

## ANALYSIS OF MALPRACTICE CRIMINAL ACTS COMMITTED BY NURSES FROM A HEALTH LAW PERSPECTIVE

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### Abstract

*Malpractice is a significant issue in the health sector, where errors or negligence committed by medical personnel can cause serious harm to patients. In the context of Indonesian law, malpractice not only harms patients physically, but also has major legal implications. This analysis aims to examine the legal aspects and accountability related to criminal acts of malpractice in health law in Indonesia. Through this study, various laws and regulations governing medical practice, Law Number 17 of 2023 concerning Health, and the Criminal Code (KUHP), as well as administrative regulations governing the ethics and discipline of health workers are described. Malpractice liability can be categorized into three main forms: criminal, civil, and administrative. Criminally, medical personnel can be prosecuted if proven to have committed negligence that causes death or serious injury, in accordance with the articles in the Criminal Code. In the civil realm, patients who are harmed have the right to claim compensation through a lawsuit for unlawful acts (PMH). Meanwhile, administrative sanctions can be imposed by the relevant agencies if violations of professional standards and codes of ethics are found. This study concludes that legal regulations in Indonesia provide a clear framework for handling medical malpractice cases, although there is still a need to strengthen the legal protection mechanism for patients and more consistent law enforcement. Legal liability in malpractice cases includes preventive and repressive aspects, with the aim of providing justice for the injured party and maintaining the integrity of the medical profession.*

**Keywords:** *Malpractice, health law, liability, criminal, civil, administrative.*

### A. INTRODUCTION

Malpractice is one of the most crucial issues in health care, because it can have serious impacts on patient safety and the credibility of the medical profession. In the context of health care, every medical worker has an obligation to provide services in accordance with professional standards, laws, and medical ethics. However, there are situations where negligence or actions that are not in accordance with procedures can cause harm to patients, which is then referred to as malpractice. The issue of malpractice is not only related to technical errors in medical procedures, but also has an important legal dimension. In Indonesia, various laws and regulations have been implemented to ensure that medical personnel carry out their duties professionally and responsibly.

These regulations also ensure legal protection for patients who are harmed by malpractice. Several cases of malpractice that arise in society often cause public unrest and highlight the importance of clear legal regulations regarding the responsibilities of health workers. The emergence of complaints or demands from patients regarding physical, mental, or financial losses due to malpractice requires proper legal regulations so that the injured party gets justice, and the negligent party gets appropriate sanctions. In the context of criminal law, malpractice that causes death or serious injury can be categorized as a crime. The articles in the Criminal Code (KUHP) provide the basis for law enforcement in this situation. On the other hand, civil law allows patients to claim compensation through a lawsuit mechanism. Liability in malpractice cases is also very complex, involving civil, criminal, and administrative dimensions. In criminal cases, a medical professional can be punished if proven negligent or has made a mistake that causes death or serious injury. Meanwhile, in the civil realm, a patient who has been harmed has the right to file a lawsuit

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to request compensation for the losses suffered. Resolved by the authorized party to impose ethical sanctions on doctors or medical personnel who violate professional standards. The goal is to protect patients from negligent acts and to educate medical and health personnel not to repeat negligent acts. With this background, the analysis of malpractice crimes in health law focuses on how Indonesian law regulates the responsibility of medical personnel in malpractice cases, including the legal mechanisms available to try, punish, and provide justice for victims. The legal and accountability aspects in this context are very important to maintain a balance between protecting patients and ensuring that medical personnel can work within a clear legal corridor.

## **B. FORMULATION OF THE PROBLEM**

1. What are the Legal Aspects of Malpractice by Nurses from a Health Law Perspective?
2. What is the legal responsibility for nurses who commit malpractice?

## **C. RESEARCH METHODS**

### **1. Research methods**

This study uses a normative legal method, which aims to analyze criminal acts of malpractice in health law according to legal and liability aspects. This normative legal approach focuses on the study of laws and regulations governing malpractice and the responsibilities of medical personnel in Indonesia. This method involves analysis of regulations, legal documents, literature, and relevant cases.

### **2. Data source**

- a. **Primary Data:** Legislation, court decisions in malpractice cases, and other legal documents.
- b. **Secondary Data:** Books, journals, and scientific articles that discuss medical malpractice, health law, and legal accountability in Indonesia.

### **3. Data collection technique**

Data collection is done through document study, namely by reviewing laws and regulations, literature, and court decisions. This technique is used to gain a deep understanding of the legal regulations governing malpractice and the application of the law in practice.

### **4. Data analysis**

The data obtained were analyzed qualitatively. Qualitative analysis is used to interpret and evaluate laws and regulations, legal doctrines, and court decisions related to malpractice. This study attempts to identify how legal liability is applied in malpractice cases and the extent of legal protection for patients. With this normative juridical method, this study attempts to provide a comprehensive understanding of the legal aspects and liability in criminal acts of malpractice in Indonesia, as well as offering a critical analysis of the application of health law in protecting patients from malpractice.

## **D. DISCUSSION**

### **1. Legal Aspects of Malpractice by Nurses from a Health Law Perspective**

The legal aspects of malpractice in Indonesia are regulated in several laws and regulations related to the health profession. The following are several laws and regulations governing malpractice in Indonesia:

#### **a. Law Number 17 of 2023 concerning Health**

This law was drafted as an effort to realize inclusive, equitable health services, and encourage technological innovation and more efficient financing. The implementation of this law is expected to improve the quality of life of the community as a whole, by ensuring that every individual can access decent and affordable health services.

**b. Criminal Code (KUHP)**

Articles 359 and 360 of the Criminal Code regulate negligence causing injury or death. In the context of malpractice, if a medical professional is proven to be negligent in providing care resulting in serious injury or death, he or she can be charged with this article.

