

CRIMINAL LEGAL PROTECTION AGAINST DOCTORS ALLEGEDLY COMMITTING MEDICAL MALPRACTICE POST THE ENFORCEMENT OF LAW NO 17 OF 2023 CONCERNING HEALTH

Rian Robian¹; Imas Rosidawati Wiradirja²; Syahrul Machmud³

Master of Laws at Langlangbuana University^{1,2,3}

Email : rianrobian.rr@gmail.com

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ABSTRACT

This research analyzes procedures and criteria to determine whether medical malpractice should be handled criminally and criminal law protection for doctors after the enactment of Law no. 17 of 2023 concerning Health. The research method uses normative juridical analysis, with literature study research to collect and analyze data from statutory regulations, court decisions, and doctrinal approaches in criminal law and medicine. The research results show that medical malpractice actions do not always have to be criminal cases, but require careful consideration of evidence, medical standards, and the patient's interests. Restorative justice can be used to restore relationships between doctors, patients and the community in resolving medical disputes. Doctors can be given legal protection from potential malpractice claims through mechanisms such as Informed Consent, medical records, as well as medical reasons such as medical risks or accidents. This emphasizes the importance of adhering to legal and ethical principles in the practice of medicine to protect physicians from undesirable legal consequences.

INTRODUCTION

“Health is a very important aspect of human life. Health is considered a right for every individual, known as *the right of self-determination*, which must be realized through the provision of health services. Every individual has the hope of better health and quality in living their life. In the context of the state, health is the right of every citizen, as stated in Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia that: "every person has the right to live in prosperity physically and mentally, to live in and to have a good and healthy living environment and the right to receive health services.

The above article is part of the constitutional mandate that must be carried out by the government. This article is also in line with the statement in the 1945 Constitution of the Republic of Indonesia, especially in the fourth paragraph: "that the state protects the entire nation and all of Indonesia's blood, promotes general welfare, makes the life of the nation intelligent and participates in implementing world order based on independence, lasting peace and social justice." This constitutional mandate is the state's effort to provide a prosperous life in various aspects, including health aspects.

To achieve public health as explained by WHO, good and quality health efforts/services are needed by the government. Article 1 paragraph 3 of Law No. 17 of 2023 concerning health, hereinafter referred to as the Health Law, states that health services are all forms of activities and/or a series of activities carried out in an integrated and sustainable manner to maintain and improve the level of public health in a promotive, preventive, curative, rehabilitative, and/or palliative.

Doctors have an important role in providing health services. The medical profession is a very noble and honorable profession. There is a lot of hope that depends on doctors as people who strive to provide healing services for patients suffering from illness. The existence of doctors

in principle helps make society healthy through their knowledge and experience. This knowledge and experience is the basis for doctors in diagnosing patient illnesses, it is hoped that the diagnosis results will be close to the truth and will have an effect on the patient's recovery.

The relationship between doctors and patients is an important aspect in realizing public health. This relationship is much more than just a meeting between a health care provider *and* a health recipient . It covers complex ethical, moral and legal aspects. A good relationship between a doctor and patient not only allows for the effective exchange of information and shared decision making, but also creates an environment that allows the patient to feel heard, respected, and emotionally understood. The legal aspect of this relationship provides a framework that regulates the rights and obligations of doctors and patients in the context of health services. This includes the patient's right to obtain clear information about diagnosis and treatment, the right to provide valid informed consent, as well as the right to obtain compensation if any medical practice is deemed to violate standards or cause injury.

One of the major challenges faced in the doctor-patient relationship is allegations of medical malpractice. Medical malpractice refers to medical procedures that are deemed not to meet expected standards and can cause injury or harm to the patient. In other words, medical malpractice occurs when medical actions carried out by doctors are deemed not to meet the expected standards, whether in diagnosis, treatment or patient management, and the results can cause injury or loss to the patient. According to Syahrul, if a doctor has carried out his duties in accordance with professional standards and applicable Standard Operating Procedures (SOP), and the results have not provided a cure / vice versa, then this is more accurately referred to as a medical risk. This opinion is in line with the fact that every profession is always accompanied by professional risks, and this is part of the provisions/nature and precepts of Allah which are difficult to avoid. However, this risk is often called *medical malpractice* by parties outside the medical profession.

