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Medical malpractice and professional accountability in Indonesia: An overview of civil, criminal, and ethical liability of health care providers

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ABSTRACT

Introduction: Medical malpractice and professional accountability remain contentious issues in Indonesia due to increasing complaints and persistent uncertainty in applying civil, criminal, and disciplinary liability. Although multiple health laws regulate medical practice, fragmentation and the absence of a unified malpractice doctrine continue to complicate accountability.

Methods: This narrative review analysed academic literature, statutes, judicial decisions, and policy documents published between 2021 and 2025. The review focused on the operation and interaction of civil liability, criminal responsibility, and professional disciplinary mechanisms, particularly following the enactment of Law No. 17 of 2023.

Results: The findings demonstrate a substantial gap between normative legal frameworks and their practical enforcement. Civil liability is formally positioned as the primary compensatory mechanism, but is undermined by high evidentiary burdens, procedural complexity, and limited patient access, reducing its effectiveness. Criminal liability has been inconsistently applied through general negligence provisions, contributing to the over-criminalization of medical judgment, although recent reforms introduce professional assessment as a gatekeeping safeguard. Professional and ethical disciplinary mechanisms function as essential filters for assessing compliance with standards. Yet, their decisions remain weakly integrated with civil and criminal processes, producing parallel and sometimes conflicting outcomes. Overall, accountability remains forum-dependent, fragmented, and insufficiently coordinated.

Conclusion: Indonesia's medical malpractice regime is legally extensive but operationally fragile. Addressing these deficiencies requires more precise differentiation between medical error and negligence, strengthening civil remedies as the primary avenue for patient redress, consistent use of criminal law as *ultimum remedium*, and improved coordination between disciplinary and judicial mechanisms to ensure proportional accountability and legal certainty.

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INTRODUCTION

Medical malpractice and professional accountability have become matters of growing urgency in Indonesia, reflecting heightened public awareness, increasing numbers of complaints against health care providers, and persistent legal uncertainty in the handling of medical disputes. In the Indonesian legal system, medical malpractice is not defined by a single statutory provision. Still, it is instead inferred from a fragmented combination of civil negligence, criminal liability, and professional and ethical regulations. This fragmented structure has made it difficult to clearly distinguish between unavoidable medical risk, professional error, and legally punishable negligence, particularly in cases that escalate into criminal proceedings.[1–3]

The problem has been intensified by extensive media coverage, the rise of patient rights advocacy, and several landmark court cases that exposed inconsistencies in the application of criminal law to medical practice. Although disciplinary bodies such as the Indonesian Medical Council and its affiliated boards have processed hundreds of complaints, the frequent recourse to general criminal law has created anxiety among health care providers and weakened legal certainty. Conversely, patients often encounter unclear procedures and limited access to effective remedies, especially when professional discipline, civil compensation, and criminal sanctions overlap without clear prioritisation.[4]

Regulatory reform has been pursued through successive health laws, most recently the Omnibus Health Law of 2023, which seeks to consolidate oversight and strengthen patient safety and professional standards. Despite these efforts, substantial gaps remain. Medical liability norms continue to be dispersed across multiple statutes, institutional mandates overlap, and the thresholds separating civil, criminal, and ethical accountability remain poorly defined. These pitfalls contribute to reactive and punitive dispute resolution, rather than a structured system focused on patient protection, fair compensation, and

proportional professional accountability.[5,6]

Against this background, this article aims to analyse the current legal landscape of medical malpractice in Indonesia by examining civil, criminal, and ethical liability mechanisms in an integrated manner. By identifying key regulatory gaps and practical pitfalls, this article seeks to contribute to clearer accountability pathways and more balanced approaches to medical responsibility within the Indonesian health system.

METHODS

Search Strategy

A structured literature search was conducted to identify relevant academic and legal sources on medical malpractice and professional accountability in Indonesia. Searches were performed across major academic databases, including Scopus, Web of Science, PubMed, Google Scholar, and GARUDA, focusing on publications from the past 5 years to capture recent regulatory developments, particularly following the enactment of the Omnibus Health Law of 2023. Search terms were applied in various combinations and included "medical malpractice," "professional accountability," "medical negligence," "health law," "patient safety," "medical discipline," "criminal liability," "civil liability," "ethical responsibility," and "Indonesia." In addition, primary legal materials were collected, including national laws, government regulations, ministerial decrees, decisions of professional disciplinary bodies, and relevant court judgments, to ensure comprehensive coverage of both normative and applied legal frameworks.

