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Legal Protection for Patients from Medical Malpractice According To Health Law in Indonesia

Ricky Rosiwa[1*], Zul Akli[1] and Ramalinggam Rajamanickam[2]

[1]Faculty of Law, Universitas Malikussaleh, Aceh, Indonesia
[2]Faculty of Law, Multimedia University, Melaka, Malaysia

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Abstract:

Health is a human right and one of the elements of well-being that must be realised in accordance with the ideals of the Indonesian nation. In practice, the professional relationship between medical personnel (doctors) and patients is based on a therapeutic relationship that requires the principles of good faith, due care, and compliance with standard operating procedures (SOPs). However, as public legal awareness increases, these interactions are often marred by medical disputes triggered by allegations of malpractice. This study is a normative study employing a statutory approach. It utilises qualitative data, which is analysed in depth. The results of the study indicate that legal protection for patients is regulated under Law No. 17 of 2023 on Health in several aspects, such as criminal, civil and administrative matters. However, in practice, there are still challenges relating to evidence, access to justice, and the imbalance of power between patients and healthcare professionals. Patients' rights, such as informed consent, access to information, and fair treatment, are still frequently disregarded in practice. This study aims to examine the forms and effectiveness of legal protection for patients against medical malpractice from the perspective of health law in Indonesia. The method used is a normative legal method employing a legal and jurisprudential approach. Effective legal protection is key to realising safe, accountable and fair healthcare services. Health Law.

Keywords: Legal Protection; Patients; Medical Malpractice, Health Law

INTRODUCTION

In the national legal system, the right to health is recognized as a human right guaranteed by the constitution and various international legal instruments. The state has a constitutional and legal obligation to provide quality, equitable, and accessible health services to all citizens (Putra, 2020). However, in practice, the provision of health services is not free from the risk of medical errors, which in its most severe form are categorized as malpractice.

Malpractice not only violates patients' rights to safe and professional medical care but also gives rise to complex legal consequences in the criminal, civil, and administrative spheres. This phenomenon demands comprehensive legal protection for patients, who are vulnerable to harm due to negligence by healthcare professionals (Daeng et al., 2023). Medical malpractice is an increasingly prominent problem as public awareness of legal rights in health services increases. Legal Protection for Patients from Malpractice According to Health Law in Indonesia (Widjaja, 2020). Although regulations regarding the medical profession have been regulated in various.

Criticism of the patient legal protection system generally focuses on the weakness of the evidentiary mechanism in malpractice cases, which requires medical technical expertise that neither the patient nor law enforcement possesses. In the evidentiary process, the patient's position is very weak, as they must prove professional negligence, a causal relationship between the action and the effect, and the resulting harm (Saragih and Hadiyanto, 2021). Furthermore, there is a tendency for the medical profession to isolate itself through strong esprit de corps, thus complicating the objective verification

*Corresponding Author : Ricky Rosiwa, Faculty of Law, Universitas Malikussaleh, Aceh, Indonesia, ORCID iD: 0009-0004-4887-7095, E-mail: ricky.r@gmail.com

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process of alleged malpractice. In this regard, legal instruments must not only provide protective mechanisms but also guarantee procedural and substantive justice for victims (Nurnanei and Bachri, 2024).

Although laws and regulations such as Law Number 17 of 2023 concerning Health, the Medical Practice Law, and the Consumer Protection Law are in place, their effective implementation still faces serious challenges. On the one hand, medical personnel often work under limited, high-pressure, and resource-constrained circumstances, while on the other hand, patients demand accountability for any errors or omissions that harm them (Pintabar, Rafianti, and Saragih, 2024). The imbalance between patients and healthcare institutions often results in legal protection for malpractice victims being formalistic and difficult to access. This indicates a gap between legal norms and social reality that has not been fully bridged by the judicial system or mediation institutions.

The inability of the legal system to respond to these needs can erode public trust in health care institutions and law enforcement (Darwaman, Sidi and Saragih, 2023). The issue of medical malpractice also highlights the complexities of ethics, law, and medical professionalism. An ideal healthcare paradigm should position patients as sovereign subjects of their rights, not merely objects of medical care. However, in practice, the power relationship between medical personnel and patients remains hierarchical, often marginalizing patients' legal rights. The urgency of strengthening patient legal protection is increasingly relevant amid the increasing number of reports of alleged malpractice and the complexity of healthcare law in the modern era. The globalization of healthcare services, the digitization of medical records, and cross-border medical practice expand the spectrum of legal risks faced by patients (Husamuddin et al., 2024).

