

# A Doctor's Responsibility for Alleged Negligence in Medical Actions

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## Abstract

This research aims to explore the implementation of Law No. 17 of 2023 concerning Health in Indonesia, specifically focusing on legal protection for health workers and patients. This research highlights important changes in health regulations, including the transition from treatment to prevention, easier access to health services, and increased efficiency of health systems. With developments in health technology and increased awareness of patient rights, this research also examines the dynamics of the relationship between patients and health workers, as well as the response of health workers to this new law. Research Method: This research uses a descriptive qualitative approach, collecting primary data through official documents related to the law and secondary data from books, journals and articles. This method aims to be in-depth and produce a comprehensive content analysis, by comparing findings from various sources to obtain valid conclusions. The focus of this research is to understand how Law No. 17 of 2023 affects legal protection for health workers and patients in Indonesia. The essence of this research revolves around the concept of medical negligence in the context of law and medical practice. Medical negligence is defined as an action or inaction that is contrary to medical, ethical, and legal standards of care, which may result in harm or injury to the patient. This research explores how negligence can occur and the factors that influence it, including non-compliance with SOPs. In a legal context, medical negligence can result in criminal sanctions or legal action, depending on the level of damage caused. This research also highlights the need for a balance between patient rights and legal protection for medical personnel. With the final conclusion that the form of responsibility of doctors for alleged negligence in medical services is that doctors for suspected medical negligence receive legal protection from the institution where they work, in this case the hospital. Furthermore, if a doctor is proven to have committed negligence or negligence, the legal sanctions are clear as stated in Law Number 17 of 2023 concerning Health, he will be sentenced to a maximum of 3 years in prison.

**Keyword:** Medical Negligence, Doctor's Responsibility, Medical Care Standards

## 1. INTRODUCTION

On August 8 2023, the President of the Republic of Indonesia finally signed Law Number 17 of 2023 concerning Health which was ratified at the DPR Plenary Session on July 11 2023. The new Health Law which was implemented this year has become a hot issue in the world of health . This law provides new direction in regulating the health system in Indonesia. The new Health Law is a regulation that regulates various aspects of the health system in Indonesia. This law covers things such as promotive, preventive, curative and rehabilitative efforts. The aim is to improve the quality of health services, protect the community, and regulate the authority and responsibilities of health workers. According to the Indonesian Ministry of Health, there are a number of aspects that will be improved by implementing this Health Law, including: (1) Changing the focus from treatment to prevention (2) Facilitate access to health services (3) Preparing a resilient health system to face disasters (4) Increase the efficiency and transparency of health financing (5) Correct the shortage of health workers (6) Encourage the health industry to be independent in

the country and encourage the use of the latest health technology (7) Simplifying the health licensing process (8) Protect health workers in particular (9) Integrating health information systems. Health workers' attitudes towards the latest Health Law may vary. Some of them accepted it well because this law provides clear guidance in carrying out their duties and responsibilities. They consider this law a step forward in improving the health system in Indonesia. There are also those who view it with skepticism, the presence of this law seems to kill the role of medical organizations such as IDI, PPI and others. However, that is not the focus of our study. Health is one of life's needs which is very important in upholding daily activities. Humans do various things efforts to create a healthy life. Article 1 Paragraph 1 Point 9 states that "Community Health Centers, hereinafter referred to as Puskesmas, are first level Health Service Facilities that organize and coordinate promotive, preventive, curative, rehabilitative and /or palliative Health Services by prioritizing promotive and preventive in their working areas" in Health Law Number 17 of 2023. The development of the world of health is very rapid, not only regarding disease, but also disease management technology and supporting facilities that are increasingly modern and sophisticated.

