

# Misdiagnosis and Legal Liability of Doctors: A Normative Juridical Study in the Indonesian Health System

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## ABSTRACT

Health is a basic human need that affects the quality of life. Hospitals, as healthcare providers, play an important role in providing comprehensive services, but the complexity of treatment often increases the risk of medical errors, particularly misdiagnosis. The legal relationship between doctors and patients, both through therapeutic transactions and legal provisions, creates rights and obligations for both parties. This research uses a normative law method to analyze the legal liability of doctors for misdiagnosis that causes harm to patients. Based on Articles 1239 and 1365-1367 of the Civil Code, doctors can be held legally liable for breach of contract or legal violations. The hospital as an institution also has legal liability for medical negligence in accordance with Article 193 of the Health Act. This research highlights the importance of professional standards, informed consent, and dispute resolution through mediation to minimize legal conflicts. With the strengthening of regulations and increased legal awareness, the relationship between doctors and patients can be more harmonious, creating a health care system that is more fair, transparent, and oriented towards the interests of patients.

## INTRODUCTION

Health is one of the basic human needs that must be met to ensure a good quality of life. The government and the private sector play an important role in providing adequate health facilities, one of which is through hospitals. As a comprehensive private healthcare provider, hospitals offer inpatient, outpatient, and emergency services. Rapid advances in science and technology in the field of health have improved the quality of medical services, but these developments also bring new challenges in the form of treatment complexities that increase the risk of errors in medical services (Rahayu, 2018; Iskandar, 2014).

Indonesian communities strongly desire easy access to quality healthcare services, including the ability to openly communicate health concerns to doctors. Act No. 17 of 2023 on Health is the main legal basis governing the healthcare sector in Indonesia. In its implementation, there are three main sectors that have legally regulated rights and liabilities, namely hospitals, medical personnel or doctors, and patients. But even though the regulations have been designed in such a way, there are still many shortcomings in

practice, especially in the relationship between these three sectors (Salindeho, 2023).

The relationship between doctors and patients in healthcare is bound by an agreement known as a therapeutic agreement. A therapeutic agreement is a legal relationship that grants rights and obligations to both parties, namely the doctor and the patient. Unlike other commercial agreements, the main purpose of this agreement is to heal the patient. Doctors have an obligation to act in accordance with professional standards, standard operating procedures, codes of ethics, and applicable regulations. The risk of negligence or error in medical practice cannot be completely avoided (Nasution, 2013; Azwar, 1990).

Misdiagnosis is one of the serious problems that often occur in medical services. One of the main causes is the lack of accurate and clear information from doctors to patients or their families. In some cases, medical decisions made without the consent of patients or their families have caused dissatisfaction and even great harm to patients. This shows that there is a gap in communication between doctors and patients that affects the quality of health services.

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The impact of misdiagnosis is felt not only by patients but also by their families, both in material and emotional terms. Such errors can also damage the reputation of medical personnel and hospitals, and reduce public confidence in healthcare services (Mubarak et al., 2023). For this reason, greater attention needs to be paid to legal and ethical aspects of the doctor-patient relationship, particularly with regard to therapeutic agreements.

Legal enforcement in the health sector plays a crucial role in ensuring that patients' rights are protected. The implementation of regulations, however, often encounters obstacles, both in terms of enforcement in the field and legal awareness among relevant parties. In certain cases, medical negligence is not even recognized as professional liability, making it difficult for aggrieved patients to obtain justice.

Based on the above issues, deep research is needed to understand the legal relationship between doctors and patients in hospitals. This research also aims to identify the forms of liability of doctors towards patients who suffer losses due to misdiagnosis. This research is expected to contribute significantly to the improvement of the legal system and medical services in Indonesia.

This research also aims to provide recommendations for hospitals, doctors, and policymakers on improving the quality of healthcare services. Emphasis on better communication between doctors and patients and compliance with professional and legal standards is expected to reduce the risk of medical errors in the future.

