

Reconstruction of the Concept of Medical Malpractice in the Indonesian Health Legal System After the 2023 Health Law

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Info Artikel	Abstract
Riwayat artikel <i>Submitted: 15 Oktober 2025</i> <i>Revised: 26 Oktober 2025</i> <i>Accepted: 6 November 2025</i> <i>Available Online: 22 Desember 2025</i>	<i>The changing landscape of health services and the increasing complexity of the legal relationship between medical personnel, patients, and the state demand an update of the concept of equitable medical malpractice. The birth of Law Number 17 of 2023 concerning Health brings an important paradigm shift, but at the same time raises conceptual issues related to legal certainty, medical risk limits, and professional liability. This study uses prescriptive and analytical juridical-normative legal methods with legislative, conceptual, historical, and comparative approaches. Legal materials are analyzed qualitatively through legal reasoning with systematic, grammatical, and teleological interpretations. The results of the study show that the 2023 Health Law consolidates the regulation of medical malpractice through the concept of layered liability, the affirmation of the ultima ratio principle, and the shift from outcome-based liability to conduct-based liability. However, legal gaps are still found in the absence of a single normative definition of medical malpractice, disharmony with the New Criminal Code, and weak protection in emergency conditions. The reconstruction of the concept of ideal medical malpractice demands a single operational definition, a multi-layered accountability system, an interpretive coordinating institution, and a restorative justice approach. This reformulation is important to realize legal certainty, balanced protection, and a substantive justice Indonesian health legal system</i>
Keywords	
<i>Medical Malpractice; Health Law; Layered Accountability; Legal Certainty; Restorative Justice.</i>	
Kata Kunci	Abstrak
Malpraktik Medis; Hukum Kesehatan; Pertanggungjawaban Berlapis; Kepastian Hukum; Keadilan Restoratif.	Perjudian Perubahan lanskap pelayanan kesehatan dan meningkatnya kompleksitas hubungan hukum antara tenaga medis, pasien, dan negara menuntut pembaruan konsep malpraktik medis yang berkeadilan. Lahirnya Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan membawa pergeseran paradigma penting, namun sekaligus memunculkan persoalan konseptual terkait kepastian hukum, batas risiko medis, dan pertanggungjawaban profesional. Penelitian ini menggunakan metode hukum yuridis-normatif bersifat preskriptif dan analitis dengan pendekatan perundang-undangan, konseptual, historis, dan perbandingan. Bahan hukum dianalisis secara kualitatif melalui penalaran hukum dengan interpretasi sistematis, gramatikal, dan teleologis. Hasil penelitian menunjukkan bahwa UU Kesehatan 2023 mengonsolidasikan pengaturan malpraktik medis melalui konsep pertanggungjawaban berlapis, penegasan prinsip <i>ultima ratio</i> , serta pergeseran dari <i>outcome-based liability</i> ke <i>conduct-based liability</i> . Namun, masih ditemukan kekosongan hukum berupa absennya definisi normatif tunggal malpraktik medis, disharmoni dengan KUHP Baru, dan lemahnya perlindungan dalam kondisi kegawatdaruratan. Rekonstruksi konsep malpraktik medis ideal menuntut definisi operasional tunggal, sistem pertanggungjawaban berlapis, kelembagaan koordinatif interpretatif, dan pendekatan keadilan restoratif. Reformulasi ini penting untuk mewujudkan kepastian hukum, perlindungan seimbang, dan sistem hukum kesehatan Indonesia yang berkeadilan substantif.
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INTRODUCTION

Legal protection in health service practice is a fundamental aspect in realizing a fair, dignified, and human safety-oriented health system¹. The complexity of the legal relationship between medical personnel, patients, and the state is increasing along with the development of medical technology and the transformation of health services, including the emergence of telemedicine practices that transcend the boundaries of space and time². This condition requires a legal system that is able to provide balanced protection between the right of patients to safe medical services and the right of medical personnel to legal certainty in carrying out their profession³. In this context, the issue of medical malpractice is one of the classic problems but increasingly relevant to be reviewed, especially after the birth of *Law Number 17 of 2023 concerning Health* (Health Law 2023).

