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### CRIMINAL LIABILITY FOR MEDICAL PERSONNEL IN BEAUTY MALPRACTICE CASES

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#### Abstract

*The purpose of this study is to analyze the basis of criminal law regulation of medical personnel and the form of legal protection for victims of beauty malpractice. This research is motivated by the growing practice of medical aesthetics in Indonesia, which often raises legal issues due to medical actions that do not comply with professional standards. The urgency of this research lies in clarifying the boundaries among ethical, administrative, and criminal violations in aesthetic medicine practice to prevent excessive criminalization of medical personnel. This study uses normative legal methods, including statutory, conceptual, and case approaches. The results of the study show that there is an overlap of norms between the Criminal Code and the Medical Practice Law in the application of the principle of *lex specialis derogat legi generali*, as well as the need to affirm the recommendation mechanism of the Professional Disciplinary Council as stipulated in Law Number 17 of 2023 concerning Health. The free verdict in the analyzed case resulted from weak evidence of the *culpa lata* element and the judge's error in assessing the absence of written informed consent. In conclusion, the legal system needs to strengthen the integration of ethical, administrative, civil, and criminal pathways to create legal protection that balances patients' rights with medical personnel's professional responsibilities. The findings or novelty of this research are the identification of the need for harmonization between general criminal law and health law in the enforcement of the criminal responsibility of doctors in the field of aesthetics.*

**Keywords:** *Health Law; Beauty Malpractices; Criminal Liability; Patient Protection*

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## A. INTRODUCTION

In the modern era, beauty is no longer seen as just an aesthetic affair but has become part of lifestyle and social identity.<sup>1</sup> The rapid development of medical practice in aesthetics reflects the growing public interest in services that promise rapid, safe physical transformation.<sup>2</sup> However, behind technological advances and the increasing demand for these services are also complex legal issues when medical procedures do not meet professional standards and cause patient losses. This phenomenon shows that the world of medicine is no longer beyond the reach of the law, but has become a realm that demands professional accountability and legal certainty for all parties involved.<sup>3</sup>

Crucial legal issues arising from the development of aesthetic medicine practice include unclear boundaries among ethical, administrative, and criminal violations, as well as overlapping norms between the Criminal Code and sectoral regulations such as the Medical Practice Law and the Health Law of 2023.<sup>4</sup> On the other hand, proving the element of culpa (negligence) often faces obstacles because it is technical and relies heavily on expert testimony. Another problem arises from the application of certification standards that were not yet in effect at the time of the act, thereby causing retroactivity in law enforcement.<sup>5</sup> In addition, aesthetic practices also raise issues of vicarious liability for clinics or institutions, the potential for criminalization of medical personnel due to slow or inconsistent disciplinary processes, and weak consumer protection when informed consent procedures, medical documentation, and service audits are not carried out consistently. These issues are the primary focus of this study: how the legal system in Indonesia responds to the risk of aesthetic malpractice and the extent to which legal protection for patients can be realized without excessive criminalization of medical personnel.

<sup>1</sup> Aulia Dwitasari et al., "Perlindungan Hukum Terhadap Pasien Korban Kelalaian Dokter Pada Klinik Kecantikan Ditinjau Berdasarkan Undang-Undang Nomor 17 Tahun 2023 Tentang Kesehatan," *Legalitas: Jurnal Ilmiah Ilmu Hukum* 10, no. 1 (2025): 77–88, <https://doi.org/10.31293/lgl.v10i1.8810>.

<sup>2</sup> Ninda Aurelia Misbah and Horadin Saragih, "Tanggung Jawab Hukum Administratif Bagi Dokter Dalam Kasus Malpraktik (Studi Putusan : Nomor 233 K/Pid.Sus/2021)," *Arus Jurnal Sosial Dan Humaniora* 5, no. 2 (2025): 2937–44, <https://doi.org/10.57250/ajsh.v5i2.1574>.

