

Regulatory Reform on Doctor Protection as an Effort to Prevent the Criminalization of Medical Actions

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The criminalization of medical actions is a crucial issue in the health law system that has direct implications for legal certainty for doctors and the protection of patients' rights. This study aims to analyze the configuration of regulatory frameworks for doctor protection in Indonesia, identify legal factors that contribute to the criminalization of medical actions, assess the effectiveness of existing regulations, and formulate an ideal and proportional model of regulatory reform. This research employs a normative (doctrinal) legal research method with statutory and conceptual approaches, through analysis of laws and regulations, legal doctrines, and academic literature related to health law and medical criminal liability. The findings indicate that existing regulations have not yet provided optimal legal protection for doctors due to normative disharmony, unclear boundaries of medical malpractice, and weak integration of professional medical standards within criminal proceedings. This study proposes a regulatory reform model that emphasizes a tiered dispute resolution mechanism, strengthening the role of professional judgment, and limiting criminalization to medical errors that are clearly and demonstrably proven. These findings are expected to contribute to the development of health law theory and serve as a reference for policymakers in building a fair, proportional, and justice-oriented legal system in healthcare services.

Keywords: Health Law; Criminalization of Medical Actions; Medical Malpractice; Legal Protection for Doctors; Regulatory Reform

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1. Introduction

The phenomenon of criminalizing medical actions involving the medical profession has become a significant issue in both national and global legal and healthcare systems. Generally, criminalization in the context of the medical profession occurs when actions performed by doctors in their practice are processed through criminal law on the allegation of violating criminal norms, even though such actions were carried out within the scope of professional authority and in accordance with medical scientific standards. In many countries, including Indonesia, this situation often triggers conflicts between legal protection for doctors and patients' rights to justice, giving rise to a policy dilemma in regulating doctors' legal liability for unintended outcomes of medical actions. International legal scholars have highlighted this complexity as a challenge for modern health law systems, particularly with regard to proof of culpa (fault), causal relationships, and professional standards that are sometimes misaligned between criminal law and professional ethics [1][2].

Various previous studies indicate that the criminalization of medical actions remains a serious problem within Indonesia's health law system. Khalid (2020) emphasizes that criminal provisions in the Criminal Code (KUHP) are often directly applied to doctors without prior assessment of professional standards and medical ethical mechanisms, thereby potentially resulting in legal injustice for doctors [3]. Furthermore, research by Rohadi et al. (2024) found that weak coordination between professional disciplinary mechanisms through the Indonesian Medical Discipline Honorary Council (MKDKI) and law enforcement

authorities causes doctors to frequently face criminal proceedings even though elements of professional fault have not been normatively established [4]. Cahjono et al. (2025) also highlight the absence of a *lex specialis* regulation that explicitly limits doctors' criminal liability in cases of alleged medical negligence [5], both in the new Criminal Code and in Law Number 17 of 2023 on Health. These findings are reinforced by Kararo (2025), who concludes that the existing regulatory framework still prioritizes a repressive criminal approach over a professional protection approach, thereby increasing the risk of criminalizing medical actions that are inherently part of medical practice [6]. This demonstrates that, normatively, regulatory gaps and disharmony persist, necessitating legal reform to provide proportional protection for doctors without disregarding patients' rights.

This issue is important to examine because it is directly related to the principles of legal certainty, professional protection, and society's need for fair and high-quality healthcare services. On the one hand, patients have the right to legal accountability when medical malpractice occurs; on the other hand, doctors require legal protection so that medical decisions made in accordance with professional standards are not automatically brought into the criminal domain without due consideration of the technical context and medical risks inherent in medical practice [3]. This aligns with several research findings cited by Heriansa (2025), which demonstrate a low level of legal understanding among doctors and the general public regarding the boundaries of criminalization in healthcare services, potentially triggering excessive litigation or disproportionate criminalization [7].

Although numerous studies have examined medical malpractice from the perspectives of criminal law, civil law, and professional ethics, there remains a research gap from the perspective of normative legal research concerning regulatory reform for doctor protection to prevent excessive criminalization of medical actions. Many studies remain fragmented, focusing on case analyses or a single field of law, and thus have not yet formed a comprehensive normative foundation for legal reform in Indonesia. This condition indicates an important literature gap, particularly in the context of harmonizing criminal regulations and health regulations following the enactment of Law Number 17 of 2023 on Health, as well as in developing a balanced concept of legal protection between patients' rights and doctors' protection.