Eligibility Criteria

Included sources comprised peer-reviewed journal articles, legal commentaries, policy analyses, and empirical or doctrinal studies that explicitly addressed medical malpractice, health care provider liability, professional discipline, or patient safety within the Indonesian legal and health system context. Statutory instruments and authoritative judicial decisions relevant to civil, criminal, or ethical accountability were also included. Excluded materials consisted of opinion pieces lacking analytical depth, publications focusing on non-Indonesian legal systems without comparative relevance, and clinical or biomedical studies not engaging with legal, regulatory, or ethical dimensions of medical practice.

Data Extraction

Data extraction was performed systematically using an adapted legal–regulatory appraisal framework. Each selected source was reviewed for key information on: (1) the conceptualisation of medical malpractice and professional accountability, (2) the allocation and scope of civil, criminal, and ethical liability, (3) institutional roles and procedures in dispute resolution, and (4) identified gaps, inconsistencies, or implementation challenges. Extracted data were organised into three analytical domains: civil liability mechanisms, criminal accountability, and professional and ethical regulation.

Data Synthesis

A narrative thematic synthesis approach was applied to integrate findings from heterogeneous sources. Normative provisions contained in laws and regulations were analysed alongside judicial decisions and empirical evidence to identify patterns of legal fragmentation, overlapping authority, and uncertainty in liability thresholds. Triangulation across academic literature, legal texts, and policy analyses was used to enhance analytical rigor and to highlight recurring pitfalls in the enforcement of medical accountability in Indonesia.

RESULTS AND DISCUSSION

Legal Definitions and Regulatory Structure of Medical Malpractice

The analysis reveals that medical malpractice in Indonesia is regulated through a complex and fragmented legal architecture, compounded by the absence of an explicit statutory definition of "medical malpractice." Consequently, courts and regulatory bodies rely on interpretative approaches derived from criminal, civil, and administrative law provisions. Within this framework, a medical malpractice claim is generally established when four cumulative elements are met: the existence of a therapeutic relationship creating a duty of care, a breach of that duty through error or negligence, the occurrence of measurable harm to the patient, and a causal link between the violation and the harm. This structure mirrors general tort principles but lacks procedural specificity tailored to medical practice.[7,8]

A critical result of this analysis is the persistent conceptual confusion between medical error, negligence (culpa), and intentional wrongdoing (dolus). Negligence is legally understood as carelessness, lack of prudence, or failure to adhere to professional standards, whereas intentional acts require proof of *mens rea* or deliberate intent. However, public discourse and law enforcement practice often conflate adverse outcomes or unavoidable medical errors with culpable negligence, contributing to inappropriate criminalisation of clinical judgment.[2,4,6]

From a regulatory perspective, Law No. 29 of 2004 concerning Medical Practice provides the foundational framework by defining professional standards, mandating informed consent, and granting legal protection to doctors acting in accordance with professional norms. It also establishes a disciplinary pathway through the Indonesian Medical Disciplinary Board, conceptually separating professional misconduct from civil and criminal liability. Law No. 36 of 2009 concerning Health expands patient rights. It introduces criminal sanctions for negligence, while Law No. 44 of 2009 concerning Hospitals imposes vicarious liability on hospitals for negligence committed by employed health workers, signalling recognition of institutional responsibility. The Consumer Protection Law offers an additional avenue by framing patients as consumers entitled to compensation for defective services, enabling dispute resolution through Consumer Dispute Settlement Bodies. More recently, Law No. 17 of 2023 concerning Health marks a significant regulatory shift by formally distinguishing "mistakes" from "negligence" and requiring professional assessment before criminal investigations proceed. Despite this development, general provisions of the Indonesian Criminal Code and Civil Code remain routinely invoked, resulting

in parallel and overlapping accountability mechanisms.[1,7–9]

