

# Education for Medical Personnel Malpractice: A Literature Review

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**Abstract:** Doctors who adhere to professional standards, service standards, and standard operating procedures can generally expect legal protection in their medical practice. Following established protocols and guidelines helps ensure that doctors provide care within accepted norms, reducing the likelihood of malpractice allegations. This is a literature review study that analyzed the literature related to the malpractice law. The initial involved searching various databases, including MEDLINE via PubMed, Scopus, and Web of Science from April to May, 2023. This search was performed using specific terms, namely doctor, dentist, malpractice, and Indonesian laws. The literature search yielded a total 153 citation (Fig. 1). Upon completion of title and abstract screening, 75 full-texts were deemed potentially relevant and reviewed. Subsequently, 21 documents fulfilled our eligibility criteria and were included. The Medical Council of Indonesia (MKDKI) has the authority to examine complaints related to the discipline of doctors and dentists and determine whether any mistakes were made in the application of medical and dental disciplines. The decisions made by MKDKI can have implications for the professional standing and disciplinary actions against doctors.

**Keywords:** Education; Health Law; Malpractice; Medical Personnel

## Introduction

In the past, the relationship was often characterized by a paternalistic approach, where doctors made decisions on behalf of patients based on their perceived expertise and what they believe was best for the patient. Patients were considered passive recipients of care (Ghaleb et al., 2021; Sutarno & Maryati, 2021).

However, there has been a significant shift towards a more patients-centered approach in healthcare. Patients are now recognized as active participants in their own healthcare journey, with rights and responsibilities. This shift acknowledges that patients have valuable insights into their own health, preferences, and values, which should be taken into consideration in the decision-making process (Suwari, 2014; Tongat, 2020).

In the current model, the doctor-patient relationship is seen as a partnership, where doctors provide their medical knowledge and expertise while considering the individual needs and preferences of the patient. This collaborative approach takes into account various factors that can influence treatment outcomes, such as the patient's unique circumstances, the nature of the disease or condition, and the potential medical risks involved (Turk et al., 2020). It is important for doctors to communicate effectively with patients, ensuring that they have a clear understanding of their medical condition, treatment options, and potential risks (Al-Safadi et al., 2018). Patients, on the other hand, have responsibility to actively participate in their own care, providing relevant information, asking questions, and making informed decisions in partnership with their healthcare providers (Alsaed et al., 2022).

## How to Cite:

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However, this condition, sometimes did not happened (Tri 2019). Malpractice or complication (medical risk) can be significant dilemma and controversial issues in the healthcare system. Despite the best efforts of healthcare professionals, there can be instances where medical errors or complications occur, leading to harm to patients. These situations can have a profound impact on individuals and their families, and they often result in legal and ethical debates (Daniel et al., 2019; Suwari, 2014).

Article 1 of Medical Practice Law Number 29 in 2004 that medical practice or medical negligence is a series of action done by a doctor or dentist to a patient in performing in performing a health effort. Article 2 mentions that Medical practice shall be performed with Pancasila principles and based on scientific value, benefit, fairness, humanity, equality, protection and safety for the patients. The purpose of medical practice is stated in Article 3, as follows: a) to provide protection to the patients, b) to maintain and escalate the quality of medical service given by doctor and dentist; and c) to give legal certainty towards people. While malpractice according to Setyo (2017) occurs when a healthcare provider fails to provide fails to provide appropriate care, resulting in harm to the patients. It is a complex and sensitive issues that requires through investigation to determine whether there was a breach of the standard of care and whether it directly caused harm to the patient.

When such cases arise, they often involve a legal process to establish liability and seek compensation for the affected individuals (Daniel et al., 2019). Complications (medical risk), on the other hand can arise even when healthcare professionals provide appropriate care. Some medical procedures or treatments inherently carry risks, and despite taking necessary precautions, adverse outcomes can occur. It is important to distinguish between complications that are known risks and those that result from negligence or errors in providing care (Vojkovic 2019).

In both cases, medical malpractice or complications, it is crucial to have robust systems in place to address these issues. This includes transparent reporting mechanisms, thorough investigations, and fair legal processes to ensure accountability and provide recourse for affected individuals. Additionally, healthcare professionals and institutions should prioritize patient's safety through continuous quality improvement, adherence to evidence -based (Hyeon et al., 2022; Sulistini et al., 2023).

