

Research Article

Criminal Liability of Perpetrators of Health Care Malpractice

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Abstract: Health care is a fundamental right of every citizen guaranteed by the constitution and various laws and regulations. However, in practice there are still cases of health care malpractice that often occur, either due to negligence, carelessness, lack of competence, or violation of professional standards. Such actions not only have an impact on the physical and psychological harm of patients, but also raise questions regarding the legal responsibility of the perpetrators, especially in the criminal realm. The problems in this study are how health care malpractice in the perspective of criminal law and how criminal liability for health care malpractice. This research uses normative juridical research method with statute approach and conceptual approach. The results showed that health care malpractice must be viewed as a criminal offence that can be subject to criminal liability in accordance with the provisions in the Criminal Code, Law Number 17 of 2023 concerning Health, and other regulations.

Keywords: Criminal Offence; Malpractice; Health Services; Criminal Liability.

1. Introduction

According to Article 1 of Law No. 17 of 2023, a Health Worker is any person who devotes himself to the field of Health and has a professional attitude, knowledge, and skills through higher education which for certain types requires authority to carry out health efforts, while a medical worker is any person who devotes himself to the field of Health and has a professional attitude, knowledge, and skills through professional education in medicine or dentistry which requires authority to carry out Health Efforts. Health workers include various other professions in the health sector, such as nurses, midwives, pharmacists, public health workers, nutritionists, and others. Medical personnel consist of doctors, dentists, specialist doctors, and specialist dentists.

Health workers and medical personnel must understand health law because it is very important in understanding their rights and obligations to the law. The harmony of the relationship between health/medical personnel and patients will be implemented if they have and understand the rules of law. The implication is that in real conditions there are still problems found to be carried out by health workers and medical personnel (Siswanto Pabidang, 2024). The importance of legal protection and legal certainty is because in an effort to provide health services, it cannot be separated from errors or negligence of medical actions, whether in the nature of human error or in the nature of circumstances that are beyond expectations (*force majeure*). This human error in health services is often referred to as malpractice (Yusuf Daeng, 2023).

Health care is an important sector that is closely related to human rights, especially the right to life and health. Therefore, medical personnel such as doctors and other health workers have a great legal and ethical responsibility in providing services that are safe, professional, and in accordance with medical standards. However, it cannot be denied that in practice there are various cases of malpractice, namely errors or omissions in medical actions that cause harm to patients.

Medical malpractice is regulated in several laws and regulations governing the profession of health workers, their obligations and responsibilities, as well as sanctions in the event of negligence or violations in health services. The legal basis in Law Number 36 Year 2009 on

Received: June 15, 2025;

Revised: June 30, 2025;

Accepted: July 09, 2025;

Published: July 13, 2025

Curr. Ver.: July 13, 2025



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Health states that everyone has the right to claim compensation due to errors or negligence of health workers in accordance with Article 58. In addition, Article 190 paragraph (1) is a punishment for health workers who deliberately take actions that harm patients, and Article 190 paragraph (2) is a punishment for health workers who due to their negligence cause the patient to die.

Law Number 29 Year 2004 on Medical Practices explains the obligations of doctors and dentists in carrying out medical practice in accordance with medical service standards in accordance with Article 51 and also administrative sanctions for medical personnel who violate the provisions of medical practice in accordance with Article 79. In addition, Law Number 36 of 2014 concerning Health Workers also explains that health workers must comply with professional standards and codes of ethics in providing health services and every health worker is responsible for the actions taken in health services in accordance with Article 46 and Article 47. Article 85 and Article 86 explain administrative sanctions for health workers who violate the provisions in carrying out their profession.

The Criminal Code (KUHP) has a legal basis that can be a reference to malpractice cases such as Article 359, which is a criminal sanction for health workers who due to their negligence cause the death of others, Article 360, which is a criminal sanction for health workers who due to their negligence cause serious injury to others, and Article 361, which is a heavier penalty if the offence is committed by a professional in their position or profession.