Through this research, it is hoped that a more equitable, transparent, and patient-oriented healthcare system can be realized. Improving the quality of the legal relationship between doctors and patients will have a positive impact on the overall quality of healthcare services, which in turn will increase public trust in the Indonesian healthcare system.

## RESEARCH METHOD

This research was conducted using a normative juridical method, which is a legal research-based approach that focuses on analyzing applicable norms and regulations. This approach aims to understand and explore the legal aspects relevant to the issues raised in this research. The normative juridical method was chosen because it allows the research to examine the legal relationship between doctors and patients and the legal liabilities arising from medical practice, particularly in cases of misdiagnosis.

In its implementation, this research uses a literature study approach as the main method for data collection. The data used consists of primary

legal materials, such as legislation and regulations applicable in the health sector, including Act No. 17 of 2023 concerning Health. Secondary legal materials such as books, scientific journals, legal articles, and other relevant literature are also primary sources for data collection. The use of these various sources aims to ensure a comprehensive and in-depth analysis of the legal issues discussed.

The data obtained was then analyzed qualitatively. This qualitative approach involved interpreting the legal materials that had been collected, with a focus on integrating relevant legal theories. One of the theories used in this research is the therapeutic contract theory, which regulates the legal relationship between doctors and patients, including the rights and obligations of each party. With this approach, the research seeks to answer the questions formulated in the problem statement.

Data analysis was conducted by linking legal findings with practical conditions in the field. This was done to gain a more holistic understanding of how health regulations are applied in the relationship between doctors and patients, as well as to identify gaps in the legal system that may be causing problems. This research therefore serves not only as a theoretical study but also makes a practical contribution to improving the legal system and health services in Indonesia.

Throughout the entire process, the approach used in this research was aimed at producing objective and relevant results that could be relied upon as a reference for policy development in the health sector. By combining in-depth legal analysis and theoretical research based on robust literature, this research is expected to make a significant contribution to the understanding and development of health and legal issues in Indonesia.

## RESULT AND DISCUSSION

### The Legal Relationship between Doctors and Patients in Hospitals

The legal relationship between doctors and patients in hospitals is a complex form of legal interaction, combining aspects of agreement, professional obligations, and broader legal regulations. Nasution (2013) defines this relationship as a therapeutic transaction, which is a legal relationship involving the rights and obligations of both parties. Unlike ordinary legal contracts, which are often *resultaatverbinten* (result-oriented), therapeutic transactions prioritize *inspanningverbinten* (best efforts) in providing health services. Doctors do not guarantee the patient's recovery, but are required to take all actions in accordance with professional standards.

In normative legal research, this relationship can be analyzed through two main legal theories as explained by Novianto (2020). Contract Theory views the relationship between doctors and patients as a contract that arises when doctors accept patients and receive compensation in the form of certain fees. In this contract, the rights and obligations of both parties are explicitly determined, including the doctor's obligation to provide clear information to the patient regarding the procedure to be performed. The Undertaking Theory, on the other hand, emphasizes that a legal relationship can be formed even if there is no formal contract, for example when a doctor voluntarily provides emergency care to a patient (Juliarto et al., 2023).

The importance of informed consent in the doctor-patient relationship is also an integral part of this analysis. According to Hartiningsih (2020), this consent is a form of trust that patients place in their doctors after receiving adequate explanations about their diagnosis, procedures, risks, and treatment alternatives. Act No. 17 of 2023 concerning Health also emphasizes the importance of informed consent as a key element in protecting patients' rights and ensuring that doctors act in accordance with professional ethical standards.

Normatively, the legal relationship between doctors and patients is also regulated by a legal statute. Article 275 paragraph 1 of the Health Act states that medical personnel are obliged to provide first aid to patients in an emergency. Machmud (2012) explains that in emergency situations such as traffic accidents or natural disasters, this legal relationship can be established without the patient's initiative. This reflects the moral and professional obligations of doctors as regulated by positive law.