Empirically, lawsuits against doctors suspected of committing malpractice are increasing from year to year. According to SG Wibisono, from 2006 to 2012, there were 182 cases of malpractice or medical negligence proven to have been committed by doctors in Indonesia. Data on the Supreme Court (MA) Decision Directory page shows 70 data on malpractice cases that have been tried in a certain period of time. In addition, from 2006 to 2015, there were 317 cases of malpractice reported to the Indonesian Medical Council (KKI). However, until now, namely from 2016 to 2023, malpractice cases still occur frequently in Indonesia and tend to be quite high.

The case of a doctor being punished due to malpractice is the case of Dr. Bambang Suprpto was sentenced to 1.5 years at the cassation level in 2014. This sentence was imposed because Dr. Bambang left suture threads in his patient's stomach after surgery to remove the tumor and connect the intestines, which caused the patient's death, and because he only had a license to practice at home and not at DKT Madiun Hospital. The case of Dr. Dewa Ayu Sasiary Prawani. This case involved three doctors, namely Dr. Dewa Ayu Sasiary Prawani, dr. Hendry Simanjuntak, and dr. Hendy Siagian, who was accused of malpractice in handling a cesarean birth which resulted in the patient's death. The case began when the three doctors were involved in a cesarean operation to deliver a patient named Julia Siska Makatey. Even though the Cassation decision initially declared Dr. Dr. guilty and imposed criminal sanctions with sentences of 10 months each. Ayu, Dr. Hendry Simanjuntak and Dr. Hendy Siagian, but Judicial Review Decision (PK) No.79 PK/PID/2013 then granted the request and canceled the previous Cassation decision.

Quite a high number of malpractice cases also occur in several countries such as America. From 2010 to 2020 approximately 15,000 to 18,000 lawsuits were filed annually alleging medical malpractice or negligence. Misdiagnosis is a leading cause of medical malpractice charges , and more than 100,000 Americans are estimated to die or be permanently disabled each year due to misdiagnosis. More than a third, or 34%, of American doctors have been sued for medical malpractice, and nearly half of them have faced two or more lawsuits, according to an American Medical Association survey . Other data shows that malpractice cases have become the 3rd cause of death for Americans from 2014 to the present / 2023. Also what happens in Japan, Singapore, Hong Kong is that the demands on doctors are quite high every year.

The above malpractice cases are a source of concern for doctors because of the risk of serious legal consequences, even criminal proceedings. Dr. Setianingrum is one of the doctors who

was traumatized and no longer wants to practice medicine. The court stated that Dr. Setianingrum was guilty and given a criminal sentence of 3 months and probation for 10 months. The case of Dr. Setianingrum and other cases highlight the importance of legal protection for medical professionals in carrying out their duties. This case shows that doctors are also vulnerable to legal action that has the potential to damage their reputation, career and personal well-being.

Strong legal protections are needed to ensure that physicians have access to a fair and transparent system for handling claims or allegations related to medical practice. The process of resolving malpractice disputes until they enter criminal proceedings makes doctors carry out their duties more carefully, but behind this it is a cause for doctors who feel deep concern.

Legal protection itself, according to Philipus M. Hadjon, is a form of protection given to legal subjects through legal instruments, both preventive (prevention) and repressive (actions after they occur), and can be written or unwritten. In the health context, doctors are part of the legal objects that must be protected by law. They have rights and obligations regulated by the legal framework applicable in the health system.

Every individual, including doctors, has the right to be treated fairly before the law, and to receive equal guarantees and protection. This legal protection is not only important for patients who receive health services, but also for doctors who provide these services. Legal protection for doctors is part of their rights to carry out their medical duties with clear medical indications and in accordance with applicable medical professional standards. This aims to prevent unfounded accusations of medical malpractice. When there is a deviation from the standards of the medical profession, the determination of whether it constitutes negligence or not must be based on casuistry facts that are considered by experts and expert witnesses, not just the negative consequences that arise for the patient.

