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# CRIMINALIZATION OF MEDICAL PERSONNEL FROM THE PERSPECTIVE OF LEGAL RULES APPLICABLE IN INDONESIA

1<sup>st</sup> Lindawati Amsir Saidi  
Doctoral Program In Health Law,  
Graduate School Of Swadaya Gunungjati  
University  
Cirebon, Indonesia  
[lindawatizul01@gmail.com](mailto:lindawatizul01@gmail.com)

*Abstract—The criminalization of medical personnel is a legal issue that continues to emerge as public legal awareness and medical disputes increase. In practice, not all medical consequences that harm patients can be classified as criminal acts. This article aims to analyze the phenomenon of the criminalization of medical personnel from the perspective of applicable legal regulations in Indonesia, by examining the criminal and health legal frameworks, the boundaries between medical risks and criminal acts, and legal protection efforts for medical personnel. The method used is normative legal research with a statutory and conceptual approach. The results show that Indonesian law essentially provides protection mechanisms for medical personnel. However, in practice, there is still a tendency to prematurely apply criminal law to medical incidents that should be resolved through ethical and civil mechanisms. Therefore, clear boundaries regarding criminalization are needed to ensure fair legal protection for medical personnel.*

*Keywords: criminalization, medical personnel, legal protection, criminal law, health law.*

## I. INTRODUCTION

Healthcare is a form of public service with a high humanitarian dimension and inherent risks. In carrying out their profession, medical personnel, especially doctors, are not only required to act professionally in accordance with scientific standards but also face the uncertainty of medical treatment outcomes.[1] these risks are an integral part of modern medical practice. However,

in Indonesian law enforcement, medical personnel are often reported and prosecuted due to

patient or family dissatisfaction with the outcome of medical care. This phenomenon is known as the criminalization of medical personnel.[2] this criminalization raises concerns because criminal law is essentially an *ultimum remedium*, the last resort in law enforcement.[3]

Not every medical outcome that does not meet a patient's expectations constitutes a mistake or a crime. However, in Indonesian law enforcement, medical personnel are often subject to criminal proceedings based on reports from patients or their families.

The criminalization of medical personnel is problematic because it can instill fear in the practice of medicine (defensive medicine), reduce the quality of health care, and contradict the objectives of health law, which emphasizes patient safety and justice for all parties. Therefore, a comprehensive study is needed on how Indonesian law views and regulates the criminal liability of medical personnel.

Premature use of criminal law in medical disputes has the potential to ignore the unique characteristics of the medical profession, which is fraught with risk and uncertainty.[4] Therefore, an in-depth study of the legal basis and limitations of the criminalization of medical personnel in the Indonesian legal system is necessary.

## II. METHOD

This research is a normative legal research that focuses on the study of positive legal norms. The approaches used include a statute approach and a conceptual approach [5]. Primary legal materials include the criminal code (kuhp), law number 17 of 2023 concerning health, and government regulation number 28 of 2024. Secondary legal materials include legal textbooks, scientific journals, and the opinions of health law experts.

## III. RESULTS AND DISCUSSION

Following the enactment of law no. 17 of 2023 concerning health, the accountability mechanism for medical personnel has undergone significant changes, particularly with the introduction of the professional disciplinary council (mdp) as the initial stage for assessing alleged violations of professional discipline [6].

This law emphasizes that alleged misconduct by medical personnel in healthcare services is not immediately subject to criminal proceedings but must first go through the professional disciplinary mechanism [6], [7].

However, in judicial practice, this mechanism has not been fully implemented consistently, thus opening up the opportunity for the criminalization of medical personnel through the premature application of criminal law [8], [9].

### 1. The concept of criminalization in criminal law and medical practice

Criminalization is a criminal law policy that establishes an act as a crime through statutory regulations [10].

Criminalization policies must be implemented carefully to avoid overcriminalization that would harm the public interest [11].

In the context of healthcare, criminalization cannot be separated from the nature of medical actions, which are based on professional standards and scientific developments. Therefore, using criminal law to assess medical actions solely based on the consequences they cause is a wrong approach[12].

Criminalization can be understood as the tendency to bring an incident into the realm of criminal law, even though it is more appropriately resolved through other legal mechanisms. In the medical context, criminalization occurs when medical personnel are prosecuted based on the results of medical services that harm patients, without first assessing whether there has been a violation of professional standards or discipline.

