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REFORMULATION OF THE CONCEPT OF MEDICAL MALPRACTICE IN A PROGRESSIVE LEGAL PERSPECTIVE: FROM INDIVIDUAL FAULT TO CONTEXTUAL ACCOUNTABILITY

Article	Abstract
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INTRODUCTION

The development of the national health service system in the past decade has shown a very fundamental transformation, both in the dimensions of regulation, institutional, financing, medical technology, and the pattern of the relationship between doctors and patients. The state through various public policy instruments, especially the implementation of the National

Health Insurance and the establishment of Law Number 17 of 2023 concerning Health, explicitly affirms its commitment to guaranteeing the right to health as part of the human rights guaranteed by the constitution. In Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it is emphasized that everyone has the right to health services, which places health as a fundamental right that must be fulfilled by the state through a fair, equitable, and quality service system. However, behind the expansion of access and the strengthening of these regulations, there are complex socio-legal dynamics in the form of increasing medical disputes that qualify as allegations of medical malpractice. Medical disputes not only develop in the civil realm as an unlawful act, but also enter the criminal area, professional ethics, and medical discipline.

Conceptually, the construction of medical malpractice in the Indonesian legal system is still heavily influenced by the classical doctrine of negligence and places individual fault as the main basis of liability. In the civil regime, malpractice is constructed as a form of unlawful act as stipulated in Article 1365 of the Civil Code, while in the criminal regime, the construction of the fault of health workers is still placed on the formal framework of conformity of actions with procedural standards that affirm the dominance of the individual fault liability paradigm so that malpractice is associated with delinquencies that result in serious injury or death. Meanwhile, in the administrative and disciplinary regime, malpractice is associated with violations of professional standards and operational procedure standards. The parameters of proving medical errors tend to follow a linear pattern, namely the existence of duty of care, breach, causation, and damage.

The dominance of the individual fault liability paradigm is rooted in the influence of legal positivism which epistemologically understands law as a closed normative system that must be applied deductively and logically based on written norms. This approach places the doctor as an individual legal subject who is personally responsible for each outcome of his or her medical actions. In fact, modern medical practice is a high-risk profession, system-based, and involves various actors, including other medical personnel, medical technology, hospital management, and health financing policies. In the modern healthcare structure, medical risks are often the result of a systemic interaction of various factors, so they cannot always be reduced to individual medical personnel errors. This complexity is even more evident in the context of the implementation of the National Health Insurance which significantly increases the workload of medical personnel. The ratio of doctors to the population is not ideal, the uneven distribution of facilities, and the administrative pressure of the financing system have an impact on the quality of services. In such conditions, systemic failure has the potential to contribute to the

occurrence of medical incidents. However, the prevailing legal construction still tends to assess medical incidents through an individualistic approach without considering structural factors in the health care system.

Currently, the fact that there is a tendency to bring medical disputes to the criminal realm without a clear differentiation between medical risks and gross negligence has given birth to the phenomenon of overcriminalization of the medical profession. In fact, the premature application of criminal law in medical disputes has the potential to disrupt professional courage and encourage the practice of defensive medicine. Defensive medicine not only has an impact on increasing health costs that patients have to bear, but can also result in unnecessary tests or procedures, even lowering the quality of service because medical decisions are based on defensive legal considerations, not the best clinical considerations, which should have been patients getting high-risk procedures but were not served (Saepullah, Efrila and Prasetyo 2025). The enforcement of ethics and discipline in the profession depends not only on state law, but also on the internal mechanisms of the profession that are based on values and integrity to maintain a balance between professional freedom and public accountability (Dahlan, et al. 2025). Academic courses on medical malpractice in Indonesia are still dominated by normative approaches that maintain the paradigm of individual fault liability, without offering a conceptual reconstruction that is able to explain the complexity of the modern health care system.

In that context, the progressive legal perspective offers a relevant analytical framework for reconstructing the concept of physician malpractice. Progressive law views law as a means to achieve substantive justice that cannot be separated from social reality. This approach rejects the mechanical application of law that ignores the social and institutional context in which an action occurs. Therefore, the application of law in medical disputes must take into account the characteristics of medical practice as a professional practice that is system-based and fraught with scientific uncertainty.