The relationship between doctors and patients is not limited to contractual aspects, but also includes legal liabilities based on the provisions of the law. In therapeutic transactions, doctors are required to act in accordance with medical standards, codes of ethics, and applicable regulations. Non-compliance with these standards can result in legal consequences, both in the form of civil lawsuits for negligence and administrative sanctions from relevant institutions (Desiana, 2023).

Doctors have the right to provide medical services in accordance with professional standards. Patients also have the right to receive a full explanation of their diagnosis and the medical procedures that will be performed. This interaction reflects the balance between the doctor's obligations and the patient's rights as regulated by legal provisions (Fitriana, 2023).

A common issue that arises in practice is when doctors perform medical procedures without obtaining consent from patients or their families. In such cases, the legal relationship may be flawed, allowing for legal action to be taken for violation of patient rights. This is exacerbated by unclear communication between doctors and patients, which is often the root cause of legal problems in the healthcare sector (Muhtadi & Santiago, 2022).

In relation to emergencies, as stipulated in Article 304 of the Criminal Code (KUHP), doctors have an obligation to provide assistance to patients regardless of their social or economic status. Failure to comply with this obligation may result in criminal sanctions, although in practice, the application of the law often faces obstacles in proving intent or negligence (Steavanno et al., 2023).

This normative legal research also considers the importance of more detailed regulations to govern the legal relationship between doctors and patients. For example, Minister of Health Regulation No. 290/Menkes/Per/III/2008 concerning Medical Treatment Consent provides more specific guidelines on informed consent procedures. This regulation aims to ensure that the legal relationship between doctors and patients is transparent and fair, while protecting the rights of both parties.

Based on this analysis, the legal relationship between doctors and patients can be summarized as consisting of two main aspects. First, the therapeutic transaction as a legal relationship involving rights and obligations based on the patient's trust and consent to medical treatment. Second, regulations based on a legal framework, which require doctors to provide health services to patients, especially in emergency situations. These two aspects form an important foundation for building a fair, transparent, and accountable healthcare system in Indonesia.

Strengthening regulations and raising legal awareness among both medical personnel and patients are therefore important steps toward minimizing legal conflicts and improving the quality of healthcare services. With this approach, it is hoped that the legal relationship between doctors and patients can continue to develop into a more harmonious relationship oriented toward mutual interests.

### **Doctor's Liability for Misdiagnosis Resulting in Patient's Harm**

A misdiagnosis made by a doctor can have significant legal consequences, especially in the realm of civil legal matters. As a profession directly related to human health and life, doctors have

complex legal liabilities, both based on contracts and general principles of civil legal matters. In normative legal research, a doctor's liability for misdiagnosis can be analyzed based on two main legal grounds, namely breach of contract and illegal acts. The element of breach of contract becomes relevant when there exists an explicit or implicit agreement between the patient and the healthcare provider that the physician will deliver care in accordance with established standards. Meanwhile, liability for illegal acts arises when the physician's actions fail to meet the threshold of due diligence expected under general civil obligations (Aji & Marbun, 2022). These two bases reflect the dual structure of legal responsibility that imposes concurrent duties on physicians to provide both competent service and to refrain from negligent conduct. The classification of misdiagnosis under these categories influences the type and scope of damages recoverable by the patient (Kaseger et al., 2023). Furthermore, the presence or absence of informed consent may exacerbate or mitigate the doctor's liability, depending on whether the patient was adequately informed of diagnostic uncertainties. In adjudicating misdiagnosis cases, courts also consider whether the physician acted within the standard of care recognized by the medical community at the time of diagnosis. This standard provides a benchmark for evaluating whether the deviation constituted professional negligence or was an acceptable error within clinical judgment. The legal consequences extend beyond individual accountability, as recurring patterns of misdiagnosis may signal systemic issues in clinical governance that necessitate institutional reform (Wulandari & Hidayat, 2022). Thus, legal scrutiny of misdiagnosis serves not only as a mechanism for individual justice but also as a diagnostic tool for institutional performance.