This is not directly proportional to the regulations governing relations regarding health services so it does not rule out the possibility of giving rise to legal problems in health services, especially those relating to patients and medical personnel, *paramedics* or hospitals. Health services are provided through the form of treatment and care. Health workers, medical and non-medical, are responsible for providing optimal service. Medical personnel, in this case doctors, have responsibility for the treatment being carried out. Treatment actions and determining needs in the treatment process are the authority of a doctor. The safety and development of patient health is an absolute foundation for doctors in carrying out their professional practice. A doctor must make every effort to treat his patients. Service health of course really needs good and maximum quality of service, with benefits that can be felt by recipients of health services (patients) and providers of health services (doctors or health workers and hospitals). Dynamics life public This also occurs in the health aspect, so that sometimes negligence and neglect of rights and obligations between patients and doctors or staff arise health. In connection with that matter, so in order to provide legal certainty and protection, both for health service providers and recipients service service health, To improve, direct and provide a basis for development in the health sector, dynamic health legal instruments are needed. Where at this time, a lot is happening change to health rules, especially regarding rights and obligations the parties involved. Nowadays, people are increasingly aware of their rights his rights as consumer health. So that often they critically question about the disease, types of examination, treatment, as well as action Which will taken regardingwith the disease. This is rights that should be respected by service providers service health. Hospitals are service providers health for patients as consumers. For that's what every hospital should provide protection to user service service health (consumer) in fulfillment right- his rights. If happen deviation inprovision service health, Example case Which happen on Sunday, 09 April 2023 in House Sick General Area (HOSPITAL) ODSK. Deviation Which happen is when persona patient's parents question the SOP, because I felt the service from the hospital not enough maximum. According to person old victim, should his son accept inspection first from the nurse at home Sick specifically Which There is in there, however para nurse Which on duty No inspect patient but rather throw sentence Which No should said to patient. Anurse say that every patient Which come must asked formerly own complaint like what, but at that time the parents of Patients are already disappointed with the service from party House Sick And quick bring patient (child) go to hospital other. Still Lots case Which happen in House sick about poor service from parties at the hospital. However, in this research I highlight and analyze the actual forms of legal protection by hospitals for their health workers. In this case, patients or recipients of health services can claim that their rights have been violated by health service providers, in this case hospitals and doctors or health workers. "As stated in Article 322 of Law No. 1 1946 concerning Criminal Law (KUHP) that a doctor can be punished for violating his obligations".

There are still other criminal regulations relating to the health or negligence of a doctor or relating to mistakes or negligence on the part of a doctor or health worker, such as Article 351, Article 356 of the Criminal Code regarding abuse, where the abuse is classified as using weapons that damage health, Article 359, Article 360, and Article 378 of the Criminal Code regarding acts of fraud. Hospitals have an obligation to provide full personal health services that provide inpatient, outpatient and emergency services. Therefore, doctors are required to be the main health workers in serving patients who come to the hospital. It is the doctor who takes medical action to cure the patient. The Indonesian Doctors Association (IDI) considers doctors' actions to be a form of assistance that does not promise healing because the people being helped are

not consumers, so according to them, Law Number 8 of 1999 concerning Consumer Protection (UUPK) cannot be applied to health workers, in cases of health workers committing professional errors or negligence. Doctors as professionals are responsible for every medical action (doctor) carried out on patients. In carrying out their professional duties, they are based on good intentions, namely making serious efforts based on their knowledge based on the doctor's oath, the medical code of ethics and professional standards to cure or help patients. The doctor's responsibility towards the patient includes, among other things, ethical responsibility, namely if there is a breach of contract or an unlawful act resulting from the doctor's actions, according to Article 1426 of the Civil Code, the compensation that can be charged in the event of a default is, Losses that are clearly suffered by the creditor, which is called *Damnun Emergens*. ; The profits that are supposed to be obtained are called *Lucrum Cegans* . In principle, the form of compensation that is commonly used is money, because according to civil law and jurisprudence experts, money is the most practical tool, which causes the least amount of difference in resolving a dispute. Apart from money, there are still other forms that are needed as a form of compensation, namely restoration of the original condition ( *innatura* ) and a prohibition on repetition. If both of these are not fulfilled, they can be reinforced with forced money. So it must be remembered that forced money is not a form or form of compensation. In the modern era, hospitals are no longer just a place to get health care, but are also a symbol of the continuation of human rights to get adequate access to health. Law No. 17 of 2023 concerning Health has emphasized the role and obligations of hospitals, especially in providing protection to health workers. Article 189 paragraph (1) letter s states that hospitals have an obligation to "*protect and provide legal assistance to all hospital officers in carrying out their duties.*" This shows that hospitals have a responsibility to protect health workers from various potential legal risks that they may face while carrying out their professional duties. This includes, but is not limited to, medical problems, discrepancies in care, or conflicts with patients. On the other hand, Article 189 also emphasizes the rights that hospitals have. One of them is the right to "obtain legal protection in carrying out Health Services" (Article 189 has the right f). This provides a basis for hospitals to obtain legal protection in every aspect of their operations, including matters relating to health workers. What is the focus of the author's research is the form of legal responsibility for alleged doctor negligence in carrying out medical procedures, both legal protection for alleged doctor negligence as well as the legal basis and criminal sanctions for doctors who commit medical negligence. With a focus on research problems, what are the rights and obligations of health service providers for doctors and patients? And how is the doctor responsible for alleged negligence in medical procedures? However, the author still includes other elements such as argumentation and legal analysis from the perspective of the Civil Code and Human Rights.