Based on this background, this research departs from a conceptual gap in the study of health law in Indonesia which still maintains the paradigm of individual fault liability in understanding medical malpractice. This research aims to reconstruct the concept of physician malpractice in a progressive legal perspective through a paradigm shift from individual fault to contextual accountability, which is an approach that places medical responsibility in the context of the health care system as a whole. With this approach, this study not only analysis the construction of malpractice in Indonesia's positive law, but also identifies paradigmatic weaknesses inherent in conventional malpractice doctrine and formulates a new conceptual

model in the form of a progressive medical liability framework that is expected to be able to make a theoretical contribution to the development of a more responsive and substantive justice health law.

METHODOLOGY

This study uses a juridical-normative method that focuses on the study of medical malpractice, especially related to individual fault and contextual accountability. The approaches used include a regulatory approach and a conceptual approach. This research collects data through literature studies for the search of primary, secondary, and tertiary legal materials, to then conduct prescriptive analysis to produce normative recommendations, with the aim of contributing to the development of legal practices that are responsive to social change.

RESULTS OF RESEARCH AND DISCUSSION

1. The Construction of Doctor Malpractice in Indonesian Positive Law: The Dominance of the Positivist Paradigm

The legal responsibility of health workers to patients is an important aspect of medical practice that emphasizes the need to provide quality and safe standards of care, which when medical errors occur, health workers must also be ready to face lawsuits that arise (Yakub 2024). Medical actions that can be categorized as malpractice include various aspects, such as examination methods, the use of tools during the examination, the enforcement of the diagnosis based on the results of the examination, the provision of medical therapy, where the medical services of the doctor who can be blamed must contain an unlawful nature (Faatiha, Madjid and Maharani 2025). However, in the nature of the Indonesian legal system, the concept of medical malpractice is not explicitly regulated in a single, comprehensive norm. Regulations regarding the responsibility of doctors are spread across various legal regimes, including civil law, criminal law, and disciplinary law and professional ethics. The fragmentation of such arrangements forms a conceptual construction of malpractice that is legal-formal and rests on the approach of individual error.

The construction of doctor malpractice in Indonesian positive law is still dominated by the paradigm of individual error based on legal positivism, which has not been fully able to answer the complexity of modern medical practice. The resolution of malpractice cases shows a tendency towards a formalistic approach in assessing the elements of error with a focus on procedural appropriateness, without deepening the inherent risks of medical action. This

approach has the potential to blur the distinction between unavoidable medical complications and culpable negligence. The normative tension between the protection of patients' rights and the protection of the medical profession becomes even sharper when justice in medical disputes cannot be interpreted solely as punishing the perpetrator. A doctor who is suspected of malpractice can face civil lawsuits, criminal reports, ethics examinations by the Honorary Council of Medical Ethics, and disciplinary examinations by the Indonesian Medical Discipline Honorary Council at the same time. After the enactment of Law Number 17 of 2023 concerning Health, the strengthening of disciplinary sanctions has not been followed by a harmonization mechanism with the judicial system, thus causing the potential for duplication of processes and legal uncertainty. This encourages doctors to avoid or even refuse to perform medical procedures for fear of the risk of lawsuits, so medical decisions are sometimes more aimed at protecting themselves than meeting the interests or needs of patients.

From a civil law perspective, malpractice is generally qualified as an unlawful act as stipulated in Article 1365 of the Civil Code. A lawsuit is filed if the patient or his family suffers losses due to medical actions that are considered not in accordance with professional standards. The elements that must be proven include the existence of unlawful acts, the perpetrator's fault, losses, and the causal relationship between these acts and losses. This framework conceptually places the interaction between doctor and patient giving birth to a legal relationship known as a therapeutic agreement that falls under the category of *inspanningsverbintenis*, namely an alliance that requires doctors to make maximum efforts in achieving patient recovery, not guaranteeing patient recovery results (Yohana and Andryawan 2025). Therapeutic agreements are the relationship between doctor and patient in the construction of a private legal relationship based on personal responsibility. Meanwhile, in the context of criminal law, allegations of malpractice are often associated with delinquencies in the Criminal Code which only regulate if an act is done intentionally, deliberately planned, and negligence that causes injury, serious injury, or that causes death (Muntaha 2017).

In addition to these two regimes, the accountability of doctors is also regulated in the mechanism of discipline and professional ethics. The Medical Practice Act and the Health Act give professional bodies the authority to assess whether a medical action has violated professional standards or operational procedure standards. This assessment process is carried out through the Honorary Council of Indonesian Medical Disciplines or medical professional ethics institutions. All of these accountability mechanisms often run in parallel. A doctor who is suspected of malpractice can face civil lawsuits, criminal reports, and professional discipline

examinations at the same time. This condition shows that the medical accountability system in Indonesia is still fragmented and does not have an integrated conceptual framework.