Therefore, understanding the differences between malpractice and complication (medical risk) is indeed crucial in ensuring an equitable process for both healthcare workers and patients in Indonesia, as well as promoting patient's safety and accountability, especially in the new era of Omnibus Health Law.

## Method

This is a literature review study that analyzed the literature related to the malpractice law. The initial involved searching various databases, including MEDLINE via PubMed, Scopus, and Web of Science from April to May 2023. This search was performed using specific terms, namely doctor, dentist, malpractice, complication, and Indonesia laws. In addition, a manual search was performed through the list of references of identified records for additional eligible articles. The searching was limited to Indonesia and English articles in peer-reviewed journals between 2018- February,2023 (Arealle et al., 2022).

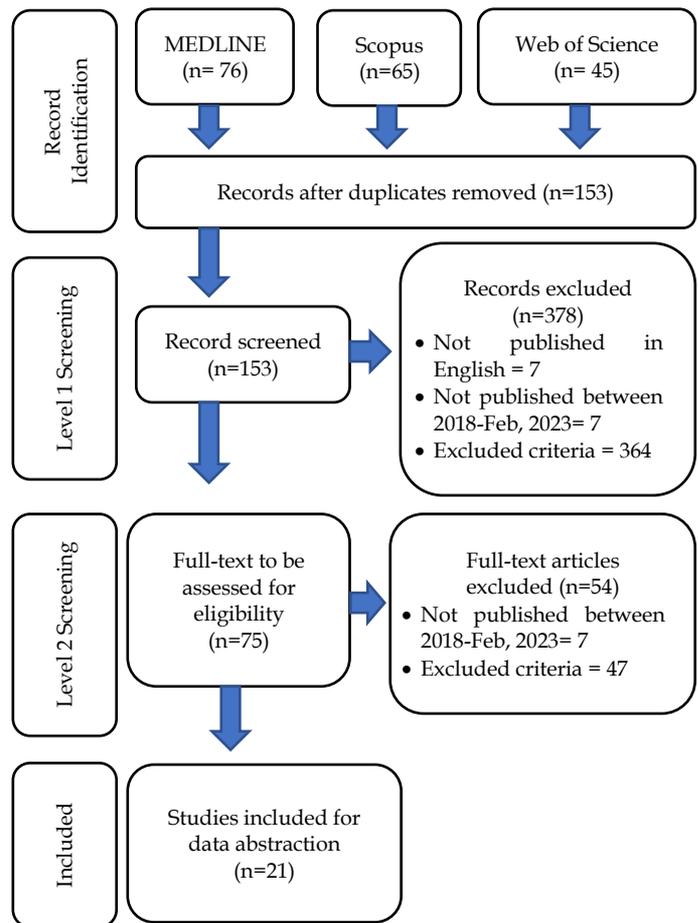


Figure 1. Study Flow Chart

Publication will be considered eligible if they meet the following selection criteria (Daniel et al., 2019). Inclusions criteria included publications in the Indonesia and English language, literature relating to doctors and dentists, peer-reviewed research including empirical papers, review, and commentaries or letters containing empirical data government documents containing data relevant to the focus of the review. While, exclusions criteria were literature on medical malpractice and medical risk (complication) relating to

healthcare professionals other than doctors (e.g. nursing), non-peer-reviewed commentaries, reviews, and letters.

The interpretation and analysis the legal provisions and principles related to medical malpractice. By examining the existing laws, the researchers sought to gain a deeper understanding of how these laws are applied and their implications in the context of medical malpractice. This type of research can contribute to the development and refinement of legal theories, concepts, and frameworks related to medical malpractice (Putra, 2020; Sungmin & Seon, 2021).

## Result and Discussion

The literature search yielded a total 153 citation (Fig. 1). Upon completion of title and abstract screening, 75 full-texts were deemed potentially relevant and reviewed. Subsequently, 21 documents fulfilled our eligibility criteria and were included.

According to the Black law Dictionary (Reuters, 2019) malpractice refers to professional misconduct, unreasonable lack of skill or fidelity in professional or judicial duties, evil practice, or illegal or immoral conduct. It encompasses situations where professionals fail to meet the required standards or engage in bad or illegal practices. Malpractice can be divided into two type, namely (1) Deliberate Malpractice: This refers to cases where health care professionals intentionally violate statutory regulations or engage in malpractice can include performing an abortion without medical certificates. These acts are considered deliberate because the healthcare provider knowingly and intentionally deviates from accepted standards of care or engages in illegal activities; (2) Accidental Malpractice: This type of malpractice occurs when healthcare professionals fail to

meet the standard of care unintentionally, resulting in harm or adverse outcomes for the patients (Marron, 2019).

