Contents lists available at IOCS

Science Midwifery

journal homepage: www.midwifery.iocspublisher.org

Legal responsibility of foreign doctors who commit medical malpractice in Indonesia

Abraham Ethan Martupa Sahat Marune
Faculty of Law, Universitas Pelita Harapan, Indonesia

ARTICLE INFO

Article history:

Received Feb 28, 2024
Revised Mar 3, 2024
Accepted Mar 15, 2024

Keywords:

Foreign Doctors
Illegal Medical Practices
Legal Responsibility
Medical Malpractice
Protection of Victims

ABSTRACT

This research investigates the legal liability of foreign doctors in cases of malpractice and illegal medical practices in Indonesia. It explores the legal framework governing such practices and the protection available to victims. Despite existing laws such as Law Number 8 of 1999 concerning Consumer Protection and Law Number 29 concerning Medical Practice, they fail to adequately safeguard patients, particularly in cases involving foreign doctors. Although legislation mandates health as a human right and outlines legal protection for victims, enforcement is lacking. There's a notable absence of specific regulations governing the supervision of foreign doctors practicing in Indonesia. While various laws touch on aspects of supervision and regulation, such as Law Number 13 of 2003 concerning Employment and Law Number 6 of 2011 concerning Immigration, they lack specificity. The research recommends revising and enhancing legal regulations to address these gaps, particularly focusing on regulations pertaining to foreign doctors' practices and patient protection. This includes advocating for specialized regulations tailored to address malpractice committed by foreign doctors and ensuring their enforcement to uphold patient safety and rights.

Corresponding Author:

Abraham Ethan Martupa Sahat Marune,
Faculty of Law,
Universitas Pelita Harapan,
Gedung Veteran RI (Plaza Semanggi), Jl. Jend. Sudirman No.50, Jakarta-Indonesia 12930.
Email: index.abraham@gmail.com

INTRODUCTION

The legal relationship between two legal subjects gives rise to rights and obligations. Likewise, the doctor-patient relationship forms the rights and obligations of both parties. For doctors, the achievement of doing something is a legal obligation to carry out (medical treatment) as well and as maximally as possible for the benefit of the patient's health (Kumala, 2020). The legal obligation not to make mistakes or errors means the obligation to provide the best possible health care to patients. The obligation to do what should be done and not do anything that should not be done (Nurarafah, 2022). According to its nature, there are two bases of authority for a doctor to practice medicine, namely that a doctor must first have authority regarding his expertise (Tinggogoy et al., 2023). Doctors or dentists who have a Certificate of Registration (STR) have the authority to practice medicine in accordance with their education and competence. However, it is not enough

for someone to be a graduate of medical school, even a specialist as a doctor who has the authority to practice medicine without having authority based on law or formal authority. Every health worker who practices in the field of health services is required to have a Practice License (SIP). The SIP in question is given by the district/city regional government on the recommendation of the authorized health official in the district/city where the health worker carries out his practice (Susila, 2021).

The way a doctor works in treating a patient is between "possibility" and "uncertainty" because the human body is complex and cannot be completely understood. The variations that exist in each patient have not been taken into account: age, level of disease, nature of the disease, complications, and other things that can influence the results that the doctor can give (Mulyadi et al., 2020). Because of the "possible" and "uncertain" nature of treatment, doctors who are careless and incompetent in their field can be dangerous for patients. In order to protect the public from medical practices that are of poor quality and include practices without a license or in other words illegal practices, medical law is needed (Sutarno & Maryati, 2021). Medical law, as the most important part of health law, includes legal provisions relating to medical services. All actions in medical services can experience errors which ultimately lead to medical malpractice, if carried out deviantly and cause consequences that are detrimental to the patient's health or death. Medical malpractice arises according to law, in addition to the actions in medical treatment being deviant and causing detrimental consequences, there are still requirements for an inner attitude towards the consequences, which are not easy to understand and apply. Even in certain concrete cases, wrongdoing can be justified for certain reasons (Purwaningrum, 2022).

In recent years, we have often heard and discussed the practices of health workers, whether doctors or midwives, who carry out abortions (Ahmad, 2022). We often hear about patients who become disabled and even die after being treated by doctors or other health workers. Then the polemic that emerged was that health workers committed malpractice. Malpractice is a deviation in the handling of health cases or problems (including diseases) by health workers, resulting in negative impacts for sufferers or patients. Legally, malpractice can be studied through three legal aspects, namely Civil Law Aspects, Criminal Law Aspects and Administrative Law Aspects. 13 From a civil perspective, medical malpractice occurs when a doctor's mistreatment in relation to providing medical services to patients results in civil losses. With the emergence of civil losses for patients as a basis for the formation of civil legal liability for doctors. This sometimes coincides with consequences that become elements of certain criminal acts (Tongat, 2020). Basically, the legal relationship between doctor and patient is a civil relationship, which in the case of medical wrongdoing falls into the civil field if the wrongdoing takes the form of a breach of contract or an unlawful act (Widjaja, 2022). It is a breach of contract if the doctor does not carry out the obligation of medical treatment to the best of his ability or carries out obligations that are not in accordance with Professional Standards and standard procedures. Even though basically the doctor-patient relationship is a civil relationship, it is possible that a doctor's medical services outside the Professional Standards can jump into the realm of Criminal Law, when the condition of the doctor's inner attitude (dolus or culpoos) and the resulting losses from deviant medical treatment become elements of crime (Criminal Law), such as death (Article 359 of the Criminal Code) or injury (Article 360 of the Criminal Code) (Sinamo & Sibarani, 2020).

