>

Healthcare professional organizations play a crucial role in resolving disputes involving medical professionals, particularly those related to malpractice. They often act as mediators between patients and healthcare professionals to achieve a peaceful resolution without the need for a lengthy and costly legal process. Additionally, they provide legal assistance to their members, such as offering legal advice, accompanying them during investigations, and providing lawyers when needed.<sup>16</sup>

This organization also has oversight and disciplinary mechanisms to ensure that its members adhere to ethical and professional standards. If violations are found, disciplinary actions such as warnings, suspension, or revocation of practice licenses may be imposed. They also play a role in advocating for the legal protection of healthcare workers, coordinating with the government and relevant institutions to ensure fair regulations and adequate protection. Based on Law No. 17 of 2023 on Health, this organization can even provide recommendations to the council established by the Minister of Health in cases of medical disputes, serving as a reference in determining the next legal steps..<sup>17</sup>

In Indonesia, healthcare workers consist of various professions, each with its own code of ethics and responsibilities that must be adhered to. Doctors, for example, are required to follow a code of ethics that prioritizes the interests of patients and avoids actions that

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<sup>15</sup> Hafid Ramadhon, Hudi Yusuf "Analisis Mediasi Sebagai Alternatif Penyelesaian Sengketa Medik Dalam Perspektif Hukum Kesehatan" *Jurnal Intelek Insan Cendikia*, Vol : 1 No: 9, November 2024

<sup>16</sup> Yuyut Prayuni, Asep Nurman Hidayat, Danny Des Kartyko Lakoro, Jumrati, Lilie Fransiska "Tinjauan Yuridis Penyelesaian Kasus Sengketa Medis Pasca UU Kesehatan Tahun 2023" *Journal Of Social Science Research*, Volume 3 Nomor 6 Tahun 2023

<sup>17</sup> Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan, Lembaran Negara Republik Indonesia Tahun 2023

contradict their profession, such as performing unnecessary medical procedures or using the title of doctor for unauthorized practice. Nurses must have a Registration Certificate (STR) and Practice Permit (SIP) to carry out nursing practices, while midwives and pharmacists are also bound by regulations ensuring the quality of healthcare services.

Radiographers are healthcare professionals with an important role in Radiology services, including Radiodiagnostics and Radiotherapy, in healthcare facilities. The main responsibility of radiographers is to ensure the proper and safe implementation of Radiology services, in accordance with the authority outlined in the Radiographer's Code of Ethics. They are responsible for ensuring radiation accuracy and safety, as well as performing quality control of Radiology equipment. Radiographers are also involved in education in the field of Radiology, with competencies that include professionalism, information management, technical skills, and the management of Radiology services.<sup>18</sup>

The skill level of a radiographer develops through ongoing education and training. In practice, they must master several levels of skills, ranging from understanding to performing tasks independently. Radiographers who hold a Practice Permit (SIP) can work in healthcare facilities, provided they only provide Radiodiagnostic and Radiotherapy services based on a written request from a doctor. They are also prohibited from performing medical procedures such as administering contrast agents or using direct fluoroscopy.

Laboratory analysts are professionals responsible for conducting tests and analyses on various samples, in fields such as healthcare, environmental, food, and pharmaceutical sectors. They use various methods and instruments to identify and measure the components of these samples. This profession is governed by several regulations to ensure competency and professionalism, including competency standards that must be met by every Medical Laboratory Technology Specialist (ATLM). They also play a role in supporting research, product development, and public safety.<sup>19</sup>

Nutritionists play an important role in maintaining and improving the nutritional status of the community. They function as dietitians, nutrition counselors, and nutrition educators, each with different responsibilities. As dietitians, they plan special menus and diets, while counselors help individuals address nutritional issues, and nutrition educators provide education to enhance public understanding of healthy nutrition. Nutritionists are required to adhere to the professional code of ethics in providing accurate, appropriate nutrition services while respecting patients' rights.<sup>20</sup>

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<sup>18</sup> Yohny Anwar, T. Riza Zarzani, Chermanto "Tanggung Jawab Hukum Petugas Fisikawan Medis Terhadap Kualitas Mutu Pada Izin Operasional Radiologi Di Rumah Sakit Bhayangkara Banda Aceh" *Sibatik Journal*, Volume 2 No.8 (2023)

<sup>19</sup> Siti Nurholisoh, Rani Apriani "Tanggung Jawab Hukum Atas Perusahaan Farmasi Terhadap Beredarnya Obat Yang Mengandung Bahan Berbahaya" *Supremasi Hukum*, Volume 18 Nomor 2, Juli 2022