Adami Chazawi states that medical malpractice occurs when doctors or people under their orders intentionally or through negligence perform actions (active or passive) in medical practice towards their patients at all levels that violate professional standards, standard procedures, or medical principles, or by violating the law without authority by causing harm (*causaal verband*) to the body, physical health, or mental and or life of the patient, and therefore establishing legal liability for health workers or medical personnel (Adami Chazawi, 2007).

Medical malpractice can have legal consequences in three aspects: civil, administrative, and criminal. In the context of criminal law, medical personnel and health workers can be held liable if they are proven to have committed acts of negligence or intent that result in serious injury or death of the patient. This is regulated in the Criminal Code (KUHP), specifically Articles 359 and 360, as well as in special regulations such as Law Number 17 of 2023 concerning Health.

According to Yudyaningarum in the Journal of Law and Social Order, criminal liability of malpractice perpetrators is highly dependent on the fulfilment of the elements of guilt (*schuld*) and a real causal relationship between the medical acts performed and the consequences that arise. If the medical action deviates from professional standards and causes harm, then the perpetrator can be held criminally liable (Yudyaningarum, 2022).

Article 440 of Law No. 17 of 2023 stipulates that medical personnel or health workers whose negligence causes a patient to suffer serious injury can be sentenced to imprisonment of up to 3 years or a fine of up to Rp250,000,000.00. If the negligence causes death, the punishment increases to 5 years in prison or a fine of Rp500,000,000. In addition, Article 304 and Article 308 state that before criminal proceedings are continued, law enforcement officials are required to seek the opinion of the Medical Personnel Disciplinary Council, in order to avoid criminalisation of medical actions that are actually in accordance with procedures.

The issue of malpractice in health services has recently begun to be discussed by the public in various groups. This is intended because of the many complaints of malpractice cases filed by the public against the medical profession that has been considered detrimental to patients in conducting treatment. Actually, the increasing number of complaints proves that the public is aware of their rights in an effort to protect themselves from other actions that harm them (Bambang Heryanto, 2010). News of health workers being sued in court due to elements of medication errors and giving doses of drugs not in accordance with the patient's condition to cause death, disability, increase the severity of the disease suffered to indecent acts committed by health workers on their patients (Teguh Sulistia Aria & Zurnetti, 2012).

Health services mean all forms of activities alone or together in an organisation to maintain and improve health, prevent and treat disease, and restore the health of individuals, groups or communities (Situmorang & Marjes, 2019). Health services are constitutionally the right of every citizen guaranteed in Article 28H paragraph (1) and Article 34 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

Health malpractice is a violation of professional standards by health or medical personnel that can have a serious impact on the patient's health, both physically,

psychologically and socially. The causes often involve negligence, lack of competence, poor communication, or violation of standard procedures. The impact of malpractice is not only felt by the patient but also by the medical and healthcare professionals, including financial loss, damage to reputation, and decreased public trust in healthcare.

Health is a state of well-being, physically, mentally, spiritually and socially that enables everyone to live a socially and economically productive life. Health is the most valuable treasure in this world, therefore efforts to improve the quality of health are increasingly being pursued. Efforts to improve health by this country are aimed at improving the quality of human life. If the quality of human life increases, welfare will be obtained (Wahyu Rizki Kartika Ilahi, 2010).

Health law is all legal provisions directly related to health care and their application to civil law, administrative law, and criminal law (Wahyu W, 2014). The scope of health law is the rules of law and regular behaviour that regulates the health sector. As a science, health science aims to prevent disease, prolong life, and increase the value of health. All legal aspects in health law regulations become a legal device that specifically determines the regularity of behaviour or the order of necessity or prohibition of doing something that applies to parties related to the health business as specified in the legislation (Wahyu W, 2014).

In the process of providing health services, errors can occur in the form of misdiagnosis, treatment, prevention and other systematic errors, which can cause disasters to patients such as disability, paralysis, or even death. These errors can ultimately cause negativity to the patient. This means that it is an intentional or unintentional error that causes injury to the patient. Health workers who are proven to make mistakes in health services must certainly be held accountable for their criminal acts and punished if it is true that the health worker is proven to have made a mistake. Surely Law Number 17 of 2023 concerning Health can bring good changes to the world of Health and can be a reference to become a legal basis if Health Workers make mistakes and can have a deterrent effect.

