

# Criminal Liability Arising from Medical Malpractice on Patients: A Review from the Perspective of Positive Law And Islamic Law

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**Abstract :** *The suspicion in cases of medical malpractice in is only slightly raised, meanwhile, there are actions by the health profession by doctors as medical personnel which have the potential to be a malpractice that can be reported by the public, but are not resolved legally because the community only has limited knowledge of science medical and because there is no form of specific legal regulations governing malpractice in Indonesia so that the occurrence of these malpractices can cause legal problems. This study aims to determine criminal liability for medical malpractice acts committed by doctors to patients in anticipating and dealing with medical malpractice problems in criminal cases. The research method used in this study is doctrinal, where the author collects material from the literature, both hardcopy and softcopy, which is related to the title of this research by using an analysis of the research object. Criminal malpractice occurs when a patient dies or is disabled and/or seriously injured as a result of actions taken by health workers who are careless or less careful in making efforts to treat patients who die or are disabled and are criminally liable as a result of medical malpractice acts committed. doctors on patients can be accounted for under Article 359 and Article 360 of the Criminal Code. In this case the health law is considered insufficient and does not clearly regulate the crime of medical malpractice. So it is necessary to regulate the crime of medical malpractice by giving birth to a new health law, namely by explicitly regulating criminal liability for medical malpractice acts by doctors against patients in Indonesia.*

**Keywords :** *Accountability, Law, Malpractice, Childbirth*

**Abstrak :** Dugaan pada kasus malpraktik medik hanya sedikit yang terangkat, sementara itu terdapat tindakan pada profesi kesehatan yang dilakukan dokter sebagai tenaga medis yang berpotensi sebagai tindakan malpraktik yang dapat dilaporkan oleh masyarakat, akan tetapi tidak diselesaikan secara hukum karena masyarakat hanya memiliki pengetahuan yang terbatas mengenai ilmu medis dan dikarenakan belum cukupnya bentuk regulasi hukum khusus yang mengatur tentang malpraktik di Indonesia sehingga dengan adanya kejadian malpraktik tersebut dapat menyebabkan adanya permasalahan hukum. Penelitian ini bertujuan untuk mengetahui pertanggungjawaban pidana terhadap tindakan malpraktik medik yang dilakukan oleh dokter pada pasien dalam mengantisipasi dan menghadapi permasalahan malpraktik medik dalam perkara pidana dan dikaitkan dengan perspektif Hukum Islam yang juga merupakan sumber hukum di Indonesia. Metode penelitian yang digunakan dalam penelitian ini adalah *doctrinal*, yaitu penulis mengumpulkan bahan dari literatur-literatur baik yang bersifat *hardcopy* maupun



*softcopy* yang berhubungan dengan judul penelitian ini dengan menggunakan suatu analisis terhadap obyek penelitian. Malapraktik pidana terjadi apabila pasien meninggal dunia atau mengalami cacat dan/atau luka berat akibat dari tindakan yang dilakukan tenaga kesehatan kurang hati-hati atau kurang cermat dalam melakukan upaya perawatan terhadap pasien yang meninggal dunia atau cacat dan pertanggungjawaban pidana akibat dari tindakan malapraktik medik yang dilakukan dokter pada pasien dapat dipertanggungjawabkan dengan Pasal 359 dan Pasal 360 KUHP. Dalam hal ini undang-undang kesehatan dianggap belum cukup dan tidak mengatur secara jelas mengenai kejahatan malapraktik medik. Sehingga perlunya pengaturan terhadap kejahatan malapraktik medik dengan melahirkan undang-undang kesehatan yang baru yaitu dengan mengatur secara ekspilisit tentang pertanggungjawaban pidana terhadap tindakan malapraktik medik oleh dokter terhadap pasien di Indonesia. Peninjauan juga dilakukan melalui perspektif Hukum Islam, sebagaimana dalam dunia Kesehatan hukum islam juga memerhatikan masalah medis. Ada 2 (dua) tindakan yang menjadi perhatian, tindakan *represif* (pengobatan) dan *preventif* (pencegahan). Serta sanksi sebagai bentuk pertanggungjawaban secara Hukum Islam yang dapat diberlakukan atas tindakan malapraktik dalam dunia medis.

**Kata kunci :** Pertanggungjawaban, Hukum, Malapraktik, Pidana

## I. INTRODUCTION

The pursuit of well-being in Indonesia encompasses a broad scope, particularly concerning physical and mental health.<sup>1</sup> To realize this within the realm of health, various efforts in the domain of healthcare are requisite. The state guarantees the provision of adequate healthcare facilities and public services.<sup>2</sup>

Healthcare services are provided in community health centers, clinics, and hospitals, which are generally regulated by Republic of Indonesia Regulation No. 36 of 2009 concerning Health. Delivering healthcare services to the public is a matter of utmost importance, necessitating a high degree of caution and professionalism among medical and/or healthcare personnel. To support the government's initiatives in achieving a healthier Indonesia, it is imperative to have healthcare professionals who are more proficient and responsible in the field of healthcare service. However, the medical profession, as a noble vocation, demands the possession of ethics, morals, and expertise in the practice of medicine, which constitutes a series of activities carried out by Physicians and Dentists in their efforts to promote health. The tangible manifestation of these demands is evident in the obligations imposed upon Physicians by Article 51 of Regulation No. 29 of 2004 Concerning Medical Practice, which include: (1) Providing medical services in accordance with professional standards, operational procedures, and the medical needs of patients; (2) Referring patients to other Physicians or Dentists with better expertise or capabilities when unable to perform a specific examination or treatment. (3) Maintaining confidentiality regarding all information known about patients, even after their demise. (4) Rendering emergency assistance on humanitarian grounds, unless confident that someone else is capable and available to perform such duties (5)

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<sup>1</sup> Article 1 of the Republic of Indonesia Regulation No. 36 of 2009 Regarding Health.

<sup>2</sup> Article 34, paragraph (3), Republic of Indonesia Constitution of 1945.

Expanding knowledge and staying abreast of advancements in the field of medicine or dentistry. The legal framework governing medicine and/or healthcare is a relatively nascent branch of law, particularly within the context of Indonesia's national legal system. To date, medical law in Indonesia has not been able to be independently formulated, resulting in an inability to establish clear boundaries regarding medical malpractice. Consequently, the definitions and parameters of medical malpractice remain inconsistent, contingent upon one's perspective.<sup>3</sup>

In recent times, we have frequently heard of and witnessed an increasing number of cases involving medical service negligence perpetrated by doctors. As an illustrative example, the author presents several cases of medical malpractice as follows:

The first case occurred in Sidoarjo Regency, precisely at Krian Husada Hospital. Dr. Wida Parama Astiti was sentenced to 10 months in prison under decision number 590K/Pid/2012 at the cassation level for committing medical malpractice that resulted in the death of a 3-year-old patient. Dr. Wida was indicted for authorizing a medical procedure by instructing a nurse to administer a 12.5 ml KCL injection. During the procedure, Dr. Wida was on the first floor and did not oversee the nurse's actions, leading to severe seizures in the patient, Deva, ultimately resulting in Deva's demise.<sup>4</sup>