In 2023, Indonesia will make major changes to the health legal framework by implementing Health Law No. 17 of 2023. This step is an important milestone in strengthening the protection of people's health rights and improving the quality standards of health services in this country. This significant legal change brings a paradigm shift in criminal law protection for doctors suspected of committing medical malpractice. The law had far-reaching impacts on medical practice and the legal procedures governing malpractice cases. This change creates new challenges in the legal system, both criminal, civil and administrative, especially in ensuring that doctors involved in allegations of medical malpractice receive fair treatment.

In the context of criminal law, accusations of malpractice against a doctor mean that the doctor is accused of negligence or actions that are not in accordance with applicable medical standards, which then results in injury or death to the patient. This is a serious criminal offense and may result in criminal consequences for the doctor, such as a fine or imprisonment.

Meanwhile, in the context of civil law, a malpractice accusation against a doctor means that the doctor is considered civilly responsible for his negligent actions which result in harm to the patient, such as additional medical costs, financial losses, or even emotional losses. In this case, the patient or his family can file a civil lawsuit to obtain compensation for the losses suffered.

On the other hand, in the context of administrative law, accusations of malpractice against a doctor may lead to disciplinary or supervisory proceedings carried out by an institution or administrative body authorized to regulate medical practice, such as a medical board or local health agency. This process usually involves an investigation into alleged violations of ethics or medical professional standards by the doctor, and can result in administrative sanctions such as revocation of a medical license or prohibition from practice.

A comprehensive analysis is needed to understand how the Health Law regulates forms of legal protection for doctors in the context of suspected medical malpractice. To sharpen the focus of analysis so that the aspects analyzed are not too broad, this research will only focus on analyzing forms of legal protection for criminal aspects. A deeper understanding of the implications of these regulatory changes will provide valuable insight in evaluating the effectiveness of new laws in achieving the objectives of legal protection especially for doctors, and at the same time can identify areas where the health legal system can be improved or strengthened.

RESEARCH METHODS

The research method uses a normative juridical approach, focusing on analyzing legal norms using secondary data which includes primary, secondary and tertiary data. The research specification is analytical descriptive, comparing facts with positive legal theories. The research stage includes the use of secondary data from various legal sources. The data collection technique is library data collection, involving exploration and analysis of relevant library materials. Data analysis was carried out using a descriptive approach through documentary studies to ensure synchronization of the data used.

RESULTS AND DISCUSSION

Criteria for Determining Whether Every Act of Medical Malpractice by a Doctor Should Be Drawn to the Domain of Criminal Law

As a country of law, Indonesia confirms its commitment through Article 1 paragraph (3) of the 1945 Constitution which states that Indonesia is a country of law. This reflects the principle that all activities, including government and citizen actions, must be within the limits regulated by applicable law. The main aim is to ensure that the rights and obligations of each individual are fulfilled and protected, as well as to ensure that the state can supervise and protect the interests of society as a whole.

Health practice, as an important activity in society, is also subject to applicable laws and regulations, especially Law No. 17 of 2023 concerning Health as well as the Criminal Code. In this context, medical disputes such as cases of alleged malpractice are serious issues that must be handled in accordance with applicable law. The principle of the rule of law guarantees that any dispute or violation of the law in health practice will be handled fairly, transparently and based on existing legal certainty.

In resolving medical disputes, it is important to follow applicable legal procedures and ensure that all parties involved receive fair and equitable treatment. It involves careful investigation, accurate evidence collection, and objective court proceedings. Thus, the principle of the rule of law becomes a strong basis for handling medical dispute cases, including allegations of malpractice, by maintaining justice, continuity of law, and protection of individual rights.

The determination of whether a medical malpractice action should be drawn into the realm of criminal law or not must be considered carefully. This is because the medical nature of many malpractice cases requires expert judgment and deep ethical considerations. Some malpractice cases may be resolved through civil litigation or professional discipline, while other cases involving extreme negligence or clearly unlawful conduct may require criminal treatment.

Before discussing further, it is important to first define the meaning of malpractice. Basically, the big Indonesian dictionary only recognizes the term "malpractice" which means medical practice that is wrong, inappropriate, and violates the law or code of ethics. However, the term often used in various literature is "malpractice" rather than "malpractice," so that in this study the term used is malpractice which has the same meaning as in the large Indonesian dictionary.