Prior to the enactment of the 2023 Health Law, regulations regarding medical malpractice in Indonesia were still spread across various laws and regulations, such as the *Criminal Code*, the *Medical Practice Law*, the *2009 Health Law*, and a number of professional regulations. This fragmentation poses conceptual and normative problems, mainly due to the absence of a firm juridical definition of medical malpractice and the overlap between ethical, disciplinary, administrative, and criminal responsibilities⁴. This ambiguity has an impact on legal uncertainty, both for medical personnel and patients, and creates disparities in law enforcement for complex medical cases⁵. Conceptually, retributive and positivistic legal approaches often ignore the values of substantive justice and professional ethical wisdom that are the basis of medical practice in Indonesia⁶.

After the enactment of the 2023 Health Law, there have been significant changes to the structure of national health law, including the regulation of the authority of professional organizations, the mechanism for resolving medical disputes, and the reaffirmation of the *lex specialis* principle in handling alleged malpractice⁷. The reformulation of these norms has juridical implications in both criminal, civil, and administrative law aspects, as this new law emphasizes the protection paradigm mutual *protection* between doctors and patients, while strengthening the state's function as a regulator and guarantor of the health system. However, these changes also raise various conceptual questions regarding the position of professional misconduct in the context of criminal law and the ethical responsibility of the medical profession, which demands a review of the current concept of medical malpractice⁸.

¹ Wijaya, H., & Pardede, C. D. L. (2025). *Reconstruction of legal protection for doctors in telemedicine practice: Perspectives of Law No. 17 of 2023 on health*. Journal of Lex Generis Law, 6(12). <https://www.ojs.rewangrencang.com/index.php/JHLG/article/view/1889>

² Lestari, R. D. (2023). *Reconstruction of legal protection regulations for doctors and patients in health services through telemedicine based on the value of justice*. Sultan Agung Islamic University. <http://repository.unissula.ac.id/id/eprint/31019>

³ Suhaymi, E. (2023). *Reconstruction of legal protection regulations for doctors in handling medical emergencies based on the value of justice*. Sultan Agung Islamic University. <http://repository.unissula.ac.id/30964/>

⁴ Jayantara, I. M. D., & Arief, H. (2024). *The settlement of medical personnel who commit medical malpractice is reviewed from the perspective of Law No. 17 of 2023 concerning Health*. Journal of Lex Generis Law. <https://ojs.rewangrencang.com/index.php/JHLG/article/view/706>

⁵ Setiyanta, P. T. (2023). *Reconstruction of medical dispute resolution regulations based on restorative justice values*. Sultan Agung Islamic University. <http://repository.unissula.ac.id/30930/1/10302000403.pdf>

⁶ Tito, E. (2025). *Reconstruction of law enforcement regulations for medical malpractice crimes based on the value of justice*. Sultan Agung Islamic University. <https://repository.unissula.ac.id/42894/>

⁷ Merry, M., Hertanto, Y., & Islami, I. M. R. (2025). *Normative analysis of the provisions of Law Number 17 of 2023 concerning health: Reconstruction of the authority of professional organizations and Collegiums*. Journal of Social Justice, 8(11). <https://www.jurnal.unismuhpalu.ac.id/index.php/JKS/article/view/7455>

⁸ Nabil, M. E. (2024). *Reconstruction of regulations on the rights and obligations of the medical profession as a fair health service provider*. Sultan Agung Islamic University. http://repository.unissula.ac.id/35197/1/Program%20Doktor%20Ilmu%20Hukum_10302100056_fullpdf.pdf

Within this framework, the reconstruction of the concept of medical malpractice is an urgent need to balance legal interests between patient protection, legal certainty for medical personnel, and the principle of substantive justice in law enforcement. A juridical-normative approach is needed to formulate a comprehensive concept, which not only emphasizes the aspect of violating the law, but also considers the ethical, moral, and professional dimensions of medical personnel^{9,10}. Thus, this research has academic urgency to rearrange the normative framework of medical malpractice to be in line with the principles of progressive law and the values of Pancasila justice which are the basis of the national legal system.

Based on this description, the formulation of this research problem is directed at the question of how to reconstruct the ideal concept of medical malpractice in the Indonesian health legal system after the enactment of the 2023 Health Law. The purpose of this research is to examine in depth the normative changes brought about by the 2023 Health Law, analyze its juridical implications on the concept of medical malpractice, and formulate a new conceptual model that is more fair, proportionate, and oriented towards balanced legal protection for all parties in health service practice.