Conceptual Ambiguity, Systemic Risk, and the Limits of Reform

The combined findings underscore that Indonesia's medical malpractice regime is defined more by regulatory plurality than doctrinal coherence. The lack of a clear statutory definition of malpractice perpetuates ambiguity in distinguishing unavoidable medical error from legally relevant negligence. This ambiguity is exacerbated by public misunderstanding and inconsistent application of criminal law, where adverse outcomes are sometimes treated as prima facie evidence of culpa, contrary to established legal principles.[3,7,8]

Notably, the analysis highlights a gradual but incomplete shift from individual fault-based liability toward recognition of systemic and institutional factors in medical error. Contemporary legal and policy discourse increasingly acknowledges that patient harm often arises from work system deficiencies, such as inadequate staffing, insufficient resources, or unsafe organisational environments. While hospital vicarious liability and institutional accountability have begun to address these realities, enforcement remains uneven, and criminal and civil liability continue to focus predominantly on individual practitioners.[6,10]

The Omnibus Health Law of 2023 represents a meaningful attempt to correct these distortions by introducing procedural safeguards against premature criminalisation and reinforcing the role of professional standards in liability assessment. Nevertheless, the effectiveness of this reform is constrained by ongoing fragmentation, overlapping jurisdictions, and the non-binding nature of disciplinary findings on civil and criminal courts. As a result, malpractice disputes remain forum-dependent, with inconsistent outcomes across disciplinary, civil, criminal, and consumer protection processes.[4,5]

Civil Liability for Medical Malpractice in Indonesia

The analysis confirms that civil liability constitutes the principal legal pathway for patients seeking compensation for harm arising from medical malpractice in Indonesia. Civil claims are grounded in three interrelated legal bases: contractual liability deriving from the therapeutic relationship, liability for unlawful acts under Article 1365 of the Indonesian Civil Code, and liability for violations of statutory patient rights, particularly under consumer protection legislation. Together, these bases form a broad but complex framework for patient compensation.[11,12]

The doctor–patient relationship is legally characterised as a therapeutic contract, imposing an obligation of best efforts rather than guaranteed results. Indonesian courts have consistently reaffirmed that doctors are not liable solely because treatment outcomes are unfavorable, provided that care is delivered in accordance with accepted professional standards. Consequently, liability arises not from failure to cure, but from failure to exercise the degree of care expected of a reasonably competent healthcare provider in comparable circumstances. In practice, however, contractual claims are less frequently pursued than tort-based claims, as most malpractice litigation relies on the doctrine of unlawful acts.[8,13]

Under Article 1365 of the Civil Code, plaintiffs must establish four cumulative elements: an act or omission by the healthcare provider, unlawfulness in the form of a breach of professional or legal standards, a causal link between the violation and the injury, and demonstrable damage. Courts assess the applicable standard of care by reference to professional guidelines, government-issued service standards, expert testimony, and hospital protocols. Increasingly, disciplinary findings from the Indonesian Medical Disciplinary Board are used as persuasive evidence, although they are not legally binding on civil courts. This evidentiary structure reflects an attempt to anchor judicial assessment in professional norms, yet it also exposes plaintiffs to significant procedural and technical challenges.[5,7]

A notable result is the expanding scope of civil liability beyond individual practitioners to include hospitals as corporate entities. Statutory provisions and judicial decisions recognise vicarious liability for negligent acts committed by employed healthcare workers, particularly where systemic failures in supervision, staffing, or facilities contribute to patient harm. Landmark cases demonstrate that courts are willing to impose substantial compensation on hospitals, encompassing both material damages, such as medical costs and loss of income, and immaterial damages, including pain and suffering. This development signals a gradual shift toward recognising institutional responsibility for the environment of care, rather than focusing exclusively on individual fault.[7,8]