Medical malpractice refers to medical actions or practices that are wrong, inappropriate, or not in accordance with professional standards, standard operating procedures, and established medical service standards. The impact of this malpractice action can potentially cause harm or negative impacts on patients or health service recipients. This term covers a wide range of situations, including negligence in the diagnosis or treatment of disease, failure to provide appropriate care, or unethical behavior by health practitioners, especially doctors.

A doctor can be said to have committed malpractice if several of the following elements are present in his practice, such as:

1. Doctors lack of mastery of medical science and technology: This refers to a situation where doctors do not have sufficient understanding or skills in medical science that is generally accepted among the medical profession. This lack of understanding or skills can result in incorrect diagnosis, ineffective treatment, or treatment that does not meet medical standards.
2. Providing services below professional standards: This occurs when doctors provide medical services that do not comply with the standards set in the medical profession. These standards

- cover generally accepted medical procedures, professional ethics, and applicable health policies. Doctors who do not adhere to these standards may risk causing harm or harm to patients.
3. Negligent or imprudent: This includes the actions of a doctor who does not pay close attention or does not comply with established medical procedures. This negligence or lack of caution may result in errors in diagnosis, treatment, or patient care, which in turn may result in harm or harm to the patient.
 4. Carrying out medical procedures that are contrary to the law: This occurs when a doctor performs medical procedures that violate applicable laws or regulations. For example, doctors who practice medicine without a valid license or violate patient rights such as medical privacy. Medical procedures that are contrary to the law can potentially harm the patient and harm the professionalism of the doctor.

Basically, the presence of one or more of these elements in a doctor's practice can be a basis for assessing whether the doctor has committed malpractice. On the other hand, if the above elements are not present, or the doctor has carried out services in accordance with applicable standards, is not negligent, has not carried out actions that are contrary to the law, then the doctor carrying out his actions is not referred to as an act of *medical malpractice*.

According to the theory developed by Peters, quoted by Syahrul, there are four main criteria for classifying a doctor's actions as a form of malpractice. First, when a doctor does not fulfill his obligations or duties *by* not providing services in accordance with applicable standards. Second, the doctor violated his obligations (*breach of duty*) *by* carrying out actions that deviated from the established standards. Third, there is a direct causal relationship *between* the doctor's actions and the loss (death or injury) experienced by the patient. Fourth, the loss that is the basis for a lawsuit must be significant (*damage*), such as death or loss that is very detrimental to the patient. This is in accordance with the legal principle of *de minimis non curat lex* which emphasizes that the law will not interfere with/pay attention to matters that are considered trivial or insignificant.

Basically, every act that meets the criminal elements can be classified as a criminal act. The concept of a criminal act cannot be separated from criminal responsibility. This means that every person who commits a criminal act must be responsible and punished in accordance with applicable law. Criminal liability occurs when there is an objective and subjective error or reproach (*vemijtbaarheid*) *from the perpetrator of the criminal act*. Based on the principle of legality and the principle of error, a person can only be punished if he is proven guilty of committing a criminal act. To hold someone legally responsible, there needs to be an element of intent or error and the absence of a reason that can erase or justify the error. Thus, a person's criminal liability in criminal cases, including in the medical field, is determined by the existence of proven guilt. If the alleged malpractice is proven to have been committed by the doctor, the law must be enforced.

Article 359 of the Criminal Code (KUHP) regulates criminal penalties for someone who, through their fault or negligence, causes another person to die. This article stipulates that a person who commits an action that results in the death of another person due to negligence or negligence can be subject to a maximum imprisonment of five years or a maximum imprisonment of one year. The article reads: "Whoever, through his fault (negligence) causes another person to die, is threatened with imprisonment for a maximum of five years or imprisonment for a maximum of one year."

The above article can be a legal basis for prosecuting doctors who negligently or negligently cause the death of a patient. If a doctor is found guilty of malpractice that results in the death of a patient, the doctor can be subject to imprisonment or imprisonment in accordance with the provisions stipulated in Article 359 of the Criminal Code.

In the context of Article 359 of the Criminal Code, there are three additional elements which are details of the sentence "causing another person to die", namely:

1. There must be a specific form of action: This element emphasizes that the action or deed carried out by the perpetrator must have a form or form that can be concretely identified. In the context of medical malpractice, certain acts may include errors in the diagnosis, treatment, or care of a patient.

