ORIGINAL ARTICLE

Jurnal Dharmaputra Hukum Kesehatan (*JDHK*) 2026, Volume 2, Number 1: 22-27
E-ISSN: 3124-1840 ; P-ISSN: 3124-1964

Criminalization of Medical Error in Indonesia: A Critical Review of Professional Autonomy, Patient Protection, and the Limits of Penal Law

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Received: 2026-02-27
Accepted: 2026-04-18
Published: 2026-05-26

ABSTRACT

Introduction: The criminalization of medical errors in Indonesia represents an ongoing systemic conflict between safeguarding professional autonomy, protecting patient rights, and defining the legitimate limits of penal law. Historically, the direct application of general negligence provisions under the Indonesian Penal Code (KUHP) exposed medical practitioners to disproportionate criminal liability, driving defensive medicine practices. This article critically examines the shifting legal landscape following the enactment of Law Number 17 of 2023 concerning Health.

Methods: This study employs a normative juridical research method using statutory, conceptual, and case approaches. It evaluates positive legal norms governing medical malpractice, the structural transition of disciplinary bodies, the application of the ultimum remedium principle, and the effectiveness of alternative dispute resolution mechanisms.

Results: The findings indicate that Law Number 17 of 2023 establishes a tiered liability framework prioritizing restorative justice and mandatory mediation. The Professional Disciplinary Council serves as an initial administrative "gatekeeper" to assess professional discipline before judicial intervention, reinforcing the lex specialis doctrine. However, the centralization of disciplinary authority under the Ministry of Health and procedural friction with police investigative powers generate significant legal uncertainty.

Conclusion: While the 2023 Health Law represents a progressive shift toward a safety and system-improvement culture, further legislative harmonization is required to resolve procedural friction and preserve the independent professional judgment of healthcare workers.

Keywords: Health Law; Medical Error; Professional Autonomy; Patient Protection; Restorative Justice.
Cite This Article: Sari, I.A.P.W.I., Udiana, G.K. 2026. Criminalization of Medical Error in Indonesia: A Critical Review of Professional Autonomy, Patient Protection, and the Limits of Penal Law. *Jurnal Dharmaputra Hukum Kesehatan*. 2(1): 22-27

INTRODUCTION

In the constitutional framework of the Republic of Indonesia, the right to health is recognized as a fundamental, non-negotiable human asset. Article 28A and Article 28H of the 1945 Constitution mandate that the state secure quality, safe, and accessible healthcare services for all citizens. Under Indonesian health law doctrines, health is defined as a comprehensive state of complete physical, mental, spiritual, and social well-being, rather than merely the absence of disease or infirmity.[1] To achieve this constitutional mandate, the national healthcare system relies heavily on the quality, safety, and welfare of its medical and health personnel. This principle is reflected in Article 28D of the 1945 Constitution, which guarantees every individual, including healthcare workers, the right to fair legal recognition, protection, security, and equal treatment before the law.[2]

Over the past decade, disputes between medical professionals and patients in Indonesia have risen significantly, mirroring a broader global trend.[3,4] This increase is primarily driven by growing public legal awareness of patient rights and a structural transformation in the patient-doctor relationship.[3,4] Historically viewed as an active-passive biomedical bond, the relationship has evolved into a therapeutic transaction where patients possess autonomy over their bodies but also hold exceptionally high, and occasionally unrealistic, expectations regarding clinical outcomes.[5,6] When clinical outcomes fail to align with these expectations, patient dissatisfaction can escalate into disputes, with patients or their representatives assuming that a professional error or negligence occurred.[5] Consequently, healthcare facilities are required to implement robust risk management systems and comply with standard operating procedures (SOPs) to mitigate disputes.[7]

A major challenge in Indonesia's health legal framework has been the "criminalization of medical error" prosecuting medical practitioners under general penal provisions for unintended clinical outcomes.[8] Because previous legislation lacked a precise and authoritative definition of medical malpractice, courts frequently applied general provisions of the Indonesian Criminal Code (KUHP), such as Article 359 (negligence causing death) and Article 360 (negligence causing serious injury).[8,9] Under Article 361 of the old KUHP, a practitioner's professional status served as an aggravating factor, increasing the standard penalty by one-third.[8]