Obtaining health services is a human right whose implementation responsibility lies with the government. The government realises that healthy people are an asset and the main goal in achieving a just and prosperous society. Therefore, the government is obliged to organise health efforts that are equitable and affordable to the community, finance public goods health services such as immunisation, eradication of infectious diseases, and the obligation to finance health services for the poor and elderly (Wahyu W, 2014).

A person is allowed to perform health care actions if they have gone through formal education regarding health management and have received authority from responsible parties such as the ministry of health, or the health department and other parties deemed responsible for health management (Syahrul Machmud, 2012). A person is not justified in carrying out health care actions if they do not have the skills, knowledge including experience in accordance with the relevant provisions regarding how steps and efforts in carrying out health services to a patient. This is because health is closely related to a person's survival, which if it violates the provisions of the service can have adverse effects on the patient (Syahrul Machmud, 2012).

Criminal law enforcement against medical personnel and health workers who commit malpractice against recipients of health services needs to be applied in accordance with applicable laws and regulations. This is done to provide protection and legal certainty to the community receiving health care efforts and to protect recipients of health services and the community for actions taken by health workers or medical personnel.

In the case in Lhokseumawe city, namely Arun Lhokseumawe Hospital (RS) and UTD PMI North Aceh, which were reported to the Lhokseumawe Police for alleged blood group transfusion errors in patients. The health workers have been negligent in carrying out their duties, namely negligence in carrying out blood transfusions by mistakenly injecting blood B which should be blood O. As a result of the mistake, the patient experienced convulsions, coma several times, and even had to undergo dialysis.

Based on Decision Number 207/Pid.Sus/2016/PN Lsm, namely stating that the Defendant Mutia Binti Alm. M. Yakob, a nurse at ARUN Hospital in Lhokseumawe, was found guilty of committing a criminal act of negligence and sentenced the defendant to 8 months imprisonment, while based on Decision Number 212/Pid.Sus/2017/PN Lsm, namely stating that the Defendant Lazuardi Bin Achyarudin and the Defendant Rahmad Hidayat Bin Muhammad Majid, officers of the North Aceh Indonesian Red Cross Blood Transfusion Unit, were found guilty of committing a criminal act of negligence, the defendants were sentenced to 6 months imprisonment.

In connection with the legal acts committed by Health Workers, namely nurses of ARUN Lhokseumawe Hospital and officers of the North Aceh Indonesian Red Cross Blood Transfusion Unit, they have been negligent in carrying out their duties, namely negligence in carrying out blood transfusions. This is contrary to Article 84 paragraph (1) of Law of the Republic of Indonesia Number 36 of 2014 concerning Health Workers which reads "Every Health Worker who commits gross negligence resulting in serious injury to Health Service Recipients shall be punished with a maximum imprisonment of 3 (three) years."

Based on the above case, it is interesting to study considering that basically health workers are one of the professions that provide direct health services to individuals, families and communities with the aim of efforts to improve health and welfare in order to maintain and maintain health and cure from illness. However, in reality, health workers in carrying out their duties commit negligence which results in a very fatal mistake for the patient, namely causing serious injury. Although negligence has been written in the Health Workers Law, health workers still violate acts that are contrary to the Law.

2. Research Method

In conducting research, accurate data is needed, both primary data and secondary data. In order to obtain the data required for this writing that meets the requirements, both quality and quantity, certain research methods are used. The research method in this writing is a normative juridical method, where normative juridical research is legal research carried out by researching library materials or secondary data (Soerjono Soekanto & Sri Mamudji, 2011). Based on the background above, the problem formulation in this research focuses on criminal liability for perpetrators of health care malpractice.

3. Results and Discussion

3.1. Health Care Malpractice in the Perspective of Criminal Law

Criminal offences in health care malpractice must basically fulfil the general elements of criminal offences consisting of human actions, unlawful, threatened with punishment by law, committed by a person who can be held responsible, and the existence of fault, namely intent (*dolus*) or negligence (*culpa*) (Widodo, 2020).