The second case occurred in the city of Banda Aceh at the Iskandar Muda Military Hospital. The Supreme Court sentenced Dr. Taufik to 6 months in prison in judgment 113PK/Pid/2012 (Cassation Level) due to his negligence causing injury while handling a patient during a cesarean section procedure for the patient Rita. Dr. Taufik's negligence transpired during the surgical closure phase when he inadvertently left surgical gauze inside Rita's abdominal cavity. This was substantiated by the discovery of a gauze cloth measuring approximately 20cm x 10cm, emitting a foul odor, inside Rita's abdomen. As a consequence of this oversight, Rita's post-operative recovery was significantly delayed, and she endured prolonged suffering.<sup>5</sup>

The third case, which occurred in the city of Samarinda, involved Rizki Kewo and Trivena Sengkey, residents of *Umadian Village, Tabang District, Kutai Kartanegara*, at the *Abdul Wahab Sjabranie Regional General Hospital in Samarinda* on Sunday, April 21, 2019. The cause of their deceased child, who was covered in blood, remains unanswered. "We can only speculate from the umbilical cord," he mentioned. Rizki, who is a pastor, sent Yohanes Traksin, the head pastor in Kukar, to inquire about the cause of their baby's death. This matter was then reported to the Indonesian Child Protection Commission (KPAI) for East Kalimantan. As confirmed by *kaltimkece.id*, Aji Suwignyo, a commissioner of KPAI Samarinda, has been handling the reports from Rizki and Trivena. Based on the chronology provided by the victim's parents, there were peculiarities surrounding Otniel's death. "So, during the 11 AM treatment, the baby's condition was not checked. However, after birth, the doctor who performed the operation stated that the baby was healthy and

<sup>3</sup> Crisdiono Achadiat, 2004. *Dinamika Etika dan Hukum Kedokteran dalam Tantangan Zaman*. Jakarta:PT. Raja Grafindo Persada. hlm. 34.

<sup>4</sup> <https://news.detik.com/berita/d-2201025/pasien-meninggal-karena-malapraktik-dokter-wida-dibui-10-bulan> Accessed on August 3, 2020, at 15:30.

<sup>5</sup> <https://www.merdeka.com/peristiwa/ini-kasus-dokter-dipidana-karena-malapraktik.html?page=2> Accessed on July 26, 2020, at 10:00

normal. Suddenly, the baby was declared dead," explained Aji. KPAI Samarinda has attempted to obtain confirmation regarding the medical treatment at AWS Regional General Hospital, but no one has been able to provide information. KPAI Samarinda is assisting the victim's parents in reporting the incident to the Samarinda Police. "Whether there was negligence or not, we are still investigating where the fault lies," he stated. According to Sesi, the death of a baby due to bleeding from the umbilical cord is extremely rare. It is suspected that the baby died due to blood loss..<sup>6</sup>

In cases of alleged medical malpractice, only a limited number of accusations are typically brought forward. However, there exist medical practitioners' actions, within their capacity as healthcare professionals, that may potentially constitute instances of malpractice, and which could be reported by the public. Nevertheless, these instances often go unresolved in the legal realm due to the public's limited understanding of medical science.

From the perspective of Islamic law, the study of knowledge that brings benefits to human life leads many scholars to assert that Islamic law imposes a communal obligation (*fardhu kifayah*) upon every Muslim to pursue medical knowledge.<sup>7</sup> According to Imam Shafi'i, knowledge is divided into two categories: religious knowledge and physical knowledge, which includes medical knowledge. He states that there is no knowledge better to be acquired after knowledge related to matters of *halal* (permissible) and *haram* (forbidden) than medical knowledge.<sup>8</sup>

Case after case has occurred in the realm of healthcare, and upon closer examination, these incidents often arise from numerous medical actions that deviate from established procedures and a lack of competence among medical professionals practicing the medical field. Such deviations encompass negligence or other actions that are inconsistent with the prevailing laws or codes of ethics. In light of existing regulations, it is evident that such actions may warrant sanctions, ranging from the revocation of medical licenses to criminal prosecution, provided they meet the prescribed criteria. In Islamic law, criminal actions are referred to as "*Jinayah*" and "*Jarimah*." Many Islamic legal scholars use the term "*Janayat*," which signifies wrongful conduct committed by an individual. Abdul Qadir Audah asserts that criminal acts in Islamic criminal law pertain to prohibitions decreed by Allah, and those who transgress these prohibitions incur the penalties set forth by Allah. Legal prohibitions may encompass engaging in forbidden acts or failing to carry out actions mandated by Allah.<sup>9</sup>

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<sup>6</sup><https://kaltimkece.id/warta/terkini/kejanggalan-tewasnya-bayi-laki-laki-yang-baru-lahir-di-rsud-aws> Accessed on July 12, 2020, at 11:23

<sup>7</sup> Anis Fitria, *Pertanggung Jawaban Pidana (Mas'uliyah Al-Jinayah) Dalam Malapraktik Dokter Di Klinik Kecantikan*, *Journal Of Islamic Studies And Humanities*, Vol. 7, No. 1 (2022), Page. 17-43. DOI: <http://dx.doi.org/10.21580/jish.v7i1.11679>.

<sup>8</sup> Zuhroni, *Respons Ulama Indonesia Terhadap Isu-Isu Kedokteran dan Kesehatan Modern*, Disertasi Sekolah Pascasarjana Universitas Islam Negeri Syarif Hidayatullah (Jakarta 2007), 29.

<sup>9</sup> Asadulloh Al Faruk, *Hukum Pidana Dalam Sistem Hukum Islam*, (Bogor: Ghalia Indonesia, 2019), Page. 16.

## II. RESEARCH METHOD

In the effort of the research process, the researcher employs a doctrinal research approach, which entails a systematic exposition of regulations governing specific legal categories. This approach involves analyzing the relationships between regulations, elucidating areas of contention, and even forecasting future developments.<sup>10</sup> The doctrinal approach referred to is one that is based on legal provisions. This research is conducted to generate legal arguments, theories, and concepts for solving the issues at hand.<sup>11</sup> In this approach, the author constructs and integrates both statutory law (black letter law) and pertinent legal theories, including those with relevance to the formulated research issues. This includes the theory of law enforcement employed to analyze the application of the law in medical malpractice cases, which aligns with the criminal law provisions. This research involves the utilization of primary legal materials, specifically the examination of the Criminal Law Code, particularly Article 359 and Article 360. To enhance the analysis of the acquired data, a survey interview research method is conducted, targeting respondents with structured information networks, including the Samarinda Police Resort and the Abdul Wahab Sjahranie Regional General Hospital.

## III. RESULT AND DISCUSSION

### Classification of Malpractice Acts as Criminal Offenses

According to the field of criminal law, an action can be classified as "een doen" or "een niet doen," which means "doing something" or "not doing something," respectively. The latter, in legal doctrine, is often referred to as "een nalaten," which also signifies "omitting something required (by law)." According to S. R. Sianturi, the elements of a criminal act are as follows:

1. The presence of a subject.
2. The presence of elements of wrongdoing.
3. An act that contravenes the law.
4. An action that is either prohibited or required by law or regulations and its violation is subject to criminal sanctions.
5. Under specific circumstances, time, and conditions.