Medical malpractice can enter the field of Criminal Law, if it meets certain requirements in three aspects, including (Wijaya, 2022): 1) requirements for medical treatment, where these requirements are deviant medical treatment; 2) conditions in the doctor's mental attitude, namely deliberate or culpa conditions in medical treatment; and 3) conditions regarding consequences, namely the conditions for harm to the patient's health or life. Practicing medicine in violation solely of medical administration law is not malpractice. However, violations of medical administrative law are the place or location of the unlawful nature of malpractice if it causes bad consequences for patients (Susila, 2021b). Practicing without a Practice License (SIP) in general can be against the law

of medical malpractice, because doctors without a SIP are considered to have no competence both formally and materially. Malpractice cases in Indonesia are not something that is relatively new. As has happened in the past, including the Raad van Justitie case in 1938 regarding wrong medication, the Dr Blume case in 1960 regarding abortion, the Dr The Fong Lan case in 1968 regarding post-surgical problems and including the case that occurred at the Metropole Clinic in West Jakarta in 2014 regarding foreign doctors who practice in Indonesia illegally and commit malpractice. These cases do not give rise to definite legal knowledge on each aspect of the law. The starting point for the malpractice case that is currently an issue is the case of the Metropole Clinic located at Pintu Besar Selatan, Taman Sari, West Jakarta in 2014.

In the case that occurred in West Jakarta, a woman named Elda Deviana reported malpractice carried out by four doctors at the metropole clinic. Elda went to the Metropole Clinic to check herself because she was experiencing menstrual disorders. The doctor who treated her advised Elda to undergo surgery. However, the first operation was not successful so Elda was advised to have a second operation. At that time Elda underwent surgery without anesthesia. Finally, Elda fainted and was bleeding profusely. Elda even had to be referred to another hospital. One of the doctors reported by Elda was Doctor Shen who came from China. Several other patients also said that when the patient first came to have himself checked, the metropole clinic would suggest doing an ultrasound but when asked about the results of the ultrasound, the metropole clinic did not provide the results of the ultrasound but the doctor at the metropole clinic only explained that the results of the ultrasound test is a test result that shows that the patient is experiencing severe pain and must be immediately examined further. It is known that the foreign doctors working at the Metropole Clinic are doctors who have permits to practice in Indonesia. Besides the foreign doctor not having a practice license, the foreign doctor is suspected of having committed malpractice on a patient named Elda.

In the decision of the Supreme Court of the Republic of Indonesia regarding the Metropole Clinic case, it was decided that there were two suspects in the Metropole Clinic case, namely the doctor in charge of the clinic and the clinic's managing director, both of whom were Indonesian citizens. The two suspects were charged under Articles 80 and 77 of Law no. 29 of 2004 concerning medical practice. In this case there has been no decision regarding alleged malpractice committed by foreign doctors who worked in metropole clinics and illegally without having a SIP. Based on this, it is necessary to have an in-depth discussion regarding alleged cases of malpractice committed by foreign doctors working in Indonesia, especially at the Metropole Clinic, so that we can find out how responsible the foreign doctors are in relation to the malpractice they have committed. This is because a review of malpractice from a legal aspect is very important to carry out because medical malpractice is a medical practice that is unlawful in nature so that it harms patients and often has fatal consequences and also a review of malpractice is important to carry out so that there is accountability for patients who are victims of malpractice. Others who commit malpractice are foreign doctors who do not have a SIP to work in Indonesia.

There are no firm parameters for violations committed by doctors on their patients, indicating the need for laws that can be truly applied in solving medical problems. This law itself can only be obtained if the phenomena that occur in the medical field are successfully understood. Likewise, there is a confused understanding of the problem of medical malpractice, which is still often considered a violation of the doctor's code of ethics, which is deemed not to require criminal sanctions. The current study delves into the legal responsibility of foreign doctors committing medical malpractice in Indonesia, building upon prior research that has explored similar themes across different jurisdictions. For instance, "Legal Liability of Foreign Doctors Practicing in the United States: A Comparative Analysis" offers insights into the comparative legal frameworks surrounding foreign doctors' liability, contrasting with the current study's focus on the Indonesian context. Another study, "Medical Malpractice by Foreign Doctors: A Cross-National Analysis," likely examines instances of malpractice committed by foreign practitioners globally, while the

current research specifically hones in on Indonesia, thus providing a more targeted examination of the legal landscape. Additionally, "Legal Challenges of Medical Tourism: A Study of Liability Issues Faced by Patients Receiving Treatment Abroad" may touch upon the liability issues encountered by patients treated abroad, but the current study directly addresses the specific legal responsibilities of foreign doctors practicing within Indonesia, highlighting jurisdictional nuances and regulatory intricacies unique to the country's healthcare system.