Medical or health workers committing acts of error or negligence that cause other people to die is a criminal offence, and this is regulated in Article 359 of the Criminal Code which reads "Anyone who through his fault (negligence) causes another person to die, shall be punished with a maximum imprisonment of 5 years or a maximum light imprisonment of 1 year". Errors or negligence committed by health workers or medical personnel, such as doctors and nurses when they provide health services are inevitable. These errors or negligence can be fatal to patients, both physically and mentally, and of course very detrimental to patients who are victims of malpractice.

Malpractice is negligence in the performance of professional duties or failure to exercise accepted professional skills or knowledge by a doctor providing professional services that results in injury, loss, or damage (Praysi Thessalonika, et. al, 2025). Malpractice can occur when someone does not carry out their obligations, someone causes injury to the patient, someone takes actions that are not in accordance with professional standards and someone takes actions that are not in accordance with standard operating procedures. This has violated the Government Regulation of the Republic of Indonesia Number 28 of 2024 concerning Regulations for the Implementation of Law Number 17 of 2023 concerning Health Article 739 Paragraph (3) which reads "In carrying out practices, Medical and Health Workers who provide Health Services to Patients must carry out the best efforts in accordance with norms, service standards, and professional standards, as well as the Health needs of Patients."

If examined from the Criminal Code, doctors who commit malpractice can be held accountable for their actions with Article 360 of the Criminal Code in paragraphs (1) and (2) so that doctors who perform medical actions that result in serious injury or death due to negligence of doctors against their patients can be held criminally responsible, with the aim of protecting the rights of victims who get malpractice. Of course, the above is processed through the judicial process (Sutopo, 2000).

Doctors are responsible for their duties, which is to provide services to patients to help them recover, but sometimes they make mistakes that cause them to take actions that are not in accordance with the patient's needs. Doctors are responsible for errors that occur in their practice. One of the reasons why this happens is because criminal law liability against doctors can be based on the element of intent or negligence of the doctor himself, although it is not

explicitly regulated in the Criminal Code. Doctoring is a difficult job as many doctors around the world often commit medical errors that lead to the disability or death of patients. Therefore, in order for a doctor not to cause disapproval of his patients, a doctor must be criminally liable in practice (Noviriska & Dwi Atmoko, 2022).

However, the regulations governing the criminal offence of malpractice in the Criminal Code have not clearly regulated the qualifications and types of malpractice in the field of medicine, the regulations in the Criminal Code only regulate more on the consequences of malpractice, so there is a need for new regulations in the Criminal Code that specifically regulate the qualifications of malpractice committed by doctors, so that doctors can be criminally liable for their actions and law enforcers can have a clear juridical basis in enforcing the regulations in the Criminal Code against doctors who commit malpractice (Noviriska & Dwi Atmoko, 2022).

The legal regulation of malpractice committed by health workers and medical personnel in hospitals in Indonesia is regulated through Law Number 17 Year 2023. The following are the forms of health care malpractice violations that are regulated and normatively recognised in Law No. 17 of 2023 on Health, along with the relevant articles:

1. Medical acts that cause serious injury or death due to negligence. The form is errors in medical procedures (misdiagnosis, misadministration of drugs, actions without consent) and not in accordance with operational standards and medical expertise. The articles violated are:
 - a) Article 440 paragraph (1) if it results in serious injury is punishable by imprisonment for a maximum of 3 years or a fine of two hundred and fifty million rupiah.
 - b) Article 440 paragraph (2) if it results in death shall be sentenced to imprisonment for a maximum of 5 years or a fine of five hundred million rupiah.
2. Medical treatment without informed consent. This involves performing medical procedures without explaining the risks and without the written consent of the patient or family. The articles violated are:
 - a) Article 293 which states that every medical procedure must be accompanied by the patient's informed consent.
 - b) Article 440 that if without consent and results in injury/death is considered negligence.
3. Practising without a licence or not in accordance with competence, where health workers without an STR/licence to practice perform medical acts and treat patients outside their field of expertise. The articles violated are:
 - a) Article 283 which states that medical/health workers must have an STR and SIP.
 - b) Article 441 if practising without a licence is punishable by 5 years or a fine of five hundred million rupiah.
4. Use of tools or drugs that are not in accordance with standards. This can take the form of using expired, damaged equipment, or drugs without a distribution licence. The articles violated are:
 - a) Article 435, namely the use of inappropriate medical devices and counterfeit / unlicensed drugs, is punishable by imprisonment for a maximum of 12 years or a maximum fine of five billion rupiah.