Based on this phenomenon, this study seeks to examine regulatory reform for doctor protection as an effort to prevent the criminalization of medical actions. The focus of this research lies in a normative analysis of statutory regulations governing doctors' legal liability, mechanisms for proving criminal elements, and the interrelationship between criminal law, professional ethics, and medical service standards. The objective of this study is to formulate a clearer and more harmonious regulatory framework while affirming the boundaries of criminalization in medical practice based on relevant legal principles. Accordingly, this research contributes both theoretically through the development of legal protection concepts within the discipline of health law and practically by providing regulatory reform recommendations for policymakers, law enforcement authorities, and professional organizations to create a fair and effective health law system.

2. Literature Review and Problem Statement

The literature review on regulatory reform for physician protection indicates that the tension between criminal liability regimes and professional disciplinary regimes remains a central theoretical debate in health law. From the perspective of medical negligence theory, the distinction between malpractice as an ethical or disciplinary violation and as a criminal offense depends on proof of fault and deviation from the professional standard of care commonly applied in medical practice [8]. In Indonesia, Law Number 17 of 2023 on Health was enacted to balance patient protection with legal certainty for physicians; however, research shows a continuing tendency toward the criminalization of medical disputes that should more

appropriately be resolved through ethical or civil mechanisms [9]. Comparative studies across several jurisdictions further highlight that no-fault compensation approaches and strengthened internal disciplinary mechanisms have been shown to reduce criminal litigation without diminishing professional accountability [10]. On the other hand, critical scholarship suggests that overly protective legal frameworks risk weakening patients' rights to justice and transparency [11]. The research gap lies in the absence of an integrated normative-dogmatic analysis of recent legislative reforms combined with empirical evaluation of patterns of criminalization of medical acts in Indonesia, as well as the lack of clear juridical parameters distinguishing inherent medical risks from punishable negligence.

Based on this gap, the research problems are formulated as follows: (1) How does the current configuration of physician protection regulations prevent the criminalization of medical actions, particularly within the context of medical practice and healthcare services in Indonesia? (2) What legal factors contribute to the criminalization of medical actions even when physicians have acted in accordance with professional standards and medical procedures? (3) To what extent are current physician protection regulations effective in providing legal certainty and protection against criminal risk for doctors? (4) How can an ideal and proportionate model of regulatory reform for physician protection be formulated to prevent the criminalization of medical actions without diminishing patient rights? This study proceeds from the premise that normative ambiguity regarding negligence standards and overlapping authority between professional disciplinary mechanisms and criminal courts constitute the primary determinants of the criminalization of medical practice. Accordingly, regulatory reform that affirms the principle of *ultimum remedium* in medical criminal law, while strengthening disciplinary and dispute mediation mechanisms, is considered a more proportionate and systemic normative solution.

3. Research Method

This study employs a normative legal research method (doctrinal legal research) as the primary approach to analyze legal phenomena in the context of doctor protection and the criminalization of medical actions. This method is chosen because the focus of the study lies on normative rules, principles, doctrines, and the existing legal regulatory system, rather than on the direct collection of empirical data in the field. The research approaches used in this study include a statutory approach to examine the applicable constitution and related legislation, and a conceptual approach to construct legal concepts related to criminalization and professional protection. The legal materials used consist of primary legal materials (Law Number 29 of 2004 on Medical Practice; Law Number 17 of 2023 on Health), secondary legal materials (books, scholarly literature, and journal articles), and tertiary legal materials (legal encyclopedias and legal dictionaries). Data collection was conducted through library research using systematic document and literature study techniques, while the analysis was carried out through qualitative-normative analysis to examine the relationship between legal norms, legal practice, and legal theory, as well as to assess the conformity between existing norms and ideal legal standards [12] [13].

4. Result and Discussion

Legal Regulation on Doctor Protection in Preventing the Criminalization of Medical Actions in Medical Practice and Healthcare Services in Indonesia

The current regulatory system remains fragmented and has not yet been optimally effective in preventing doctors from the criminalization of medical actions in medical practice and healthcare services. Structurally, the primary legal instrument governing legal protection for doctors is Article 50 of Law Number 29 of 2004 on Medical Practice, which was subsequently updated by Article 27 of Law Number 17 of 2023 on Health.