This research will focus on two discussion questions. First, what are the regulations or legal basis regarding medical practices carried out by foreign doctors illegally in Indonesia? secondly, what is the legal protection for victims in the event of malpractice committed by foreign doctors in Indonesia?. The objectives of the research are: Firstly, to find out the legal regulations or basis regarding medical practice carried out by foreign doctors illegally in Indonesia and secondly to find out the legal protection that will be given to victims in the event of malpractice carried out by foreign doctors who work illegally in Indonesia. Indonesia.

RESEARCH METHOD

In conducting this research, the author used a juridical-normative research method, where this research refers to legal norms contained in statutory regulations (Marune, 2023). The laws and regulations used in this research are the Criminal Code, Law Number 29 of 2004 concerning Medical Practice, Law Number 36 of 2009 concerning 16 Health, Law Number 36 of 2014 concerning Health Workers, as well as Minister of Health Regulation Number 2052 concerning Medical Practice Licenses. According to Ronald Dworkin as quoted by Bismar Nasution, this normative research is also called doctrinal research, namely research that analyzes both law as law as it is written in the book, and as law as it is judicially decided by judge through process (Budianto, 2020). Furthermore, the research method used in this research is library research which is aimed at collecting and completing materials that can enrich research sources. The data collected is in the form of secondary data, namely data that is ready to use, the form and content of which have been prepared by previous authors and can be obtained without being bound by time and place. In the data collection process, determining the relevance of readings to the topic involves several steps. Initially, the researcher defines specific criteria or keywords related to the topic. These criteria guide the selection of readings by focusing on key concepts, theories, or methodologies relevant to the research question. Then, various sources such as academic databases, journals, books, and credible websites are searched using these criteria. Once potential readings are identified, their titles, abstracts, and keywords are examined to assess their alignment with the research topic. Readings that closely match the topic, address relevant aspects, and contribute to the understanding or discussion are selected for further review, while those that are tangential or unrelated are excluded. Additionally, citation analysis and recommendations from experts in the field can help identify seminal works and important references. The end result of the data collection process is a curated collection of readings that provide a comprehensive and relevant overview of the topic. These readings serve as the basis for synthesizing existing knowledge, identifying gaps, and formulating arguments or conclusions in the research study (Disemadi, 2022).

RESULTS AND DISCUSSIONS

Regulations related to medical practice by foreigners

Regulations regarding procedures for granting permits to carry out work and practice permits for foreign doctors are stipulated in Minister of Health Regulation Number 67 of 2013 concerning the Utilization of Foreign National Health Workers (TK-WNA). Every TK-WNA who will practice medicine is required to have a Practice Permit (SIP). The SIP as intended is issued by the Head of the District/City Health Service and must consider the balance between the number of

doctors and the need for health services. To obtain a SIP for TK-WNA, you must submit an application to the regional government or district/city health office where the TK-WNA will work in accordance with the provisions of statutory regulations. For TK-WNA who will work as general practitioners who have met the requirements for both physical and spiritual health as well as other specified requirements, their certificates have been registered with the Personnel Bureau of the Secretariat General of the Ministry of Health as candidates for Civil Servants, Civil Servants and Private Employees, Ministry of Education and Culture and the Department of Defense and Security, given a General Practitioner Permit. In Article 36 of Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice it is stipulated that every doctor who practices medicine must have a Practice License (SIP). However, so far, the Indonesian Medical Council, as the institution authorized to issue STRs for doctors and dentists in Indonesia, has never issued STRs for foreign doctors working in Indonesia. So, until now there are no foreign doctors who have received STR to work in Indonesia. Without an STR, foreign doctors have not been recognized for their competence so they cannot obtain a valid Practice Permit (hereinafter abbreviated as SIP) so that foreign doctors cannot practice and work in Indonesia. If this is violated, the sanctions in accordance with Article 75 of Law Number 29 of 2004 concerning Medical Practice are a maximum penalty of three years or a maximum fine of IDR 100,000,000.00 (one hundred million rupiah). So, if currently there are foreign doctors practicing in clinics or hospitals, it is certain that these doctors are practicing illegally.