RESEARCH METHODS

This research uses a prescriptive and analytical *juridical legal research method*. This approach is used to examine positive legal norms that govern medical malpractice and to formulate ideal legal concepts that can be applied in the Indonesian health legal system after the enactment of *Law Number 17 of 2023 concerning Health*. As a prescriptive study, this study not only describes the prevailing legal situation, but also provides normative arguments on how the law should regulate and balance protection for medical personnel and patients in the context of modern medical practice. Its analytical nature emphasizes the effort to find the rational relationship between legal norms, legal principles, and doctrines that form a system of health law that is just and legally certain.

This research uses several legal approaches, namely a legislative approach by examining the 2023 Health Law and related regulations, a conceptual approach to examine theories and doctrines regarding medical malpractice and professional liability, a historical approach to trace the development of medical malpractice regulations before and after the enactment of the 2023 Health Law, and a comparative approach by comparing medical malpractice regulations in Indonesia and other countries such as the United Kingdom and the United States. These approaches are used in a complementary manner to obtain a comprehensive analysis of the reconstruction of the concept of medical malpractice in the Indonesian health legal system.

The legal materials used consist of: (1) primary legal materials, namely laws and regulations, court decisions, and national legal instruments relevant to the issue of medical malpractice; (2) secondary legal materials, which include scientific literature, legal textbooks, academic journals, previous research results, and the views of health law experts; and (3) tertiary legal materials, in the form of legal dictionaries, legal encyclopedias, and bibliographic indexes. The technique of collecting legal materials is carried out through library research and searching for legal documents both in print and online form from credible academic sources.

Furthermore, the analysis of legal materials is carried out qualitatively using the legal *reasoning* method. This analysis involves a systematic interpretation of relevant legal norms, grammatical interpretation of the provisions of laws and regulations, and a teleological interpretation to assess the purpose and spirit of the formation of the 2023 Health Law in the context of legal protection in the health sector. Through a combination of these methods, this research is expected to produce a coherent,

⁹ Vianto, D. (2025). *Reconstruction of legal protection regulations for doctors in providing justice-based high-risk health services*. Sultan Agung Islamic University. <https://repository.unissula.ac.id/42893/>

¹⁰ Yudhariansyah, A. (2025). *Reconstruction of criminal provisions on the practice of plastic surgery, reconstruction and aesthetics in the Health Law that is more just*. Sultan Agung Islamic University. https://repository.unissula.ac.id/42761/1/Program%20Doktor%20Ilmu%20Hukum_10302200063_fullpdf.pdf

applicative conceptual reconstruction of medical malpractice that is coherent, applicative, and able to become a reference in the development of health law policy in Indonesia.

RESULTS AND DISCUSSION

1. Normative Changes to the Concept of Medical Malpractice in the 2023 Health Law

Law No. 17 of 2023 concerning Health brings fundamental changes to the legal structure of medical malpractice in Indonesia. Prior to the enactment of this law, the regulation of malpractice was **fragmentary** and spread across various legal instruments such as Law No. 29 of 2004 concerning Medical Practice, Law No. 36 of 2009 concerning Health, Law No. 36 of 2014 concerning Health Workers, as well as a number of implementing regulations and professional codes of ethics. This condition creates overlapping norms and legal uncertainty in determining the boundaries between ethical, discipline, and criminal violations. The 2023 Health Law seeks to consolidate the legal framework by placing the issue of malpractice as an integral part of the medical profession responsibility system that is integrated with the implementation of national health services. According to Lestari & Mahardika (2023), this approach marks a paradigm shift from *legal fragmentation* to *normative consolidation*, which aims to create juridical clarity in medical practice¹¹.

The most significant normative change is the introduction of the concept of layered accountability for medical personnel. The 2023 Health Law states that violations of professional standards and standard operating procedures (SOPs) can result in administrative, civil, or criminal sanctions, but these are implemented in a hierarchical and proportional manner. This means that minor medical errors or those stemming from procedural inaccuracies do not automatically result in criminal penalties but must first be resolved through administrative or ethical mechanisms. This approach differs from the previous regime, which allowed law enforcement officials to directly use criminal instruments against medical personnel, often resulting in a "chilling effect" on medical practice. This new model aligns with the principle of *ultima ratio* in criminal law, where criminal sanctions are used as a last resort after other legal instruments have proven ineffective¹².