Referring to the elements of criminal acts as mentioned above, S. R. Sianturi<sup>12</sup> formulates the definition of a criminal act as an action occurring under specific circumstances of place, time, and conditions, that is prohibited (or violates a legal duty) and is subject to criminal sanctions as prescribed by law. It is unlawful and involves elements of wrongdoing, committed by a person who is legally responsible.

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<sup>10</sup> Muhammad Abdulkadir, 2004. *Hukum dan Penelitian Hukum*. Bandung: PT. Citra Aditya Bakti. Page. 52.

<sup>11</sup> Peter Mahmud Marzuki, 2011. *Penelitian Hukum*, Cetakan ke-11. Jakarta: Kencana. Page. 35.

<sup>12</sup> *Ibid*

From these five elements, they can be simplified into subjective and objective elements. The term "subjective elements" refers to those components that are inherent to or related to the perpetrator's person, including everything contained within their intent.<sup>13</sup>

On the other hand, the term "objective elements" refers to elements related to circumstances, namely the circumstances under which the actions of the perpetrator must be carried out.<sup>14</sup> The subjective elements of a criminal act are as follows:

- a) Deliberateness or negligence (*dolus* or *culpa*).
- b) Intent or "*voornemen*" in an attempt or endeavor as specified in Article 53 paragraph 1 of the Criminal Law Code (KUHP).
- c) Various types of intent or "*oogmerk*," such as those found in crimes like theft, fraud, extortion, forgery, and others.
- d) Premeditation or "*voorbedachte raad*," as found, for example, in the crime of murder under Article 340 of the Criminal Law Code (KUHP).
- e) Fear or "*vrees*," including instances found in the formulation of criminal acts under Article 308 of the Criminal Law Code (KUHP).

According to Moeljatno, the elements of a criminal act are as follows:<sup>15</sup>

- a) The act must be a human act.
- b) The act must be prohibited and subject to punishment under the law.
- c) The act must be contrary to the law (unlawful).
- d) It must be carried out by a person who can be held accountable.
- e) The act must be attributable to the perpetrator.

Meanwhile, according to Leobby Loqman, the elements of a criminal act encompass:<sup>16</sup>

- a) Human actions, whether active or passive.
- b) The act must be prohibited and subject to criminal sanctions under the law.
- c) The act is considered contrary to the law.
- d) The act can be attributed to the perpetrator.
- e) The actor is accountable.

Medical malpractice can be considered a criminal act if it meets the criteria in three aspects, namely:

1. Requirements related to the doctor's mental state;
2. Requirements concerning medical treatment; and
3. Requirements regarding the consequences.

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<sup>13</sup> P.A.F Lamintang, 2011. *Dasar-Dasar untuk Mempelajari Hukum Pidana yang Berlaku di Indonesia*, cetakan ke empat. Bandung: PT. Citra Aditya Bakti. Page. 193

<sup>14</sup> *Ibid*

<sup>15</sup> Erdianto Efendi, 2014. *Hukum Pidana Indonesia-Suatu Pengantar*. Bandung: PT. Refika Aditama. hlm. 98.

<sup>16</sup> *Ibid.*, hlm 99.

Fundamentally, the criteria for deliberateness involve either intentional (*dolus*) or negligent (*culpa*) acts as forms of conducting medical actions. The criteria for medical treatment encompass actions or medical procedures that deviate (do not adhere to standard operational procedures), and the criteria for consequences pertain to the occurrence of harm to the health or life of the patient. All actions in medical care can entail errors (either intentional or negligent) that ultimately lead to medical malpractice when carried out in a deviant manner. It is important to note that not all instances of medical malpractice necessarily result in legal liability. This is because, for legal recognition of medical malpractice, in addition to deviant medical treatment, there are also requirements regarding the mental state and consequences that are not easily comprehended and applied.

Even in certain specific cases, an act of medical malpractice, which is evidently incorrect, can sometimes be justified for specific reasons, provided there is a reasonable and justifiable basis from a common logical perspective. For instance, an error in making a diagnosis may be justified if there is a valid justification, such as the presence of medical facts (results of examinations in accordance with accepted standards) that justify drawing a diagnostic conclusion.<sup>17</sup> According to Muntaha, medical malpractice is an act that is not only committed through negligence by a doctor or healthcare professional in the execution of their profession but can also involve intentional actions resulting in injury, disability, or even death to a patient undergoing medical care.<sup>18</sup>

Muntaha's perspective fundamentally correlates with the formulation presented by The Oxford Illustrated Dictionary, which states:<sup>19</sup>

*“Malpractice a wrongdoing (law) improper treatment of patient by medical attendant, illegal action for one’s own benefit while in position of trust”.*

Malpractice is the improper (legally speaking) conduct in providing healthcare services to a patient by medical professionals or healthcare practitioners, an illegal action undertaken for personal gain while in a position of trust. Moh. Hatta expresses his opinion on medical malpractice, which is negligence that occurs when certain actions are not performed.<sup>20</sup> From the above definition, we can conclude that medical malpractice is the negligence of a doctor or healthcare professional to employ the level of skill and knowledge commonly used in treating patients or individuals who are injured in a manner that does not conform to the standards within the same environment and circumstances.<sup>21</sup> Therefore, negligence here refers to a lack of caution, which means failing to do what should have been done with care and prudence. Negligence can also be defined as doctors or healthcare professionals performing medical actions below the professional standards.<sup>22</sup>

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<sup>17</sup> Muntaha, 2019. *Hukum Pidana Malapraktik Pertanggungjawaban dan Penghapusan Pidana*. Jakarta Timur: Sinar Grafika Offset. Page. 48.

<sup>18</sup> *Ibid.*, Page. 14.

<sup>19</sup> *Ibid.*, Page. 15.

<sup>20</sup> Asyhadie, Zaeni, 2017. *Aspek-Aspek Hukum Kesehatan*. Depok: PT. Raja Grafindo. Page. 118.

<sup>21</sup> *Ibid.*, Page. 116.

<sup>22</sup> *Ibid.*, Page. 116.

Negligence itself is not a legal violation or a crime if it does not result in harm or injury to another person, and that person can accept it. This is based on the legal principle "De minimis noncurat lex," which means the law does not concern itself with trivial matters. However, if negligence leads to material losses, harm, or even the loss of another person's life, it is classified as gross negligence (*culpa lata*), serious, and criminal.<sup>23</sup> In exploring the legal principles governing medical malpractice, it is necessary to identify three interested parties:<sup>24</sup>

- a. Injured patients who seek accountability due to alleged unsafe practices by healthcare professionals;
- b. Healthcare service providers who assert their innocence, with their professional conduct legally contested;
- c. The general public, who are also under the shadow of potential instances of medical malpractice.