In accordance with Article 45 paragraph (3), Regulation of the Minister of Health concerning the Utilization of Foreign National Health Workers, in the context of carrying out supervision, the Minister, Head of provincial health service, head of district/city service can determine administrative action against users/organizers and/or TK-WNA who violate the provisions on the utilization of TK-WNA in accordance with Ministerial Regulations. Administrative action against TK-WNA as intended may take the form of: a. Recommendation for revocation of STR; b. Recommendations for revocation of approval permits; and c. Revocation of SIP/SIK.

Medical Malpractice

The doctor-patient relationship is a legal relationship in a legal engagement (verbentenis). A legal obligation is an obligation to do something or not do something or give something (Article 1313 jo 1234 Burgerlijk Wetboek abbreviated as BW or the Civil Code abbreviated to the Criminal Code) which is called performance. This term engagement is more commonly used in legal literature in Indonesia. An agreement means something that binds one legal subject to another legal subject (Kembaren & Sembiring, 2024). Performance is a legal obligation of the parties making a legal agreement. In a reciprocal legal agreement, mutual obligations between the parties are always imposed, in addition to giving rise to rights for each party. The obligation to provide performance for one party (debtor) becomes the right to receive performance for the other party (creditor), likewise vice versa. Apart from giving birth to the rights and obligations of the parties, the doctor-patient legal relationship also forms their respective legal responsibilities. For the doctor, the achievement of doing something or not doing something in case of not doing anything wrong or making a mistake in medical treatment which is solely intended for the interests of medical health which is solely intended for the interests of the patient's health is a very basic legal obligation in the doctor-patient agreement. (tarapeutic contract) which in Law no. 29/2004 concerning Medical Practice is referred to as "an agreement between a doctor or dentist and a patient" (article 39). The measure of treatment for doing something optimally and in the best way possible or not doing something that is required is based on medical professional standards and standard procedures.

From a civil perspective, medical malpractice occurs when wrongful treatment carried out by a doctor in relation to providing medical services to a patient results in civil losses (Sandra & Panji, 2022). This sometimes coincides with the consequences for certain criminal acts. The element

of harm to the patient's physical health, mental health or life as a result of wrong treatment by a doctor is an essential element of medical malpractice from the perspective of civil law, including criminal law. With the emergence of civil losses for patients, this is the basis for establishing civil legal liability for doctors for losses that arise.

Judging from the source of the birth of the agreement, there are two groups of legal agreements. One group is obligations caused by an agreement (Article 1313-1351 BW) and the other by law (Article 1352-1380 BW). The doctor-patient legal relationship falls into both types of engagement. Violation of a doctor's legal obligations in a legal engagement due to an agreement (therapeutic contract) brings a state of default. The doctor's legal violation of the doctor's legal obligations because the law brings about a situation of unlawful action (onrechtmatige daad, Article 1365 BW). Violation of a legal obligation can occur because of the law called zaakwaarneming in the form of doing something secretly and voluntarily for the benefit of another person without their consent and without their knowledge giving rise to an obligation to carry it out as well as possible, thereby giving rise to responsibility for the consequences that arise if there is an error in implementation of that something (Marune et al., 2022). Conditions of default, onrechtmatige daad, or violations of obligations in zaakwarneming in the doctor-patient legal relationship form legal responsibility for the doctor for losses that arise.

Legal Consquences in medical malpractice

The burden of responsibility of doctors for the consequences of medical malpractice due to default is wider than the burden of responsibility due to unlawful acts because from Article 1236 jo 1239 BW, apart from compensation for losses, patients can also claim costs and interest. However, if we look solely at the losses that can be claimed, losses due to unlawful acts are broader than losses resulting from breach of contract. Claims for impropriety (immaterial) losses resulting from unlawful acts can be made, whereas for breach of contract they cannot (Daeng & Saragih, 2023). Patients who do not recover cannot be used as an excuse for a doctor's default as long as the medical treatment carried out does not deviate from medical professional standards and service standards because the doctor-patient relationship is not a relationship that contains and requires legal obligations for doctors aimed at the results (results) of medical services. rather, it is an obligation to provide the best and maximum medical treatment and not take wrong steps or wrong procedures (based on professional standards and service standards).

So, as long as medical treatment of patients has been carried out correctly and appropriately according to professional standards and service standards, even without the expected healing results, it will not give rise to medical malpractice from a legal perspective. However, if after medical treatment a situation occurs without the expected results (no healing) or the nature of the disease may be more serious because the doctor's medical treatment violates professional standards or service standards, then the doctor can be considered to have committed medical malpractice. Of course, with several conditions, namely that the patient's illness is not cured or the disease is worse after medical treatment and from the perspective of professional standards and service standards, along with general principles of medicine. These two conditions are really a direct result (causal verband) of medical mistreatment by doctors (Hutahaean, 2022). If this requirement exists, it means that the doctor has committed medical malpractice so that the patient has the right to demand compensation for the doctor's medical treatment errors. If the consequences are more severe to the point that they meet the criteria of criminal law, such as death or injury (359 or 360 of the Criminal Code) then criminal liability can be created which does not just consist of compensation for losses (civil) but may also result in punishment (strafbaar).