2. There is a consequence in the form of death: This element shows that the consequence of the action is someone's death. In medical malpractice cases, the outcome of the patient's death is an important factor in determining whether the doctor can be held responsible for his actions.
3. The existence of a *causal verband* between the form of action and the result of death: This element refers to the causal relationship that exists between the action carried out by the perpetrator and the result of death that occurs. This means that the actions carried out by the perpetrator must directly or indirectly cause the death of the victim.

Furthermore, Article 360 of the Criminal Code stipulates criminal sanctions for perpetrators who, due to their negligence or negligence, cause other people to suffer injuries, whether in the form of serious injuries or injuries that cause illness or obstacles in carrying out certain activities. This article regulates negligence that results in injury, which is divided into two parts:

1. When negligence causes another person to suffer serious injuries, the perpetrator is threatened with imprisonment for a maximum of five years or imprisonment for a maximum of one year.
2. When negligence causes injury to another person in such a way as to cause illness or impediment to carry out official work or search for a certain period of time, the perpetrator is threatened with a maximum imprisonment of nine months, a maximum imprisonment of six months, or a maximum fine of four thousand five hundred. rupiah.

It can be concluded that, if the doctor's actions are proven to be carried out with services that are not in accordance with applicable standards, deviate from obligations, are negligent, and result in losses such as death or serious injury to the patient, then the action can be classified as an act of medical malpractice which falls under criminal category.

However, it should be noted that not every allegation of medical malpractice must always be drawn into the realm of criminal law. Because the case depends on the context of the case that occurred. If every allegation of malpractice is then drawn into the realm of criminal law without considering the specific context and circumstances, this can have a negative impact on medical practice as a whole. Therefore, law enforcement in medical malpractice cases must be carried out wisely, taking into account various factors such as sufficient evidence, applicable medical standards, and the interests and needs of patients. Moreover, in some cases, settlement through mediation or through administrative processes can be a more suitable alternative to resolve disputes between doctors and patients without having to involve the criminal justice process.

Handling medical malpractice cases must pay attention to the principles of justice, taking sides with the interests of patients, and ensuring that doctors are responsible for their actions in accordance with applicable ethical and legal standards. In addition, legal protection must also be provided to doctors in an appropriate and fair context, so that it does not hinder responsible and quality medical practice. Article 305 and Article 306 of the Health Law regulate provisions regarding complaint procedures and disciplinary sanctions against medical personnel or health workers. Article 305 explains that patients or their families who feel disadvantaged by the actions of medical personnel or health workers in providing health services have the right to complain about this matter to the panel as regulated in Article 304. The complaint submitted must at least include the identity of the complainant, information about the medical worker or staff health involved, as well as the reasons for the complaint.

Article 306 contains two provisions regarding sanctions given, *first*: Disciplinary violations by medical personnel or health workers may be subject to disciplinary sanctions such as written warnings, the obligation to attend education or training in the health sector, temporary deactivation of the STR (Registration Certificate), or recommendation for revocation of the SIP (Practicing Permit). The results of examinations and sanctions imposed on medical personnel or health workers are binding. *Second*: if there are allegations of criminal acts against medical personnel or health workers who have been subject to disciplinary sanctions, law enforcement officials are given priority to resolve disputes using restorative justice mechanisms in accordance with statutory provisions. The *restorative* justice approach can be interpreted as a case resolution carried out outside the court, and places greater emphasis on restoring damaged relationships between the perpetrator, victim and society. Several concepts related to restorative justice, such as "*victim*

awareness work”, highlight the importance of better understanding the impact on victims by the offense or crime committed.

It can be concluded from the description above that allegations of malpractice against doctors must be based on clear evidence. It is important to distinguish between malpractice and medical risks. If the existing evidence shows that the doctor was proven negligent which resulted in harm to the patient, then the resolution is carried out using a restorative justice settlement model or settlement outside of court. This means that not every act of medical malpractice by a doctor must be drawn into the realm of criminal law. Although a doctor's actions can be classified as malpractice if they do not meet applicable standards, are negligent, and result in significant harm to the patient, treatment does not always have to involve criminal legal proceedings.