## 2. RESEARCH METHODOLOGY

This research adopts a descriptive qualitative approach to understand, describe and analyze the legal protection provided by hospitals to health workers based on Law No. 17 of 2023 concerning Health. To achieve this goal, researchers collected data through two main sources: primary data which includes laws and their derivative regulations and official documentation, as well as secondary data consisting of books, journals, articles and other relevant publications. Data collection techniques include documentation and literature studies, where documents and related literature are reviewed and analyzed in depth. After data collection, content analysis was carried out to organize, classify and analyze the data to obtain relevant and significant findings. The results of this analysis are then analyzed based on a predetermined theoretical framework and compared with findings from secondary data sources to produce valid conclusions. This entire process is organized into a research schedule designed to ensure efficient and effective data collection and analysis.

## 3. RESULT AND DISCUSSION

### *Medical Negligence*

Medical negligence is a form of medical malpractice, as well as the most common form of medical malpractice. Basically, negligence occurs when someone accidentally does something (commission) that should not be done or does not do something (omission) that should be done by another person who has the same qualifications in the same circumstances and situation. It should be remembered that in general, negligence committed by an individual is not an act that can be punished, unless it is carried out by a person who, by the nature of his profession, should act carefully and has resulted in loss or injury to another person.

An action or attitude of a doctor or dentist is considered negligent if it meets the four elements below, namely:

1. *Duty* or obligation of doctors and dentists to take certain actions or not to take certain actions towards certain patients in certain situations and conditions.
2. *Dereliction of the duty* or deviation from the obligation.
3. *Damage* or loss, namely anything that is felt by the patient as a loss as a result of the health/medical services provided by the service provider.
4. *Direct causal relationship* or real cause and effect relationship. In this case, there must be a causal relationship between the deviation of obligations and the loss which is at least a " *proximate cause* ".

The definition of the term medical negligence is implied from the definition of medical malpractice according to the World Medical Association (1992), namely: "*medical malpractice involves the physician's failure to conform to the standard of care for treatment of the patient's condition, or lack of skill, or negligence in providing care to the patient, which is the direct cause of an injury to the patient*" The World Medical Association also reminds that not all Medical failures are the result of medical malpractice. A bad event something that cannot be predicted beforehand ( *unforeseeable* ) that occurs when standard medical procedures were carried out but resulted in injury on patients is not included in the definition of malpractice or negligence medical. "*An injury occurring in the course of medical treatment which could not have been foreseen and was not the result of the lack of skill or knowledge on the part of the treating physician is untoward result, for which the physician should not bear any liability*" A doctor's liability for alleged negligence in medical procedures focuses on evaluating whether there has been a deviation from established standards of medical care. In this context, a doctor is liable if there is evidence that his or her actions (or inaction) caused harm or injury to the patient that could have been prevented. For example, a doctor who performs surgery but forgets to remove medical equipment from the patient's body, which then results in infection or other complications, could be considered to have committed medical negligence. In such cases, the doctor may face legal action or professional sanctions, depending on the extent of the damage or injury suffered by the patient and the extent to which the doctor's actions deviated from accepted medical practice. However, in this case our focus is on the doctor who is suspected of having committed medical negligence.

#### *Rights and Obligations of Health Services to Doctors and Patients*

Health care facilities are infrastructure that provides various types of health care to the population. These include hospitals, clinics, and primary care centers that offer services ranging from emergency medicine to disease prevention. These facilities are equipped with medical equipment, professional staff such as doctors and nurses, and systems to manage patient health information. The goal is to improve the health and well-being of communities by providing access to medical care that is quality, timely, and tailored to the specific needs of individuals and communities. Health Service Facilities must:

- a. provide broad access to service needs, education, research and service development in the Health sector;
- b. providing quality health services and prioritizing patient safety;
- c. maintain medical records;
- d. send reports on the results of services, education, research and development to the Central Government with a copy to the Regional Government via the Health Information System;
- e. make efforts to utilize the results of services, education, research and development in the Health sector;
- f. integrating services, education, research and development in a system as an effort to overcome health problems in the region; And
- g. create standard operational procedures by referring to Health Service standards.
- h. In the event of an outbreak or epidemic, Health Service Facilities are obliged to provide Health Services as a response effort in accordance with the provisions of laws and regulations.
- i. Health Service Facility Operators are prohibited from employing Medical Personnel and Health Personnel who do not have practice permits in accordance with statutory provisions.
- j. Health Service Facilities belonging to the Central Government, Regional Government, and/or the community are obliged to provide Health Services for someone who is in an Emergency condition to prioritize saving lives and preventing disability.