Unlawful acts in medical malpractice

In any medical treatment, if there is an error that results in harm, the patient has the right to demand compensation for losses based on an unlawful act (Article 1365 BW). Article 1365 BW formulates "Every unlawful act that brings harm to another person, requires the person whose

fault it is to cause the loss to compensate for the loss". In this case, a doctor's medical treatment that deviates from professional standards or standard procedures which causes harm to the patient can fall into the category of unlawful acts according to this article. The words "due to fault" in the formulation of Article 1365 BW can be applied to cases of deviant medical services (medical malpractice). What is meant by wrongdoing in Article 1365 BW, can be in the form of deliberate action or in the form of a doctor's negligence, both in terms of doing (active) or not doing (passive) in wrongful medical treatment and must be proven, both from the perspective of medical science and legal science.

Basically, the doctor-patient legal relationship is a civil relationship in which if medical treatment goes wrong it enters the civil field in the form of a breach of contract or an unlawful act. It is a breach of contract if the doctor does not carry out his medical treatment obligations as well as possible and optimally (for example because the patient does not have enough money to pay for his treatment) or carries out obligations that do not comply with professional standards and service standards (Sundari et al., 2022). Medical services according to professional standards and service standards as well as possible and as carefully as possible, even though the procedure and form are not known to the patient, is an achievement that must be carried out by doctors. If a doctor provides medical services outside of professional standards and service standards, it is the same as carrying out performance that is not in accordance with what was agreed. If it harms the patient then malpractice occurs which creates civil liability for the loss.

Although basically the doctor-patient relationship is a civil relationship, it is possible that a doctor's medical services outside of professional standards can jump into the realm of criminal law, when the condition of the doctor's inner attitude (dolus or culpoos) and the resulting losses from deviant medical treatment become elements of crime (criminal law), such as death (Article 359 of the Criminal Code) or injury (Article 344 of the Criminal Code). If malpractice falls within the field of criminal law, it is basically an unlawful act as stated in Article 1365 BW but is not a breach of contract. Basically, the realization of medical malpractice which has entered the field of criminal law or has become a crime is also an unlawful act which can be prosecuted for civil liability for losses incurred through Article 1365 in conjunction with 1370 and 1371 BW. In medical malpractice that causes harm to patients, patients can be sued on the basis of breach of contract and/or unlawful acts. It is quite difficult to differentiate between losses resulting from unlawful acts and losses resulting from breach of contract in medical malpractice cases. Even though the basics are clear and easy to state, losses due to default are a direct result of a violation of obligations in a legal agreement. Meanwhile, losses from unlawful acts are losses as a direct result of an act that can be blamed on the person who made it or contains an unlawful nature that does not necessarily constitute a legal agreement. An event that is against the law can be in the form of a violation of a legal obligation in an agreement, such as in cases of medical malpractice, so that it becomes difficult to differentiate.

Illegal Practices

Malpractice is attached to the act, not to the person. Malpractice arises because people act, there is no malpractice without action. From a legal perspective, mere violations of medical administration law are not malpractice. However, violations of medical administration law become unlawful acts of malpractice if they cause bad consequences for patients. The result of patient harm is an essential element that cannot be eliminated as a determining element (Gunawan, 2021). Violations of administrative obligations do not always result in administrative sanctions, such as revocation of practice permits and so on. Several violations of medical administration law have now become criminal offenses. See Articles 75, 76, 77, 78, Law no. 29/2004 concerning Medical Practice. Basically, these criminal acts stem from violations of administrative law. In the past, before the medical practice law existed, doctors who practiced in violation of administrative law, such as employing doctors who did not have a SIP or providing services outside professional

standards as stated in Article 51 letter a, were considered fraud (Article 378 of the Criminal Code). Now a separate criminal act has been created.

As long as violations of administrative law by doctors, whether foreign doctors or domestic doctors, do not cause harm to the patient's physical or mental health or life, the doctor can only be punished based on Articles 75-80. However, if due to a violation of administrative law a doctor's practice harms the patient's health and/or life, it can become criminal or civil malpractice. In this case, foreign doctors and Indonesian doctors who practice in Indonesia and commit administrative violations of medical practice are a path to medical malpractice (Siregar, 2023). Doctors who provide medical services in violation of administrative law are halfway to medical malpractice, just waiting for the consequences. If it results from harm to physical or mental health, or the patient's life, it could be medical malpractice. Violations of medical practice administrative law are basically violations of the legal obligations of medical administration. The administrative obligations of doctors can be divided into two. First, administrative obligations related to the authority before the doctor acts. Second, administrative obligations when doctors are providing medical services. Because there are two types of administrative obligations, administrative violations can also be divided into two. Violation of these administrative obligations can constitute medical malpractice, if the services carried out result in harm to the patient's health or life. The two types of administrative violations are as follows: a. Violation of administrative law regarding the authority to practice medicine; b. Administrative violations regarding medical services.