Who has the right to determine professional standards. It is none other than the doctors themselves. The doctor profession is autonomous, all provisions concerning the implementation of professional work are determined by professional groups. Professional groups determine the content of service standards that are considered correct. The government here only determines the doctor's obligation to implement and obey the contents of the professional standards of medicine and medicine made by his group through legislation and also threatens legal sanctions against those who violate (Riza Alifianto Kurniawan, 2013).

A measure of medical negligence is necessary to know which doctor's actions are wrong and which are not. In a treatment process, it is not always in accordance with the patient's expectations. Sometimes the treatment process or the doctor's medical action is unsuccessful or in other words the doctor experiences a medical failure. Often medical failure is identified with a doctor's mistake or negligence. In medicine, a term commonly referred to as medical risk is recognised, which is a condition that cannot be reached beforehand, or a condition that medically cannot be prevented (Riza Alifianto Kurniawan, 2013).

Medical negligence and medical risk are two different things. Medical negligence is part of doctor malpractice. Medical negligence occurs because there is no element of caution and precaution from doctors when providing medical services to patients. Medical negligence that causes harm or loss of life of the patient gives the patient the right to report the doctor's negligence to law enforcement officials such as the police. Medical risk is something that may arise during the provision of medical therapy or treatment. Medical risks that occur will be very difficult to be considered as negligence because the patient is aware and gives permission to the doctor for medical therapy (Riza Alifianto Kurniawan, 2013).

The results of research obtained through interviews from several informants regarding the factors that cause health service malpractice can be described as follows:

1. The factor of minimal knowledge level;
2. Discommunication factor;
3. The factor of incorrect planning of patient care; and
4. Factors of physical condition that experience fatigue;

3.2. Criminal Liability for Health Care Malpractice

Criminal liability in foreign terms is called *theekenbaardheid theory* or *criminal responsibility* which leads to the punishment of the perpetrator with the intention of determining whether a defendant or suspect is responsible for a criminal act that occurs or not. The criminal offence committed fulfils the elements of the offence specified in the law. From the point of view of the occurrence of prohibited acts, a person will be held accountable for these acts, if the act is against the law and there is no justification or elimination of the unlawful nature of the crime committed. And from the point of view of the ability to be responsible, only someone who is capable of being responsible can be held accountable for his actions (Fitri Wahyuni, 2017).

In the articles of the Criminal Code, the elements of the offence and the elements of criminal responsibility are mixed up in books II and III, so that in distinguishing them an expert is needed to determine the elements of both. According to the Criminal Code makers, the requirements for punishment are equated with the offence, therefore in the loading of the elements of the offence in the prosecution must also be proven in court. Criminal responsibility leads to the punishment of the perpetrator, if he has committed a criminal offence and fulfilled the elements that have been determined in the law. From the point of view of the occurrence of a prohibited action (required), a person will be held criminally responsible for these actions if the action is against the law. From the point of view of the ability to be held responsible, only someone who is "capable of responsibility" can be held criminally responsible. In general, the elements of criminal responsibility include: (Fitri Wahyuni, 2017).

1. Capable of being responsible;
2. Fault; and
3. No excuse.

Based on the research that has been conducted, in carrying out their duties health workers at Arun Lhokseumawe Hospital and the North Aceh Indonesian Red Cross Blood Transfusion Unit have committed acts of negligence. Where health workers make mistakes in transfusing blood groups to patients by mistakenly injecting blood B which should be blood O, resulting in the patient experiencing convulsions, coma several times, and even having to undergo dialysis. This has been regulated in Article 84 paragraph (1) of Law Number 36 of 2014 concerning health workers which reads "Every Health Worker who commits gross negligence resulting in serious injury to Health Service Recipients shall be punished with a maximum imprisonment of 3 (three) years". The blood transfusion error committed by the health worker to the patient has resulted in harm to the patient.