- k. In emergency conditions, Health Service Facilities belonging to the Central Government, Regional Government, and/or the public are prohibited from refusing patients and/or asking for advance payments and are prohibited from prioritizing all administrative matters, thereby causing delays in Health Services.
- l. Health Service Facilities are required to implement patient safety standards.
- m. Every Health Service Facility is obliged to continuously and continuously improve the quality of Health Services internally and externally.

Articles 192 and 193 of Law No. 17 of 2023 concerning Health outline the legal responsibilities of hospitals related to medical procedures and the protection of their health workers. The hospital is not legally responsible if the patient or his family refuses treatment that could cause death after a comprehensive medical explanation. On the other hand, the hospital is responsible for losses arising from the negligence of its staff. It emphasizes the importance of effective communication between doctors and patients and the implementation of high standards in medical practice to protect both patients and health professionals, including doctors, from legal risks.

### *Doctor's Liability for Alleged Negligence in Medical Procedures*

In clear and simple terms, what the author means by the doctor's responsibility for alleged negligence in medical procedures is. If there is a doctor who is suspected by the patient or the patient's family to have committed negligence in medical services which resulted in the patient's death or permanent disability. What and how is the doctor's responsibility for this incident? If the doctor is declared negligent, or in terms of Law Number 17 of 2023 concerning Health, negligence, what are the sanctions? And conversely, if he is declared to have done nothing wrong, what and what form will the consideration be? The benchmark for determining whether a doctor has committed negligence or whether the doctor is guilty or not is that the doctor must act in accordance with what his colleagues would do in the same situation, namely the doctor must have the ability and caution in treating patients. J. Guwandi stated that to say that a doctor has committed negligence, the following must be proven: There is an attitude of action by a doctor who: (1) Contrary to ethics, morals and discipline; (2) Contrary to law; (3) Contrary to the standards of the medical profession; (4) Lack of knowledge or lagging behind in knowledge in the profession which is common among these circles; (5) Neglect (*negligence, abandonment*), negligence, carelessness, indifference, lack of concern for patient safety, flagrant mistakes and so on. In daily medical practice, doctors must always anticipate the possibility of risks occurring as a result of the actions they take, and at the same time take preventive measures if possible and prepare countermeasures if the risks cannot be avoided. Because if the risk actually occurs, even though the doctor has taken into account the consequences of his actions and has also considered the best he can, but if he is negligent in not preparing efforts to overcome or prevent risks that could cause harm to the patient, such things are deemed to be done by the doctor. negligence. So in summary, in the author's opinion, doctors cannot be blamed for medical service results that do not match the expected results as long as the doctor has carried out his duties in accordance with the SOP. Of course, this is a different context from dentists, because doctors generally strive for healing with the standards of service and treatment that they have studied. In contrast to dentists, for example, when filling teeth, it depends on the results. Referring to Satjipto Rahardjo's theory of legal protection in the context of doctors' liability for alleged negligence in medical procedures, an important aspect that must be considered is standard operating procedures (SOP) in medical practice. According to this theory, doctors cannot be blamed for results that do not meet expectations if they have acted in accordance with SOPs.

This is based on the understanding that doctors must have the ability and care in treating patients, in accordance with what colleagues do in the same circumstances. A doctor's liability for negligence must meet certain criteria, such as contrary to ethics, law, medical professional standards, or lack of scientific knowledge. If a doctor has made every effort to anticipate risks and has prepared adequate precautions, but the results do not meet expectations without any evidence of negligence, then the doctor cannot be considered negligent. This approach takes into account the complexity and variability of outcomes in medical practice, as well as the importance of fair assessment of physicians' actions based on context and applicable professional standards. In the context of medical liability, doctors are considered negligent if they fail to meet expected professional standards in diagnosis or therapy. This negligence could have serious consequences, such as death or serious injury to the patient. The assessment of negligence must be normative, meaning it must be assessed based on the actions that a medical professional would have taken in

the same situation. Gross negligence ( *culpa lata* ) is distinguished from minor negligence ( *culpa levis* ). If doctors meet expected professional standards, for example in diagnosis and therapy, and act as competent doctors, then they are not considered negligent. However, if they fail to do what they are supposed to do, then they can be prosecuted and threatened with criminal penalties in accordance with Articles 359 and 360 of the Criminal Code, which relate to errors that result in death or serious injury.