<sup>3</sup> S. Zulfikar G. Assegaf et al., "Legal Review of Informed Consent in the Case of Malpractice in Aesthetic Practice Case Study of Aesthetic Doctors in Makassar City (Analysis of Decision Number 441/PID. SUS/2019/PN. MKS)," *Journal of Research in Medical Sciences* 4, no. 2 (2025): 01–13, <https://doi.org/10.55606/jurrike.v4i2.6012>.

<sup>4</sup> Dinisatri Daeli, "Pertimbangan Hakim Pada Putusan Bebas Malpraktik Dokter Yang Mengakibatkan Kebutaan," *Jurnal Panah Hukum* 2, no. 2 (2023): 19–26, <https://doi.org/10.57094/jph.v2i2.984>.

<sup>5</sup> S Dewi and M. Suryoutomo, "Tinjauan Hukum Kesehatan Pemasangan Veneer Di Indonesia," *Jurnal Ilmiah Hukum Dan Dinamika Masyarakat* 20, no. 1 (2022): 13–23.

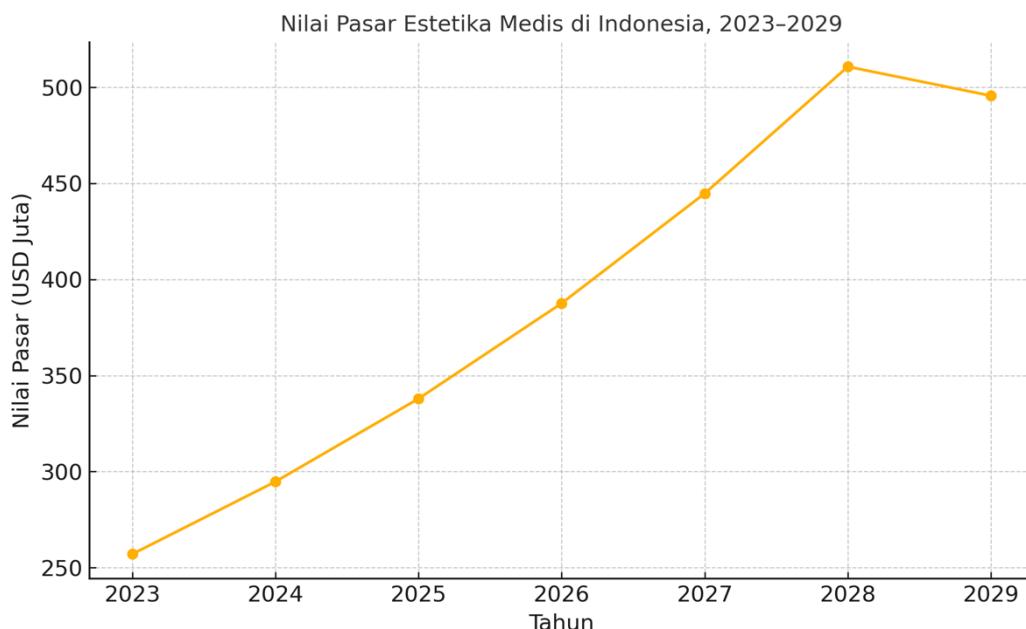


Figure 1. Medical Aesthetics Market Value in Indonesia, 2023-2029 (USD Million)  
Source: *Research & Markets*<sup>6</sup>

From Figure 1, it can be seen that the market value of medical aesthetics in Indonesia shows a significant upward trend from 2023 to 2028, then declines slightly in 2029. In 2023, the market value was in the range of 250 million USD and continues to increase each year, peaking at around 500 million USD in 2028. This increase reflects the growth in demand for medical aesthetic services in Indonesia, which is influenced by advances in beauty technology and increasing public awareness of self-care. A slight decline in 2029 could be interpreted as a sign of a market slowdown after the rapid expansion phase in previous years.