The legal construction shows that the concept of malpractice in Indonesian positive law is built through a normative approach centred on the element of individual error. The parameters of proof follow the classic structure known in the doctrine of negligence that occurs in health service practice is categorized as a form of malpractice, namely acting unreasonably under the circumstances which refers to professional standards and other standards of care that apply to health service practices (Pujiyono 2023). This approach epistemologically reflects the strong influence of legal positivism. Positivism views law as a closed normative system that must be applied logically based on written norms without considering the broader social context. As a result, the complexity of medical practice is often reduced to a matter of individual doctors' errors.

In modern healthcare practice, this approach often has problematic implications. Medical action is a professional activity fraught with scientific uncertainty and inherent risks. Not all poor medical outcomes can be identified as professional error. However, legal frameworks that focus on personal error tend to simplify such complexity, resulting in judgments that are not always proportionate to the realities of medical practice. The consequence of such construction is the emergence of legal uncertainty in the resolution of medical disputes. Doctors can face various accountability mechanisms simultaneously in the absence of clear coordination between the civil, criminal, and professional discipline systems. This condition shows that the concept of malpractice in positive law is still dominated by the legal-formal paradigm that is not yet fully able to respond to the complexity of the modern health care system.

2. Kritik Hukum Progresif terhadap Doktrin Malpraktik Konvensional

The character of the law does not change, it remains a number of commandments and prohibitions to human beings in society (Prasetyo 2019), However, the legal paradigm can change. The progressive legal paradigm offers a different approach to understanding the relationship between law and social reality. In this perspective, law is not seen as a rigid normative system, but rather as an instrument for achieving substantive justice in society. The law should be placed as a means to serve humans, not the other way around. This approach provides a critical foundation for the conventional doctrine of malpractice based on the paradigm of individual error that reflects weaknesses related to the paradigm's inability to explain the growing complexity of modern medical practice.

Every medical procedure has certain risks that cannot always be avoided. These risks can arise even if medical procedures have been carried out in accordance with applicable

professional standards. In modern medical practice, medical actions cannot be separated from the context of a complex health care system, involving a wide range of actors and institutions. Clinical decisions are often made in conditions of limited facilities, time pressures, and the involvement of various health workers collectively in one service process. In addition, the success of a medical procedure is also highly dependent on the support of health facilities, medical technology, and hospital management policies. Therefore, placing all the responsibility on individual doctors often ignores the structural dimensions that contribute to the occurrence of medical incidents.

Progressive law rejects a legalistic approach that judges a doctor's actions solely on the basis of formal conformity to a written procedure. This approach is considered too simplistic because it does not take into account the characteristics of medical practice that are full of uncertainty. In the framework of progressive law, law is not understood as a rigid and autonomous system, but rather as a means to achieve substantive justice. Progressive law rejects the view that laws should be applied mechanically without regard to the social context. Law as social engineering assumes that law makes many social changes that emphasize the effectiveness of laws that observe the interaction of law with the social environment. This paradigm is relevant to reconstruct the concept of malpractice to be more responsive to the complexity of modern health services (Kusmiati 2025).

In medicine, the final outcome of an action cannot always be predicted with certainty, so a bad outcome cannot necessarily be equated with professional error. From a substantive justice perspective, criminalizing doctors without considering the systemic context of health services can result in injustice. Criminal law, which should function as the *ultimum remedium*, is instead used as the first instrument in resolving medical disputes. This phenomenon has the potential to create overcriminalization of the medical profession and encourage the emergence of defensive medicine practices. Defensive medicine refers to medical practice that is carried out not solely for the benefit of patients, but to protect medical personnel from potential lawsuits. In such conditions, doctors tend to overdo diagnostic measures or even avoid high-risk medical procedures. As a result, the health service system becomes inefficient and the quality of service can decrease. From a progressive legal perspective, the problem shows that the individual fault paradigm in the doctrine of malpractice is no longer adequate to explain the reality of contemporary medical practice. This approach ignores the structural and systemic dimensions that are part of the healthcare ecosystem. Therefore, a conceptual reconstruction based on progressive law is needed to shift the paradigm from individual fault to contextual accountability in order to realize a more contextual, proportional, and substantive justice

medical accountability system. Accountability is distributed proportionately to actors in the health system, including hospitals and policymakers.