This legal vulnerability is illustrated by the landmark case of Dr. Ayu and her companions (Supreme Court Decision No. 365 K/PID/2012).[8,9] In late 2013, the Supreme Court convicted three obstetricians on cassation, sentencing them to ten months in prison following a failed emergency cesarean section that resulted in the patient's death. The conviction was heavily criticized for linking the doctors' administrative failure to secure signed informed consent directly to the patient's death, which was medically caused by an unavoidable and unforeseeable amniotic fluid embolism. This controversial precedent shocked the medical community, triggered nationwide strikes, and fostered defensive medicine, where practitioners perform excessive diagnostic procedures primarily to avoid legal liability.[8] Conversely, in cases characterized by clear *culpa lata* (gross negligence), such as Supreme Court Decision No. 590 K/PID/2012 involving Dr. Wida Parama Astiti, the court justified a custodial sentence.10 In that instance, a pediatric patient died after the unsupervised administration of potassium chloride (KCl), a high-alert medication, representing a severe deviation from mandated safety protocols and professional duties.[10]

To resolve these legal ambiguities and balance the competing interests of patient protection and professional security, the Government of Indonesia enacted Law Number 17 of 2023 concerning Health (the "Health Law 2023").[4,11] This omnibus legislation consolidated eleven fragmented laws, seeking to harmonize legal standards, streamline healthcare governance, and balance the dual interests of patient protection and professional autonomy.[4,12]

Despite these progressive provisions, several practical barriers hinder the widespread implementation of medical mediation in Indonesia. This article critically reviews the tension between professional autonomy, patient protection, and the limits of penal law under this new omnibus framework, advocating for a balanced, multi-layered accountability system.[13,14]

METHODS

This study employs a normative juridical legal research method focusing on the analysis of positive legal norms governing medical malpractice in Indonesia. To address the complex intersection of criminal law, administrative discipline, and medical science, the study utilizes three distinct analytical approaches, namely statutory, conceptual, and case approaches.

The statutory approach involves examining the provisions of Law Number 17 of 2023 on Health, Government Regulation Number 28 of 2024, Minister of Health Regulation Number 3 of 2025, and the new Criminal Code (Law Number 1 of 2023).[15,16] The conceptual approach reviews legal doctrines and theories of legal protection (preventive and repressive), the lex specialis derogat legi generali principle, the presumption of innocence, and the ultimum remedium doctrine.[5,17,18] The case approach conducts an in-depth analysis of landmark judicial decisions, particularly Makassar District Court Decision Number 1441/Pid.Sus/2019/PN Mks, to evaluate how Indonesian courts handle evidentiary challenges and define medical negligence.[13]

To retrieve the legal and academic resources required for this analysis, a systematic searching protocol was executed across national and international legal and literature databases. Primary legal materials and national regulatory frameworks were retrieved from the Legal Documentation and Information Network (JDIH) of the Ministry of Law and Human Rights (jdih.kemenkumham.go.id) and the legal documentation system of the Supreme Court of the Republic of Indonesia. For secondary legal materials, international academic databases, specifically Scopus, PubMed, and Google Scholar, were systematically queried to identify peer-reviewed journal articles, health law reviews, and comparative health literature. This searching protocol utilized precise keyword strings, including "Professional Disciplinary Council", "Law Number 17 of 2023", "medical error", "criminalization", "disciplinary", and "ultimum remedium".

The primary legal materials analyzed consist of statutory regulations and court decisions, while secondary legal materials include health law textbooks, academic journals, and legal opinions. Tertiary legal materials comprise legal encyclopedias and legal dictionaries. These materials are systematically evaluated using qualitative and deductive legal reasoning to reconstruct a balanced and legally certain framework for medical errors.[12,14]

RESULT AND DISCUSSION

Defining Medical Malpractice and the Presumption of Innocence

A primary source of legal uncertainty in healthcare disputes is the tendency of the public and law enforcement to conflate adverse clinical outcomes with criminal negligence. Legally, the doctor-patient relationship is classified as an *inspanningsverbintenis* an obligation of best effort rather than a *resultaatverbintenis* an obligation to guarantee a specific result. Consequently, a physician should not be presumed at fault, let alone be subject to criminal prosecution, solely because a medical procedure fails to align with the patient's expectations, provided the doctor acted in accordance with professional standards, service standards, and local SOPs.[5]

To establish fair liability, the law must distinguish between three distinct concepts: medical risk, medical error, and medical negligence.[5] A medical accident or mishap represents an unexpected event that occurs despite the practitioner acting with due care, thoroughness, and compliance with protocols.[19] Such accidents are legally understood as unforeseeable risks and are not punishable under the law.[20] In contrast, medical malpractice or negligence requires the cumulative satisfaction of three legal elements: a violation of professional standards and SOPs, fault or negligence (*culpa*) on the part of the professional, and actual harm suffered by the patient that is causally linked to the medical act.[3] Without the fulfillment of all three elements, an adverse clinical event cannot be legally classified as malpractice.[3,15,16]

Under Article 474 of the New Criminal Code (Law Number 1 of 2023), negligence resulting in injury or death remains a criminal offense, and committing such negligence while performing professional

Table 1. Criminal Sanctions and Legal Standards for Medical Negligence in Indonesia.