As for the patient as a victim of negligence on the part of the health worker, the negligence that has been committed can be subject to legal sanctions in administrative, criminal and civil. Medical actions that do not meet the professional standards of health workers can be punished. However, criminal law mechanisms should be the last resort after civil or administrative mechanisms have been taken first (Danny Wiradharma, 1996).

The efforts that patients can make in dealing with malpractice problems caused by negligence are:

1. Mediate or sue civilly to seek compensation;

2. Make a criminal report if the health worker commits gross negligence that results in serious injury to the recipient of health services.

In accordance with the principle of "*equality before the law*" every citizen involved in a criminal offence can be criminally prosecuted before the court, including health workers. Health workers can be convicted if they are proven guilty of committing an act that is based on the applicable laws and regulations declared as a criminal offence (Muh Endriyo Susila, 2016).

Criminal sanctions in criminal law are one of the special sufferings, because the punishment threatened to potential violators is definitely imposed on violators or perpetrators of crimes which can be in the form of death penalty, imprisonment and objects or other sanctions that have been determined by criminal rules in accordance with the development and growth of law. The purpose of the criminal threat is to protect the interests of people in the association of life. In this case, criminal law uses criminal threats and the imposition of punishment if these interests are balanced with the sacrifices that must be borne by victims of crimes or offences (Sudarsono, 2017).

The Lhokseumawe District Court has handed down a verdict in a case of alleged health service malpractice. In his decision, the judge found the defendant guilty of committing unlawful acts in the form of medical malpractice, and sentenced him to imprisonment.

Based on Decision Number 207/Pid.Sus/2016/PN Lsm, namely stating that the Defendant Mutia Binti Alm. M. Yakob was proven guilty of committing the crime of negligence, sentencing the defendant therefore to 8 months imprisonment but at the cassation stage the sentence was reduced to 6 months imprisonment and a probation period of 1 year, thus making the defendant free from prison.

Based on Decision Number 212/Pid.Sus/2017/PN Lsm, namely stating that the Defendant Lazuardi Bin Achyarudin and the Defendant Rahmad Hidayat Bin Muhammad Majid were proven guilty of committing the crime of negligence, punishing the defendant therefore with 6 months imprisonment and at the time of cassation still received a sentence of 6 months imprisonment.

Furthermore, the defendant was given a lighter sentence than the provisions of Article 84 of Law Number 36 of 2014 concerning Health Workers because the case was classified as an element of negligence rather than an element of intent. This was then strengthened by the consideration of the Panel of Judges by reviewing the decisions, as well as reviewing several factors that support the mitigation of the sentence, namely because the perpetrator is the backbone of his family so that his criminal liability has been considered from all aspects.

Justice in the realm of criminal law is not only seen from the severity or leniency of the punishment imposed, but from the process, reasons, and legal considerations used in making a decision. When a defendant is sentenced to a lighter sentence than the punishment listed in the applicable article, this is not necessarily considered unfair, as long as the decision is based on objective and accountable legal reasons.

Judges have the authority to impose sentences based on the legal facts revealed at trial, including taking into account mitigating factors, such as the defendant's cooperative attitude, the existence of peace with the victim, or other special conditions such as age and family dependents (Yustisia, 2021). This is in accordance with the principle in Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which states that judges are obliged to explore, follow, and understand legal values and a sense of justice in society. Related articles such as Article 197 paragraph (1) letter f of the Criminal Procedure Code states that the verdict must contain reasons and grounds for judgement, and Article 183 of the Criminal Procedure Code states that judges may not impose punishment unless they are convinced that it has been proven legally and convincingly.