This provision explicitly safeguards doctors' rights to obtain legal protection as long as medical actions are carried out in accordance with professional standards and applicable standard operating procedures. This provision is further reinforced by Government Regulation Number 67 of 2019, which emphasizes that legal protection is granted when doctors perform their professional obligations in compliance with standards stipulated in the Indonesian Doctors' Competency Standards (SKDI) and the Indonesian Medical Code of Ethics (KODEKI). When medical actions are supported by informed consent and carried out in accordance with standard operating procedures, such actions should not constitute legal violations; therefore, efforts to criminalize such actions may be rebutted insofar as the elements of a criminal offense cannot be proven [4] [14].

However, despite the existence of a legal basis that provides room for protection, these regulations have not yet been fully effective as a strong legal umbrella in preventing criminalization within the criminal law domain. Research conducted by Karoro (2025) shows that legal protection for doctors remains partial and largely accommodates administrative and professional aspects, while the criminal domain continues to rely on general norms within the Criminal Code (KUHP) in resolving alleged malpractice or medical actions that harm patients [6]. The concept of doctors' criminal liability under the Criminal Code requires proof of culpa (fault) or intent, which in judicial practice often creates ambiguity in assessing medical fault, as judges tend to apply general standards without in-depth reflection on professional medical guidelines as sector-specific legal norms [15].

In the context of recent developments, Law Number 17 of 2023 on Health introduces refinements to the health law framework, including regulations concerning the legal liability of doctors and healthcare professionals. Provisions within Law Number 17 of 2023 on Health explain more specific criminal regulations concerning medical malpractice and affirm that criminal liability depends on proof of fault (culpa) that results in serious consequences for patients. This aligns with the fundamental principle of criminal law that there is no punishment without fault, thereby reinforcing the boundaries of criminalization for medical actions performed in accordance with doctors' competency standards [4] [15].

Nevertheless, substantial gaps remain in several important aspects, particularly regarding regulations governing clear preventive legal protection mechanisms for doctors as opposed to repressive protection after an incident occurs. Research by Nasution and Rohman (2025) indicates that hospitals, as institutions providing healthcare services, are obligated to provide administrative and reactive legal protection to doctors facing legal proceedings; however, there are no explicit legal instruments that systematically regulate preventive protection mechanisms aimed at preventing criminalization from the outset [16]. Furthermore, our research conducted in 2025 also reveals that in many cases, public perception and evidentiary practices in alleged malpractice cases continue to place doctors in positions vulnerable to criminalization without a full understanding of medical professional standards. This underscores the need for further harmonization between criminal law, health law, and professional ethical codes [17].

Legal Factors Contributing to the Criminalization of Medical Actions Despite Doctors Acting in Accordance with Professional Standards and Medical Procedures

Several legal factors contribute to the criminalization of medical actions even when doctors have acted in accordance with professional standards and medical procedures. First, there is a lack of clarity in the definition and boundaries of malpractice within Indonesian legal instruments, particularly in Law Number 29 of 2004 on Medical Practice, Law Number 17 of 2023 on Health, and Law Number 1 of 2023 on the Criminal Code (KUHP), none of which provide a clear conceptual formulation of medical malpractice. Although malpractice is not explicitly defined in statutory provisions, the concept and limits of doctors' liability are regulated through mechanisms of professional negligence that carry legal consequences

(criminal, civil, and administrative). General provisions on negligence (*culpa*) in the Criminal Code are often used to process alleged malpractice cases, even though the distinction between inherent medical risks and professional error is frequently not clearly differentiated within criminal norms. As a result, the potential for criminalization increases even when doctors act professionally. The absence of a clear definition of malpractice and detailed criminal boundaries remains a major regulatory issue, contributing to doctors' vulnerability to criminal prosecution without specific legal parameters [18] [19].

Second, inconsistencies between criminal law norms and norms within the medical profession further intensify the risk of criminalization, as the Indonesian Doctors' Competency Standards and the Indonesian Medical Code of Ethics are often not directly integrated into the assessment of criminal norms in general courts. Indonesia's malpractice legal structure is multidimensional and overlapping, combining criminal, civil, administrative, and professional ethical provisions without adequate coordination mechanisms, thereby creating ambiguity in determining the legal status of a medical action. In practice, judges or law enforcement officials may apply general criminal norms to cases that are clinically acceptable medical risks inherent in medical practice, rather than acts of negligence or criminal conduct [4] [16].