<sup>20</sup> Dr. Donal Nababan, SKM., M.Kes, Vera Chitra Dewi Saragih, SKM., M.Kes, Tri Yuniarti, S.KM., S.Kep., M.P.H, Dr.dr. Elsa Yuniarti, M.Biomed., AIFO-K, Annisa Andriyani, Amd., Kep., A.MPH, Ardiani Sulistiani, SST., M.Kes., M.Keb, Isnani Nurhayati, SKM., S.Kep., M.Kes, Astri Wahyuningsih, S.ST., M.Kes, Nur Baharia Marasabessy, *Gizi dan Kesehatan Masyarakat*, Batam: Yayasan Cendikia Mulia Mandiri, 2023

Medical Recorders and Health Information Management professionals are responsible for managing medical record data, which is crucial for administration, finance, research, and public health. They collect, analyze, and disseminate information to support planning and decision-making in healthcare facilities. Competency standards for this profession ensure that medical recorders have the necessary skills to manage health information efficiently, accurately, and in accordance with applicable regulations.

Legal breakthroughs or rule-breaking represent a strategy to surpass existing legal rules that are considered no longer reflective of the evolving values of justice in society. These breakthroughs manifest in decisions that consider all aspects in resolving a case, ensuring that the decision meets justice criteria. For example, in the Supreme Court Decision Number 1110 K/Pid.Sus/2012, an innovation in healthcare was implemented by providing doctors with an ID card containing a chip. The chip holds data about the Registration Certificate (STR) and Practice Permit (SIP), and provides a notification if the documents have expired. Another innovation is the installation of CCTV monitoring in major medical procedures, which can be viewed by the family through recordings or transparent glass in the operating room. This increases transparency and accountability in hospitals for high-risk medical procedures.

Legal reform is necessary to create an effective legal system that reflects the spirit of society. The law must be able to address the challenges of the times and solve existing problems. Legal reform involves testing existing legal formulations to achieve efficiency, justice, and equal opportunities for the public. This process is carried out by legislative, executive, and judicial bodies that have the authority to amend laws and regulations. Reform also aims to address legal gaps and ensure that the law applied meets international standards. In this context, legal reform focuses on adapting to the dynamics of societal life so that the law remains relevant and can be effectively implemented.<sup>21</sup>

The creation of law is the process of forming laws by judges or other legal officers involved in legal events. This process is necessary when statutes are incomplete or ambiguous, requiring judges to find the appropriate legal solution for the situation. Legal creation can be done through interpretation, analogy, or refinement of the law. Legal creation differs from the application of law because it involves the discovery of something new. In efforts to prevent malpractice in hospitals, legal creation can include limiting the number of practice locations for doctors, regulating working hours for nurses, and restricting practice locations for pharmacists. The goal is to ensure the quality of medical services that are safe and in line with established standards.

In the United States, medical malpractice law is managed by individual states, unlike many other countries that use federal law. Patients seeking compensation must prove that medical negligence resulted in injury. Each state has a set time limit, or statute of limitations,

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<sup>21</sup> Muchlas Rastra Samara Muksin "Tujuan Pemidanaan dalam Pembaharuan Hukum Pidana Indonesia" *Jurnal Sapientia et Virtus*, Volume 8 Nomor 1, Maret 2023.

for filing claims. Damages awarded include both economic and noneconomic losses, such as medical costs and suffering. Doctors typically carry malpractice insurance to protect themselves from lawsuits related to medical negligence.<sup>22</sup>

Medical malpractice is defined as the actions or negligence of a doctor that deviates from the accepted standards within the medical community and causes harm to the patient. It is part of civil law focused on professional negligence, where the standard used is the "reasonable person standard," which creates a benchmark for safe behavior. The medical malpractice legal system in the United States has its roots in 19th-century English common law, which developed through court decisions and has been modified by state laws. In some cases, medical malpractice law can also be influenced by state legislative actions.<sup>23</sup>

On the other hand, the "Good Samaritan" law provides an exemption from legal responsibility for those who voluntarily provide first aid. Although its application varies, this law generally protects those who act in good faith during emergency situations. However, in some states, only those trained in first aid receive legal protection.

The U.S. judicial system has state courts for medical malpractice cases, with final decisions made by the state Supreme Court. If federal parties are involved, claims can be filed in federal court. During the process, the right to a trial by jury is a constitutional right, involving the community in making decisions, which differs from a trial by judge. In medical malpractice cases, the jury will consider evidence and make a ruling.

To file a medical malpractice claim, patients must prove four legal elements: the legal duty of the doctor to care for the patient, a breach of that duty, causality between the breach and the injury, and the resulting damages. In cases of standard of care violations, expert testimony is often required to explain whether the doctor's actions align with reasonable professional standards.

