

# Juridical Analysis of Negligence in Health Services by Health Personnel Reviewed from Law Number 17 Of 2023 Concerning Health

Helly Habiballoh Luqmansyah<sup>1</sup>, Sumarno<sup>2</sup>, Fitri Rafianti<sup>3</sup>

<sup>1,2,3</sup>Program Study Magister Hukum Kesehatan, Pascasarjana UNPAB, Indonesia

Email: <sup>1</sup>[dr.helly18@gmail.com](mailto:dr.helly18@gmail.com), <sup>2</sup>[sumarno@dosen.pancabudi.ac.id](mailto:sumarno@dosen.pancabudi.ac.id), <sup>3</sup>[fitirafianti@dosen.pancabudi.ac.id](mailto:fitirafianti@dosen.pancabudi.ac.id)

## 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.

**Keywords:** Negligence, Health Service, Health Personnel, Law Number of Concerning Health.

## 1. INTRODUCTION

On August 8 2023, the President of Indonesia ratified Law no. 17 of 2023 concerning Health, which has decided in DPR session on July 11, 2023. This law, which begins applies year this, be topic talks major in the sector health and marking direction new in management health in the country . this law arrange various aspect in system health, incl effort promotive, preventive, curative and rehabilitative, with objective For increase quality service health and giving protection to public as well as set authority and responsibility answer for power health. According to the Ministry of Health, the new Health Law This will bring repair in a number of aspect, like divert focus to prevention than treatment, expanding access service health, building system more health tough to disaster, improve efficiency and transparency financing health, improve lack power health, support industry health domestic, simplify the licensing process, protect power health, and integration system information health. Reaction power health to the new law This varies some welcomed it as clear guidelines for operate task they saw it as step proceed for system Indonesian health. Temporary that, some others feel worry will reduce role

organization medical. However, focus main is on provision service health that includes effort promotive and preventive, as stated in the Law. Development technology and facilities in health has increase rapidly, however regulations often not in line, that can be give rise to problem law between patients and staff medical. Service health covers maintenance medical and non-medical, with doctor responsible answer on treatment patient. Security patient is priority main for doctor , that's a must try as good as Possible in maintenance. With increasing awareness public about rights they as consumer service health, appears demands on transparency and quality service. Hospital, as provider service, must ensure rights patient fulfilled. Cases deviation in service health, as happened at ODSK Hospital, highlights importance protection law for power health and patients. Health Law no. 17 of 2023 provides framework Work For protection law for power health and home sick, confirmed rights and obligations in provide service health. study this focus on responsibility answer law doctor on conjecture negligence medical and how system law handle issues This from Human Rights and Civil Code perspectives, explore rights and obligations between doctor and patient as well as accountability on negligence medical.

## 2. METHODOLOGY

This study use methodology descriptive qualitative For inspect how the Hospital delivers protection law to power health in accordance with Law no. 17 of 2023 concerning Health. Study This relies on two types of data: primary data in the form of laws and regulations related, as well documentation official; and secondary data which includes books, journals, articles, and sources relevant other. Data is collected through review documents and literature which are then reviewed and analyzed in a way comprehensive. Data analysis was carried out with technique analysis fill, which is possible researcher organize and classify information For interesting findings important. Findings this then checked in context existing theories and compared with secondary data sources For confirm validity conclusion . Study designed with tight schedule for ensure a systematic and organized data collection and analysis process.

## 3. RESULTS AND DISCUSSION

### *Medical Negligence*

Medical negligence is a common form of medical malpractice, which occurs when a health professional fails to perform or accidentally performs an act that should not be performed, or does not perform an act that should be performed, by a person with similar qualifications under the same circumstances. Negligence Tthis only can considered as violation law If carried out by expected professionals Act with prudence and have cause loss or injury to party other. There are four element main determinant negligence medical : Obligation professional for do or no do action certain to patient in condition certain.

1. Deviation from obligation the
2. Loss or injury suffered patient consequence service health provided
3. Connection because consequence direct between deviation obligations and losses experienced, which must be is reason main loss

According to the World Medical Association (1992), malpractice medical happen when a doctor no fulfil standard maintenance required, deficiencies skills, or negligence in give care, which is direct cause injury to the patient. However, no all failure medical considered as malpractice. Incident bad ones don't can allegedly before and not results from lack of Skills or knowledge doctor considered as no results desired, where is the doctor No should responsible answer. Not quite enough answer doctor on conjecture negligence medical determined through evaluation is happen deviation from standard maintenance medical who have set. Doctors can considered responsible answer If action or his inactivity proven cause loss or injury to the patient should be can prevented. For example, a doctor who leaves tool medical inside body patient moment operation, cause infection or complications, yes considered negligent. In situation like that, doctor Possible face demands law or penalty professional, depending on the level damage or injury suffered patient and how much far action doctor deviated from accepted medical norms. Focus study This is at the alleged doctor do negligence medical.

### *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 activities in the medical field, it is important for doctors to always consider and anticipate potential risks that may arise from the medical procedures they carry out. Doctors are expected not only to prevent this risk but also to be ready with treatment steps if the risk is inevitable. If the risk occurs and the doctor is proven to have failed to prepare preventive or treatment steps to reduce the danger to the patient, then this situation can be considered a form of negligence by the doctor.