Law enforcement in medical malpractice cases must be carried out wisely, taking into account the context of the case, the interests of the patient, and applicable medical standards. There are alternative solutions such as mediation or administrative processes which can be more appropriate options without having to involve the criminal justice process. The Health Law also provides a complaint mechanism and disciplinary sanctions against medical personnel, and prioritizes dispute resolution using a restorative justice approach, which emphasizes restoring damaged relationships between perpetrators, victims and the community.

Forms of Legal Protection for Doctors Suspected of Committing Medical Malpractice

In principle, legal protection is an integral concept in the legal system which aims to protect the rights, security, interests and welfare of individuals or groups. It includes both preventive and repressive functions, serving as a refuge for all entities. The preventive function in legal protection refers to efforts to prevent legal violations or detrimental actions before they occur. Meanwhile, the repressive function in legal protection refers to efforts to respond to legal violations or detrimental actions that have occurred by imposing sanctions or law enforcement actions.

As part of the characteristics of a legal state, legal protection is an important aspect in national and state life. In the context of health/medical services provided by medical personnel such as doctors are part of an entity that cannot be separated from legal protection. Both individuals and groups have the right to legal protection.

Article 28 D paragraph 1 of the 1945 Constitution emphasizes the basic rights of every individual to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law. The article states that the rights of Indonesian citizens include: "the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law." This means that every citizen has the right to be legally recognized, to receive guarantees of protection from the law, and to enjoy a fair legal process without discrimination.

In the context of legal protection for doctors suspected of committing medical malpractice, this article emphasizes that these doctors also have the right to fair legal protection. This means that the doctor has the right to be processed in accordance with applicable legal procedures, given the opportunity to defend himself, and not be punished without sufficient evidence. Apart from that, doctors also have the right to equal treatment before the law, which means that medical malpractice cases must be handled without discrimination or unfair treatment.

Allegations of malpractice against doctors are a complex situation where doctors, even though they have carried out their practices well and correctly, can be involved in legal proceedings as a result of medical risks that occur to patients. On the one hand, doctors strive to provide the best health services to patients, but on the other hand, if adverse consequences occur to the patient, the patient's right to file lawsuits and lawsuits must be respected.

However, according to Michelle's research, in such legal proceedings, there is the potential for doctors to become victims of unscrupulous lawyers who see an opportunity to gain material benefit from the situation. Doctors can be caught in a situation where they have to defend their reputation and good name through a long and tedious legal process, even if they had no intention of doing anything wrong.

Legal protection for medical personnel such as doctors is protected by Law No. 17 of 2023 concerning health. Doctors who have provided medical services in accordance with professional standards, medical service standards and standard operational procedures have the right to obtain

legal protection. This is in accordance with Article 273 paragraph (1) letters a, d, and f which states that medical personnel, in this case doctors/dentists, in carrying out their practice have the right to:

1. Point a states: "obtain legal protection as long as you carry out your duties in accordance with professional standards, professional service standards, standard operational procedures and professional ethics, as well as patient health needs."
2. Point d states: "obtain protection for safety, occupational health and security."
3. Point f states: "get protection from treatment that is not in accordance with human dignity, morals, decency and socio-cultural values."

Based on Article 273 above, doctors are given sufficient legal protection for doctors in carrying out their medical practices in accordance with established professional standards and ethics. This law also regulates the enforcement of discipline among medical personnel to ensure legal protection for doctors. Article 304 states:

1. In order to support the professionalism of medical personnel and health workers, it is necessary to enforce professional discipline.
2. In the context of enforcing professional discipline as intended in paragraph (1), the Minister forms a council to carry out duties in the field of professional discipline.
3. The assembly as intended in paragraph (21) determines whether there are violations of professional discipline committed by medical personnel and health workers.
4. The assembly as intended in paragraph (2) can be permanent or *ad hoc*.
5. Further provisions regarding the duties and functions of the assembly as intended in paragraph (2) are regulated by Government Regulations.

Article 302 paragraphs 1-3 also provides legal protection to doctors that medical personnel and health workers who know or have reason to suspect that there has been a criminal act committed by a patient who is receiving health services have the right to report it to law enforcement officials. Even medical personnel and health workers who report or participate in reporting criminal acts against patients who are receiving health services, as regulated in Article 302, are entitled to legal protection. This aims to ensure that they will not be prosecuted or legally persecuted for carrying out their obligations to report criminal acts.