Therefore, studies on patient legal protection cannot be merely normative but must also consider social dynamics, professional ethics, and accessibility to justice. An interdisciplinary approach is needed to develop a legal protection model that is adaptive to changing times and contextualized to local realities. Thus, health law becomes not only a normative tool but also a transformative instrument in realizing a civilized healthcare system. Legal Protection of Patients from Malpractice According to Health Law in Indonesia. This indicates the need for a reformulation of the accountability system within the medical profession, one that is not only based on a code of ethics but also has concrete legal consequences. This reform is crucial for building health governancethat upholds the principles of justice, transparency, and accountability (Syamsul, 2024).

Based on this background, this article aims to critically examine the form and effectiveness of legal protection for patients who are victims of medical malpractice in Indonesia. The study uses a normative and conceptual juridicalapproach, examining regulatory aspects, implementation, and structural and cultural challenges in patient legal protection.The discussion will focus on efforts to bridge the gap between legal norms and the reality of implementation.

METHODS

This research applies a normative legal approach, which is conducted by systematically reviewing and analyzing various legal sources to understand the applicable legal provisions in providing protection to patients against medical malpractice. This approach focuses on normative-doctrinal studies, where law is understood as a set of written norms reflected in legislation, jurisprudence, and the thoughts of legal experts (Negara, 2023). This research does not involve collecting empirical data from the field, but rather aims to build a normative analysis of existing and formally applicable legal structures (Chang, 2024). In its implementation, a statutory regulatory approach is used, namely by reviewing the provisions in Law Number 17 of 2023 concerning Health, Law Number 29 of 2004 concerning Medical Practice, as well as other regulations including the Criminal Code and various relevant sectoral regulations. n addition, a conceptual approach is used, examining various legal ideas or concepts such as medical malpractice, professional responsibility, and the legal relationship between healthcare professionals and patients.

This approach is used to explore the substantive dimensions of legal protection stemming from the principles of professional ethics and the fundamental rights of patients in healthcare. The data sources

used in this study are divided into two categories: primary and secondary legal materials (Soekanto, 1981). Primary legal materials include national and international regulations governing healthcare practices, as well as court decisions relevant to malpractice cases. Secondary legal materials are obtained from various health law literatures, such as scientific books, journal articles, academic papers, and other supporting documents relevant to the issue of legal protection for patients in the context of medical errors.

RESULTS

Medical malpractice is a form of professional error or negligence by healthcare professionals in providing medical services that deviates from standard operating procedures (SOPs), professional codes of ethics, and applicable laws and regulations, and results in harm to patients. The term "malpractice" itself comes from the Latin words malus (bad) and practicum (implementation), which in the context of health law are defined as medical actions carried out incorrectly, mistakenly, or below professional standards that can result in legal consequences. According to the KBBI (Big Indonesian Dictionary) and legal literature, Malpractice is a professional practice that is wrong or deviant and violates the law or professional ethics (Lajar, Dewi and Widyantara, 2020).

In the Indonesian legal system, the term medical malpractice has not been explicitly defined in a single, stand- alone legal provision. However, provisions regarding the liability of healthcare workers for negligence that results in harm to patients can be found in several articles scattered throughout the legislation. These include Articles 293 and 310 of Law Number 17 of 2023 concerning Health, which provide the legal basis for the legal consequences of medical actions that deviate from standards. Furthermore, Article 1365 of the Civil Code (KUHPerdata) stipulates that any unlawful act that results in harm requires the perpetrator to provide compensation.

Meanwhile, in the criminal realm, Article 360 of the Criminal Code. (KUHP) stipulates provisions regarding negligence that causes injury or death. Medical malpractice encompasses three basic elements: (1) medical actions that do not comply with norms or standards; (2) the presence of negligence (culpa); and (3) legal consequences in the form of harm to the patient. Mistakes can take the form of actions that should not have been carried out, failing to carry out actions that should have been carried out, or providing services carelessly without complying with the principle of medical prudence. In practice, proving malpractice requires a technical medical review to determine deviations from professional standards, as well as a direct causal link between the health worker's actions and the patient's harm (Handoyo, 2020).