Justice will be undermined if the lenient sentence does not reflect the level of guilt of the perpetrator or the harm suffered by the victim, and is not transparently explained in the legal considerations. If the judge imposes a verdict without stating adequate reasons, or contrary to the existing facts, then this can create a perception of injustice, both for the victim and the wider community. This is contrary to the principle of substantive justice, which is justice that is truly felt and understood reasonably by all parties.

Hartati argues that criminal justice is not only orientated towards the perpetrator, but must also consider restoring the rights of victims so that there is no imbalance of justice in the legal process (Hartati & Sri, 2020). In addition, Suryani mentioned that the imposition of too light a sentence without sufficient consideration can weaken the deterrent effect and public confidence in the legal system (Suryani & Intan, 2022). This shows that substantive

justice must be the main consideration of judges in imposing punishment, not only formal justice that is oriented towards the text of the law.

Thus, a verdict that is lighter than the punishment in the article can be considered fair, as long as it is based on legal facts and valid evidence, contains legal considerations that are rationally and ethically acceptable, and still pays attention to the interests of victims and a sense of public justice.

Health care malpractice generally occurs in complex situations that involve good intentions to save lives, but end up with undesirable consequences. Doctors or health workers as perpetrators are not people with evil mens rea as in ordinary offences, but professionals who work under pressure, limitations, and high risks. If criminal law is applied rigidly, then doctors who make unintentional mistakes or minor negligence can be criminalised like ordinary criminals. This contradicts the *ultimum remedium* principle, which places criminalisation as a last resort after ethical, administrative, and civil channels are no longer adequate.

In the medical world, trust between patients and health workers or medical personnel is the main foundation. When a doctor commits a fatal medical error due to serious negligence or intent, the act not only injures the patient's body, but also destroys public trust in the health care system. In this context, the theory of retaliation in punishment becomes relevant to uphold justice. The theory of retribution holds that punishment should be imposed as an appropriate form of retribution for the crime committed. Punishment does not solely aim to prevent future crimes, but rather to provide moral retribution for wrongdoing. In other words, the offender should receive the consequences of his actions because he deserves them.

In cases of health care malpractice involving gross negligence, such as a doctor who prescribes the wrong prescription because he fails to check the patient's allergy history, the harm caused is not only physical, but also concerns the patient's basic right to safety. If these acts are left without strict criminal sanctions, then justice is not upheld, and the public's sense of justice will be shattered. Using the theory of retaliation, criminal law is tasked with imposing sanctions on perpetrators of medical malpractice as a form of retribution for intolerable acts. The punishment imposed must be proportional to the level of guilt and the impact caused. This is not merely a matter of providing a deterrent effect, but also to emphasise that every life has a value that should not be ignored by anyone, including by medical and health personnel.

The application of the theory of retaliation in medical malpractice cases also confirms that the medical profession is not immune to the law. Professionalism in the medical world must go hand in hand with legal and ethical responsibilities. By enforcing commensurate criminal sanctions, the public sees that the legal system upholds justice, and any violation of human rights including the right to life and health will be appropriately accounted for.

4. Conclusions

Health care malpractice fulfils the elements of a criminal offence, such as human action, unlawful nature, the existence of criminal threats, committed by a responsible person, and occurring due to the fault of the perpetrator. Therefore, health care malpractice must be viewed as a criminal offence that is subject to criminal liability in accordance with the provisions of the Criminal Code, Law No. 17 of 2023 on Health, and other regulations. Forms of health care malpractice offences according to Law No. 17 of 2023 on Health are medical acts that cause serious injury or death due to negligence, medical acts without *informed consent*, practising without a licence or not according to competence, and the use of tools or drugs that are not in accordance with standards. In judicial practice, it is not uncommon for the penalties imposed on perpetrators of malpractice to be lighter than the criminal penalties in the relevant articles. However, this can still be considered fair if the verdict objectively considers various aspects, such as the intention of the perpetrator, the degree of fault, the situation at the time of the act, and the perpetrator's efforts to take responsibility for the patient. Substantive justice is not always measured by the severity of the punishment, but rather by the proportionality between the act and the sanction imposed and the protection of victims' rights.

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