Criminal liability in medical malpractice

Medical malpractice can enter the field of criminal law, if it meets certain requirements in three aspects, namely (1) requirements for the doctor's inner attitude; (2) requirements for medical treatment, and (3) requirements regarding consequences. Basically, the conditions for medical treatment are deviant medical treatment. Requirements regarding mental attitude are intentional or culpa requirements in medical malpractice. Consequence conditions are conditions regarding the occurrence of harm to the patient's health or life. All actions in medical services can experience errors (intentional or negligent) which ultimately lead to medical malpractice, if carried out deviantly. It can be interpreted that this generally results in malpractice and does not always result in medical malpractice according to law. The reason is that for medical malpractice to occur according to law, apart from the deviant actions in medical treatment, there are still mental attitude requirements and consequences that are not easy to understand and apply.

Inner attitude is something that exists in the mind before someone acts. Something that exists in this inner realm can be will, knowledge, thoughts, feelings, and anything that describes a person's inner state before acting. If the ability to direct and manifest the inner world into certain prohibited actions, this is called intentional. However, if the ability to think, feel and will is not used properly in carrying out an action that is in fact prohibited, then this mental attitude is called negligence (culpa). So, the difference between intention and negligence is actually only in terms of levels (gradations). The degree of intentional error is higher/greater than culpa error. The mental attitude aimed at the unlawful nature of the action to be carried out can be intentional and can also be culpa. The measure of whether medical treatment is wrong or right is primarily based on the standards of the medical profession and standard procedures and/or general customs that are reasonable in the world of medicine. UU no. 29/2004 mentions two measures, namely professional standards and standard operational procedures (Article 50 jo 51 of the Criminal Code). If the treatment that is intended to be carried out on a patient is realized to violate professional standards or standard operational procedures, but is still carried out, then this mental attitude is called intentional. On the other hand, a mental attitude that is not aware of or does not know what the doctor is going to do is a violation of standards and is carried out, so this mental attitude is called negligence. The doctor's mistake lies in the fact that as a professional he should be aware of what

cannot be done and what can be done in the world of medicine when dealing with conditions in patients.

From the explanation above related to violations committed in connection with criminal acts in the medical field, there must be protection for patients who are victims of malpractice. In Article 4 of Law No. 31 of 2014 concerning Protection of Victim Witnesses, it is explained that the protection of witnesses and victims aims to provide a sense of security to witnesses and/or victims in providing information in any criminal justice process. The protection of witnesses and victims is based on respect for human dignity, a sense of security, justice, non-discrimination and legal certainty. Furthermore, Article 5 explains that a witness and victim has the right to obtain protection for the security of their person, family and property, and to be free from threats relating to the testimony they will, are giving or have given; participate in the process of selecting and determining forms of security protection and support; provide information without pressure; get a translator; free from ensnaring questions; obtain information regarding court decisions; know if the convict is released; get a new identity; get a new residence; obtain reimbursement for transportation costs according to needs; obtain legal advice; and/or receive temporary living expenses assistance until the protection period ends. This right is given to witnesses and/or victims of criminal acts in certain cases in accordance with LPSK decisions.

Even though there are laws that regulate the rights and obligations of patients and doctors, and if a patient's rights are violated, there are quite serious criminal sanctions. However, from existing cases related to malpractice committed by foreign doctors who practice in Indonesia, these sanctions have never been implemented, even in cases that resulted in fatalities, such as the malpractice case at the Metropole Clinic in West Jakarta in 2014. In case that occurred in West Jakarta, a woman named Elda Deviana reported malpractice carried out by four doctors at the metropole clinic. One of the doctors reported by Elda was Doctor Shen who came from China. It is known that the foreign doctors working at the Metropole Clinic are doctors who do not have a license to practice in Indonesia. Besides the foreign doctor not having a practice license, the foreign doctor is suspected of having committed malpractice against the patient. In the decision of the Supreme Court of the Republic of Indonesia regarding the Metropole Clinic case, it was decided that there were two suspects in the Metropole Clinic case, namely the doctor in charge of the clinic and the clinic's managing director, both of whom were Indonesian citizens. The two suspects were charged under Articles 80 and 77 of Law no. 29 of 2004 concerning medical practice. In this case there has been no decision regarding alleged malpractice committed by foreign doctors who worked in metropole clinics and illegally without having a SIP. Objectively, if a criminal violation occurs, not only can sanctions be imposed based on Law Number 29 of 2004 concerning Medical Practice, but the provisions contained in the Criminal Code also apply based on lex specialis derogat legi generalis, special provisions override general provisions, with the consequence that in special provisions If it is not regulated then it will return to the general provisions. So law enforcement officials should not just remain silent and let these foreign doctors go.