Health services are essentially a relationship of trust between medical personnel and patients, aimed at preventing, treating, and restoring individual health conditions.<sup>7</sup> According to Van der Mijn, health law is a collection of regulations directly related to health services and to the application of civil, criminal, and administrative law in general.<sup>8</sup> This arrangement is then affirmed in Article 1 paragraph (6) of Law Number 17 of 2023 concerning Health, which defines medical personnel as any person who is

<sup>6</sup> Dubline, *Indonesia Medical Aesthetics Market Report 2024–2029* (Research and Markets, 2024), <https://www.globenewswire.com/news-release/2024/11/06/2975522/28124/en/Indonesia-Medical-Aesthetics-Market-Report-2024-2029-11-5-CAGR-Forecast-with-Market-Set-to-Reach-USD-495-64-Million-by-2029.html>.

<sup>7</sup> Risha Shindyani Halim et al., "Pemenuhan Hak Restitusi Terhadap Korban Tindak Pidana Kelalaian Medis Di Indonesia," *Jurnal Multidisiplin Indonesia* 2, no. 9 (2023): 3048–75, <https://doi.org/10.58344/jmi.v2i9.580>.

<sup>8</sup> Mariana Mugiono et al., "Pertanggungjawaban Atas Tindakan Malapratik Medis Profesi Dokter Pada Klinik Kecantikan," *Judge: Jurnal Hukum* 6, no. 01 (2025): 71–82, <https://doi.org/10.54209/judge.v6i01.997>.

devoted to the health sector and has a professional attitude, knowledge, and skills through medical or dental professional education that requires authority in carrying out legal health efforts. Thus, health is not only a biological issue, but also a legal aspect that demands protection, responsibility, and high ethical standards.<sup>9</sup>

Although medical services have a noble purpose, medical practice often raises serious legal issues. One of the cases that has become a matter of public attention is Decision Number 1441/Pid.Sus/2019/PN Mks involving Dr. Elisabeth Susana, M.Biomed, an aesthetic doctor in Makassar. In this case, the defendant injected nasal filler into the patient, which led to blindness in the left eye.<sup>10</sup> Based on the results of the examination, the medical procedure was carried out without *written informed consent*, without a valid medical aesthetic competency certificate, and without a preliminary examination according to professional standards. This incident illustrates how negligence in the practice of aesthetic medicine can lead to serious legal consequences and raises questions about the limits of criminal liability of medical personnel.

In the context of criminal law, the case concerns Article 360 of the Criminal Code (KUHP), which regulates negligence that causes serious injury or injury to another person. This article emphasizes that a person can be held criminally liable if his negligence causes serious consequences to the victim, either in the form of serious injuries or health problems that hinder the victim's activities for a specific period of time.<sup>11</sup> Thus, the application of this article shows that negligence in medical actions that cause patient losses can be qualified as a criminal act, provided that a causal relationship between the actions of medical personnel and the resulting consequences is proven. In the context of beauty malpractice, the article provides the legal basis for assessing the extent to which doctors can be held accountable for patient losses arising from medical actions that are not in accordance with professional standards.<sup>12</sup>

The provision emphasizes that medical personnel can be held criminally liable if negligence occurs that results in serious injury or death to the patient. Therefore, it is

<sup>9</sup> N. K. T. A Pramesti and I. B. Y Raditya, "Analisis Perlindungan Hukum Terhadap Konsumen Yang Overdosis Anestesi Pada Klinik Kecantikan," *Jurnal Media Akademik (JMA)* 3, no. 10 (2025), <https://doi.org/10.62281/3zdvn660>.

<sup>10</sup> Christian Elizar et al., "Perlindungan Hukum Terhadap Dokter Yang Diduga Melakukan Malpraktik Ditinjau Dari Peraturan Perundang-Undangan Yang Berlaku Studi Kasus Putusan Mahkamah Agung Nomor 233 K/Pid.Sus/2021," *ALADALAH: Jurnal Politik, Sosial, Hukum Dan Humaniora* 2, no. 2 (2024): 154–69, <https://doi.org/10.59246/aladalah.v2i2.794>.