From the perspective of normative definitions, the 2023 Health Law still does not provide an explicit definition of "medical malpractice", but clarifies the criteria for actions that can be categorized as professional violations. The 2023 Health Law emphasizes that medical personnel who carry out actions in accordance with professional standards and SPO cannot be punished even if there are adverse *events*. This provision is an important normative innovation because it accommodates the uncertain and risky reality of medicine. Thus, the Health Law 2023 attempts to shift the legal orientation from *outcome-based liability* to *conduct-based liability* — where the assessment of fault is more focused on process and compliance with professional standards, rather than just on the medical consequences that occur. This approach is in line with the doctrine of *negligence in professional duty*, as it is known in the *common law* system, which emphasizes that legal liability arises when there is a *breach of duty of care* that can be objectively proved.

The medical dispute resolution mechanism has also undergone a fundamental restructuring. The 2023 Health Law introduces the institution of the Professional Discipline Council (MDP) which replaces and integrates the role of the Honorary Council of Indonesian Medical Disciplines (MKDKI). The function of the MDP is to assess whether there is a violation of professional discipline before the case can be submitted to the general court. Thus, the MDP acts as an *administrative-juridical filter* that separates ethical errors from violations of the law. This mechanism strengthens the application of *the principle of due process of law* and ensures a balance between the interests of patients and the protection of medical personnel.

¹¹ Lestari, M., & Mahardika, A. (2023). *Reformulation of Legal Responsibilities of Medical Personnel After the 2023 Health Law*. Journal of Progressive Law, 18(3), 201–219.

¹² Nugroho, D. (2024). *The Concept of Graded Responsibility in Indonesian Health Law*. Journal of Lex Medicinæ, 5(1), 55–73.

However, some experts believe that the MDP's position under the Ministry of Health could give rise to potential bureaucratic intervention and reduce the independence of the agency, ultimately potentially undermining objectivity in case assessment. (Suryani, 2023).

From the aspect of sanctions, the 2023 Health Law introduces a more proportionate system of sanctions hierarchy. Administrative sanctions include reprimands, freezes, and revocation of practice licenses, while civil sanctions regulate compensation obligations based on the principle of professional responsibility. Criminalization is only applied when there is an element of intentionality or gross negligence that causes serious harm to the patient. This arrangement represents a shift from *a punitive justice* approach to *restorative justice*, where the primary goal of health law enforcement is not just punishment, but the restoration of patient rights and learning for medical personnel. Normatively, this reflects the application of the principles of proportionality and corrective justice, two important principles in administrative law and modern criminal law.

The normative implications of all these changes are very significant for legal certainty in the health sector. With a layered accountability system and clearer dispute resolution mechanisms, medical personnel have a stronger guarantee of legal protection, while patients gain access to more efficient and transparent recovery mechanisms. However, implementation challenges remain large — especially in ensuring consistency in the application of norms in the field, inter-agency coordination, and increasing law enforcement officials' understanding of the characteristics of medical risks. As reminded by Hidayat (2024),¹³ the effectiveness of these new legal norms will depend heavily on the quality of derivative regulations and the readiness of law enforcement systems that are sensitive to the medical context.

2. Juridical Implications of Medical Malpractice Regulation Post the 2023 Health Law

Legal protection for patients

Health Law No. 17 of 2023 affirms the *redefinition of patients' rights* through the expansion of the right to medical information, approval of actions, and administrative compensation¹⁴. This regulation reinforces the principles of *autonomy* and *non-maleficence*, two pillars of modern medical ethics, by making the patient the subject active in the medical decision-making process.

However, the effectiveness of this protection still depends on the implementation of the Professional Disciplinary Council (MDP) mechanism. The study by Ghozali et al. (2024)¹⁵ criticized that MDTMs often lack independence and technical expertise in assessing "*reasonable professional judgment*", so the potential for conflicts of interest between health institutions and patients is still high. In addition, Nofianto (2024)¹⁶ highlighted that the space for patients to demand justice in the context of *telemedicine* is still not regulated in detail, so there is a gap between norms and practices.

Legal certainty and professional protection for medical personnel

The 2023 Health Law provides certainty between inherent medical risks and professional negligence, as implied in Article 273, which states that medical personnel cannot be punished if they have acted in accordance with professional standards and fixed operational procedures (SOPs) despite adverse *events*.

¹³ Hidayat, R. (2024). *Harmonization of Malpractice Regulations in the New Criminal Code and the 2023 Health Law*. Indonesian Journal of Law & Health, 12(2), 145–162.