Despite this seemingly comprehensive framework, the practical effectiveness of civil liability remains limited. A central obstacle is the strict application of the burden of proof, which requires patients to demonstrate complex medical negligence and causation in a highly technical context. Information asymmetry between patients and healthcare providers, coupled with the cost and duration of litigation, renders civil proceedings lengthy, expensive, and uncertain. As a result, civil law is often perceived as an inadequate mechanism for timely and effective redress.[7,8] To address these shortcomings, alternative dispute resolution mechanisms have been increasingly promoted. The Health Law of 2023 mandates that disputes arising from medical "mistakes" be resolved through alternative dispute resolution before court proceedings may commence. Hospitals are encouraged to establish internal mediation systems, and consumer protection law offers an additional forum through Consumer Dispute Settlement Bodies. These mechanisms provide faster and less costly avenues for resolution, but their jurisdictional limits and inconsistent enforceability reduce their overall reliability.[6,14]

From a systemic perspective, the findings suggest that the limited accessibility and effectiveness of civil liability have contributed to a failure of the primary accountability mechanism. This failure has, in turn, encouraged patients to pursue criminal complaints as a substitute for civil redress, even in cases involving mere negligence rather than intentional wrongdoing. Such a trend undermines the principle of criminal law as *ultimum remedium* and intensifies the over-

criminalisation of medical practice.

Criminal Liability for Medical Malpractice in Indonesia

The analysis demonstrates that criminal liability represents the most severe and contentious form of accountability for medical malpractice in Indonesia. Historically, criminal prosecution of healthcare providers has relied predominantly on general negligence provisions in the Indonesian Criminal Code, particularly Articles 359 and 360, which criminalize negligence causing death or injury. These provisions, although not explicitly designed for medical practice, have been extensively applied in clinical contexts where adverse outcomes occur. Their broad formulation has allowed medical negligence to be subsumed under general criminal negligence, contributing to legal uncertainty and inconsistent enforcement.[11,15]

A significant regulatory development is the enactment of Law No. 17 of 2023 concerning Health, which, for the first time, explicitly regulates criminal liability of medical and healthcare personnel in a medical context. Article 440 of this law differentiates negligence from mere medical error and links criminal sanctions directly to deviations from professional standards, service standards, and standard operating procedures. By doing so, the law narrows the scope of criminal liability and clarifies that complications or poor outcomes arising despite adherence to standards do not constitute criminal conduct. The law also introduces a procedural safeguard requiring a preliminary recommendation from a professional discipline assembly before criminal investigation may proceed, effectively positioning professional assessment as a gatekeeping mechanism against unwarranted criminalization.

In addition to negligence-based offenses, criminal liability may arise from intentional misconduct or gross violations of medical law, such as practicing without a license, falsification of medical records, failure to provide mandatory care, or practicing while impaired. Violations of informed consent may also trigger criminal responsibility under general assault provisions, reflecting the criminal law's role in protecting patient autonomy. These categories demonstrate that Indonesian criminal law distinguishes, at least normatively, between culpa-based negligence and dolus-based intentional wrongdoing.

The threshold for criminal responsibility is significantly higher than that for civil liability. Criminal negligence requires proof beyond a reasonable doubt that the healthcare provider's conduct constituted a gross or substantial deviation from accepted professional standards. Indonesian jurisprudence increasingly recognizes that medical professionals operate under conditions of uncertainty and risk, and that errors of judgment, when made in good faith and within the range of reasonable professional discretion, should not be criminalized. This distinction has been reinforced by judicial reasoning that emphasizes procedural compliance, documentation, consultation, and informed consent over retrospective evaluation of outcomes.

Noteworthy criminal cases illustrate both the risks and corrective potential of the criminal justice system. The Doctor Ayu case is emblematic of the dangers of over-criminalization, where an initial conviction based on procedural interpretation was later overturned by the Supreme Court, which reaffirmed that adverse outcomes do not equate to criminal negligence when professional standards are met. Conversely, cases involving clear procedural violations, such as negligent blood transfusions or dental procedures performed without proper diagnostics or consent, demonstrate that criminal liability remains appropriate for gross negligence and undisputed departures from established protocols.