<sup>11</sup> Ummu Istikharoh et al., "Pertanggung Jawaban Hukum Dokter Bedah Plastik Melakukan Tindakan Perubahan Bentuk Wajah Menurut Hukum Di Indonesia," *Jurnal Risalah Kenotariatan* 5, no. 2 (2024): 286–309, <https://doi.org/10.29303/risalahkenotariatan.v5i2.242>.

<sup>12</sup> Amir Khoiruddin et al., "Consumer Protection for Beauty Clinic Patients by Fake Doctors Reviewed from Law Number 8 Of 1999 Concerning Consumer Protection (UUPK)," *Jurnal Hukum Lex Generalis* 6, no. 4 (2025), <https://doi.org/10.56370/jhlg.v6i4.1296>.

important to examine more deeply the form of criminal liability of doctors in the practice of aesthetic medicine, as well as how judges consider the elements of error when imposing judgments in cases of medical malpractice.

Previous research conducted by Silalahi (2023) highlighted the legal liability of doctors for medical actions that result in patient death from the perspective of criminal law and health law. The results of his research show weaknesses in law enforcement stemming from the absence of a clear boundary between professional negligence and intentional criminal misconduct. The advantage of this study lies in its in-depth juridical discussion of the element of error (culpa), but its weakness is that it has not highlighted the context of malpractice in the field of aesthetics, which has different risk characteristics from general medical practice.<sup>13</sup> Meanwhile, Susila (2021) discusses the concept of medical malpractice from a legal perspective and provides a conceptual evaluation of doctors' responsibility. He emphasized that most malpractice cases in Indonesia are rooted in weak implementation of professional standards and a lack of patient protection mechanisms. This research excels because it presents a strong conceptual approach to distinguishing among ethical, disciplinary, and criminal errors, but it has not empirically linked them to concrete cases or court decisions.<sup>14</sup>

Furthermore, Triyana (2022) examines the practice of plastic surgery from the perspectives of Islamic law and health law, focusing on the moral limits and legal status of aesthetic procedures.<sup>15</sup> The findings of his research confirm that aesthetic practices are permissible as long as they do not violate patient safety principles and do not entail excessive gharar or undue risk. The advantage of this study is the integration of positive legal norms and Islamic law, while the disadvantage is that it does not provide an in-depth analysis of the criminal responsibility of medical personnel in the context of aesthetic malpractice.

Unlike previous studies, this study focuses on the criminal liability of medical personnel in beauty malpractice cases by examining the Makassar District Court Decision No. 1441/Pid.Sus/2019/PN Mks. The advantage of this research lies in the use of a case-specific approach and the discussion of the relationship between the Criminal Code and Law Number 17 of 2023 concerning Health within the framework of the

<sup>13</sup> Andre Kristianto Silalahi et al., "Pertanggungjawaban Hukum Dokter Atas Tindakan Medis Yang Menyebabkan Hilangnya Nyawa Pasien. *Jurnal Cahaya Mandalika* ISSN 2721-4796 (Online), 4(1), 723-738. [Https://Doi.Org/10.36312/jcm.v4i1.1946](https://doi.org/10.36312/jcm.v4i1.1946)," *Jurnal Cahaya Mandalika* 4, no. 1 (2023): 723-38, <https://doi.org/10.36312/jcm.v4i1.1946>.

<sup>14</sup> Muh Endriyo Susila, "Malpraktik Medik Dan Pertanggungjawaban Hukumnya: Analisis Dan Evaluasi Konseptual," *Law and Justice* 6, no. 1 (2021): 46-61, <https://doi.org/10.23917/laj.v6i1.11425>.

<sup>15</sup> D Triyana, "Operasi Bedah Plastik Untuk Meningkatkan Kecantikan Dalam Perspektif Hukum Islam Dan Hukum Kesehatan," *Dinamika* 28, no. 16 (2022): 5460-77.

principle of *lex specialis derogat legi generali*. Thus, this research is expected to fill theoretical gaps not addressed by previous research, especially in the context of the harmonization of general criminal law and health law in addressing aesthetic malpractice. The final objective of this study is to analyze the basis of criminal law regulation against medical personnel and the form of legal protection for victims of beauty malpractice in Indonesia.