In the context of criminal law in Indonesia, a doctor can obtain reasons for expunging a criminal sentence. The two bases for eliminating mistakes are: Justifying Reasons and Forgiving Reasons. Justifying reasons refer to situations where the doctor's actions are considered legal and do not violate the law because they are carried out within the correct legal corridors as contained in Article 49 paragraph (1), Article 50 and Article 51 paragraph (1) of the Criminal Code. This removes the unlawful nature of the act. While reasons excuse even though the doctor's actions may violate the law, there are reasons that can excuse or reduce the nature of the action, such as circumstances that reduce responsibility, the doctor's skills, or certain circumstances that influence the action, this is as stated in Article 44, Article 48, and Article 49 paragraph (2) of the Criminal Code.

Apart from that, in medical practice, fulfilling *Informed Consent* and medical records is not only an ethical practice, but also a legal protection for doctors against potential malpractice claims. *Informed Consent* is written proof that a patient has given informed consent to receive a particular medical treatment or procedure. In the event of suspected malpractice, the doctor can use the *Informed Consent form* that has been signed by the patient as proof that the patient has been given adequate information about the risks, benefits and available treatment alternatives. In this way, doctors can demonstrate that their actions were based on the patient's informed consent, which can reduce the likelihood of lawsuits.

The medical record is a complete record of the care and treatment given to the patient. In cases of suspected malpractice, medical records can be used as evidence that the doctor has provided treatment in accordance with applicable medical standards. Detailed and accurate medical records can help doctors prove that they have performed a proper evaluation, made the correct diagnosis, and provided appropriate treatment based on the patient's condition. This evidence can be an important factor in defending a doctor against unwarranted lawsuits.

In addition to *informed consent* and medical records, there are situations where doctors can be exempt from lawsuits based on certain medical reasons such as medical risks. Medical risks are

often referred to as medical accidents. Medical risk refers to the possibility of an undesirable outcome or complication occurring as a consequence of a medical procedure performed by a doctor. Even though the doctor has provided care in accordance with accepted medical standards and has informed the patient of the risks associated with the procedure, there are situations in which complications or poor outcomes can still occur. In some cases, if a lawsuit is filed against a doctor because of these adverse outcomes, the physician may use the concept of medical risk as a defense to prove that they took reasonable medical action and should not be held responsible for the adverse outcome.

CONCLUSIONS AND RECOMMENDATIONS

Based on the results of the analysis in the previous chapter, the conclusions of this thesis are as follows :

First: Not every act of medical malpractice by a doctor must be drawn into the realm of criminal law. As a country of law, Indonesia emphasizes its commitment to resolving medical disputes fairly and based on applicable law. To determine whether an action of malpractice should be elevated to the criminal level, various factors need to be carefully considered such as sufficient evidence, applicable medical standards, and the interests of the patient. Doctors can be considered to have committed malpractice if it is proven that they did not fulfill their obligations or duties, violated professional standards, were negligent, or carried out medical procedures that were contrary to the law. However, in some cases, settlement through mediation or through administrative processes can be a more suitable alternative without having to involve the criminal justice process. Apart from that, a restorative justice approach can also be used to restore relationships between doctors, patients and the community in resolving medical disputes.

Second: Doctors can be given legal protection from potential malpractice claims through several mechanisms, including Informed Consent, medical records, and certain medical reasons such as medical risks or medical accidents. Doctors have the right to fair and equal legal protection before the law, as guaranteed by the law and the principles of the rule of law. In the context of criminal law in Indonesia, doctors can also obtain criminal expunging reasons such as justifying reasons or forgiving reasons in several situations. This shows the importance of complying with legal and ethical principles in medical practice to protect doctors from undesirable legal consequences.

Some suggestions that can be proposed include the following: *First*, the need for careful consideration in handling medical malpractice cases, by carefully evaluating the evidence and considering the interests of the patient. *Second*, the promotion of alternative solutions such as mediation can improve the relationship between doctors and patients and avoid the costs of criminal justice. *Third*, the government should immediately issue implementing regulations for the Health Law to strengthen law enforcement in the field of health services in Indonesia.

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