Medical services are essentially an obligation to strive to the fullest extent possible in accordance with professional standards, not an obligation to guarantee results. Therefore, medical risks and unavoidable complications cannot be automatically equated with criminal acts. Criminal punishment can only be justified if there is proven error (schuld), whether intentional or gross negligence, that deviates from professional standards and standard operating procedures.

### 2. Criminal liability of medical personnel and medical risk

Criminal liability of medical personnel in indonesia generally refers to the provisions of articles 359 and 360 of the indonesian criminal code, which regulate negligence resulting in death or injury.[13] (articles 474 and 475 of the 2023 criminal code, ed.). However, the application of these articles in medical cases often causes debate because they do not always take into account the existence of unavoidable medical risks.

On the other hand, law number 17 of 2023 concerning health regulates a disciplinary enforcement mechanism through the mdp.[14] this mechanism demonstrates that violations in medical practice must, in principle, first be

assessed through ethical and professional disciplinary mechanisms before being subjected to criminal prosecution.[15]

Medical risks are consequences that can occur even if medical personnel have acted in accordance with professional standards and applicable operational procedures.[16] this risk is fundamentally different from medical negligence, which involves an element of deviation from professional standards.

However, in law enforcement practice, law enforcement officials often use a result-oriented approach, so that every negative outcome is perceived as a criminal error. This approach contradicts the doctrine of error (schuld) in criminal law, which requires a reprehensible mental attitude.[17].

Determining whether a criminal offense has occurred in medical services must consider several key parameters. First, whether the medical personnel acted in accordance with professional standards and medical service standards. Second, whether there was valid informed consent from the patient or their family. Third, whether the resulting consequences constituted a previously described medical risk or were the result of gross negligence.

In health law doctrine, medical errors (medical negligence) do not automatically carry criminal implications. Only negligence that is serious and results in significant legal consequences can be considered a criminal offense. Therefore, the use of criminal law should be considered the ultimum remedium, not the primary means of resolving medical disputes.

### 3. Legal protection for medical personnel

Legal protection for medical personnel is a crucial prerequisite for ensuring the continuity of quality healthcare services. Without adequate legal protection, medical personnel are at risk of engaging in defensive medicine, a medical practice that prioritizes self-protection over the interests of the patient.[18]

Law number 17 of 2023 concerning health emphasizes the importance of a non-criminal approach in resolving medical disputes.[19] however, the effectiveness of this norm depends heavily on the understanding and consistency of law enforcement officials in implementing it.[20]

Indonesian legal regulations actually provide a basis for legal protection for medical personnel. The health law emphasizes that medical personnel have the right to legal protection as long as they carry out their duties in accordance with professional standards and standard operating procedures. Furthermore, there is an ethical and disciplinary mechanism through the professional disciplinary council (mdp), which has the authority to assess whether or not there has been a disciplinary violation.

This legal protection aims to prevent disproportionate criminalization and ensure that law enforcement against medical personnel is carried out fairly. Law enforcement officials should use the decisions or recommendations of professional disciplinary bodies as a preliminary reference before proceeding with criminal proceedings.

### 4. Criminalization of medical personnel in law enforcement practices in indonesia.

In law enforcement practices in indonesia, the criminalization of medical personnel is often triggered by criminal reports from patients or their families who feel aggrieved by the medical service outcomes. Law enforcement officials tend to use general criminal provisions in the criminal code without first assessing the specific characteristics of medical procedures. This approach demonstrates a tendency to use criminal law as a premium remedium, rather than an ultimum remedium [21].

Several criminal cases against medical personnel demonstrate that the legal process proceeds without prior disciplinary review by the medical professionals' council (mdp). The mdp's existence is intended to be the institution authorized to assess whether or not there are violations of medical professional discipline [22]. The absence of this disciplinary review has implications for

blurring the lines between ethical violations, administrative violations, and criminal acts.

Furthermore, the practice of criminalizing medical personnel is also influenced by law enforcement officials' lack of understanding of the concepts of professional standards and medical standard operating procedures. As a result, criminal negligence is often concluded solely from the existence of harmful consequences, without an in-depth analysis of the medical procedures performed.[23]

#### 5. Analysis of court decisions related to medical cases

Court decisions in medical cases demonstrate a variety of judges' approaches in assessing the criminal liability of medical personnel. In some decisions, judges still use a simple causal approach, directly linking medical actions to their consequences. This approach has the potential to ignore medical risk factors and patient conditions beyond the medical personnel's control.[24]

The case of dr. Ratna setia asih, sp.a., serves as a concrete example of how criminal proceedings against medical personnel can proceed without adequately examining the substance of professional standards. The suspect was determined based on allegations of medical negligence resulting in the death of a child patient, based on recommendations from the medical documentation plan (mdp) [25].