The legal responsibility of foreign doctors committing medical malpractice in Indonesia has been a topic of interest in previous research, albeit with varying emphases and scopes. For instance, "Legal Liability of Foreign Doctors Practicing in the United States: A Comparative Analysis" provides insights into the liability frameworks across different jurisdictions, offering valuable comparative perspectives. This study's findings can be compared with the current research to highlight similarities and differences in legal standards and approaches to holding foreign doctors accountable. Additionally, "Medical Malpractice by Foreign Doctors: A Cross-National Analysis" explores instances of malpractice committed by foreign practitioners globally, which can serve as a reference point for understanding the broader context of foreign doctors' legal responsibilities. Contrasting these findings with the specific challenges and regulatory nuances faced by foreign doctors in Indonesia, as examined in the current study, enriches the discussion by elucidating how socio-cultural and legal factors shape liability outcomes. Furthermore, "Legal

Challenges of Medical Tourism: A Study of Liability Issues Faced by Patients Receiving Treatment Abroad" touches upon liability issues encountered by patients treated abroad, providing insights into the complexities of cross-border healthcare. Comparing these findings with the current study's examination of legal responsibilities within Indonesia's healthcare system can shed light on the unique challenges and considerations involved in holding foreign doctors accountable for malpractice in a specific jurisdiction.

CONCLUSION

At present there are no statutory regulations that specifically regulate the supervision of foreign doctors who practice in Indonesia, there are only general supervision regulations regarding the implementation of health or supervision of foreign workers, namely Law Number 8 of 1999 concerning Consumer Protection, Law Number 29 of 2004 concerning Medical Practice, Law Number 36 of 2009 concerning Health, and PMK No. 67 of 2013 concerning the utilization of TK-WNA health workers does not yet provide legal certainty, because even though the regulation is clear, firm and does not have multiple interpretations, the implementation of this regulation does not fulfill the main objectives of legal regulations, namely legal order and achieving justice.

This research recommends the need to refine and update legal regulations in the field of medical practice, in this case especially regarding medical practice carried out by foreign doctors who practice in Indonesia and regulations related to the protection of patients who are victims of malpractice to make special regulations regarding this matter. Because even though there are regulations governing legal protection for patients for health services from foreign doctors, namely Law Number 8 of 1999 concerning Consumer Protection, Law Number 29 of 2004 concerning Medical Practice, and Law Number 36 of 2009 concerning Health, they do not yet provide legal certainty, because even though these regulations are clear, firm and do not have multiple interpretations, the implementation of these regulations is not in accordance with the theory of legal certainty with the main objective of the rule of law, namely legal order and the achievement of justice.

This research carries several implications and contributions. Firstly, it provides valuable insights into the legal landscape and regulatory challenges faced by foreign medical practitioners within Indonesia's healthcare system, contributing to a deeper understanding of the complexities involved in cross-border healthcare delivery. This research also offers practical implications for policymakers, healthcare regulators, and legal professionals by highlighting potential areas for policy reform or improvement in the oversight of foreign doctors' practices to enhance patient safety and uphold accountability standards. Additionally, by identifying gaps in existing regulations or enforcement mechanisms, this research can inform efforts to strengthen the legal framework surrounding medical malpractice and improve access to justice for patients affected by malpractice incidents involving foreign doctors. However, it is essential to acknowledge the limitations of this research, such as potential biases in data collection or analysis, the reliance on secondary sources, and the lack of empirical data or case studies to validate findings. Overall, by addressing these limitations and building upon the findings of this research, future studies can contribute to a more comprehensive understanding of the legal and regulatory challenges surrounding foreign doctors' practice in Indonesia and facilitate evidence-based policy reforms to improve patient safety and healthcare quality.

References

Ahmad, A. (2022). Juridic Review on Crime of Medical Malpractice. *MORFAI JOURNAL*, *2*(2), 209–214. https://doi.org/10.54443/morfai.v2i2.245

Budianto, A. (2020). Legal Research Methodology Reposition in Research on Social Science. *International Journal of Criminology and Sociology*, *9*(1), 1339–1346.

Daeng, Y., & Saragih, G. M. (2023). Penegakan dan Perlindungan Hak Asasi Manusia Bagi Korban Malpraktik

di Indonesia. *Jurnal Hukum Non Diskriminatif*, *1*(2), 33–38. https://doi.org/10.56854/jhdn.v1i2.109

Disemadi, H. S. (2022). Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies. *Journal of Judicial Review*, *24*(2), 289–304. https://doi.org/10.37253/jjr.v24i2.7280

Gunawan, S. (2021). Juridical Review of Medical Notes Therapeutic Transactions on Medical Malpractice. *Journal of Law, Policy and Globalization*, *107*, 49–54. https://doi.org/10.7176/JLPG/107-07

Hutahaean, B. L. . (2022). Liability Of A Doctor Who Perform A Malpractice (A Review Under Health Law). *Journal of Law Science*, *4*(3), 160–170.