The first legal basis used to hold doctors accountable is breach of contract as stipulated in Article 1239 of the Civil Code (KUHPerduta). Breach of contract occurs when doctors fail to fulfill their obligations in accordance with the therapeutic contract made with patients. A therapeutic contract is a special legal relationship that includes the doctor's obligation to provide medical services in accordance with professional standards and the patient's consent (Kholis et al., 2023). To prove breach of contract, three main elements must be fulfilled: the existence of a therapeutic contract between the doctor and the patient, a breach of that contract by the doctor, and the loss suffered by the patient as a result of the breach.

The second legal basis is illegal acts, as stipulated in Article 1365 of the Civil Code. This article states that "every illegal act that causes loss to another person obliges the person who caused the loss to compensate for it." In the context of misdiagnosis, a doctor's actions that do not comply with professional standards, whether due to negligence or carelessness, can be categorized as an illegal act. Doctors may also be held liable under Article 1366 of the Civil Code, which affirms that every person is liable for losses caused by their negligence (Nurarafah, 2022).

The legal liability of doctors does not only apply to individuals, but also involves hospitals as the institutions where doctors work. Based on Article 1367 of the Civil Code, employers are liable for the negligence of their employees in carrying out their duties. In this case, the hospital can be held liable for the actions of doctors that cause harm to patients. The hospital's liability is also confirmed in Article 193 of Law Number 17 of 2023 concerning Health, which states that hospitals are legally liable for losses caused by the negligence of their medical personnel (Febriyanti, 2023).

To maintain professional standards and prevent misdiagnosis, Article 304 of the Health Act regulates the establishment of a disciplinary council tasked with enforcing medical professional discipline. This council serves to assess whether a doctor's actions have complied with professional standards. If a violation is found, the council may impose sanctions, ranging from reprimands to revocation of practice licenses. This is part of the internal oversight mechanism within the medical profession, which aims to protect patients while maintaining the reputation of the profession (Mubarak et al., 2023).

In practice, disputes arising from misdiagnosis are often resolved through mediation as a first step. Mediation offers a faster and more efficient solution than litigation in court. If mediation fails, however, patients can file a civil legal action in court to seek compensation. This compensation covers material losses, such as additional medical expenses, and immaterial losses, such as psychological distress or loss of employment opportunities (Gabriel Tito Barista, 2023).

The amount of compensation awarded to patients depends heavily on the level of harm suffered. The court has the authority to determine the amount of compensation based on evidence submitted by the patient. This reflects the principle of justice in civil legal proceedings, which aims to restore the patient's condition as closely as possible to what it was before the harm occurred.



Legal liability is not the only concern in cases of misdiagnosis; ethical considerations are also important. The Indonesian Medical Code of Ethics (KODEKI) requires doctors to act with caution and focus on the interests of the patient. Violations of this code of ethics can result in moral sanctions from professional organizations, which complement the legal liabilities of doctors.

Normative legal research also shows that the legal system in Indonesia has provided a clear framework for handling misdiagnosis. In practice, however, there are various challenges, including patients' lack of understanding of their rights and limited access to justice. Legal education for the public and increased oversight of medical practices are therefore essential.

Doctors' liability for misdiagnosis involves a complex interaction between legal rules, professional standards, and dispute resolution mechanisms. The role of the state and professional organizations is essential to ensure that patients' rights are protected and doctors can perform their duties properly without fear of excessive legal threats. The existence of strong and fair legal mechanisms not only protects patients but also provides legal certainty for doctors and healthcare institutions.

## CONCLUSION

The legal relationship between doctors and patients in hospitals can be examined from two main sources. First, this relationship can be based on therapeutic transactions, namely legal relationships involving the patient's trust and consent to the medical treatment provided. Doctors have an obligation to seek to cure patients in accordance with professional standards, although they cannot guarantee the final outcome of the treatment provided. Second, the legal relationship can also arise from the provisions of the law, particularly in emergency situations, where doctors are obliged to provide health services without first obtaining the patient's consent. This is regulated in Article 275 paragraph 1 of the Health Act, which emphasizes the obligation of doctors to provide first aid.