Despite these doctrinal clarifications, significant challenges persist in the criminal enforcement of medical malpractice. Police and prosecutors face substantial evidentiary hurdles, particularly in proving causation and fault through expert testimony. Dependence on medical experts, combined with professional solidarity and concerns over collegial pressure, often undermines the perceived objectivity and availability of expert evidence. These difficulties weaken prosecutorial capacity and contribute to inconsistent outcomes, eroding public confidence in criminal accountability.[11,15]

From a systemic perspective, the findings reveal a paradox. The perceived ineffectiveness and complexity of civil remedies have driven patients to initiate criminal complaints as a first resort rather than as *ultimum remedium*. This practice subverts the foundational principle that criminal law should be applied only as a last resort and exacerbates defensive medicine and professional anxiety. The Omnibus Health Law's emphasis on professional filtering and alternative dispute resolution represents an important step toward restoring the *ultimum remedium* doctrine. Yet, its success will depend on consistent implementation and institutional independence.[9]

Ethical and Professional Accountability in Medical Practice

Ethical and professional accountability in Indonesia is primarily exercised through a self-regulatory disciplinary framework centered on the Indonesian Medical Council and its disciplinary body, the Indonesian Medical Disciplinary Board. This track is designed to uphold professional integrity, clinical standards, and public trust, operating independently from civil and criminal justice mechanisms. The disciplinary system focuses on assessing whether doctors and dentists have complied with professional standards, codes of ethics, and standard operating procedures, rather than determining legal fault or imposing punitive sanctions. Sanctions are professional in nature, ranging from warnings and mandatory education to suspension or revocation of registration and practice licenses.[5,6]

A key finding is that the disciplinary process provides an essential preliminary filter for medical disputes, particularly following recent reforms under the Health Law of 2023 and its implementing regulations. These reforms reinforce the role of professional assessment in determining whether a deviation from standards has occurred and require such assessment before criminal investigations may proceed. Normatively, this strengthens professional autonomy and aligns accountability with the realities of clinical decision-making, where uncertainty and risk are inherent. Ethical principles codified in the Indonesian

Table 1. Summary of Key Reform Measures and Policy Implications in Indonesian Medical Accountability[4,6,7,10,19,20]

Reform Area	Key Measure	Intended Impact	Remaining Challenges
Legal Framework	Law No. 17 of 2023 (Omnibus Health Law)	Clarifies mistake vs negligence; reinforces *ultimum remedium*	Ambiguity in practical application
Criminal Process	Mandatory professional assessment before investigation	Prevents premature criminalization	Dependence on assembly independence and capacity
Dispute Resolution	Mandatory ADR for medical mistakes	Faster, less adversarial resolution	Risk of inadequate patient protection
Professional Discipline	Standardized discipline panels (PP No. 28/2024)	Greater consistency and transparency	Lengthy procedures; limited integration
Patient Safety	Incident reporting and EHR promotion	System learning and error prevention	Underreporting; data privacy concerns
Systemic Balance	Emphasis on proportional liability	Reduced defensive medicine	Cultural shift still ongoing

Code of Medical Ethics (such as informed consent, confidentiality, beneficence, non-maleficence, justice, and professional competence) serve as the substantive benchmarks for evaluating conduct.[5,10]

However, the analysis also reveals persistent structural weaknesses. Disciplinary findings are formally non-binding on civil and criminal courts, creating the possibility of divergent outcomes across forums for the same clinical event. A healthcare provider may be disciplined without civil or criminal liability, or conversely, face criminal prosecution despite no disciplinary breach being found. While this jurisdictional separation protects against automatic criminalization, it also generates public confusion and undermines confidence in professional self-regulation as an effective accountability mechanism. Moreover, the disciplinary process itself is lengthy and resource-intensive, often requiring 1–2 years to conclude, limiting its responsiveness for patients seeking a timely resolution.[6,7]

Overall, ethical and professional accountability plays a crucial corrective and preventive role within Indonesia's medical liability system, emphasizing professional standards and remediation over punishment. Yet its effectiveness is constrained by limited integration with civil and criminal processes and by perceptions of weak enforcement. Strengthening coordination between disciplinary findings and legal proceedings, while preserving due process and professional independence, is essential if the disciplinary track is to function as a credible cornerstone of medical accountability rather than merely an ancillary forum.[16–18]