According to J. Guwandi, there are four (4) elements that must be satisfied to pursue a claim for medical negligence, known as the 4D, which are as follows:<sup>25</sup>

a. *Duty to Use Due Care*

There is no negligence if there is no duty to treat. This means that there must be a legal relationship between the patient and the doctor or healthcare professional/hospital. With the existence of such a relationship, it must comply with medical service standards to prevent patients from suffering harm. The adage "primum non-nocere," especially, must be adhered to.<sup>26</sup>

b. *Dereliction (Breach of Duty)*

Once a duty exists, the doctor or healthcare professional in a hospital must act in accordance with the prevailing professional standards. If there is a deviation from these standards, they can be held accountable. Evidence of such a deviation can be provided through expert witnesses, medical records, nurse testimonies, and other forms of evidence. If an error or omission is so apparent that expert testimony is not required, the judge can apply the doctrine of "Res ipsa loquitur."<sup>27</sup>

c. *Damage (Injury)*

The third element required for medical malpractice prosecution is injury or harm caused to the patient. Even if a doctor, healthcare professional, or hospital is accused of negligence, if it does not result in injury, harm, or damage to the patient, they cannot be legally held accountable.<sup>28</sup>

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<sup>23</sup> *Ibid.*, hlm. 116.

<sup>24</sup> Jr, Joseph H. King, 1986. *The law of Medical Malpractice*. St Paul: West Publishing Company. hlm. 4.

<sup>25</sup> Yunanto, Ari, Helmi, 2010. *Hukum Pidana Malapraktik Medik*. Yogyakarta: CV. Andi Offset. hlm. 35.

<sup>26</sup> *Ibid* hlm. 36.

<sup>27</sup> *Ibid* hlm. 36.

<sup>28</sup> *Ibid* hlm. 36.



d. *Direct Causation (Proximate Cause)*

For a medical malpractice claim to succeed, there must be a reasonable causal connection between the doctor's actions and the patient's resulting harm.<sup>29</sup>

The alleged criminal malpractice data recorded from 2018 to 2020, based on the research conducted by the author through an interview with the Head of the Women and Children's Protection Unit, Inspector Teguh Wibowo S.H. at the Samarinda City Police, is as follows:<sup>30</sup>

Table 1. Medical Malpractice Cases Data at the Women and Children Protection Unit of Samarinda City Police Resort for the Year 2018-2021

No	Year	Submitted Report
1	2018	2
2	2019	1
3	2020	0
4	2021	0

Source: Samarinda Police Resort.

Based on the table above, it can be observed that there were three cases of medical malpractice reported at Samarinda City Police Resort (Polresta Samarinda) in the last three years. One of them is the report with Police Report Receipt Letter (Surat Tanda Terima Laporan Polisi or STILP) number STILP/256/IV/2019 dated April 26, 2019. According to the chronology, on Sunday, April 21, 2019, which was Easter, it became a special gift for the couple Rizki Kewo and Trivena Sengkey, residents of Umaiding Village, Tabang District, Kutai Kartanegara, to give birth to their third child at Abdul Wahab Sjahranie Regional General Hospital (RSUD), Samarinda.

At exactly 9:30 PM local time, Trivena Sengkey underwent a cesarean section surgery performed by Dr. Faisal. A baby boy named Otniel Junior Kewo was born with a loud cry and declared healthy. After the delivery process, Trivena Sengkey and the newborn were temporarily separated. Both of them were taken to the same building, namely the Rose Room, with Trivena in Room A1 for postpartum care, while Otniel was placed in the baby room.

On the following day, Monday, April 22, 2019, around 06:15 AM local time, baby Otniel Junior Kewo was pronounced dead. He lived for less than 10 hours, and his body was found to be filled with blood, suspected to have originated from his umbilical cord, while he was in the baby care room.<sup>31</sup> According to Yohanis, a representative from the

<sup>29</sup> Asyhadie, Zaeni, *Op. Cit.*, hlm. 118.

<sup>30</sup> The results of the author's interview with Mr. Iptu Teguh Wibowo S.H., who serves as the (Kanit) Head of the Women and Child Protection Unit at the Samarinda City Police Resort, on October 5, 2020..

<sup>31</sup> <https://m.merdeka.com/peristiwa/kasus-bayi-meninggal-di-rs-samarinda-keluarga-lapor-ke-polisi.html> diakses pada Accessed on August, 13, 2020 At : 12.30

family of the couple Rizki Kewo and Trivena Sengkey<sup>3268</sup> the birth was initially deemed healthy by the obstetrician, but after 10 hours, upon the baby's death, irregularities were discovered, including the presence of blood on the bedsheet and the baby's clothes.

Therefore, in light of this incident, the victim reported a suspected case of medical malpractice due to the negligence of the obstetrician, invoking Article 359 of the Indonesian Criminal Law Code (KUHP), which states, 'Anyone, due to their fault (negligence), causing the death of another person, shall be subject to a maximum imprisonment of five years or a maximum detention of one year.' The imposition of penalties under the provision for medical malpractice does not have a maximum deterrent effect on perpetrators of medical malpractice crimes. This is because court rulings in cases involving medical malpractice do not impose stringent legal consequences, as exemplified by the Trivera Singkey case, which only resulted in the issuance of a Police Report Receipt numbered STTLTP/256/IV/2019. While Article 359 of the KUHP does encompass acts of negligence or medical malpractice, it lacks explicit regulations specifically addressing medical malpractice as a criminal offense. Hence, there is a pressing need for specialized regulations concerning medical malpractice within the domain of healthcare to ensure the safety and well-being of the public and the state.

### **Criminal Liability for Medical Malpractice on Patients Based on the Indonesian Criminal Law Code (KUHP)**

In general, *malapraktik* refers to practices that are incorrect or do not conform to professional standards or operational standards. The term "malpractice" is not recognized in Indonesian positive law. Malpractice, in its literal sense, or malpractice, or malapraxis, means bad practice or poor practice. "The term malpractice has a broad connotation and is generally used to denote bad practice, sometimes referred to as malapraxis, in the treatment of a patient" is said to be bad because it is incorrect and deviates from what should be done.<sup>33</sup>

According to Veronica Komalasari<sup>34</sup>, *Malapraktik* originates from the term "Malpractice," which fundamentally signifies errors in the execution of a profession arising from the obligations that doctors are required to fulfill. Therefore, medical malpractice refers to errors in the execution of medical professional duties that do not align with the standards of the medical profession in carrying out their practice.

From 2006 to 2012, there were 182 cases of medical negligence/malpractice throughout Indonesia. These actions serve as evidence of malpractice conducted by doctors following hearings by the Indonesian Medical Disciplinary Board (MKDKI). Of these 182 malpractice cases across Indonesia, 60 cases were committed by general

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<sup>32</sup><https://kaltim.tribunnews.com/amp/2019/04/26/bayi-otniel-junior-meninggal-9-jam-setelah-dilahirkan-keluarga-laporkan-rsud-aws-ke-polisi-diakses-pada-August-13-2020-at-13.00>

<sup>33</sup> Hermin Hadiati Koeswadi, 1998. *Hukum Kedokteran, (Studi Tentang Hubungan Hukum Dalam Mana Dokter Sebagai Salah Satu Pihak)*. Bandung: Citra Aditya Bakti. Page. 123.