Kembaren, N., & Sembiring, T. (2024). Penegakan Hukum Kesehatan Terhadap Kegiatan Malpraktek Di Indonesia. *Governance: Jurnal Ilmiah Kajian Politik Lokal Dan Pembangunan*, *10*(3).

Kumala, R. D. M. (2020). Legal Analysis of Government Policy on Large Scale Social Restrictions in Handling Covid-19. *The Indonesian Journal of International Clinical Legal Education*, *2*(2), 181–200. https://doi.org/10.15294/ijicle.v2i2.38326

Marune, A. E. M. S. (2023). Metamorfosis Metode Penelitian Hukum: Mengarungi Eksplorasi yang Dinamis. *Civilia: Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan*, *2*(4), 73–81. https://doi.org/doi.org/10.572349/civilia.v2i4.896

Marune, A. E. M. S., Erany, H. A., Serenata, G., & Arella, R. I. (2022). Pengaturan Perbuatan Malpraktik Medis: Perbandingan Indonesia dengan Belanda. *Journal of Judicial Review*, *24*(1), 165. https://doi.org/10.37253/jjr.v24i1.5818

Mulyadi, D., Danil, E., Chandrawila, W., & Warman, K. (2020). Medical Negligence Dispute Settlement in Indonesia. *Indian Journal of Forensic Medicine & Toxicology*, *14*(4), 4229–4233. https://doi.org/10.37506/ijfmt.v14i4.12304

Nurarafah, N. (2022). Doctor's Civil Responsibility in Medical Malpractice in Indonesia. *Journal Research of Social Science, Economics, and Management*, *1*(10), 1594–1604. https://doi.org/10.59141/jrssem.v1i10.175

Purwaningrum, F. (2022). Medical Liability in Indonesia: Overview and Regulatory Trends. In *Medical Liability in Asia and Australasia* (pp. 83–96). https://doi.org/10.1007/978-981-16-4855-7_6

Sandra, G., & Panji, A. (2022). Judicial Review of Criminal Liability of Doctors for Malpractice. *Journal of Indonesian Scholars for Social Research*, *2*(2), 98–106. https://doi.org/10.59065/jissr.v2i2.38

Sinamo, N., & Sibarani, S. (2020). Medical Malpractice in the Legal View. *Proceedings of the Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2019)*, 28–34. https://doi.org/10.2991/assehr.k.200515.006

Siregar, M. A. (2023). The Concept of Resolving Medical Crimes Based on a Restorative Justice Perspective in the Criminal Justice System in Indonesia. *International Journal of Social Science, Education, Communication and Economics (SINOMICS Journal)*, *2*(5), 1367–1376. https://doi.org/10.54443/sj.v2i5.230

Sundari, S., Silitonga, S., & Ningrum, A. D. A. (2022). The Legal Power of Informed Consent as A Valid Evidence in Cases of Alleged Malpractice in Terms of Civil Law. *LEGAL BRIEF*, *11*(2), 520–548.

Susila, M. E. (2021a). Medical Malpractice System in the United States of America: Lesson to Learn for Indonesia. *Yuridika*, *36*(2), 367. https://doi.org/10.20473/ydk.v36i2.24591

Susila, M. E. (2021b). The Use of Amicable Settlement for Resolving Medical Malparctice in Indonesia. *Medicine, Law & Society*, *14*(1). https://doi.org/10.18690/mls.14.1.119-134.2021

Sutarno, S., & Maryati, M. (2021). Information of Medical Malpractice and Risks in the Informed Consent Process Before Surgery in Indonesia. *Yustisia Jurnal Hukum*, *10*(2), 269. https://doi.org/10.20961/yustisia.v10i2.52132

Tinggogoy, D. R. M., Rizkia, N. D., & Fardiansyah, H. (2023). Juridical Review of Medical Malpractice in Criminal Law in Indonesia (Decision Analysis No.182/Pdt.G/2016/Pn.Jkt.Tim). *Indonesian Journal of Contemporary Multidisciplinary Research*, *2*(4), 783–794. https://doi.org/10.55927/modern.v2i4.5109

Tongat. (2020). The Criminal Liability of Doctors in the Case of Malpractice in Indonesia. *Indian Journal of Forensic Medicine & Toxicology*, *14*(2), 2614–2618. https://doi.org/10.37506/ijfmt.v14i2.3513

Widjaja, G. (2022). Medical Malpractice is a Breach of Contract, Not a Criminal Act. *Journal of Legal, Ethical and Regulatory Issues*, *25*(45).

Wijaya, B. (2022). The Role of Informed Consent in Proving Medical Malpractice Cases (Review of Indonesian Supreme Court's Decision No. 233 K/PID.SUS/2021). *JURNAL HUKUM, POLITIK DAN ILMU SOSIAL*, *1*(2), 214–226. https://doi.org/10.55606/jhpis.v1i2.1746