- 1) Article 359 of the Criminal Code: "Anyone who, due to his mistake (negligence), causes the death of a person, shall be punished by a maximum imprisonment of five years or a maximum imprisonment of one year."
- 2) Article 360 of the Criminal Code: "Anyone who, through his mistake (negligence), causes serious injury to another person, shall be punished by a maximum imprisonment of five years or a maximum imprisonment of one year."

**c. Nursing Code of Ethics**

The nursing code of ethics is a guideline or rule that regulates the behavior, attitude, and professional responsibilities of nurses in carrying out their duties. This code of ethics serves as a moral and professional reference for nurses in providing health services, maintaining relationships with patients, colleagues, and the community. The main purpose of the nursing code of ethics is to ensure that nurses provide safe, humane, fair, and dignified care, by upholding moral principles such as integrity, justice, and patient autonomy. This code of ethics also helps maintain professionalism in the nursing profession, preventing actions that are detrimental to patients or the profession itself, and promoting the quality and standard of health services. In carrying out their duties, nurses are required to always prioritize the welfare and safety of patients, and maintain the confidentiality of information related to patients. In short, the nursing code of ethics is a moral foundation and behavioral guide that must be followed by nurses to ensure ethical and professional health services.

**2. Legal Liability in Malpractice Cases**

Legal liability in cases of malpractice in Indonesia involves several types of responsibilities that can be imposed on medical personnel or health facilities. This liability can be criminal, civil, and administrative, depending on the type of violation or negligence committed. The following is an explanation of the forms of legal liability in cases of malpractice in Indonesia:

**a. Criminal Liability**

Criminal liability is applied if the negligence or actions of medical personnel cause serious harm, such as serious injury or death of the patient, and involve elements of significant error or negligence. Some relevant articles in the Criminal Code (KUHP) include:

- 1) **Article 359 of the Criminal Code:** States that a person who, due to his negligence, causes another person to die can be punished with a maximum prison sentence of five years.
- 2) **Article 360 of the Criminal Code:** Regulates negligence that causes serious injury to another person. The penalty for this violation is a maximum of five years in prison.

If in the investigation process an element of negligence is found that results in death or serious injury, medical personnel can be threatened with criminal penalties. Examples of malpractice cases that can be subject to criminal sanctions include operations carried out without due care that result in the death of a patient or errors in administering medication that result in fatal effects.

**b. Civil Liability**

Civil liability relates to compensation or damages for losses suffered by patients due to malpractice. The legal basis for civil liability is Article 1365 of the Civil Code on unlawful acts, which states: "Every act that violates the law and causes loss to another person, requires the person whose fault causes the loss to compensate for the loss."

If a patient experiences material or immaterial losses due to malpractice, the patient can file a civil lawsuit in court to claim compensation. The forms of losses that can be claimed include additional medical expenses, physical losses, and psychological suffering. In practice, civil lawsuits can be filed against:

- 1) **Doctor or health worker** which is considered negligent.
- 2) **Hospital or health facility** as health service providers who are responsible for the negligence of their staff.

**c. Administrative Accountability**

Administrative liability refers to violations of professional standards or laws and regulations in carrying out medical practice. Administrative sanctions can be:

- 1) Written warning.
- 2) Temporary suspension of practice permit.
- 3) Revocation of practice permit.

Administrative sanctions for doctors or health workers who are proven to have violated professional standards or ethics will be given sanctions by the authorized party or authorized institution.

**d. Hospital Accountability**

In addition to individual doctors or health workers, hospitals or health facilities also have legal responsibilities. Law Number 11 of 2023 concerning health states that hospitals are responsible for any negligence committed by health workers working under the auspices of the hospital. This means that hospitals can be sued civilly or subject to administrative sanctions if there is proven negligence in the management of services medical. In addition, the hospital is also responsible for facilitating nurses in terms of Restorative Justice which aims to empower all parties to find solutions and improve community life.

**e. Proof in Malpractice Cases**

Proof in malpractice cases usually involves the following aspects:

- 1) **There is a violation of professional standards:** Are the actions taken by medical and health personnel in accordance with applicable service standards?
- 2) **There is a causal relationship:** Is there a direct relationship between the actions of health workers and the harm experienced by patients?
- 3) **Real loss:** Did the patient actually suffer any harm, either physical or mental?

Complete and accurate medical records are usually important evidence in malpractice legal proceedings, whether in civil or criminal courts, or before an ethics panel.

**E. CLOSING**

**Conclusion**

1. Regarding the legal aspects of malpractice in the legislation in Indonesia are as follows:

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- a. Governing Laws and Regulations: Medical malpractice is regulated through various laws, including Law Number 17 of 2023 concerning Health and the Criminal Code which regulates criminal sanctions for negligence that causes serious harm or death.
  - b. Legal Liability: Liability in malpractice cases includes criminal, civil, and administrative liability. Medical personnel and Health Care Providers who are proven to be negligent may be subject to criminal penalties, civil lawsuits, or administrative sanctions such as revocation of practice licenses.
  - c. Supervisory and Dispute Resolution Institution: The malpractice complaint mechanism can be carried out through the authorized party whose function is to handle violations of the code of ethics and professional discipline, as well as through the courts for civil and criminal cases.
2. Legal liability in cases of malpractice in Indonesia includes various criminal, civil, and administrative aspects. Medical personnel and health workers can be subject to criminal sanctions if proven negligent to the point of causing physical harm or death. They can also be sued civilly by patients who are harmed, and subject to administrative sanctions by the relevant authorities if they violate professional standards. Hospitals as health service providers are also not free from legal responsibility if negligence occurs in their environment.

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