The distinction between malpractice and medical risk is also important. Medical risk is a potential consequence that may arise even if medical procedures are performed according to standards, and in this case, legal liability cannot be established. Conversely, malpractice is an avoidable professional failure that should not have occurred if medical personnel had acted according to professional procedures and standards. Law Number 29 of 2004 concerning Medical Practice regulates the procedures for enforcing professional discipline against medical personnel suspected of committing ethical and professional violations. Evaluation of these violations is carried out by the Indonesian Medical Disciplinary Honorary Council (MKDKI) , which has the authority to assess and impose sanctions within the scope of medical professional discipline. Therefore, although there is no single article that explicitly defines malpractice, its legal construction can be formed through a combination of various provisions that regulate responsibility and sanctions for negligent acts in medical practice (Nurdin, 2015). malpractice includes:

a. Doing something that should not be done;
b. Not doing something that should be done;
c. Violating laws and regulations
d. Ignoring ethical obligations in medical practice. In this context, malpractice reflects not only individual failures, but also potential weaknesses in the system in supervising, training, and enforcing the accountability of the medical profession.

The concept of malpractice also touches on ethical and social dimensions. According to J. Guwandi, In the Indonesian legal system, the term medical malpractice has not been explicitly defined in a single, stand- alone legal provision. However, provisions regarding the liability of healthcare workers for negligence that results in harm to patients can be found in several articles scattered throughout the legislation. These include Articles 293 and 310 of Law Number 17 of 2023 concerning Health, which provide the legal basis for the legal consequences of medical actions that deviate from standards. Furthermore, Article 1365 of the Civil Code stipulates that any unlawful act that results in harm requires the perpetrator to provide compensation. Meanwhile, in the criminal realm, Article 360 of the Criminal Code Malpractice is a professional practice that is wrong or deviant and violates the law or professional ethics (Lajar, Dewi and Widyantara, 2020).

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Therefore, the legal system is not sufficient to only punish the perpetrator, but also needs to ensure systemic protection for patients and strengthen the accountability mechanisms of the health profession (Guwandi, 2004). In principle, medical malpractice can be understood as a form of non-conformity in health service practices carried out by medical personnel who do not master the knowledge and skills that should be the general standard in their profession.

In addition, malpractice also includes services rendered inappropriately, or services that fall below the applicable service standards. In more serious circumstances, malpractice occurs when medical personnel commit gross negligence, act carelessly, or take actions that should not be taken, even performing medical actions that directly contradict legal provisions applicable.

However, not all medical errors can be categorized as malpractice. In many cases, malpractice lawsuits often fail because in the medical world, there is no guarantee of definitive results for medical procedures performed according to procedure. Therefore, even if a healthcare professional has acted in accordance with established service standards, they cannot necessarily be held legally liable simply because the treatment outcome does not meet the patient's expectations. On the other hand, suspected misdiagnosis or inappropriate treatment can be an initial clue, but it must still be supported by valid legal evidence before it can be concluded as malpractice.

Every healthcare professional is fundamentally legally responsible for all their actions while carrying out their professional duties. If it is proven that a healthcare professional has committed an error or misconduct that causes harm to a patient, they are legally responsible for their actions. To declare malpractice, four essential elements must be proven. First, the healthcare professional's professional obligation to the patient arises from the moment the legal relationship is established. Without this obligation, negligence cannot be considered (Dachban, Sidi, and Saragih, 2023). Fourth, a direct causal relationship is a must, namely a direct link between the actions taken by the healthcare professional and the harm caused to the patient. This element is crucial in determining the legal liability of healthcare professionals in cases of alleged malpractice.

DISCUSSION

Principles of Legal Protection for Patients in Health Services

Legal guarantees for patients in receiving health services reflect respect for human rights values, especially the right to obtain a decent standard of health. This right is constitutionally protected through Article 28 paragraph (1) of the 1945 Constitution of the Republic of Indonesia , which states that every individual has the right to a prosperous life , including in aspects of physical and mental health. In the national legal system, patient rights are not only guaranteed by the constitution, but are also further elaborated in various sectoral regulations, including through Law Number 17 of 2023 concerning Health.

Normatively, the principle of legal protection for patients in health services is based on the principles of medical law and ethics, namely (Heriani and Munajah, 2019): Number 44 of 2009 concerning Hospitals, and Law Number 29 of 2004 concerning Medical Practice. At the international level, the guarantee of the right to health is also recognized in the Universal Declaration of Human Rights of 1948, which recognizes health as an inseparable part of the basic rights of every human being that must be respected by the state and its legal system (Hidayat, 2016).