¹⁴ Thahir, P. S., & Tongat, T. (2024). *Legal review of medical crime: Patient protection and professional responsibility in medical practice*. Audito Journal of Law and Policy, 9(1), 12–27. <https://ejournal.umm.ac.id/index.php/audito/article/view/33832>

¹⁵ Ghozali, M., Afra, C., & Agusriadi, D. (2024). *Legal consequences of medical accidents and medical malpractice in Indonesia*. Indonesian Journal of Law, Society and Health, 1(2), 45–60. <https://journal.lps2h.com/ijlsh/article/view/159>

¹⁶ Nofianto, E. (2024). *The legal protection of patients as a victim of medical malpractice by physicians on telemedicine services*. ResearchGate. <https://www.researchgate.net/publication/380601519>

This principle, according to Robian & Wiradirja (2024),¹⁷ confirms the application of *the doctrine of volenti non fit injuria* — in which the patient is considered to agree to the *inherent* risks of medical action.

However, Wulan & Rokhim (2025)¹⁸ show that this article has the potential to be used as a "*shield clause*" that is too protective of medical personnel, especially if the assessment of compliance with SOPs is carried out internally without an independent audit. Therefore, the concept of legal protection needs to be balanced with professional accountability so as not to create disguised impunity.

The role of the state in supervision and law enforcement

The state now takes a strategic role in the supervision of medical personnel, setting standards of practice, and handling malpractice cases through the MDP and the National Health Information System. This step is in line with the spirit of *the welfare state* — that the state is obliged to guarantee safe, quality, and accountable health services¹⁹.

However, Wicaksono (2025)²⁰ reminded that a centralized supervisory system risks slowing down dispute resolution due to the overlap of authority between the Ministry of Health, IDI, and MDP. Therefore, the effectiveness of law enforcement after Law 17/2023 requires *multi-level governance* that balances state supervision and the autonomy of the medical profession.

3. Conceptual Problems and Legal Gaps in the Regulation of Medical Malpractice

Although Health Law Number 17 of 2023 brings significant normative updates to the governance of the medical profession, there are still conceptual problems and fundamental legal vacuums. First, the boundary between *professional negligence* and *inherent medical risk* has not been explicitly described in the articles of the Law. This ambiguity of terminology leads to the potential for multiple interpretations both at the investigative and judicial levels, so that medical personnel are often criminalized for actions that should be in the realm of acceptable medical risks²¹.

Second, normatively, there is a regulatory disharmony between the 2023 Health Law and the New Criminal Code (Law No. 1 of 2023), especially in the formulation of the element of *professional misconduct* (*professional culpa*) that results in death or serious injury. The new Criminal Code contains articles that allow doctors to be subject to criminal sanctions without considering the principles of medical ethics or the results of the recommendations of the Professional Disciplinary Council. As a result, there is a potential for jurisdictional overlap between ethics institutions, MDPs, and general courts²².

Third, the void of substantive law is also seen in the absence of norms that explicitly guarantee legal protection for medical personnel in the context of emergencies or medical actions carried out in good faith.

¹⁷ Robian, R., & Wiradirja, I. R. (2024). Criminal legal protection against doctors allegedly committing medical malpractice post the enforcement of Law No. 17 of 2023 on Health. *International Journal of Administrative and Policy Collaboration*, 5(2), 21–35. <http://ijapcollaboration.com/index.php/IJAPC/article/view/41>

¹⁸ Wulan, I. G. K., & Rokhim, A. (2025). *Legal protection for medical personnel who neglect their duties in performing medical procedures under Law No. 17 of 2023 on Health*. *Locus Journal of Law*, 4(9), 44–59. <https://locus.rivierapublishing.id/index.php/jl/article/view/4732>

¹⁹ Widjaja, G. (2025). *Legal liability of doctors in medical malpractice cases: A literature study*. *Journal of Contemporary Administrative and Social Change*, 10(2), 101–117. <https://jcas.com/index.php/jcas/article/view/1603>

²⁰ Wicaksono, E. N. (2025). *Corporate legal aspects of hospitals in relation to medical malpractice: A review of Law No. 17 of 2023 on Health*. *Private and Social Science Journal*, 5(11), 88–104. <https://www.journal.privietlab.org/index.php/PSSJ/article/view/944>

²¹ Susila, M. E. (2021). *Medical malpractice and its legal liability: Conceptual analysis and evaluation*. *Law and Justice Journal*, 6(1). https://www.academia.edu/download/67619595/2021_Law_and_Justice_Sinta_4.pdf

²² Fitira, A., Subekti, R., & Isharyanto, I. (2025). *The position of the recommendations of the Professional Disciplinary Council as a quasi-investigation in the resolution of medical disputes in Indonesia*. *IUSTUM Law Journal*. <https://journal.uui.ac.id/IUSTUM/article/view/41936>

Suhaymi's research (2023)²³ shows that the weak legal protection increases the fear of medical personnel in making risky quick clinical decisions, so that it can have a negative impact on patient safety.