<sup>34</sup> Veronica Komalasari, 1998. *Hukum Dan Etika Dalam Praktek Dokter*, Jakarta: Pustaka Sinar Harapan. Page. 87.

practitioners, 49 cases by surgeons, 33 cases by obstetricians, 16 cases by 6 pediatric specialists, and the remaining 10 cases were diverse in nature.<sup>35</sup>

Meanwhile, based on data from the Indonesian Medical Association (IDI), reports and legal claims against doctors in Indonesia continue to increase each year. In 2015, there were 10 legal claims against doctors, and this number rose to 30 in 2016, 38 in 2017, and in the first half of 2018, it had already reached 33 legal claims.<sup>36</sup> Based on this information, the author has compiled a data table regarding the imposition of penalties in several cases of medical malpractice in Indonesia that have become legally binding (Inkracht), as follows:

Tabel 2. Criminal Convictions Against Defendants in Medical Malpractice Cases

No	Verdict Number	Location	Culprit	Criminal Charges	Final Ruling
1	590K/Pid/2012 (Cassation Level)	Sidoarjo Regency, Jawa Timur	dr. Wida Parama Nastiti	Article 359 in conjunction with Article 361 of the Indonesian Criminal Law Code (KUHP)	A penalty of 1 year and 6 months.
2	113PK/Pid/2012 (Cassation Level)	Banda Aceh City	dr. Taufik W	Article 360, paragraphs (1) and (2), and Article 361 of the KUHP	A Penalty of 6 Months
3	257/Pid.B/2015/PN .Dps	Badung Regency, Bali	dr. I Nyoman Sudarnata	Article 360 Paragraph (2) of the KUHP	A Penalty of Imprisonment for 5 months

Source: Court Ruling Directory of the Indonesian Republic Supreme Court.

Based on the data in the above table, there are 4 criminal court verdicts related to cases of medical malpractice as a form of criminal liability for doctors towards patients. In this regard, doctors can be held criminally responsible for the consequences of their criminal actions towards patients based on the Indonesian Criminal Code (KUHP), Law No. 29 of 2004 on Medical Practices, and Law No. 36 of 2009 on Health. When examined

<sup>35</sup> <https://nasional.tempo.co/read/469172/sampai-akhir-2012-terjadi-182-kasus-malapraktik> accessed on August, 3 2020 at 11.23

<sup>36</sup><https://mediaindonesia.com/read/detail/168824-mediiasi-harus-dimanfaatkan-dalam-kasus-malapraktik> Accessed on August 17, 2020 at 12.35

in accordance with the Indonesian Criminal Code (KUHP) currently in force, the explicit definition of malpractice is not found in the articles of the Indonesian Criminal Code (KUHP). According to the Indonesian Criminal Code (KUHP), if there is an act related to negligence, it means that the act constitutes a criminal offense.

Every action performed by a doctor in the context of healthcare, if related to negligence resulting in harm to a patient, can be considered a criminal act. There are several articles in the Indonesian Criminal Code (KUHP) that can serve as the basis for criminal prosecution of medical malpractice against doctors, namely, these are found in Articles 359, 360, and 361 of the Indonesian Criminal Code (KUHP). These articles can apply to doctors if they perform an action that causes serious injury or death to another person. This can be associated with allegations of medical malpractice. Medical malpractice can be defined as an error or negligence<sup>37</sup> committed by an individual in an act (action), which is regulated in Articles 359, 360, and 361 of the Indonesian Criminal Code (KUHP). Regarding negligence resulting in someone's death, it can be observed in the provisions of Article 359 of the Indonesian Criminal Code (KUHP), which states:

"Anyone who, due to their fault (negligence), causes the death of another person, is liable to a maximum prison sentence of five years or a maximum detention sentence of one year."

a. Criminal Liability: Negligence.

In criminal law, negligence, error, lack of care, or negligence is referred to as culpa. The meaning of culpa is 'general fault,' but in legal science, it has a technical meaning, namely a type of fault committed by the perpetrator of a criminal act that is not as severe as intentional wrongdoing. It involves a lack of caution resulting in unintended consequences.<sup>38</sup>

a. Elements of Criminal Acts

a. Elements of 'anyone'

In the element of 'anyone,' the act must be committed by a human being.

b. Elements of fault and negligence

c. In the element of fault or negligence, the act must involve negligence, error, lack of care, and/or negligence that is prohibited and punishable by law.

d. Elements of causing the death of another person

In the element of causing the death of another person, the act is considered illegal (contrary to the law) because it has resulted in the loss of someone's life.

e. Elements of Criminal Penalty

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<sup>37</sup> The results of the author's interview with Mr. Iptu Teguh Wibowo S.H., who serves as the (Kanit) Head of the Women and Child Protection Unit at the Samarinda City Police Resort on October 5 2020.

<sup>38</sup> Wirjono Prodjodikoro, 2003. *Asas-Asas Hukum Pidana di Indonesia*. Bandung: PT Refika Aditama. hlm. 72.

In the element of criminal penalty, the act can be attributed to someone who can be held criminally responsible, with a maximum prison sentence of five years or a maximum detention sentence of one year.

This article is related to criminal liability for medical malpractice, which can be charged in cases where death is suspected to be caused by a doctor's mistake. It carries a maximum prison sentence of up to five years or a maximum detention sentence of up to one year. Article 359 of the Criminal Law Code (KUHP) also serves to protect patients who are victims as a preventive measure to deter and address medical malpractice. However, there is a need for solutions to alleviate excessive fear among doctors, as medical professionals, resulting from the existence of this article.

The provisions regarding the consequences of one's fault or negligence towards another person are found in Article 360 of the Criminal Law Code (KUHP), which states:

- (1) "Anyone who, due to their negligence, causes serious injuries to another person, shall be liable to a maximum prison sentence of five years or a maximum detention sentence of one year."
- (2) "Anyone who, due to their negligence, causes injuries to another person in such a way that it results in illness or impediment to perform their job, duties, or occupation for a certain period, shall be liable to a maximum prison sentence of nine months or a maximum detention sentence of six months or a fine of up to four thousand three hundred Indonesian Rupiah."

The negligence referred to in this article constitutes gross negligence (*culpa lata*), meaning that the act in question fulfills its elements: is contrary to the law, the consequences are foreseeable, the consequences can be avoided, and the act can be attributed as a fault. According to M. Jusuf Hanafiah and Amri Amir, the elements of malpractice are as follows:

1. The presence of errors/negligence committed by healthcare professionals in carrying out their profession;
2. The presence of actions that do not conform to standard operating procedures;
3. The presence of serious injuries or death, resulting in the patient being disabled or deceased;
4. The presence of a causal relationship, where the serious injury suffered by the patient is a result of the doctor's actions that do not conform to medical service standards.