The trial process in U.S. medical malpractice cases often does not reach court, largely due to the legal system encouraging efficient dispute resolution through the discovery process. This process involves the exchange of factual information between parties through document requests, interrogatories, and depositions. Collected documents include medical records, hospital billing information, and others, used to uncover relevant facts. Depositions, where parties are questioned under oath, are a crucial part of this process and can be used as evidence during trial.

Sworn statements, particularly in medical malpractice cases, become key moments for the involved doctors. Depositions are usually held at the doctor's office and attended by attorneys from both sides and insurance company representatives. This process includes direct examination, cross-examination, and redirect to clarify further information. Objections

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<sup>22</sup> Lia Marlina, Juniaty Caroline Simanjuntak, Yudi Hasnawan, Jhohan Adhi Ferdian, Ade Saptomo "Perbandingan Sistem Hukum Kesehatan Di Indonesia Dan Amerika Serikat Dalam Hal Malpraktik Medis" *Syntax Literate: Jurnal Ilmiah Indonesia* Vol. 9, No. 3, Maret 2024

<sup>23</sup> Siti Rokayah, "Kelalaian (Negligence) Dan Malpraktik Medis", *Cross-border*, Vol. 5 No. 1 Januari-Juni 2022

to questions or evidence can be raised during the deposition, but most objections are related to the form of the questions, rather than the acceptance of evidence itself.

In court, the plaintiff's lawyer must prove that medical negligence occurred, with the "preponderance of evidence" standard, which is lower than the "beyond reasonable doubt" standard in criminal cases. The jury or judge will determine whether the evidence presented shows more than a 50% likelihood that negligence occurred. The costs of medical malpractice litigation are very high, covering expenses for lawyers, expert testimony, and the long trial process. This process often takes years and typically ends with an out-of-court settlement.

Outside the United States, the medical malpractice system varies. In the UK, the system relies more on the National Health Service (NHS) and government funds for compensation. France has a no-fault system outside of court, while Germany uses mediation boards and expert panels. Countries such as Sweden, Finland, Denmark, and Norway implement a no-fault system to provide compensation to patients for injuries caused by medical care. In Japan, malpractice cases are often viewed as criminal matters, and medical malpractice claims can be filed through a collective insurance system.

This study aims to analyze the legal aspects of health law concerning medical malpractice committed by healthcare professionals. Medical malpractice can occur due to negligence by a medical professional while performing their duties in line with their profession and obligations. However, it is not uncommon for members of the public to deliberately place a medical professional or doctor in a position where they can be accused of medical malpractice. This type of issue is sometimes complicated by the lack of medical expertise, which often leads to medical errors, later disguised as medical hazards. As a result, there has been a development where healthcare professionals or doctors who have served and worked professionally and in accordance with professional standards, services, and Standard Operating Procedures (SOPs) are involved in unethical behavior.

The research method used in this study is normative legal research. The regulation of medical malpractice actions by healthcare professionals is outlined in several laws and regulations that provide guidelines for malpractice actions committed by medical personnel. These regulations can be found in the Medical Law and Health Law, which provide legal certainty for the affected parties. This is a characteristic of law itself in enforcing justice. Malpractice committed by healthcare professionals is already regulated under Law No. 36 of 2014 concerning Health Workers and the applicable Medical Code of Ethics. In addition, there are sanctions for medical malpractice, including criminal sanctions, civil sanctions, administrative sanctions, and moral sanctions.

This study discusses the phenomenon of legal protection for healthcare professionals. This has led to the ease with which healthcare professionals can be sued by plaintiffs, causing legal protection to be ineffective, as the plaintiff's legal basis focuses on proving negligence without considering the risk of medical actions. The objective of the research is to understand

the judges' considerations in medical malpractice verdicts and the forms of legal protection for healthcare professionals. In resolving malpractice cases, it is recommended to adhere to the agreement made prior to medical actions. Hospitals and healthcare facilities need to establish SOPs based on the consensus of the medical profession, hospital conditions, and the function of healthcare services. These SOPs will guide doctors to perform their duties without harming patients. The Indonesian Medical Association (IDI) is advised to create medical and healthcare professional standards with minimum competency requirements that doctors must possess in accordance with the Health Workers Law. This supports the improvement of medical service quality and more effective legal protection for all parties.

## CONCLUSION

1. The government has an obligation to provide legal protection in the form of legal assistance to medical and healthcare professionals. In practice, there are criminal law issues related to the fact that medical and healthcare professionals often do not receive proper legal assistance as they should.
2. As Indonesian citizens, medical and healthcare professionals have the right to recognition, guarantees, protection, and legal certainty that is fair, as well as equal treatment before the law. The provision of legal assistance as a form of legal protection must not infringe upon the broader rights of the public. Based on this principle, medical and healthcare professionals involved in legal issues have the right to receive legal assistance in all legal matters or cases they face, except in cases classified as extraordinary crimes, where legal assistance is not provided.

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