Neglecting a patient’s treatment, failing to diagnose a condition, or making errors during surgical procedures are examples of accidental malpractice (Al-Safadi et al., 2018). These actions are not intentional but can still lead to significant harm or even death due to negligence, lack of skill, or mistakes in judgement. Indonesia is law country including in health sector; thus, Indonesia has laws and regulation related to medical practice and medical risk (Ginting, 2017; Rudianto, 2018).

The Indonesia Criminal Code that regulate criminal responsibility that leads to a person’s death (Indonesia, 1915): Article 359: This article deals with the criminal negligence that leads to a person’s death. It likely establishes the conditions and penalties for individuals who, due to their negligence, cause the death of another person in the context of medical practice; Article 360: This article addresses negligence that causes someone’s injury. It likely sets out the elements and consequences for individuals who, through their negligent actions in the medical field, cause harm or injury to another person; Article 361: This article likely determines the burden of punishment for perpetrators involved in carrying out crimes, including those related to medical malpractice. It likely establishes principles or guidelines for determining the appropriate punishment for individuals convicted under articles 359 and 360

Furthermore, the government’s efforts to provide legal certainty by issuing Law Number 29 of 2004 concerning Medical Practice, Law Number 36 of 2009 concerning Health, and Law Number 35 of 2014 concerning Health Workers (Indonesia, 2004, 2009, 2014).

**Table 1.** Study finding related to medical malpractice or medical risk (complication).

Types of Study	Author, Year, and Country	Sample	Result
Retrospective cohort study	Bernardinange li, et al., (2023), Switzerland	A total of 4793 criminal proceedings were ultimately identified.	Proceedings related to the field of orthopaedic trauma were then examined and identified. A complete analysis of 132 of the identified files (76.7%) was carried out. The field with the highest risk of disputes was determined to be the field of trauma. The most frequent complaint was found to arise from unsatisfactory surgical outcomes following elective surgery.
Randomized controlled trial	Benedikt et al., (2021), Germany	615 adults were randomized to one of four intervention groups.	Media portrayals featuring allegations of psychiatric malpractice cause reputational damage not only to the specific clinic facing allegations, but also to the entire field. Public responses can partially mitigate the reputational damage and are preferable to no response.
Review articles	Mukherjee, et al, (2023), India	20 articles	Adequate pre-operative consent, early detection of complications, and appropriate management coupled with regular honest communication with the patients and their family and accurate documentation remain the most important issues

Types of Study	Author, Year, and Country	Sample	Result
Clinical review & education	Daniel et al., (2019), USA	49 articles.	Many factors play a role in the risk of a physician incurring a malpractice claim, including medical specialty, age, sex, and education.
Review articles	Tongat, (2022), Indonesia	8 articles	Criminal legal protection against doctor malpractice in Indonesia in the Criminal Code cannot be applied to the doctor's action who has medical risk. This is because at the medical risk, there is one element that cannot be fulfilled, namely the negligence element.
Review articles	Deri et al., (2020), Indonesia	15 articles	There were no clear rules regarding medical negligence, medical risk, and medical dispute resolution to produce identical rules based on structure, substance, and culture. The settlement of medical negligence disputes through mediation is an alternative in resolving medical negligence disputes in Indonesia to allow for legal certainty and legal protection for doctors and patients.
Review	Berghi et al., (2021), Romanian	25 articles	The limitation derives from interpreting the skin reactions to an undiluted drug as an allergy and unnecessary restraining the patient from receiving that medication. Another aspect revealed is that deadly drug allergic reactions are reported mostly in unauthorized healthcare settings. This article presents a review of medical literature regarding medico-legal aspects of these potential harmful situations.
Review	Biswas et al., (2023), Egypt	39 articles	Awareness of the main medico-legal issues and insurance in the radiology field is very important for the radiologist to protect himself from malpractice litigation.
Cohort study	Bouterse et al., (2023), USA	4732 cases	The study findings suggest that prompt and accurate diagnosis, coordination of care, timely referral for surgical intervention, and understanding of the indications versus limitations of conservative therapy may help to mitigate the risk of litigation associated with laminectomy.
Cohort study	Bradfield et al., (2022), Australia	885 cases	In contrast to prior overseas cross-sectional survey studies, we show that medical negligence claims do not adversely affect the well-being of doctors in Australia when adjusting for time trends and previously established covariates. This may be because: (1) prior studies failed to adequately address issues of causation and confounding; or (2) legal processes governing medical negligence claims in Australia cause less distress compared with those in other jurisdictions. Our findings suggest that the interaction between medical negligence claims and poor doctors' health is more complex than revealed through previous studies.
Cohort study	Chen et al., (2023), China	109 cases	The diagnosis and treatment capabilities of coronary artery bypass grafting in different levels of hospitals in China were inconsistent, and the treatment capabilities in prefecture-level hospitals were lower than that in national hospitals. The procedural error, failure to properly monitor the patient and diagnostic errors were common in CABG litigations. Postoperative complications related to surgical injuries and insufficient basic postoperative management lead to a higher responsibility proportion
Review	Daniel et al., (2019), USA	25 articles	The study and effect of EI within medicine offers great opportunity to investigate how physician characteristics may influence one's EI, as well as medicolegal risk. This review suggests an indirect negative correlation between a physician's level of EI and his or her risk of litigation. Studies directly linking physicians with low EI to a higher risk of litigation are lacking and may provide valuable insight. Demonstrating such a correlation should prompt the development of interventions that may enhance a physician's level of EI early in his or her career and may limit future legal action.
Review	Davis et al., (2023), USA	36 cases	Failure to diagnose primary malignant sarcoma and unrelated carcinoma was the most common reason for oncologic litigation brought against orthopaedic surgeons. Although most of the cases ruled in favor of the defendant surgeon, it is important for orthopaedic surgeons to be aware of the potential errors that not only prevent litigation but also improve patient care.