Third, limited legal understanding among the public and law enforcement authorities also contributes to the increased likelihood of criminalizing medical actions. Research by Arimbi (2025) finds that a lack of public understanding regarding the nature of medical risks and the distinction between malpractice, medical complications, and medical risks often leads patients and their families to file criminal reports prematurely, even when doctors have complied with all applicable procedural standards and consent requirements [20]. This situation is exacerbated by insufficient public education regarding medical law and dispute resolution mechanisms that ideally should proceed through ethical and professional disciplinary mechanisms via the Professional Discipline Council (MDP) before advancing to the criminal justice process.

Fourth, weaknesses in criminal evidentiary practices also constitute a significant factor. Evidence in alleged malpractice cases often fails to adequately consider medical professional standards due to the lack of competent medical experts in the field of health law or the insufficiency of medical records (incomplete medical documentation). As a result, judges frequently rely on general legal benchmarks in criminal assessments rather than benchmarks specific to professional medical standards. This situation indirectly increases the risk of criminalizing medical actions even when doctors have acted in accordance with established medical procedures [1] [21].

Effectiveness of Regulations on Doctor Protection in Providing Legal Certainty and Protection Against Criminal Liability Risks

Although a regulatory framework for doctor protection exists in Indonesia, its effectiveness in providing legal certainty and protection against criminal liability risks remains limited and not yet fully optimal. Legal protection for doctors is regulated through various instruments, such as Law Number 29 of 2004 on Medical Practice, Law Number 36 of 2009 on Health, and the most recent update through Law Number 17 of 2023 on Health, which explicitly regulates aspects of the legal liability of healthcare professionals in medical practice. These regulations provide a legal foundation for doctors to carry out their profession in accordance with professional standards and medical procedures, with dispute resolution mechanisms involving administrative processes, professional disciplinary measures, and criminal law where elements of professional fault have been proven [4] [22]. Research by Wicaksono (2025) indicates that Article 189 of Law Number 17 of 2023 on Health regulates the communication of responsibility between hospitals and patients as an effort to clarify the boundaries of liability, thereby potentially reducing disproportionate criminalization. However, these findings also highlight the persistent complexity of substantive legal dilemmas in the practical enforcement of criminal law in the medical field [19].

In practice, the effectiveness of legal protection is heavily influenced by consistent implementation and enforcement of regulations by law enforcement authorities, as well as the level of legal understanding among doctors and healthcare institutions. Although the legal framework provides avenues for dispute resolution through mediation, arbitration, or professional disciplinary mechanisms, in certain alleged malpractice cases law enforcement authorities often continue to rely on general criminal norms within the Criminal Code (KUHP), which are multipurpose in nature, without adequately integrating medical professional standards as evaluative parameters. This condition has the potential to create legal uncertainty, as interpretations of criminal norms are not always aligned with the complex clinical context and professional medical standards [17]. Andreas and Widjaja (2025) further argue that although alternative mechanisms such as mediation and arbitration are available within the regulatory framework, understanding and implementation of these mechanisms remain limited among doctors. This limitation directly affects the perceived effectiveness of legal protection for doctors when they become involved in medical disputes and alleged malpractice cases [18].

Furthermore, reliance on strong criminal evidence and the role of medical experts in judicial proceedings continue to present challenges in providing legal certainty. Redyanto (2025) emphasizes that in the post-enactment context of Law Number 17 of 2023 on Health, liability for medical risks that fall within the criminal category still depends on clear proof of fault, in accordance with the principle of *nullum crimen sine culpa* (no crime without fault) [15]. In practice, however, such proof often encounters technical challenges, including the quality of medical records, the availability of competent medical experts in court, and law enforcement officials' juridical understanding of professional standards.

In addition, although considered crucial, systemic preventive legal protection has not yet obtained a strong footing in either regulation or judicial practice. Existing regulations tend to be more reactive, imposing sanctions or liability after an incident occurs rather than providing legal certainty before or at the time medical actions are performed. This is reinforced by analyses of the synergy between Law Number 17 of 2023 on Health and other legal instruments, which still reveal regulatory lacunae in the systematic prevention of criminalization. For instance, in resolving alleged malpractice disputes, mediation or non-litigation mechanisms regulated under Law Number 17 of 2023 on Health actually provide opportunities for more equitable and contextual dispute resolution. However, implementation of these mechanisms in practice remains suboptimal due to limited legal understanding and a weak culture of alternative dispute resolution among healthcare professionals and patients [4] [19].