1. Principle of Non-Maleficence (Doing No Harm)

   Healthcare workers are prohibited from engaging in actions that endanger, harm, or leave patients in conditions that worsen their health. This principle is reflected in the requirement for medical personnel to work in accordance with Standard Operating Procedures (SOPs) and a professional code of ethics. Violation of this principle is a gateway to malpractice, where the patient's right to be protected from harm is the primary basis for legal liability.

2. Principle of Beneficence (Acting for the Good of the Patient)

   Healthcare services must be non-discriminatory and prioritize the medical interests and safety of patients. This principle requires medical personnel to provide the best interventions based on their competence and the patient's condition, prioritizing promotive, preventive, curative, and rehabilitative measures that are integrated professionally and ethically

3. Principle of Justice

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4. Principle of Autonomy (Right to Determine Your Own Fate)

   This principle emphasizes the importance of informed consent, namely the patient's right to accept or refuse medical treatment after being given complete information regarding it. diagnosis, procedures, risks, benefits, and available alternative treatments. Article 293 of Law No. 17 of 2023 and Article 52 of Law No. 29 of 2004 require health workers to obtain verbal or written consent from patients before performing medical procedures, especially high-risk procedures.

5. Principle of Accountability

   Every medical action must be accounted for professionally, ethically, and legally. If a loss occurs due to negligence or error by a healthcare professional, the patient has the right to claim compensation as stipulated in Article 58 of Law No. 36 of 2009 (now expanded in Law No. 17 of 2023). This principle also emphasizes that hospitals as institutions have legal responsibility for the actions of medical personnel under their supervision, as stated in Article 46 of Law No. 44 of 2009.

An addition to the principles mentioned above, the legal protection of patients also encompasses the principles of due care, transparency, and affordability. In practice, these principles aim to establish a symmetrical relationship between patients and medical personnel, preventing patients from being

placed in a subordinate position, passively receiving medical treatment without the right to question, refuse, or assert their rights.

Law No. 17 of 2023 concerning Health outlines patient rights recognized and guaranteed by national law and universal human rights principles. These rights embody the principles of justice, human dignity, and the guarantee of health protection as a fundamental right of every citizen. One of the fundamental rights of patients is the right to information.

Every patient has the right to clear and complete information about their health condition, diagnosis, alternative medical procedures, the risks and benefits of procedures, and the possible outcomes of treatment. This right is closely related to the principle of informed consent, which is the right to approve or reject a medical procedure after being provided with adequate information. Article 293 of Law No. 17 of 2023 states that healthcare professionals are required to obtain patient consent, either verbally or in writing, before performing medical procedures, particularly those with high risks (Nurnanei and Bachri, 2024).

Patients also have the right to receive appropriate and quality care in accordance with their medical needs and professional standards. This includes the right to be treated with respect, without discrimination based on social status, religion, race, or economic background. Article 276 of Law No. 17 of 2023 affirms that patients have the right to receive care in accordance with established professional standards and operational procedures. In addition to the principles mentioned above, the legal protection of patients also encompasses the principles of due care, transparency, and affordability. In practice, these principles aim to establish a symmetrical relationship between patients and medical personnel, preventing patients from being placed in a subordinate position, passively receiving medical treatment without the right to question, refuse, or assert their rights.

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Patients also have the right to obtain a second opinion from another healthcare professional if they are unsure about a diagnosis or proposed medical treatment. This right allows patients to make informed and informed medical decisions. Furthermore, patients have the right to access their personal medical records, as stipulated in Article 276(e) of the Health Law. This access is essential to ensure transparency and accountability in healthcare practices.

In an emergency, patients have the right to receive first aid without being hampered by administrative procedures, and hospitals may not refuse patients on the grounds of financial inability. Refusing to treat a patient in an emergency is a serious violation and may result in criminal sanctions under Article 438 of Law No. 17 of 2023. Therefore, recognizing patient rights is not only Violations of this right can be considered a form of unlawful act that has implications for the legal responsibility of health workers or health service institutions.