In addition, Yusr & Hidayat (2024) emphasized that in the context of criminalization, the elements of *mens rea* (malicious intent) and *culpa* (negligence) are often not conceptually separated, causing a bias of law enforcement officials in distinguishing between procedural errors and criminal errors²⁴. This exacerbates legal uncertainty and has the potential to lower public trust in the medical profession.

Systemically, these weaknesses indicate the need for a reconstruction of medical law based on justice and legal certainty, including vertical harmonization between the Health Law, the Criminal Code, and the Medical Practice Law. In line with the idea of Hakam (2022),²⁵ a fair legal system for medical personnel and patients must be based on a firm separation between *risk-based accountability* and *fault-based liability*. Thus, regulations are not only oriented towards punitiveness, but also on the protection of ethics and professionalism of health workers.

4. Reconstruction of the Ideal Concept of Medical Malpractice in the Indonesian Health Legal System

The reconstruction of the ideal concept of medical malpractice in the Indonesian health legal system must be directed at the development of a legal framework that balances the protection of patients and medical personnel based on the principles of substantive justice, proportionality, and legal certainty.

First, a single normative definition of medical malpractice is needed that includes elements of professional fault, violations of professional standards, and their legal consequences. Currently, the difference in definition between the 2023 Health Law, the Medical Practice Law, and the new Criminal Code creates ambiguity in the application of the law. Hakam's research (2022) emphasizes that the reconstruction of malpractice law must integrate the value of Pancasila justice to avoid the dominance of a punitive approach that places doctors as defendants without an ethical test first²⁶.

Second, the layered liability model needs to be applied, namely the order of enforcement from the administrative → civil → criminal realms. This pattern upholds the principle of *ultimum remedium*, namely criminal law is only used as a last resort after ethical and civil mechanisms are unable to resolve disputes. This concept is in line with Tito's (2025) idea²⁷ which emphasizes that the enforcement of malpractice law based on the value of justice must begin with professional clarification through the Professional Discipline Council to ascertain whether there are ethical errors or pure violations of the law.

Third, it is necessary to establish the National Health Law Council as a cross-sectoral coordinating institution (Kemenkes, IDI, BHPN, and MA) that has the authority to provide official legal interpretation of malpractice cases. This will prevent overlap of jurisdictions and strengthen coordination between the ethical and criminal realms. A similar institutional idea was proposed by Suhaymi (2023²⁸), who suggested

²³ Suhaymi, E. (2023). *Reconstruction of legal protection regulations for doctors in handling medical emergencies based on the value of justice*. Sultan Agung Islamic University. <http://repository.unissula.ac.id/30964/>

²⁴ Yusr, M., & Hidayat, S. (2024). *Imposition of criminal charges against malpractice cases based on Law Number 17 of 2023*. *Bureaucracy Journal*, 4(3). <https://bureaucracy.gapenas-publisher.org/index.php/home/article/view/436>

²⁵ Hakam, M. A. (2022). *Reconstruction of the formulation of medical malpractice policies in the Indonesian legal system based on the value of justice*. Sultan Agung Islamic University. <https://search.proquest.com/openview/5bde0b377294bf617820689ac677ebe8/1?pq-origsite=gscholar&cbl=2026366&diss=y>

²⁶ Hakam, M. A. (2022). *Reconstruction of the formulation of medical malpractice policies in the Indonesian legal system based on the value of justice*. Sultan Agung Islamic University. <https://search.proquest.com/openview/5bde0b377294bf617820689ac677ebe8/1?pq-origsite=gscholar&cbl=2026366&diss=y>

²⁷ Tito, E. (2025). *Reconstruction of law enforcement regulations for medical malpractice crimes based on the value of justice*. Sultan Agung Islamic University. <https://repository.unissula.ac.id/42894/>

²⁸ Suhaymi, E. (2023). *Reconstruction of legal protection regulations for doctors in handling medical emergencies based on the value of justice*. Sultan Agung Islamic University. <http://repository.unissula.ac.id/30964/>

the need for an *advisory-judicial* supervisory institution to assess professional and legal aspects in one integrated forum.