Diagnostic errors made by doctors can have serious legal consequences, both through claims of breach of contract under Article 1239 of the Civil Code (KUHPerdata) and through claims of unlawful acts as regulated in Articles 1365, 1366, and 1367 of the Civil Code. In this case, legal liability is not only borne by the doctor, but also by the hospital as the institution liable for the negligence of its medical personnel, as stipulated in Article 193 of the Health Act.

The settlement of disputes arising from misdiagnosis generally begins with a mediation process to find a solution that is acceptable to both parties amicably. If mediation fails to reach an agreement, the patient may proceed with a legal claim in court to seek compensation for the losses incurred.

It is therefore important for doctors to always practice medicine in accordance with professional standards, provide clear and transparent information to patients, and carry out their duties with the utmost care. These measures not only serve to minimize the risk of errors that could harm patients, but also protect doctors and hospitals from unwanted legal consequences.

## REFERENCES

- Aji, R. A. P., & Marbun, R. (2022). Civil Liability of A Doctor In Malpractice Cases. *Eduvest*. <https://doi.org/10.36418/eduvest.v2i11.660>
- Azwar, A. (1990). *Kesehatan Kini dan Esok*. Ikatan Dokter Indonesia, Jakarta.
- Barista, G. T. (2023). *Hukum Kesehatan dan Penyelesaian Sengketa Medis*. Kencana Prenada Media, Jakarta.
- Desiana, Y. Y. (2023). Validity of Therapeutic Agreements Between Doctors and Patients According to the Indonesian Civil Code . *Indonesian Journal of Contemporary Multidisciplinary Research*, 2(6), 1069-1082. <https://doi.org/10.55927/modern.v2i6.6405>
- Febriyanti, N. D. (2023). Legal Protection of The Patient in The Event of Occurrence The Misdiagnosis Is Connected With Law Number 8 Of 1999 Consumer Protection And Law Number 29 Of 2004 Concerning The Practice Of Medicine (Case Study Of High Court Decision DKI Jakarta Number: 624/Pdt/2019/ PT. DKI). *Journal of Political and Legal Sovereignty*. <https://doi.org/10.38142/jpls.v1i1.47>
- Fitriana, D. (2023). The Role of Informed Consent as Legal Protection for Doctors in Conducting Medical Procedures. *Sinergi International Journal of Law*. <https://doi.org/10.61194/law.v1i3.101>
- Gabriel, T. B. (2023). Medical Malpractice and Compensation for Diagnostic Errors in Indonesian Law. *Journal of Health Law Studies*, 5(2), 45-65.
- Hartiningsih, R. H. (2020). *Persetujuan Tindakan Medis: Implikasi Hukum terhadap Hak Pasien dan Kewajiban Dokter*. Kencana Prenada Media Group, Jakarta.
- Iskandar, T. (2014). Tinjauan Yuridis tentang Pembuktian Seorang Dokter dalam Melakukan