In the Indonesian Criminal Code (KUHP), there are criteria for what constitutes 'Serious Injury,' as stipulated in Article 90 of the Criminal Code (KUHP). These criteria are as follows:"

- a) Falling ill or sustaining an injury that offers no hope of complete recovery or poses a mortal danger.
- b) Being continuously incapable of performing official duties or gainful employment.
- c) Losing one of the senses.
- d) Suffering severe disability.
- e) Afflicted with paralysis.

- f) Impaired cognitive function for a period exceeding four weeks.
- g) Miscarriage or fetal demise in a pregnant woman.

The wording of Article 360 of the Criminal Code (KUHP) pertains to medical malpractice committed by a doctor and falls under the category of offenses that result in disability or severe injuries leading to illnesses or hindrances to a person's occupation. This represents a consequence of the perpetrator's actions, considering the subjective mental state of the perpetrator in relation to the outcome of their deeds. Examples of medical malpractice include when a doctor or healthcare professional:

- a. Leaving gauze inside the patient's uterus.
- b. Forgetting surgical instruments inside the patient's abdomen.
- c. Delaying childbirth, resulting in fetal death in the mother's womb.
- d. Carelessly suturing surgical incisions, leading to severe infections in the patient.
- e. Failing to adhere to professional standards and operational procedures.<sup>39</sup>

In the presence of wrongful acts committed by a doctor, this article may entail criminal penalties of imprisonment for up to five years or detention for up to one year, and/or imprisonment for up to nine months or detention for up to six months or a fine of up to three hundred Indonesian Rupiah. Furthermore, in Article 361 of the Indonesian Criminal Law Code (KUHP), which is an aggravating article, it states: 'If the crime described in this chapter is committed in the course of carrying out a duty or occupation, the penalty shall be increased by one-third, and the guilty party may be deprived of the right to pursue the occupation in which the crime was committed, and the judge may order the publication of the judgment. Article 361 of the Indonesian Criminal Law Code (KUHP) pertains to the aggravated punishment of individuals performing a duty or profession, such as doctors, midwives, and pharmacists, who commit criminal acts as described in Article 359 and Article 360 of the Indonesian Criminal Law Code (KUHP)

In accordance with this article, a doctor who causes injuries, disabilities, or death in connection with their duties, occupation, or profession will face more severe penalties under Article 361 of the Indonesian Criminal Law Code (KUHP). In this regard, professionals in their respective fields must exercise caution in the execution of their duties or occupations. If they act negligently, resulting in harm, disability, or even death to others, the judge may impose penalties, including the revocation of the right to engage in the occupation used in committing the crime. The judge may also order the publication of the verdict, and the punishment may be increased by one-third (1/3) compared to that stipulated in Article 359 and Article 360 of the Indonesian Criminal Law Code (KUHP).

The criminal act of medical malpractice is not clearly defined in the Indonesian Criminal Law Code (KUHP). However, in some court decisions, individuals suspected of committing medical malpractice can be prosecuted using Articles 359, 360, and 361 of the Indonesian Criminal Law Code (KUHP), which serve as the basis for criminal charges against doctors who have shown negligence in the practice of medicine, resulting in harm

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<sup>39</sup> Abdul Aziz A.H, *Tinjauan Kriminologi Mengenai Praktek Medis Yang Di Lakukan Oleh Perawat*, Jurnal Ilmu Hukum Legal Opinion, Vol 2. No 2, (2014). Page.4.

to patients in the form of severe injuries or even death. The regulations in the Indonesian Criminal Law Code (KUHP) primarily focus on the consequences of malpractice.

Article 359 of the KUHP indeed provides for criminal sanctions against those who commit medical malpractice. However, from the explanation above, it is clear that this crime is committed with evidence left inside the patient's body, leading to severe injuries or death. It does not clearly define the specific actions categorized as negligence in medical practice that can be considered a criminal offense. This is due to the existence of other laws that regulate health and consumer protection, which can be applied to such cases.

Law is established as one of the avenues expected to provide a fair and just resolution to prevent and effectively combat various forms of criminal activities that are deemed detrimental, infringing upon, or depriving the human rights of others. Law represents a set of norms governing human interactions within a society. The development of law is closely tied to the evolution of human thought, as humans create laws to regulate themselves. Law exists in every society across the globe.

The application of criminal sanctions for medical malpractice crimes has, until now, failed to provide certainty and justice for victims of such crimes. Despite several proposed solutions for addressing medical malpractice, the reality is that these measures have not had a maximum deterrent effect on those committing medical malpractice, resulting in the persistence of such crimes. Therefore, the existing regulations are currently insufficient to hold perpetrators of medical malpractice accountable, as there are no clear provisions regarding the qualifications and forms of medical malpractice crimes, as well as the specific fines and durations of imprisonment or detention for such offenses. The resolution of medical malpractice crimes within the healthcare sector lacks adequate legal regulation. Hence, there is a need to introduce additional articles in healthcare legislation that address the criminal aspects of medical malpractice.

### **Legal Review of Islamic Law on Medical Malpractice Actions Against Patients**

Many Islamic jurists use the terms "*jinayah*" or "*jarimah*," and there is not much difference in meaning between these two terms. Linguistically, "*jarimah*" is a derived word (Masdar) from the root "*jarimah*," which means wrongdoing or committing an offense, so "*jarimah*" signifies an act of wrongdoing.<sup>40</sup> In a legal context, "*jarimah*" refers to actions that have been prohibited and can incur sanctions for such actions. It is recommended to refrain from such actions to avoid being subject to sanctions in accordance with the laws prescribed by Allah Subhanahuwata'ala. We can understand that wrongdoing in this context refers to actions that can cause harm to others or actions that violate and deviate from established norms and rules. Medical malpractice is undoubtedly included among actions that can be categorized as "*jarimah*" because such actions pose risks and can lead to fatal harm to others, including the loss of life.

In practice, it is emphasized that even the Prophet himself stressed the importance of professionalism. Errors and negligence are less likely to occur if one has thoroughly

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<sup>40</sup> Makrus Munajat, *Hukum Pidana Islam Di Indonesia*, (Yogyakarta: Teras, 2009), Page. 3.

studied and mastered their field of knowledge. He commanded that anyone seeking medical treatment must consult with a specialist, and he even threatened that anyone who practices medicine without expertise must take responsibility for any mistakes made.<sup>41</sup> As medical professionals, the primary form of prevention is to thoroughly study medical science, avoiding actions outside one's area of expertise, and adhering to procedures and the foremost code of ethics in the medical profession. Professionalism must be upheld, refraining from actions that may harm others for personal gain. As for repressive actions (medical treatment), individuals should seek treatment from doctors or medical professionals who possess the necessary competence and expertise in their respective fields. Sometimes, society seeks instant and inexpensive solutions, leading them to seek treatment from individuals who lack the required expertise. They are tempted by the prospect of affordable and swift healthcare, which, unfortunately, can exacerbate their illnesses.