An Ideal and Proportional Regulatory Reform Model for Doctor Protection to Prevent Criminalization Without Undermining Patients' Rights

In formulating an ideal and proportional model of regulatory reform for doctor protection, this study finds that the current legal framework must be redesigned through an approach that balances legal certainty for doctors with the protection of patients' rights, particularly in the context of alleged criminalization of medical actions.

First, reform should adopt an integrated and tiered dispute resolution mechanism that does not immediately bring every alleged malpractice case into the criminal justice system, but instead prioritizes non-litigation processes such as formal mediation, arbitration, and alternative dispute resolution (ADR) systems based on medical professional standards and principles of restorative justice. ADR mechanisms, as applied in several jurisdictions for malpractice disputes, can help preserve doctor-patient relationships, encourage transparency, and expedite resolution without generating excessive fear of criminal liability, thereby ensuring fair and timely outcomes for both parties. Through ADR, patients may still obtain appropriate compensation, while doctors are protected from disproportionate criminal risks. This approach aligns with

international malpractice reform trends that emphasize responsive solutions addressing the interests of both parties [23] [19].

Second, ideal reform should consider the development of a no-fault compensation model, which has increasingly been discussed in malpractice reform discourse. This model provides compensation to harmed patients without requiring full proof of professional fault, while simultaneously limiting the possibility of criminal prosecution against doctors based solely on inherent medical complications rather than professional defects. Although this model has not yet been widely implemented in Indonesia, a no-fault approach has the potential to enhance fairness and efficiency within the health law system and strengthen public trust in medical services [23] [24].

Third, integration of procedural inspection and audit systems based on professional standards and scientific evidence is essential within the reform model. Ideal regulations should stipulate that criminal elements in alleged malpractice cases are fulfilled only when there is a clear violation of nationally or internationally recognized professional standards, strong evidence of harm that does not constitute a normal medical complication, and failure to implement patient safety protocols. This approach should also require prior assessment by an independent expert panel (e.g., from professional organizations, medical colleges, or specialist associations) before criminal proceedings are initiated, thereby preventing premature and subjective criminalization. This principle reflects an adaptation of professional evaluation approaches widely applied in medical justice systems in several developed countries [1] [21].

Fourth, regulatory reform should strengthen obligations for open, transparent, and information-based communication between doctors and patients, including the requirement to provide effective, comprehensive, and comprehensible informed consent. Regulations mandating transparency not only protect patients' rights to clear information but also assist doctors in lawfully communicating medical risks, thereby reducing the likelihood of disputes rooted in misinformation or miscommunication. Strong implementation of informed consent is a key element in preventing disproportionate legal claims, as it promotes patient awareness of risks and available alternatives [14] [23].

Finally, an ideal reform model must include strengthening the capacity of law enforcement authorities and health policymakers through education in health law, including training on medical professional standards, legal medical standards, and professional evaluation mechanisms. Through such measures, law enforcement officials will become more sensitive to distinctions between medical complications, normal medical risks, and medical negligence, enabling more accurate assessments of whether a medical action warrants criminal prosecution. Such reforms will minimize the risk of criminalizing medical actions while still safeguarding patients' rights to accountability in cases of serious professional violations [23] [24].

5. Conclusion

This study concludes that the current configuration of regulatory frameworks for doctor protection in Indonesia has not yet been fully effective in preventing the criminalization of medical actions performed in accordance with professional standards and medical procedures. The existing legal framework remains fragmented, with a dominant reliance on general criminal law approaches that are not optimally integrated with medical professional norms and disciplinary mechanisms. As a result, doctors continue to face legal uncertainty and criminal liability risks despite acting professionally, while patients' rights are not always proportionally protected through fair and contextual mechanisms.

The findings of this study contribute to the development of health law scholarship by emphasizing the importance of a *lex specialis* approach, the principle of *nullum crimen sine culpa*, and the integration of professional standards as the primary parameters of medical criminal liability. From a practical perspective,

this research underscores the need to strengthen non-litigation dispute resolution mechanisms, early independent expert assessments, and the capacity of law enforcement authorities to understand the complexities of medical actions. From a policy standpoint, this study highlights the urgency of more comprehensive and proportional regulatory reform to balance legal protection for doctors with the fulfillment of patients' rights. Future research is encouraged to conduct cross-country comparative studies or empirical analyses of reform mechanism implementation to broaden and deepen understanding of the effectiveness of legal protection in medical practice.

6. References

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