Another important right is the right to medical confidentiality, which requires healthcare professionals to maintain the confidentiality of all information related to a patient's health condition, except with the patient's consent or under certain circumstances stipulated by law. This right is based on ethical and legal principles regarding privacy and personal data protection, and is reinforced by the provisions of Article 274 of the Health Law. Violations of this confidentiality can result in legal sanctions, including administrative, civil, and criminal, depending on the consequences Patients also have the right to obtain a second opinion from another healthcare professional if they are unsure about a

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a serious violation and may result in criminal sanctions under Article 438 of Law No. 17 of 2023. Therefore, recognizing patient rights is not only. normative aspects, but rather reflects the responsibility of the state and the medical profession in ensuring legal and ethical protection in health services.

Forms of Legal Protection for Patients in Health Law in Indonesia

Legal protection for patients is an essential component of the healthcare system, aimed at guaranteeing patients' rights against potential violations, negligence, or deliberate acts committed by medical personnel. When deviations occur in medical practice, legal protection can be provided through three main channels: criminal, civil, and administrative, depending on the nature and legal consequences of the actions taken. Legal protection in the criminal field is intended to provide sanctions for the actions of medical personnel proven to have committed errors or negligence that result in serious consequences such as serious injury or death to patients. In this regard, the provisions of Articles 359 and 360 of the Criminal Code (KUHP) are often used.

Article 359 states that a person whose negligence causes the death of another person can be subject to a maximum of five years in prison, while Article 360 concerns negligence that causes serious injury. In addition to the Criminal Code, Article 440 of Law No. 17 of 2023 concerning Health also regulates criminal sanctions against health workers who are proven to have been negligent and caused serious injury or death to patients. In fact, refusing first aid to emergency patients is now classified as a criminal offense punishable by imprisonment, as stipulated in Article 438 of the same law. This criminal protection is repressive and aimed at providing a deterrent effect and upholding substantive justice for victims of malpractice.

In civil law, patients as victims of malpractice can file a lawsuit for compensation on the basis of breach of contract or unlawful acts (onrechtmatige daad). This lawsuit is usually directed at medical personnel personally or at health care institutions, such as hospitals, which are vicarious responsible for the actions of medical personnel under their supervision. The normative basis for this civil legal protection is found in Article 1365 of the Civil Code (regarding unlawful acts), Article 1366 (regarding negligence), and Article 1367 paragraph (3) (regarding responsibility for the actions of others in an employment relationship). In addition, Article 1239 of the Civil Code can be used if there is a violation of the therapeutic agreement between the patient and the doctor. The forms of compensation that can be requested include material and immaterial compensation, including the costs of further treatment, loss of income, and psychological suffering due to incorrect medical actions.

Administrative legal protection involves sanctions or corrective actions against healthcare workers through ethical oversight mechanisms and professional discipline. These procedures are regulated in Law No. 29 of 2004 concerning Medical Practice and Law No. 17 of 2023 concerning Health, specifically through institutions such as the Indonesian Medical Disciplinary Honorary Council (MKDKI) and the Indonesian Medical Council (KKI). According to Article 306 of the Health Law, violations of professional standards can be subject to administrative sanctions, ranging from written warnings, mandatory training, temporary deactivation of Registration Certificates (STR), to recommendations for revocation of practice permits. Meanwhile, Articles 305 and 308 stipulate that if the violation results in harm to patients, it can be used as the basis for recommendations to the medical realm. criminal and civil law. This administrative protection is more corrective and preventive in nature, to maintain the integrity and quality of health services as a whole.

CONCLUSION

Legal protection for patients can be achieved through three main channels: criminal, civil, and administrative. The criminal channel imposes sanctions for serious errors or negligence that result in injury or death; the civil channel serves to provide compensation to victims; while the administrative channel aims to enforce professional standards and discipline in medical practice. All three have distinct but complementary functions in ensuring justice and legal protection for patients.

The rights of patients as legal subjects in healthcare services have been normatively regulated in various regulations, including the right to information, the right to consent to or refuse medical treatment, the right to fair treatment, the right to medical confidentiality, and the right to compensation for losses suffered due to medical negligence. Enforcing these rights embodies important principles of healthcare law, such as non-maleficence, beneficence, justice, autonomy, and accountability, which serve as the ethical and legal foundations for all medical services. Legal protection for patients can be achieved through three main channels: criminal, civil, and administrative.

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Conflict of Interest

All authors state that there is no conflict of interest.

Use of artificial intelligence (AI)

The authors declare that the generative artificial intelligence (AI) tool [name of the tool] was used exclusively for language editing and/or grammatical improvement. The use of AI did not influence the scientific content, study design, data analysis, data interpretation, results, or conclusions of the manuscript. Full responsibility for the content remains with the authors.

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