Reform Efforts and Policy Directions in Medical Accountability

Recent reforms signal a decisive shift in Indonesia's approach to medical malpractice and professional accountability, with Law No. 17 of 2023 concerning Health representing the most consequential transformation. The Omnibus Health Law introduces a more apparent conceptual distinction between medical *mistakes* and *negligence*, formally embedding the principle that not all adverse outcomes warrant litigation or punishment. By mandating alternative dispute resolution for cases arising from mistakes and requiring prior professional assessment before criminal investigation, the law seeks to realign accountability with clinical realities and to reinforce criminal law as *ultimum remedium*. These reforms reflect policy recognition that excessive reliance on litigation and criminal sanctions has distorted medical practice and undermined patient–provider trust.[6,10]

Institutionally, the creation of professional discipline assemblies and the expanded role of health councils mark a shift toward stronger state oversight of professional self-regulation. This recalibration aims to address public concerns regarding transparency and accountability, but it also raises tension with traditional models of professional autonomy. Constitutional Court Decision No. 21/PUU-XXI/2023 reinforces the binding nature of disciplinary decisions while emphasizing due process, underscoring that the legitimacy of professional accountability depends not only on authority but also on procedural fairness. Government Regulation No. 28 of 2024 further operationalizes these reforms by standardizing disciplinary procedures, strengthening patient safety reporting, and promoting electronic medical records to enhance transparency and traceability of care.[2,3]

Despite these advances, the findings indicate persistent gaps and contested issues. The practical distinction between mistake and negligence remains difficult to operationalize, as it depends heavily on expert interpretation. Mandatory alternative dispute resolution offers efficiency and restorative potential, yet insufficient safeguards risk marginalizing patient interests if mediation lacks independence or oversight. Moreover, ambiguity in the boundaries between civil, criminal, and disciplinary liability continues to fuel forum shopping and inconsistent outcomes. Without more explicit guidance and coordination, reforms may reduce overt criminalization but fail to resolve underlying structural uncertainty.[4,5]

Policy analysis supports a set of convergent recommendations: strengthening patient safety incident reporting through non-punitive systems; clarifying liability thresholds to align culpability with proportional consequences; improving clinical governance, documentation, and informed consent; expanding access to justice for patients through legal aid and

education; reinforcing fair and transparent disciplinary processes; and addressing defensive medicine by protecting good-faith clinical judgment. Collectively, these measures aim to rebalance the system, enhancing patient protection while ensuring a fair and predictable environment for healthcare providers.[4,5,10]

CONCLUSION

Recent literature and regulatory developments indicate that Indonesia has established an increasingly comprehensive legal framework for medical malpractice and professional accountability across civil, criminal, and disciplinary domains, particularly following the enactment of Law No. 17 of 2023. Nonetheless, a critical gap persists between formal legal norms and their practical application. Fragmented regulations, overlapping institutional roles, high evidentiary burdens, and weak coordination among accountability forums continue to undermine legal certainty for healthcare providers and limit effective remedies for patients. The continued dependence on general criminal provisions and the limited effectiveness of civil compensation mechanisms have encouraged premature criminalization and defensive medical practice.

Bridging this gap requires more precise doctrinal boundaries between medical error, negligence, and intentional misconduct; strengthening civil liability as the primary avenue for patient compensation; and reinforcing criminal law as *ultimum remedium* through consistent professional assessment and alternative dispute resolution. Equally significant are improvements in patient safety systems, disciplinary transparency, and access to justice. Embedding these measures within a coherent governance framework under Law No. 17 of 2023 is essential to achieving a balanced accountability system that protects patients while ensuring fairness and legal certainty for healthcare professionals.

AUTHORS CONTRIBUTION

N.P.E.K.P. conceptualized the study, designed the methodology, and wrote the original draft. A.A.G.K.N.P conducted data extraction and contributed to the review and editing of the manuscript. K.K.W.W. supervised the project and provided critical revisions to the manuscript. P.E.V.N.B. contributed to the literature review and data interpretation. All authors have read and approved the final version of the manuscript.

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CONFLICT OF INTEREST

The authors declare no conflict of interest related to this study.

ETHICAL CONSIDERATION

Not applicable.

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