3. Reformulation of the Concept of Malpractice: From Individual Fault to Contextual Accountability

The reformulation of the concept of medical malpractice needs to be carried out through a paradigm shift from an individual fault approach to a contextual accountability approach. This shift includes ontological, epistemological, and axiological dimensions in the construction of medical responsibility. Ontologically, malpractice is no longer understood solely as a doctor's personal fault, but rather as a possible failure that occurs in the health care system. Modern medical services involve the interaction between medical personnel, hospital management, medical technology, and public health policy. Responsibility for medical incidents should be understood as responsibilities that are distributed within the system. This approach allows for a more comprehensive analysis of the factors that influence the occurrence of medical errors, including the condition of health facilities, the availability of human resources, and service management policies.

At the epistemological level, the evaluation of alleged malpractice is not enough to be carried out through normative testing of procedural standards. The assessment should take into account the real context in which the medical procedure was performed. Some factors that need to be considered include the condition of the health facility, the workload of medical personnel, the limitations of medical technology, and the inherent risk level of certain medical procedures. This contextual approach allows for a more proportionate assessment of the doctor's actions. Meanwhile, from an axiological perspective, the main goal of the medical accountability system is not just to impose sanctions on perpetrators, but to ensure the fair restoration of patients' rights. This approach places patient protection and healthcare system improvement as top priorities.

Medical dispute resolution should prioritize recovery mechanisms, transparency, and systemic learning to prevent future recurrence. Departing from the implications of a progressive legal approach, this study offers a conceptual model called the progressive medical liability framework. This model aims to create a substantive justice-oriented medical accountability system that refers to four main pillars, namely the contextual pillar, proportionality pillar, restorative pillar, and integrative pillar.

The contextual pillar as the first pillar emphasizes the importance of analyzing systemic factors before concluding the existence of individual errors. Evaluation of alleged malpractice must include the condition of the health service organization, hospital management policies,

and the support of available medical facilities. The proportionality pillar affirms that the use of criminal law in medical disputes should be placed as a last resort. A clear differentiation needs to be made between gross negligence that is culpable and the medical risk that cannot be avoided. This approach aims to maintain a balance between patient protection and the protection of the medical profession. Furthermore, the restorative pillar places a restorative-based dispute resolution mechanism as the main approach. Medical mediation and compensation mechanisms can be a means to resolve conflicts more quickly and fairly without having to go through a lengthy litigation process. Then the integrative pillar as the fourth pillar emphasizes the importance of integration between various medical accountability regimes. Harmonization between criminal law, civil law, and professional discipline mechanisms is needed to prevent duplication of legal processes and ensure legal certainty for all parties. Through this framework, the concept of physician malpractice can be reformulated into an accountability system that is more responsive to the complexity of modern medical practice. This approach does not aim to weaken patient protection, but rather to strengthen substantive justice in the health care system.

CONCLUSION

This research departs from the conceptual gap in the study of health law in Indonesia which still positions medical malpractice in the framework of individual fault liability based on legal positivism, so that medical liability is reduced to a matter of personal fault without considering the complexity of the modern health service system which is multidisciplinary and high-risk. This paradigm has proven to have limitations in explaining the reality of contemporary medical practice and has the potential to give birth to legal uncertainty, fragmentation of accountability, and a tendency to over criminalize the medical profession. Departing from the progressive legal critique of this legalistic approach, this study offers a conceptual novelty in the form of a reconstruction of the malpractice paradigm from individual fault to contextual accountability, which places medical incidents within the framework of systemic responsibility involving interactions between medical personnel, health care institutions, and health policy structures. The theoretical contribution of this research lies in the development of a progressive medical liability framework model, which emphasizes a contextual, proportional, restorative, and integrative approach to assessing medical responsibility, thus enabling the creation of an accountability system that is more adaptive to the complexity of modern medical practice while being oriented towards substantive justice in the healthcare system.

RECOMMENDATION

Based on the findings of this study, the reformulation of the concept of medical malpractice towards a contextual accountability paradigm requires more integrated policy implications and scientific development. Policymakers in the health sector need to encourage harmonization of medical accountability frameworks between criminal and civil regimes, as well as professional discipline mechanisms to avoid the fragmentation of law enforcement and ensure that criminal law is proportionately placed as the ultimum remedium in medical disputes. Healthcare institutions need to strengthen a system of medical risk management, accountability, and patient safety culture that emphasizes systemic learning of medical incidents. This research opens the agenda for the development of a more interdisciplinary study of health law by integrating legal, medical, and health policy approaches in understanding the dynamics of medical accountability. To address the limitations of this research that are still normative, future research will need to integrate empirical data from health care practice and medical dispute resolution through a multi-method approach.

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