Types of Study	Author, Year, and Country	Sample	Result
Clinical Trial	Davolio et al., (2023), Italy	2 cases	An accurate patient's informed consent subscription, a detailed surgical report and proper diagnostic-therapeutic management of CO2 embolism play a crucial role in clinical management and medico-legal evaluation in cases of carbon dioxide embolism.
Prospective study	Hanganu et al., (2022), Romanian	1684 samples	The profile identified by the present research underlines the main characteristics that could be targeted with specific measures in order to prevent the ongoing increase of malpractice complaints in Romania.
Review	Mastalier et al., (2021), Romanian	37 articles	The future preventive strategies, resulting from an attentive root-cause analysis, must be worldwide implemented in order to decrease the preventable surgical errors and reduce patient injury.
Review	McQuoid-Mason, (2022), South Africa	17 articles	The Chief Justice can also issue a practice directive that all presiding officers must appoint medicolegal experts as assessors in medical malpractice cases. The medical profession can assist the process by arranging a panel of such experts who can be called upon to serve as assessors by the courts.
Cohort study	Palaniappan, (2022), USA	55 cases	In addition to excellent surgeon patient/family communication, administering surgical treatment in a timely manner, diagnosing acting on concomitant medical conditions, and close patient monitoring may diminish medical malpractice litigation involving aortic and mitral valve replacement operations.
Cohort study	Roei et al., (2022), India	16 cases	Malpractice education, careful supervision, awareness during perioperative care, and detailed communication between patients and physicians should be highlighted in training programs to improve patient outcomes and mitigate risk of future malpractice.
Review	Schacht et al., (2022), USA	55 cases	Most claims involved adult patients, occurred in the outpatient setting, and involved diagnosis related allegations. Although representing a minority of the claims, obstetric claims made up most of the total settlement amount. Missed or delayed diagnoses of cancer were a common cause for claims, reinforcing the important role that primary care physicians have in supervising and administering preventative health care to patients. This study also emphasizes the value of peer review committees to help inform medical-legal consultants as evidenced by the high correlation between standard of care determination and final claims outcomes.
Cross-sectional study	Shehata et al., (2022), Egypt	177 samples	Despite the fact that more than half of the participants' knowledge of defensive medicine (DM) was insufficient, about 61% had a very high score for DM-related behaviors. This highlights the DM current situation among them which could endanger physicians' proficiency, quality of care, patient rights, and cost. Efforts with medicolegal training should be made to keep physicians' risk perception and anxiety in balance to avoid DM

According to Article 66 paragraph (1) Law Number 29 of 2004 concerning Medical Practice Act grants to submit a complaint to the chairperson of the Indonesian Board of Medical Discipline (MKDKI) to anyone who is aware of or has an interest in the harm caused by an erroring health services, particularly by doctor. Furthermore, Articles 67 and 68 of the Medical Practice Act empower the Board of Medical Discipline to investigate and adjudicate on the complaints received. If an ethical violation is established based on the rules and requirements of the Indonesian Medical Honorary Assembly, the complaints are forwarded to the relevant professional organization. Thus, it is explained in Article 66 paragraph (3) of the Law on Medical Practice that the legal protection provided to victims of malpractice. It

acknowledges the rights of victims to seek legal actions for compensation and addresses the forms of compensations that can be pursued by the victims (Indonesia, 2004).