*Article 359 of the Criminal Code 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* Article 360 of the Criminal Code reads:

- 1. Any person who, through his fault (negligence), causes another person to suffer serious injuries, is threatened with imprisonment for a maximum of five years or imprisonment for a maximum of one year.*
- 2. Any person who, through his fault (negligence) causes another person to be injured in such a way as to cause illness or impediment to carry out the work of a position or search for a certain period of time, is threatened with imprisonment for a maximum of nine months or imprisonment for a maximum of six months or a fine of a maximum of four thousand five hundred rupiah.*

Next is the civil perspective. In this case, what applies is 1365 of the Civil Code (Article 1401 BW) regarding provisions for unlawful acts. To be able to file a lawsuit based on an unlawful act, 4 (four) conditions must be met as stated in Article 1365 of the Civil Code, namely:

1. The patient must experience some loss;
2. There is error or negligence (besides individuals, hospitals can also be responsible for errors or negligence of their employees);
3. There is a causal relationship between harm and wrongdoing;
4. This act violates the law.

*"Every act that violates the law and brings loss to another person, requires the person who caused the loss through his fault to compensate for the loss."*

Usually someone is said to be in default if they violate an agreement that has been agreed with another party, while someone is said to have committed an unlawful act if their action is in conflict with the rights of another person or with their own legal obligations or is contrary to morality. In the context of human rights, the responsibility of doctors for alleged negligence in medical procedures emphasizes the patient's right to receive appropriate and safe health care. Human Rights considers that patients have a fundamental right to care that meets medical and ethical standards. If doctors fail to meet these standards and cause harm, they could be legally liable. However, if doctors have followed SOPs and professional standards well, even if the results are not as expected, they are not considered to have violated the patient's human rights. This approach balances the patient's right to safe care with the protection of physicians from unfair prosecution. Finally, as a closing narrative at this discussion point the author quotes an article in Law Number 17 of 2023 concerning Health regarding negligence.

*Article 440*

- 1) Every Medical Worker or Health Worker who commits negligence that results in serious injury to the patient shall be punished with a maximum imprisonment of 3 (three) years or a maximum fine of Rp250,000,000.00 (two hundred fifty million rupiah).*
- 2) If negligence as referred to in paragraph (1) results in death, each Medical Worker or Health Worker shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of Rp500,000,000.00 (five hundred million rupiah).*

In the article above it is clearly stated that if it is proven that a health worker has committed negligence or negligence, the criminal sanction is a maximum of 3 years in prison. The question is what kind of negligence is meant and what are the examples? Until this research was carried out, what the author understood about this negligence was as described by Sajipto Raharjo and Guwandi. Namely health services that do not comply with SOPs while the author refers to article 191 " Hospital Sick responsible answer in a way law to all loss Which caused on negligence which done by source power man Health House Sick ".

#### 4. CONCLUSION

Health care facilities, including hospitals and clinics, have the responsibility of providing high-quality medical services, maintaining medical records, and integrating care, education, research, and development. They are obliged to provide emergency services without demanding upfront payments and continue to improve the quality of health services. According to Law No. 17 of 2023, hospitals are not legally responsible if a patient refuses treatment after a medical explanation, but are responsible if staff negligence causes harm. This emphasizes the importance of high standards in medical practice and effective communication between doctors and patients. The responsibility of doctors for alleged negligence in medical procedures is confirmed in law. If doctors fail to meet expected professional standards and cause serious harm, they may be legally liable. This is included in the context of the Criminal Code, where errors that cause death or serious injury can result in criminal sanctions. However, doctors are not considered negligent if they act according to SOPs and professional standards, even if the results do not meet expectations. In the context of human rights, the patient's right to safe and appropriate care is also considered. Hospitals are responsible for losses resulting from the negligence of their staff, and the relevant articles in the Health Law emphasize legal protection for patients and health workers.

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