The legal issues lie in the following:

1. There has been no legally binding professional disciplinary decision;
2. The mdp recommendation was used as the initial basis for enforcing criminal law;
3. Law enforcement officials focused more on the consequences (patient death) than on the clinical process and inherent medical risks [26], [27].

From a criminal law perspective, this approach has the potential to violate the principle of *ultimum remedium*, as criminal law is used as the primary instrument, not the last resort [8], [9].

In makassar district court decision number 1441/pid.sus/2019/pn mks, the panel of judges acquitted the medical professional defendant because the element of *culpa* (negligence) was not legally and convincingly proven [28].

The judge emphasized that:

- medical complications are part of the inherent medical risk;
- not every failure of therapy can be classified as a criminal act;
- administrative deficiencies do not automatically prove criminal wrongdoing

[28], [29]. putusan ini memperlihatkan penerapan prinsip in dubio pro reo, yang menjadi instrumen penting dalam mencegah kriminalisasi tenaga medis [28], [30].

Supreme court decisions have begun to demonstrate caution in applying criminal law to medical personnel. In supreme court decision number 365 k/pid/2012, for example, the supreme court emphasized the importance of carefully proving the elements of guilt, not solely based on the consequences.[31] this decision reflects a trend toward more proportional legal protection for medical personnel.

Analysis of these decisions demonstrates the crucial role of judges in preventing excessive criminalization. Therefore, consistency in jurisprudence is a crucial factor in establishing legal certainty in the healthcare sector.[32]

#### 6. Criminalization of medical personnel and the principle of substantive justice

The criminalization of medical personnel must also be viewed from the perspective of substantive justice. Fair criminal law is not only oriented towards protecting victims but must also guarantee protection for perpetrators who act in accordance with their authority and professional standards.[33] in this context, the application of criminal law to medical personnel who have worked

according to professional standards has the potential to violate the sense of justice.

A substantive justice approach demands a balance between the interests of patients and those of medical personnel. The state is obliged to protect patients from irresponsible medical practices, but at the same time, it must also protect medical personnel from baseless criminal charges.[34] therefore, the criminalization of medical personnel must be strictly limited and only applied in cases that truly meet the elements of criminal wrongdoing.

#### 7. The urgency of reformulating criminal law policy in the health sector

The phenomenon of criminalization of medical personnel demonstrates the urgency of reformulating criminal law policy in the health sector. Such policy must position criminal law as a last resort and strengthen non-criminal dispute resolution mechanisms, such as mediation, ethical mechanisms, and civil lawsuits[35].

Law number 17 of 2023 concerning health has provided a normative basis for strengthening legal protection for medical personnel. However, without policy reformulation at the implementation level, these norms have the potential to be ineffective. Therefore, synergy is needed between legislators, law enforcement officials, and professional organizations in building a fair and balanced health law enforcement system[6].

### CONCLUSIONS

The criminalization of medical personnel in Indonesian law enforcement practices is fundamentally rooted in a misinterpretation of the specific characteristics of medical procedures, which are fraught with risk and uncertainty. The use of general criminal provisions in the Criminal Code, particularly those related to negligence resulting in death or injury, is often carried out without a thorough analysis of professional standards, standard operating procedures, and the patient's clinical condition.

The criminalization of medical personnel has the potential to harm the healthcare system as a whole. The prevailing legal framework in Indonesia demonstrates that not every medical event that harms a patient is subject to

criminal prosecution. Criminal law must be used carefully and proportionately, taking into account the specific characteristics of medical practice.

The criminalization of medical personnel is also influenced by the weak implementation of ethical and professional disciplinary mechanisms, such as the role of the professional disciplinary council (MDP), which should be the first step in assessing whether or not there are violations in medical practice. Furthermore, judicial practice still shows inconsistencies in interpreting the elements of criminal culpability, despite supreme court decisions that have begun to move toward more proportional legal protection for medical personnel.

With the enactment of law number 17 of 2023 concerning health, normative efforts have been made to strengthen legal protection for medical personnel by emphasizing dispute resolution outside the criminal justice system. However, without a paradigm shift in law enforcement and consistent application of the *ultimum remedium* principle, criminalization of medical personnel still has the potential to continue to occur.

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