According to Article 29 of Health Law Number 36 of 2009, if a health worker is suspected of carelessness in the performance of his duties, this negligence must first be remedied through mediation. Under Article 84 of Health Workers Law Number 36 of 2014, a doctor can get punished for his malpractice act. However, there are contradictions and gaps in the specific definition, leading to uncertainty and a lack of clarity in defining and regulating medical practice in Indonesia. The conflicts between Article 66 (1) and Article 66 (3) of law Number 29 of 2004, and between Article 29 of Law

Number 36 of 2009 and Article 84 of Law Number 36 of 2014, highlight the need for harmonization and clarification in the legal framework (Indonesia, 2004, 2009, 2014).

Additionally, the absence of a specific and comprehensive norm or legislation that specifically addresses medical malpractice in Indonesia further compounds the issue. The lack of a clear definition, types of violations, liability regulations, degrees of faults, and corresponding sanctions creates a legal vacuum in the understanding and regulation of medical malpractice. It is important for the legal system in Indonesia to address these gaps and conflicts to provide a robust legal framework that protects the right patients, establishes clear standards for healthcare professionals, and promotes a fair and effective systems for addressing medical malpractice cases (Eva et al., 2023; Putra, 2020).

Article 29 of the Health Law, in cases where a health worker is suspected of being careless or negligent in performing their duties, the first step is to seek remedy through mediation.

On the other hand, Article 66 paragraph (1) of the Medical Practice Act grants the right to submit a complaint to the chairperson of the Indonesian Board of Medical Discipline (MKDKI) for anyone who is aware of or has an interest in the harm caused by an error in health services, particularly by a doctor (Eppler et al., 2023; Kim 2017; Sanon et al., 2021). This is suggesting that a formal complaint process exists within the medical disciplinary framework. The potential conflict arises from the difference in approaches: one promoting mediation and the other providing a mechanism for formal complaints to be made to the Board Medical Discipline (Indonesia, 2009; Sulistini et al., 2023).

However, promoting mediation as the initial approach to addressing allegations of carelessness or negligence, the law emphasizes the importance of resolving conflicts through dialogue and finding mutually acceptable solutions, rather than immediately resorting to formal legal proceedings (Miziara & Miziara, 2022; Sungmin & Seon, 2021). This approach recognizes the benefits of resolving conflicts through dialogue and reaching a compromise rather than immediately resorting to litigation (Hamid et al., 2022; Tri 2019).

Under the criminal provisions in Indonesia, doctors may have grounds for the elimination of punishment due to two reason: justification and forgiveness. Justification refers to a reason that eliminates the unlawful nature of an action, considering it proper and right (Giovanni & Cacciamani, 2023). In the context of medical malpractice, this suggests that if a doctor's actions are justified, even if they may have violated certain laws, they may be exempt from punishment. The concept of forgiveness may also be considered, which

could lead to release of the doctor from legal liability (Rudianto, 2018). It is important to note that the application of these legal principles and determination of whether a doctor's actions are justified or deserving of forgiveness would depend on the specific circumstances and the interpretation of the law by the relevant authorities, including courts or regulatory bodies (Al-Safadi et al., 2018). Legal professionals familiar with Indonesian law would be best equipped to provide detailed guidance on the specific provisions and their implications in medical malpractice cases within the country (Albertus, 2019; Biswas et al., 2023; Setyo, 2017).

## Conclusion

The importance of good communication between parties involved in a dispute due to malpractice or medical risk and emphasized the significance of considering moral rights, human rights, and sincerity from both sides. The mediation as an appropriate alternative for resolving medical disputes, involving specially trained mediators accredited by relevant institution. Mediation aims to provide a space for open dialogue and understanding between the parties, focusing on the needs and desires of each side in the dispute. Compared to the formal criminal justice system, mediation allows for a longer period of resolution and multiple meetings, potentially leading to better outcomes for all involved.

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## Author Contributions

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## Conflicts of Interest

The authors declare that they have no conflicts of interest.

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