Legal Instrument & Provision	Culpability Standard	Statutory Penalties (Injury / Grievous Harm)	Statutory Penalties (Death)	Aggravating Factors / Special Clauses
Old Penal Code (KUHP) Articles 359, 360, and 3618	General negligence (*culpa*) in public settings.[8]	Max 1 year imprisonment or confinement.[8]	Max 5 years imprisonment or confinement.[8]	Article 361: Imposes an additional 1/3 penalty if the negligent act is committed during professional duties.[8]
New Penal Code (Law 1/2023) Article 4746	General professional negligence.[6]	Max imprisonment or fine based on standardized categories.[6]	Max imprisonment or fine based on standardized categories.[6]	Professional status acts as an aggravating factor, increasing the standard penalty by 1/3.[6]
Health Law (Law 17/2023) Article 4401	Professional negligence causing injury or death.[1]	Max 3 years imprisonment or fine of Rp250,000,000.[1]	Max 5 years imprisonment or fine of Rp500,000,000.[1]	Governed by the *lex specialis* principle; requires prior disciplinary review.[11]
Medical Practice Law (Law 29/2004) Articles 75, 76, and 798,19	Administrative lapses (practicing without STR/SIP).[8]	Originally up to 3 years imprisonment or Rp100,000,000 fine.[8]	N/A	2007 Constitutional Court Review: Abolished threat of physical imprisonment, retaining only financial fines.[8]

duties can increase the penalty by one-third.[6] However, the 2023 Health Law establishes specialized parameters for professional liability.[11,17] Article 440 of Law Number 17 of 2023 stipulates that medical personnel whose negligence causes serious injury face up to three years' imprisonment or a fine of up to Rp250,000,000, while negligence causing death carries up to five years' imprisonment or a fine of up to Rp500,000,000.[1]

To clarify these statutory differences, Table 1 compares the criminal provisions under the general KUHP and the specialized Health Law.

Adherence to professional standards, service standards, and SOPs remains the essential condition for medical personnel to receive legal protection in Indonesia.[2,18] Standardized operating procedures serve as primary instruments of preventive legal protection, directing healthcare workers to act with caution and technical accuracy.[18] Under Article 273 Paragraph (1) of the 2023 Health Law, medical and health workers are entitled to legal protection while performing their duties in accordance with these standards, professional ethics, and patient health needs.[2,18]

Restorative Justice and Alternative Dispute Resolution Mechanisms

A major innovation of the 2023 Health Law is the integration of restorative justice and alternative dispute resolution (ADR) mechanisms as the primary channel for settling medical disputes.[11,15] This framework attempts to shift healthcare conflict resolution from a punitive "blame culture" to a constructive "system-improvement culture."[3]

The legal basis for this approach is established in Article 306 Paragraph (3) and Article 310 of Law Number 17 of 2023.[15] Article 310 mandates that any dispute arising from alleged professional errors causing loss to a patient must first be resolved through alternative dispute resolution outside the court system.[15] Furthermore, Article 322 Paragraph (4) places an obligation on law enforcement officials to prioritize restorative justice mechanisms in handling medical disputes, ensuring that criminal litigation is utilized only after out-of-court channels are exhausted.[16]

Mediation serves as the primary mechanism within this restorative framework.[15,16] The process offers several distinct advantages over formal litigation:

A. Efficiency: Mediation is faster and less expensive than traditional court trials, which can take years and require significant financial resources.[15,16]
B. Confidentiality: Sessions are strictly closed to the public, protecting the reputation of the healthcare professional and facility, and preserving patient privacy.[4,15]
C. Consensus-Driven Outcomes: Rather than assigning guilt, mediation seeks a "win-win" resolution focusing on relationship restoration, open communication, and fair compensation.[11,16]

To facilitate this process, observers and legal experts established the Indonesian Medical and Health Arbitration Mediation Institute (LMA-MKI).[4,16] The success of mediation often depends on utilizing mediators with specialized medicolegal training who can bridge communication gaps and clarify technical medical concepts for patients.[15,16] Data indicates that over 70% of medical disputes can be successfully resolved through mediation when properly executed.[17]

Despite these progressive provisions, several practical barriers hinder the widespread implementation of medical mediation in Indonesia:

1. Mismatched Compensation Expectations: Patients often demand substantial financial damages that exceed realistic limits, while doctors or medical institutions may resist compromise, believing any payout implies an admission of guilt.[16]
2. Emotional and Psychological Barriers: A deep breakdown in communication and mutual trust between the patient's family and the healthcare provider can make collaborative dialogue difficult.[6,16]
3. Public Misconceptions of Justice: There is a persistent public belief that formal criminal prosecution is the only mechanism that provides true legal protection and accountability.[16]

The Structural Transition from the MKDKI to the Professional Disciplinary

Council (MDP). Prior to the 2023 Health Law, the enforcement of medical discipline was governed by Law Number 29 of 2004 on Medical Practice, which established the Indonesian Medical Disciplinary Board (MKDKI) as an autonomous body under the Indonesian Medical Council (KKI).[18] Under the old framework, the MKDKI's decisions on professional violations were final and binding, focusing on due process of ethics rather than due process of law.[19]

The enactment of Law Number 17 of 2023 and its implementing regulation, Government Regulation Number 28 of 2024, fundamentally restructured this system by transitioning the MKDKI into the Professional Disciplinary Council (Majelis Disiplin Profesi (MDP)). This structural shift has introduced notable changes in professional oversight.[18] Table 2 compares the structural and authority profiles of the MKDKI and the MDP.

This structural transition has drawn criticism from healthcare professional associations.[18] Relocating professional disciplinary oversight directly to the Ministry of Health diminishes the independence of the medical profession, subjecting technical clinical evaluations to bureaucratic control. This risk is heightened by Article 307 of Law Number 17 of 2023, which allows a party to submit a review (PK) of an MDP decision directly to the Minister of Health. Under this framework, the Minister serves as the final authority on clinical and ethical matters.[18]

Furthermore, Minister of Health Regulation (Permenkes) Number 3 of 2025 (Article 4 Paragraph 2) grants the Minister unilateral authority to establish additional disciplinary violations. The regulation also omitted the phrase "in the conduct of medical practice" from provisions concerning inappropriate or sexual conduct, thereby extending the MDP's disciplinary jurisdiction into the private lives of medical personnel, which may compromise professional autonomy.[18]

Table 2. Structural and Procedural Differences Between MKDKI and MDP.

Analytical Dimension	MKDKI (Law No. 29 of 2004)18	MDP (Law No. 17 of 2023 / PP No. 28 of 2024)18	Systemic & Legal Impact
Institutional Accountability	Autonomous body of the Indonesian Medical Council (KKI); independent peer review.[18]	Directly responsible to the Minister of Health; integrated into the Ministry of Health.[18]	Shifts professional discipline from an independent clinical domain into a state bureaucratic domain.[18]
Membership Structure	3 doctors, 3 dentists (from professional orgs), 2 from hospital assocs, 3 law graduates (with health law expertise).[18]	9 members: representatives of MoH, professional orgs, healthcare facilities, legal experts, and the general public.[18]	Removes strict requirements for experienced health law specialists, increasing the risk of recruitment bias.[18]
Decision-Making Finality	Decisions were final and binding on doctors, dentists, and the KKI; immune to executive review.[18]	Decisions are binding, but subject to Review (PK) and finalization by the Minister of Health.[18]	Introduces executive veto power, exposing objective disciplinary rulings to potential political intervention.[18]
Scope of Authority	Strictly limited to disciplinary violations occurring "in the conduct of medical practice."[18]	Can be expanded unilaterally by the Minister of Health (Permenkes 3/2025).[18]	Blurs boundaries of authority, allowing the council to discipline practitioners for conduct in their private lives.[18]
Recommendation Role in Criminal Cases	Informal expert opinion; did not legally halt police or prosecutor actions.[12,20]	Mandatory pre-litigation recommendation required before criminal prosecution (Article 308).[11,18]	Acts as a formal legal gatekeeper, codifying the *lex specialis* principle in the criminal justice process.[11,18]

The Ultimum Remedium Principle and Procedural Friction

Under the *ultimum remedium* doctrine, criminal law should only be applied as a last resort after civil, administrative, and disciplinary remedies have been exhausted.[11,15] In the context of medical disputes, this principle requires that clinical actions undergo professional review before being subjected to general criminal prosecution.[18]

The Makassar District Court Decision Number 1441/Pid.Sus/2019/PN Mks illustrates the judicial application of this principle. In that case, a general practitioner holding a master's degree in biomedicine was prosecuted under the Medical Practice Law (for willfully failing to adhere to professional standards) and Article 360 of the KUHP (negligence causing serious injury) following a procedure performed at a beauty clinic.13 On July 1, 2020, the panel of judges acquitted the defendant of all charges, establishing key jurisprudential precedents:[13]