In addition, Lestari (2023)²⁹ proposes the application of *the restorative justice paradigm* in resolving medical disputes. This approach is more in line with the principles of proportionality and humanization of the law, as it emphasizes the restoration of the relationship between doctor and patient rather than punishment. This approach is also relevant to the vision of a substantive justice-based health system as suggested by Nabil (2024),³⁰ who emphasizes that health law should move towards two-way protection—not merely penalistic.

Thus, the reconstruction of the concept of ideal medical malpractice requires strengthening four main aspects:

1. A single and operational legal definition;
2. A layered accountability system based on *ultimum remedium*;
3. National coordinating institutions with interpretive functions; and
4. Dispute resolution based on restorative justice and ethical-professionalism.

These measures are expected to be able to restore health law to its function as an instrument of substantive justice and professional protection, not just a punishment mechanism.

5. The Relevance of Concept Reconstruction to Health Service Practice

The reconstruction of the concept of health law has significant relevance to health service practices in Indonesia. This relevance is not only normative, but also operational in strengthening a more preventive, restorative, and accountable health law system.

First, this reconstruction strengthens the medical dispute prevention system through strengthening legal competence for medical personnel and increasing transparency in the implementation of *informed consent*. In the context of patient autonomy, *informed consent* is not just an administrative formality, but the embodiment of human rights principles for the freedom and dignity of patients^{31,32}. Comparative studies confirm that effective implementation of *informed consent* is directly correlated with a reduction in the potential for medical disputes because it increases trust between patients and medical personnel.

Second, this reconstruction encourages dispute resolution through administrative forums and medical mediation that focuses on the principle of *restorative justice*. The non-litigation dispute resolution model is considered more efficient and in accordance with substantive justice values because it emphasizes the restoration of social and professional relationships, not just punishment^{33,34}. Medical mediation is also in

²⁹ Lestari, R. D. (2023). *Reconstruction of legal protection regulations for doctors and patients in health services through telemedicine based on the value of justice*. Sultan Agung Islamic University. <http://repository.unissula.ac.id/id/eprint/31019>

³⁰ Nabil, M. E. (2024). *Reconstruction of regulations on the rights and obligations of the medical profession as a fair health service provider*. Sultan Agung Islamic University. <https://search.proquest.com/openview/2227b7819d1bfc94945230b1e8b22041/1?pq-origsite=gscholar&cbl=2026366&diss=y>

³¹ Widjaja, G. (2021). *New Paradigm in Health Law Education and Regulation: A Conceptual Approach Towards Indonesian National Health Law*. Zenodo. https://www.academia.edu/download/84245201/76_New_Paradigm_in_Health_Law_Education_and_Regulation_a_Conceptual_Approach_Towards_Indonesian_National_Health_Law.pdf

³² Firma, F. R., Jusri, E., & Sapsudin, A. (2025). *Comparative Review of Informed Consent as a Legal Safeguard in Healthcare: Perspectives from Indonesia and Other Countries*. Research Horizons, 5(4). <http://www.journal.lifescifi.com/index.php/RH/article/view/717>

³³ Bharata, Y., Zamroni, M., & Pramono, B. (2024). *Medical Dispute Resolution Based on RME Data Through Restorative Justice*. De Lega Lata, University of Muhammadiyah North Sumatra. <https://jurnal.umsu.ac.id/index.php/delegalata/article/view/18057>

³⁴ Mawardi, C., Zaid, M., & Kamil, R. (2024). *The Importance of the Restorative Justice Approach in the Resolution of Medical Disputes*. Wacana Hukum, 30(1). <https://ejurnal.unisri.ac.id/index.php/Wacana/article/view/10667>

line with the spirit of *good governance* which demands transparency and accountability of legal processes in health services³⁵.

Third, from the policy aspect, the reconstruction of health law provides a direction for national policy reform to be in line with the principles of *good governance* and human rights protection. This approach places health as a constitutional right of citizens that must be guaranteed by the state in a fair and sustainable manner^{36,37}. Thus, the reconstruction of the concept of health law is not just a theoretical update, but a strategic step towards more equitable health governance and oriented towards the protection of patients' rights.