Examining its elements, medical malpractice in Islamic Law, or "jarimah" in the terminology, can be categorized into two types: firstly, common elements, which are the general requirements that must be met for any act to be considered "jarimah." Secondly, specific elements, which are the particular requirements that must be met for a specific "jarimah." The general elements of "jarimah" are further divided into three categories:<sup>42</sup>

1. Al-Rukn Al-Ayar'I or Formal Element: This element signifies that an individual can be considered a perpetrator of "jarimah" if there is a specific law explicitly prohibiting and imposing sanctions on the act.
2. Al-Rukn Al-Madi or Material Element: This element stipulates that a person can be subject to punishment if they are unequivocally proven to have committed a "jarimah," whether it is of a positive nature (actively engaging in an act) or a negative nature (failing to perform an act).
3. Al-Rukn Al-Adabi or Moral Element: This element asserts that an individual can be held accountable if they are not insane, underage, or acting under duress.

When we examine these three common elements, it becomes evident that the act of "jarimah" or the category of medical malpractice in Islamic law is not significantly different from criminal offenses in the positive law of Indonesia. It can be said that in medical practice, "jarimah" must adhere to applicable criteria and requirements. Just as there is a law prohibiting certain acts, for instance, in Article 1 paragraph 1 of the Indonesian Criminal Law Code (KUHP), we recognize the Principle of Legality, it must also be proven that the act was genuinely committed by the perpetrator of "jarimah." This condition aligns with provisions found in Articles 116 through 121 of the Indonesian Criminal Procedure Code (KUHP) concerning the definition and function of each means of proof. Additionally, the status of the perpetrator, whether they are mentally unstable or underage, plays a role. This aspect is also addressed in Indonesian criminal law, particularly in the Indonesian Criminal Law Code (KUHP) Article 44 paragraph (1),

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<sup>41</sup> Hadith: "Whoever provides medical treatment without possessing the necessary knowledge, then they must bear (the consequences)." (Narrated by Ibn Majah, Al-Daraqutni, Abu Dawud, Al-Nasai, and Al-Hakim, through the narration of Amr Bin Syaib)

<sup>42</sup> Makrus Munajat, *Op Cit*, Page. 11-12.



known as the excuse, which absolves the perpetrator of a criminal act but still deems the act unlawful. This is viewed from the perspective of the subject or the actor of the act. If the actor is mentally unsound or insane, they cannot be held accountable for their actions. Likewise, if the actor is underage, Indonesia's criminal law addresses this separately from the KUHP, with regulations found in Regulation Number 11 of 2012 regarding the Juvenile Justice System (UU SPPA). This law explicitly emphasizes restorative justice and legal diversion. These terms refer to diverting and keeping children away from the legal process to avoid negative perceptions of children involved in legal matters.

Furthermore, the two specific elements in Islamic law are those present in certain criminal (*jarimah*) conditions and differentiate between specific elements in the types of "*jarimah*." For example, in the case of theft and robbery, if theft involves merely taking someone else's property (perhaps without the owner's knowledge), resulting in losses to the other party, then in the case of robbery, there is a similar element to theft, which is taking someone else's property or rights, but through coercion or intimidation of the owner of the property or rights. Consequently, this coercion can lead to additional losses beyond the loss of property or rights. In Islamic law, such an act falls into the category of "*hirabah*" (banditry) because the perpetrator carries a weapon and uses it to commit the theft.<sup>43</sup>

From the explanation of the elements of "*jarimah*" above, it is clear that every action undertaken by a legal subject, if it meets the criteria prohibited by the law, can be held accountable for what has been done. Various scholars have their own views on the accountability of a doctor or healthcare professional for mistakes in medical practice. There is a hadith classified as "*hasan*" in which the Prophet Muhammad discusses accountability for errors in medical treatment. Narrated by Abu Dawud and An-Nasa'i through "*mursal*" transmission (where the narrator was a companion of the Prophet who lived during his time), it is explained that a person who lacks medical knowledge but practices medicine and subsequently injures or harms another individual is obligated to be accountable for their actions.<sup>44</sup>

However, some scholars also suggest that a doctor who commits negligence or errors in medical practice should pay "*diyat*" for the harm suffered by the patient due to the doctor's actions. "*Diyat*" is a fine that must be paid by a perpetrator of a criminal act to the victim for what has been done. Based on a narration from 'Amr bin Syu'aib, from his father, from his grandfather, it is reported that the Prophet Muhammad ruled that whoever unintentionally causes death, the "*diyat*" is 100 camels, with a breakdown of 30 pregnant female camels, 30 nursing female camels, 30 *hiqqah* (female goats over 2 years old), and 10 nursing male camels.<sup>45</sup>

In essence, the forms of accountability for "*jarimah*" or medical malpractice in Islamic law, if it involves medical practice, are quite diverse, including fines in the form of property, fines involving body parts, fines for causing harm to body parts, and "*qishash*" (retribution). The specific form of accountability depends on several factors,

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<sup>43</sup> *Ibid*, Page. 11-12

<sup>44</sup> Al-Hafizh Ibnu Hajar Al-Asqalani, *Bulughul Maram, Pustaka Imam Adz-Dzahabi*, 2013.

<sup>45</sup> [https://almanhaj.or.id/945-diyat-denda.html#\\_ftn1](https://almanhaj.or.id/945-diyat-denda.html#_ftn1), Accessed on September 28 2023, at 15:42.

such as who the perpetrator is, the nature of their actions, the extent to which it can be proven, and the degree of harm caused. This is because Islamic law in the field of medicine places a strong emphasis on the principle of professionalism in carrying out duties or professions, with the aim of minimizing or even eliminating harm to others.

#### IV. CONCLUSION

The qualification of malpractice is considered a criminal act. In this regard, it first refers to the basis of regulating the standard operating procedures of medical practice related to the practice of medicine. However, from several regulations, malpractice actions are not explicitly defined. Therefore, clear boundaries of malpractice cannot be formulated, making the content of the definition and boundaries of medical malpractice inconsistent and subject to individual interpretation. There are three criteria for categorizing malpractice as a criminal act: firstly, the doctor's subjective intent; secondly, requirements within the medical treatment; thirdly, requirements regarding consequences. This is further supported by reported data of alleged criminal malpractice cases recorded in the Criminal Investigation Unit of the Samarinda City Police Department from 2018 to 2021. One of these cases involves a report based on Police Report Acknowledgment Letter (STTLP) Number: STTLP/256/IV/2019, dated April 26, 2019, in which a victim reported negligence in the treatment provided by an obstetrician. Thus, this incident led to an allegation of malpractice due to the negligence of the attending obstetrician. Criminal liability for medical malpractice actions against patients by doctors or medical professionals can be attributed to the consequences of the criminal acts committed, subject to the provisions of the Criminal Code. From an Islamic law perspective, medical malpractice is categorized as "jarimah," an action that is prohibited and subject to sanctions as a form of accountability for the deeds committed. Islamic law places a strong emphasis on professionalism in work and fulfilling entrusted responsibilities, especially for medical professionals like doctors, where the primary focus is on possessing comprehensive knowledge to carry out medical practice competently. Various forms of accountability can be imposed on perpetrators of criminal acts in Islamic law (jarimah), ranging from paying fines (diyat) to compensating for the losses suffered by the victim.