Through this study, it is hoped that a comprehensive understanding of the application of criminal law to medical personnel in cases of beauty malpractice in Indonesia will be obtained. In addition to making an academic contribution to the development of health criminal law, this research also has practical value in strengthening legal protection for patients and enforcing professional standards for medical personnel, ensuring that medical practice in the field of aesthetics can operate ethically, safely, and responsibly.

## B. RESEARCH METHODS

This research is a normative legal study of positive legal norms governing the criminal liability of medical personnel in cases of beauty malpractice. The study was conducted by analyzing relevant laws and regulations, legal doctrines, and court decisions, without using empirical field data. The approaches used include the Statute Approach to examine the basis for regulating medical practice and legal protection for patients, as well as the Conceptual Approach to understand the concepts of *culpa*, *error*, and criminal responsibility in medical practice.

In addition, this study applies the Case Approach by making the Makassar District Court Decision Number 1441/Pid.Sus/2019/PN Mks as the main case study. Through this approach, the researcher examines the judge's considerations, the application of legal principles, and the consistency between legal norms and judicial practice in handling cases of aesthetic malpractice. The analysis of the decision is used to assess the application of the rules and identify potential errors in law enforcement.

The legal materials used include primary legal materials (the Criminal Code, Law Number 17 of 2023 concerning Health, implementing regulations, and court decisions), secondary legal materials (textbooks, scientific journals, and expert opinions), and tertiary legal materials (legal dictionaries and encyclopedias). All legal materials are analyzed using normative qualitative techniques, connecting norms, doctrines, and legal facts to illustrate the relevance and application of criminal provisions to beauty malpractice cases.

## C. RESULTS AND DISCUSSIONS

The significant findings derived from this study show that the implementation of accelerated inheritance-sharing practices in Muslim communities has a significant positive impact. The word of the Prophet (peace and blessings be upon him) in the Qur'an is the name of the prophet Muhammad saw (Sriani, 2018). With a growing awareness of the importance of sharing inheritance fairly and promptly, Muslim communities can minimize the potential for conflict and conflict within families related to the sharing of inherited property. In addition, these practices can also strengthen social ties within the family and the Muslim community as a whole. However, despite that, the findings also show that there are still obstacles and challenges to overcome in implementing this practice widely. Therefore, collaborative efforts from all sides are needed to address these problems so that the acceleration of the division of inheritance can become a sustainable norm within the Muslim community.

### 1. Criminal Law Regulations related to the Liability of Medical Personnel in Cases of Beauty Malpractice in Indonesia

Philosophically, the criminal act of malpractice in Indonesia violates the three main pillars of the medical profession: moral responsibility, professional ethics, and legal obligations. Malpractice occurs when medical personnel fail to practice their profession according to professional standards and proper precautionary measures, resulting in physical, psychological, and social harm to patients.<sup>16</sup> In practice, this kind of action is not only seen as a professional mistake but also as a form of denial of the human values inherent in the medical profession. In substance, these violations involve interrelated ethical, social, and legal dimensions.<sup>17</sup> Therefore, the crime of malpractice not only concerns technical violations of medicine but also shakes the foundation of trust between medical personnel and the public.

From a criminal law perspective, malpractice is an unlawful act that may be subject to criminal sanctions, as stipulated in the Criminal Code (KUHP) and in special regulations in the health sector.<sup>18</sup> The actions of medical personnel who are negligent or fail to meet professional standards of care are considered to violate patients' fundamental right to obtain safe and responsible medical treatment. Thus, the

<sup>16</sup> Christian Elizar et al., "Perlindungan Hukum Terhadap Dokter Yang Diduga Melakukan Malpraktik Ditinjau Dari Peraturan Perundang-Undangan Yang Berlaku Studi Kasus Putusan Mahkamah Agung Nomor 233 K/Pid.Sus/2021."