- Malpraktek Pelayanan Medis. *Jurnal Ilmu Hukum Legal Opinion*, 4(2), 1-11.
- Jayanti, N. K. I. (2009). *Penyelesaian Hukum dalam Malpraktik Kedokteran*. Pustaka Yustisia, Yogyakarta.
- Juliarto, T. S., A. Riyanto, D. Darmawan, N. H. Pakpahan, K. N. Kholis. (2023). Legal Basis for Doctor Protection in Emergency Situations Without a License to Practice, *Studi Ilmu Sosial Indonesia*, 3(2), 35-54.
- Kaseger, H., D. G. S. Baktiasih, A. V. Harianto, N. Indaryanti, & F. Issalillah. (2023). The Interplay of Legal Responsibilities in Cesarean Operations: A Study of Doctor-Patient Relationships within Hospital Settings, *Legalis et Socialis Studiis*, 1(3), 26-34.
- Kementerian Kesehatan. (2008). Peraturan Menteri Kesehatan Republik Indonesia Nomor 290/MENKES/PER/III/2008 tentang Persetujuan Tindakan Kedokteran. Jakarta.
- Kementerian Kesehatan. (2018). *Peraturan Menteri Kesehatan Republik Indonesia Nomor 4 Tahun 2018 tentang Kewajiban Rumah Sakit dan Kewajiban Pasien*. Berita Negara Republik Indonesia Tahun 2018 Nomor 416. Jakarta.
- Kholis, K.N., N. Chamim, J. A. Susanto, D. Darmawan, & M. Mubarak. (2023). Analyzing Electronic Medical Records: A Comprehensive Exploration of Legal Dimensions within the Framework of Health Law, *International Journal of Service Science, Management, Engineering, and Technology*, 4(1), 36-42.
- Machmud, S. (2012). *Penegakan Hukum dan Perlindungan Hukum bagi Dokter yang Diduga Melakukan Medikal Malpraktik*. Karya Putra Darwati, Bandung.
- Margareth Sagala. (2020). Perbuatan Melawan Hukum Dokter (Studi Kasus Putusan Nomor 38/Pdt.G/2016/Pn.Bna). *Skripsi*, Universitas Sumatera Utara.
- Mubarak, M., D. Darmawan, & R. Saputra. (2023). Legal and Ethical Arrangements for Medical Record Filling by Doctors: A Normative Study, *Bulletin of Science, Technology and Society*, 2(1), 33-38.
- Muhtadi, A., & Santiago, F. (2022, January 1). The Legal Position of Informed Consent in the Doctor-Patient Relationship. *Proceedings of the First Multidiscipline International Conference, MIC 2021, October 30 2021, Jakarta, Indonesia*. <https://doi.org/10.4108/eai.30-10-2021.2315744>
- Nasution, B. J. (2013). *Hukum Kesehatan: Pertanggungjawaban Dokter*. Rineka Cipta, Jakarta.
- Novianto, W. T. (2020). The Legal Perspective on the Doctor-Patient Relationship in Therapeutic Transactions. *Indonesian Journal of Legal Studies*, 7(2), 45-62.
- Nurarafah, N. (2022). Doctor's Civil Responsibility in Medical Malpractice in Indonesia. *Journal Research of Social Science, Economics, and Management*. <https://doi.org/10.59141/jrssem.v1i10.175>
- Pelafu, J. (2015). Pelaksanaan penegakan kode etik kedokteran. *Lex Crimen*, 4(3).
- Rahayu, Y. K. (2018). Tanggung Jawab Rumah Sakit terhadap Keterlambatan Penanganan Akibat Kelalaian Tenaga Kesehatan pada Pelayanan Gawat Darurat bagi Pasien. *Skripsi*, Fakultas Hukum Universitas Brawijaya.
- Republik Indonesia. (2023). *Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan*. Lembaran Negara Republik Indonesia Tahun 2023 Nomor 105. Sekretariat Negara, Jakarta.
- Salindeho, T. A. (2023). Perlindungan Hukum terhadap Dokter Atas Kelalaian dalam Melaksanakan Tugas yang Berkaitan dengan Profesi. *Jurnal Fakultas Hukum Universitas Sam Ratulangi*, 12(3), 1-11.
- Soekanto, S. (1983). *Aspek Hukum dan Etika Kedokteran di Indonesia*. PT. Temprin, Jakarta.
- Steavanno, D., Nurdin, B., & Fakrulloh, Z. A. (2023). *Legal protection for doctors in providing medical services*. <https://doi.org/10.58631/injury.v2i1.19>
- Tresno, W. N. (2020). Contract and Commitment Theories in Doctor-Patient Relationship: A Legal Analysis. *Health Law Review Journal*, 12(1), 22-40.
- Wulandari, P., & Hidayat, R. (2022). Legal Review of Physician Malpractice Cases: A Narrative Literature Review. *Open Access Indonesia Journal of Social Sciences*. <https://doi.org/10.37275/oaijs.v5i6.144>