#### SUGGESTIONS

To healthcare professionals, especially medical practitioners such as doctors working in Indonesia, it is imperative to consistently carry out medical procedures in accordance with the prevailing legislation and adhere to all Standard Operating Procedures (SOP) and medical ethics. This ensures that the public, as patients, can have greater confidence in medical practitioners to provide care, monitor, and treat their illnesses until recovery. When performing any procedure, medical personnel should exhibit precision and caution to ensure patient comfort and avoid any infringement on the patient's rights. It is advisable for the government to undertake revisions and additions, or incorporate specific sections, within the legislation to regulate medical malpractice in the medical field comprehensively. Furthermore, the public should maintain a critical mindset and awareness when observing

cases of medical service violations by considering the rights and responsibilities inherent to patients. This approach can help minimize occurrences of medical service violations.

## BIBLIOGRAPHY

- Achadiat, Crisdiono, 2004. *Dinamika Etika dan Hukum Kedokteran dalam Tantangan Zaman*. Jakarta:PT. Raja Grafindo Persada. Page. 34.
- Asadulloh Al Faruk, *Hukum Pidana Dalam Sisem Hukum Islam*, (Bogor: Ghalia Indonesia, 2019), Page. 16.
- Asyhadie, Zaeni, 2017. *Aspek-Aspek Hukum Kesehatan*. Depok: PT. Raja Grafindo. Page. 118.
- Efendi, Erdianto, 2014. *Hukum Pidana Indonesia-Suatu Pengantar*. Bandung: PT. Refika Aditama. Page. 98.
- Hadiati Koeswadji, Hermin, 1998. *Hukum Kedokteran, (Studi Tentang Hubungan Hukum Dalam Mana Dokter Sebagai Salah Satu Pihak)*. Bandung: Citra Aditya Bakti. Page. 123.
- Hajar Al-Asqalani ,Al-Hafizh Ibnu, *Bulughul Maram, Pustaka Imam Adz-Dzahabi*, 2013.
- Joseph H. King, Jr., 1986. *The law of Medical Malpractice*. St Paul: West Publishing Company. Page. 4.
- Komalasari, Veronica, 1998. *Hukum Dan Etika Dalam Praktek Dokter*, Jakarta: Pustaka Sinar Harapan. Page. 87.
- Lamintang, P.A.F, 2011. *Dasar-Dasar untuk Mempelajari Hukum Pidana yang Berlaku di Indonesia*, cetakan ke empat. Bandung: PT. Citra Aditya Bakti. Page. 193.
- Marzuki, Peter Mahmud, 2011. *Penelitian Hukum*, Cetakan ke-11. Jakarta: Kencana. Page. 35.
- Muhammad Abdulkadir, 2004. *Hukum dan Penelitian Hukum*. Bandung: PT. Citra Aditya Bakti. Page. 52.
- Munajat, Makrus, *Hukum Pidana Islam Di Indonesia*, (Yogyakarta: Teras, 2009), Page. 3.
- Muntaha, 2019. *Hukum Pidana Malapraktik Pertanggungjawaban dan Penghapus Pidana*. Jakarta Timur: Sinar Grafika Offset. Page. 48.
- Prodjodikoro Wirjono, 2003. *Asas-Asas Hukum Pidana di Indonesia*. Bandung: PT Refika Aditama. Page. 72.
- S. R., Sianturi, 2002. *Asas-asas Hukum Pidana di Indonesia dan Penerapan*, Cet. 3. Jakarta: Stora Grafika. Page. 208.
- Yunanto, Ari, Helmi, 2010. *Hukum Pidana Malapraktik Medik*. Yogyakarta: CV. Andi Offset. Page. 35.
- Zuhroni, *Respons Ulama Indonesia Terhadap Isu-Isu Kedokteran dan Kesehatan Modern*, Disertasi Sekolah Pascasarjana Universitas Islam Negeri Syarif Hidayatullah (Jakarta 2007), 29.

### Jurnal

- Abdul Aziz A.H, *Tinjauan Kriminologi Mengenai Praktek Medis Yang Di Lakukan Oleh Perawat*, Jurnal Ilmu Hukum Legal Opinion, Vol 2. No 2, (2014). Page.4.

Anis Fitria, *Pertanggung Jawaban Pidana (Mas'uliyah Al-Jinayah) Dalam Malapraktik Dokter Di Klinik Kecantikan*, *Journal Of Islamic Studies And Humanities*, Vol. 7, No. 1 (2022), Page. 17-43. DOI: <http://dx.doi.org/10.21580/jish.v7i1.11679>.

### **Peraturan Perundang-Undangan**

Republic of Indonesia Regulation No. 36 of 2009 concerning Health

Article 34, paragraph (3), Republic of Indonesia Constitution of 1945.

### **Hadith**

Hadith: "Whoever provides medical treatment without possessing the necessary knowledge, then they must bear (the consequences)." (Narrated by Ibn Majah, Al-Daraqutni, Abu Dawud, Al-Nasai, and Al-Hakim, through the narration of Amr Bin Syaib)

### **Hasil Wawancara**

The results of the author's interview with Mr. Iptu Teguh Wibowo S.H., who serves as the (Kanit) Head of the Women and Child Protection Unit at the Samarinda City Police Resort on October 5 2020.

The results of the author's interview with Mr. Iptu Teguh Wibowo S.H., who serves as the (Kanit) Head of the Women and Child Protection Unit at the Samarinda City Police Resort on October 5 2020.

### **Website**

[https://almanhaj.or.id/945-diyat-denda.html#\\_ftn1](https://almanhaj.or.id/945-diyat-denda.html#_ftn1), Accessed on September 23 2023, at 15:42 Wita.

<https://kaltim.tribunnews.com/amp/2019/04/26/bayi-otniel-junior-meninggal-9-jam-setelah-dilahirkan-keluarga-laporkan-rsud-aws-ke-polisi> Accessed on August 13 2020 at 13.00 Wita.

<https://kaltimkece.id/warta/terkini/kejanggalan-tewasnya-bayi-laki-laki-yang-baru-lahir-di-rsud-aws> Accessed on July 12 2020 at 11.23 Wita.

<https://m.merdeka.com/peristiwa/kasus-bayi-meninggal-di-rs-samarinda-keluarga-lapor-ke-polisi.html> Accessed on August 13 2020 at 12.30 Wita.

<https://mediaindonesia.com/read/detail/168824-mediiasi-harus-dimanfaatkan-dalam-kasus-malapraktik> Accessed on August, 17 2020 at 12.35 Wita.

<https://nasional.tempo.co/read/469172/sampai-akhir-2012-terjadi-182-kasus-malapraktik> Accessed on August, 3 2020 at 11.23 Wita.

<https://news.detik.com/berita/d-2201025/pasien-meninggal-karena-malapraktik-dokter-wida-dibui-10-bulan> Accessed on August 3 at 15.30 Wita.

<https://www.merdeka.com/peristiwa/ini-kasus-dokter-dipidana-karena-malapraktik.html?page=2> Accessed on July 26 2020 at 10.00 Wita.