The author's approach states that doctors cannot be blamed for medical service outcomes that do not meet expectations as long as they have acted in accordance with Standard Operating Procedures (SOP). This applies differently to doctors and dentists, where dentists have specific expected results from certain medical procedures, such as tooth fillings. Based on Satjipto Rahardjo's theory of legal protection regarding the responsibility of doctors in cases of alleged negligence, it is very important to consider SOPs in medical practice. This theory emphasizes that doctors cannot be held responsible for results that do not match expectations as long as they have carried out actions in accordance with the SOP. It is based on the principle that physicians should operate with the same skill and care as their colleagues would in similar situations. 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; (5) 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 personnel or health personnel who makes a mistake which results in a patient being seriously injured will be punished with a maximum imprisonment of 3 (three) years or a maximum fine of Rp. 250.000.000.00 (two hundred and fifty million rupiah).
- (2). If the negligence as intended in paragraph (1) results in death, each medical personnel or health personnel shall be punished with imprisonment for a maximum of 5 (five) years or a fine of a maximum of Rp. 500.000.000.00 (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 institutions, such as hospitals and clinics, are responsible for providing quality medical services, managing patient medical records effectively, and integrating service, education, research and innovation activities. They are required to provide emergency services without requiring payment in advance and must always strive to improve the quality of their health services. Based on Law No. 17 of 2023, a hospital will not be held legally responsible if a patient refuses treatment after being given an adequate medical explanation. However, hospitals are liable if harm occurs due to negligence by their staff, highlighting the importance of implementing high medical standards and good communication between doctors and patients. The responsibility of doctors in cases of suspected medical negligence has been clearly defined in legal regulations. Doctors who do not meet expected professional standards and cause serious harm to patients may face legal liability. This falls within the scope of the Criminal Code which states that medical errors that result in death or serious injury can attract criminal

sanctions. However, doctors will not be considered negligent if they have followed SOPs and professional standards, even if the final results do not meet expectations. In the context of human rights, the patient's right to receive safe and adequate care is also taken into account. Hospitals have a legal obligation to cover losses arising from the negligence of their staff, and health law affirms legal protection for patients and health workers.

## REFERENCES

- Asshiddiqie, Jimly. "Constitution and Constitutionalism in Indonesia." (2009).
- Beni Satria and Redyanto Sidi, *Criminal Liability of Hospitals for Negligence Committed by Medical Personnel*. Nganjuk: Dewa Publishing, 2022.
- Black, Henry Campbell. "Black's Law Dictionary." (6th ed. 1990).
- D. Suharnoko and A. Muktiyanto, "Development of the Concept of Medical Malpractice in Indonesia," *Mimbar Hukum*, 31, no. 1 (2019): 1-10.
- Guwandi J., *Medical Law*. FK UI, Jakarta, 2004.
- Health Law Number 17 of 2023 is Valid, These are the Important Points, accessed from: <https://dinkes.babelprov.go.id/content/undang-angkat-kesehatan-nomor-17-tahun-2023-sah-these-important-points-apply>, October 26 2023 at 16.01 WIB.
- Heboh, members of North Sulawesi DPRD quarrel with nurses at RSUD ODkS," accessed from: <https://www.detik.com/sulsel/berita/d-6670756/heboh-Member-DPRD-sulut-cekcok-dengan-perawat-rsud-odks> , October 26 2023 at 15.59 WIB.
- Hermin Hadiati Koeswadji, *Medical Law (Study of Legal Relations in Which the Doctor is One of the Parties)*. Bandung: Citra Aditya Bakti, 1998.
- Hj. Ukilah Supriyatin, SH, MH, "Legal Relations Between Patients and Medical Personnel (Doctors) in Health Services," accessed from: <https://jurnal.unigal.ac.id/index.php/galuhjustisi/article/viewFile/1713/1387>, October 26 2023, 21.30 WITA.
- Internet Source:
- Kadek Arini & Ida Bagus Putra Atmadja, "Setting the level of doctor's error as a basis for determining compensation for patients who are victims of malpractice," *Kertha Semaya: Journal of Legal Sciences*, Vol. 6 No. 12 (2016).
- Law Number 17 of 2023 concerning Health.
- Law of the Republic of Indonesia no. 44 of 2009 concerning Hospitals, Article 1.
- Lubis, Todung Mulya. "In Search of Human Rights: Legal-Political Dilemmas of Indonesia's New Order." (1985).
- Notoatmodjo, Soekidjo. "Health Promotion and Behavioral Science." Jakarta: Rineka Cipta. (2007).
- Redyanto Sidi, *Human Rights in the Perspective of Health Law in Indonesia*. Medan: Perdana Publishing, 2021.
- Shidarta, *Indonesian Consumer Protection Law*. Jakarta: Grasindo, 2000.
- Sjahrir, R. "The Role of Health Workers in the National Health System." (2012).
- Sjukur, A. "Hospital Implementation Based on Science and Technology Development." (2008).
- Soewono Hendrojono, *Limits of Legal Liability for Doctor Malpractice in Therapeutic Transactions*. Heroine, 2007.
- Subekti, *Civil Code*. Jakarta: Pradnya Paramitha, 1990.
- Sumarno, "Legal Protection for Consumers Buying Motorcycles on a Fiduciary Basis," *Responsive*, 2 (2016).
- Trini Handayani, "Resolving Medical Disputes Through Mediation Linked to Supreme Court Regulation Number I of 2008 Concerning Mediation Procedures in Court," *Mimbar Justicia Law Journal*, Faculty of Law, Suryakencana University, Vol. 06, No. 02, 2014.