A. Prerequisite of Disciplinary Rulings: The court ruled that proving a deviation from professional standards requires a definitive, authoritative benchmark from a competent body. Because the prosecution failed to present a final, binding decision from the Central Medical Ethics Honorary Council (MKEK) or the MKDKI confirming a standard violation, the allegation remained speculative, and the *actus reus* could not be established.[13]
B. Specialized Nature of Medical Negligence: The court emphasized that medical negligence differs fundamentally from general criminal negligence (such as reckless driving). Establishing medical negligence requires demonstrating a clear deviation from the standard of care expected of a competent peer under similar circumstances.[13]

C. Lex Specialis Derogat Legi Generali: The court recognized the clinical procedure as a legitimate medical action rather than common assault.13 Consequently, the specialized health statutes took precedence over general penal codes, positioning the disciplinary body as an essential "gatekeeper" to criminal trials.[13]

To codify this gatekeeper mechanism, the legislature enacted Article 308 of Law Number 17 of 2023.[11,18] This article stipulates that when medical personnel are suspected of committing legal violations during healthcare delivery that carry criminal sanctions, investigators must first obtain a recommendation from the Professional Disciplinary Council (MDP) before initiating formal criminal proceedings.[11,18] Under this framework, criminal prosecution should proceed only if the MDP issues a formal recommendation confirming a serious disciplinary violation, and the investigator proves that the act satisfies the core elements of criminal liability, including both *actus reus* and *mens rea*.[21]

While designed to prevent the immediate criminalization of medical errors, Article 308 introduces procedural friction within the Indonesian legal system.[11,18] The mandate to obtain an MDP recommendation prior to criminal investigation conflicts directly with Article 16 of the Police Law (Law Number 2 of 2002), which grants police officers absolute authority to make arrests, searches, and seizures without relying on external administrative approvals.18 This conflict creates procedural uncertainty and may lead to constitutional challenges regarding equal treatment before the law and public access to justice.[4,22]

Furthermore, the integration of risk management and strict adherence to hospital-level standard operating procedures serves as the cornerstone of preventive legal protection.[7] When hospitals enforce clinical governance and maintain complete, accurate medical records, they strengthen the legal position of healthcare providers, reducing the risk of administrative errors being misconstrued as criminal negligence.[4,6,23]

CONCLUSION

Law Number 17 of 2023 introduces structural changes to the resolution of medical disputes in Indonesia by prioritizing restorative justice, mandating out-of-court mediation, and establishing the Professional Disciplinary Council (MDP) as a procedural gatekeeper under Article 308. Through these provisions, the omnibus law aims to reduce the immediate criminalization of medical errors and protect professional autonomy within the healthcare sector. However, these reforms have also introduced significant legal and institutional challenges. The relocation of disciplinary oversight to the Ministry of Health, coupled with the grant of executive review powers over MDP decisions under Article 307, raises concerns about compromising the professional independence of the medical community. Furthermore, the procedural conflict between the MDP recommendation mandate and the independent investigative powers granted by the Police Law creates legal uncertainty, potentially undermining the effectiveness of the new dispute resolution framework.

To resolve these challenges and establish a more balanced health law system, several measures are recommended. First, procedural harmonization is essential; the government must issue joint implementing guidelines (SKB) between the Ministry of Health, the National Police, and the Attorney General's Office to align Article 308 with the Criminal Procedure Code (KUHAP), thereby resolving jurisdictional ambiguities and establishing clear timelines for investigations. Second, the independence of the MDP must be safeguarded by limiting the executive review power under Article 307 to procedural or administrative matters, ensuring that evaluations of professional discipline remain under independent peer review rather than executive discretion.

Additionally, Indonesia should consider establishing specialized medical courts or tribunals that involve specialized judges and medical experts to ensure that complex scientific and clinical issues are assessed with the necessary technical expertise, thereby supporting both patient protection and professional security. Finally, healthcare institutions must prioritize preventive legal protection by strictly enforcing standard operating procedures (SOPs), maintaining comprehensive electronic medical records, and training medical personnel in effective communication and risk management. These combined efforts would create a more coherent and just system that balances the interests of patients, medical professionals, and the broader healthcare system.

DISCLOSURES

AUTHORS CONTRIBUTION

[Initials] initiated the study, structured the review process, conducted comprehensive literature analysis, and drafted the original work. [Initials] contributed expertise in legal analysis, particularly regarding Indonesian regulatory instruments, and assisted in manuscript revision. The final manuscript has been read, revised, and unanimously approved by all authors.

FUNDING

None.

CONFLICT OF INTEREST

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

Ethical Consideration

Not applicable.

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