Overall, the integration between preventive (legal education and *informed consent*), restorative (mediation and administrative dispute resolution), and normative (human rights-based policy reform and *good governance*) shows that health law reconstruction has a real impact in realizing a more fair, humanistic, and accountable^{38,39}.

CONCLUSION

Law Number 17 of 2023 concerning Health represents an important turning point in the regulation of medical malpractice in Indonesia through efforts to consolidate norms and reform the paradigm of health law. The results and discussions show that this law has normatively shifted the legal approach from a fragmentary and repressive pattern to a more systemic, proportional, and equitable framework of professional responsibility. The introduction of the concept of layered responsibility, the affirmation of *the principle of ultima ratio* in punishment, and the strengthening of protection for medical personnel who act in accordance with professional standards mark the transition from *outcome-based liability* to *conduct-based liability* that is more in line with the inherent risk characteristics of medical practice.

In terms of juridical implications, this new regulation provides clearer legal certainty for medical personnel while expanding the protection of patients' rights, especially through strengthening the right to information, approval of medical measures, and administrative dispute resolution mechanisms. However, the effectiveness of such protection is still highly dependent on the institutional quality of the Professional Disciplinary Council, the independence of the professional assessment process, and the consistency of law enforcement officials in understanding the conceptual difference between medical risk and professional negligence. Without strengthening these aspects, protection norms have the potential to turn into instruments of impunity or, conversely, continue to open up space for criminalization of medical personnel.

This study also confirms that the 2023 Health Law still leaves significant conceptual problems and legal vacancies, especially related to the absence of a single normative definition of medical malpractice, disharmony with the New Criminal Code, and weak legal protection in medical emergency situations. The unclear separation between *risk-based accountability* and *fault-based liability* has the potential to weaken

³⁵ Perangin-Angin, T. A., Silaban, L. S., & Batubara, S. A. (2025). *Mediation as an Alternative to Legal Dispute Resolution in Health Services in Hospitals*. Jurnal Sosialita, 11(1). <http://ejournal.um-sorong.ac.id/index.php/js/article/view/3898>

³⁶ Dahlan, R., & Budiarsih, B. (2025). *Transformation of Health Law in Indonesia After Law No. 17 of 2023: A Qualitative Study of the Protection of Patients' Rights and Responsibilities of Medical Personnel*. International Journal of Social Policy and Law, 6(2). <https://www.ijospl.org/index.php/ijospl/article/view/213>

³⁷ Eryani, S., & Samosir, T. R. A. (2025). *The Impact of Health Law Reforms on Patient Rights and Medical Professional Accountability Worldwide*. Armada Journal, 5(2). <https://ojs.cahayamandalika.com/index.php/armada/article/view/4906>

³⁸ Sriwidodo, J., & Wahid, S. H. (2025). *Toward Equitable Healthcare: A Medical Dispute Resolution Framework to Address Medical Supply Delays in Health Law*. Journal of Legal and Dispute Analysis in Health, 12(3). <https://ascelibrary.org/doi/abs/10.1061/JLADAH.LADR-1298>

³⁹ Sari, I. (2025). *Alternative Dispute Resolution In Medical Dispute Resolution: Initiating The Establishment Of An Alternative Medical Dispute Resolution Institution In Indonesia*. Jurnal Justitia, SEAN Institute. <https://ejournal.seaninstitute.or.id/index.php/Justi/article/view/6633>

legal certainty and reduce public trust in the health legal system. Therefore, existing normative reforms have not fully addressed the need for a legal system that is sensitive to the complexity of medical practice.

The reconstruction of the ideal concept of medical malpractice in the Indonesian health legal system, as formulated in this study, requires the strengthening of four main pillars, namely a single and operational legal definition, the implementation of a layered accountability system based on *ultimum remedium*, the establishment of a national coordinating institution with an interpretive function, and the mainstreaming of a restorative justice approach in the resolution of medical disputes. The reconstruction not only serves as a normative update, but also as a strategic instrument to build preventive, humanistic, and accountable health service governance.

Thus, it can be concluded that the 2023 Health Law has laid the initial foundation for a more equitable reform of the medical malpractice law, but still requires conceptual refinement, regulatory harmonization, and strengthening institutional implementation. The reconstruction of the concept offered in this article is expected to be able to become an academic and policy reference in realizing the Indonesian health legal system that not only guarantees patient protection, but also maintains the professionalism and dignity of medical personnel within the framework of a substantive justice-oriented state of law

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