<sup>17</sup> Adib Wajih Alirfani and Hudi Yusuf, "Penyelesaian Sengketa Medik Terhadap Adanya Dugaan Kelalaian Medik Oleh Dokter Kecantikan Dalam Perspektif Hukum Kesehatan," *Jurnal Intelek Insan Cendikia* 1, no. 9 (2024): 4968–77.

<sup>18</sup> Tengku Keizerina Devi Azwar et al., "Pertanggungjawaban Hukum Bedah Plastik Estetik Yang Merubah Fitur Wajah," *JURNAL MERCATORIA* 16, no. 1 (2023): 40–50, <https://doi.org/10.31289/mercatoria.v16i1.8433>.

application of criminal law to malpractice has a dual function: first, to uphold justice for victims who are harmed; and second, to enforce the discipline and responsibility of the medical profession as part of the legal protection of the wider community.

The basic philosophy underlying the criminal liability of medical personnel is rooted in the principle of “no crime without fault” (*geen straf zonder schuld*). This principle holds that a person can be convicted only if it is proven that there is an element of guilt, either in the form of intention (*dolus*) or negligence (*culpa*).<sup>19</sup> In the context of medical malpractice, mistakes are often due to forgetfulness, i.e., actions taken without due care in accordance with professional standards. However, criminal liability cannot necessarily be imposed on medical personnel whenever an unexpected outcome occurs, because criminal law also distinguishes between unavoidable medical risks (*medical mishap*) and accountable negligence (*culpa lata*). Therefore, criminal law enforcement in the medical field requires a balance between protecting patients and protecting the medical profession, so that there is no overcriminalization of professional errors of human nature.<sup>20</sup>

Furthermore, from a moral and social perspective, medical malpractice can be seen as a violation of the social contract between medical personnel and patients. The legal relationship between the two is not only civil, but also ethical and trustworthy.<sup>21</sup> Patients entrust the safety of their bodies and lives to medical personnel. In contrast, medical personnel have a moral obligation to act with *good faith* and full responsibility, in accordance with applicable professional standards. When a doctor ignores the principles of prudence, professionalism, or competence, then philosophically, he has violated the essence of his profession’s moral vocation based on the medical oath: “primum non nocere,” first of all, do not harm. Therefore, malpractice is not only a matter of technical or administrative errors but also a denial of ethical and humanitarian values that are the moral foundation of the medical profession.

In the context of regulations, Law Number 17 of 2023 concerning Health provides a comprehensive juridical basis regarding the definition and obligations of medical personnel. Article 1 paragraph (6) states that medical personnel are everyone who is devoted to the health sector and has a professional attitude, knowledge, and skills

<sup>19</sup> Anis Fitria and Laras Fira Fauziyah, “Pertanggung Jawaban Pidana (Mas’uliyah Al-Jinayah) Dalam Malapraktik Dokter Di Klinik Kecantikan,” *Journal of Islamic Studies and Humanities* 7, no. 1 (2022): 17–43, <https://doi.org/10.21580/jish.v7i1.11679>.

<sup>20</sup> Dwitasari et al., “Perlindungan Hukum Terhadap Pasien Korban Kelalaian Dokter Pada Klinik Kecantikan Ditinjau Berdasarkan Undang-Undang Nomor 17 Tahun 2023 Tentang Kesehatan.”

<sup>21</sup> Ana Firli and Rusdianto Sesung, “Perlindungan Hukum Terhadap Konsumen Yang Dirugikan Oleh Klinik Kecantikan Yang Tidak Memiliki Izin,” *Journal Evidence Of Law* 4, no. 2 (2025): 672–80, <https://doi.org/10.59066/jel.v4i2.1386>.

through medical or dental professional education. This law emphasizes that the authority of medical personnel is limited and must be based on the principle of legality. To ensure this professionalism, every medical worker is required to have a Registration Certificate (STR) as proof of legal recognition of professional competence and qualifications issued by the Indonesian Medical Council (KKI). KKI, as an independent institution, plays an important role in maintaining competency standards, codes of ethics, and professional discipline, and serves as a liaison between the medical world and the legal system in enforcing professional responsibility.

Another vital philosophy that underlies the regulation of criminal liability of medical personnel is the privileged position of the medical profession in the legal system. The panel of judges in various rulings emphasized that doctors and dentists bear a greater responsibility than other health workers because they deal directly with the human body and life. This profession is independent and full of risks because every medical procedure involves clinical decisions that must be made quickly yet in accordance with professional standards.<sup>22</sup> Therefore, the law allows for professional discretion, but it also demands legal accountability if the freedom is abused or exercised without an adequate scientific basis.

With such a strategic position, the medical profession demands a balance between professional autonomy and legal accountability. On the one hand, medical personnel must be protected so that they can carry out their practices without fear of excessive criminalization. On the other hand, patients are also entitled to safety guarantees and dignified treatment during medical procedures. Therefore, in the philosophical view of law, malpractice is understood not only as a violation of formal regulations but also as a failure to maintain public trust and the dignity of the medical profession. Through this principle, the law serves not only to punish perpetrators of medical errors but also to maintain a balance among justice, humanity, and professionalism in health services.

Malpractice, in general, is an irregularity in the handling of medical problems by medical personnel that adversely affects patients. Malpractice is a form of negligence by doctors in the care they provide to patients, because they act below the standard of care expected by the profession or medical service standards.<sup>23</sup> The study also emphasized that guilt is the primary factor in determining criminal liability.<sup>24</sup>

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<sup>22</sup> Christian Elizar et al., “Perlindungan Hukum Terhadap Dokter Yang Diduga Melakukan Malpraktik Ditinjau Dari Peraturan Perundang-Undangan Yang Berlaku Studi Kasus Putusan Mahkamah Agung Nomor 233 K/Pid.Sus/2021.”

<sup>23</sup> Susila, “Malpraktik Medik Dan Pertanggungjawaban Hukumnya.”

<sup>24</sup> Mugiono et al., “Pertanggungjawaban Atas Tindakan Malapraktik Medis Profesi Dokter Pada Klinik Kecantikan.”

The elements of medical malpractice include several interrelated aspects. First, there is an element of negligence, namely a lack of care, knowledge, or skill in carrying out medical measures in accordance with professional standards. Second, the action is carried out by medical personnel who have authority and competence in the health sector. Third, the actions taken are not in accordance with applicable professional standards and operational procedures. Fourth, there are real losses experienced by patients, either in the form of injuries, disabilities, or deaths, which have a direct causal relationship with the actions of the medical personnel. These four elements form the basis for assessing criminal liability in medical malpractice cases.<sup>25</sup>

Malpractice can be divided into two main forms: criminal malpractice and administrative malpractice.<sup>26</sup> Criminal malpractice occurs when medical personnel make serious mistakes that result in serious injury or death of the patient. The form can be in the form of *intentional malpractice*, such as performing illegal abortions or providing false medical certificates; malpractice *recklessness*, such as performing medical procedures without *informed consent* or not following applicable professional procedures; and malpractice *negligence* (forgetfulness), which is carelessness that causes serious harm to the patient. Meanwhile, administrative malpractice violates administrative provisions, such as practicing without a license, exceeding authority, or negligence in making medical records in accordance with applicable legal provisions.

The urgency of criminal liability for medical personnel not only functions as a tool of punishment, but also as an instrument of legal protection for patients and a mechanism for fostering the medical profession. In the practice of health services, patients are in a weak position both in terms of knowledge and legal position. Therefore, the presence of a criminal accountability mechanism ensures that any irregularities or gross negligence in medical actions can be addressed in accordance with the principles of justice. The application of criminal sanctions also has a preventive effect, encouraging medical personnel to act with caution and to provide a deterrent effect against violations.

In the Indonesian legal system, based on the principle of Rechtsstaat, criminal liability is a manifestation of the rule of law, which holds that no profession, including medical personnel, is immune from the law. This principle maintains public trust in health institutions and the medical profession. However, the application of criminal law

<sup>25</sup> Herbiyanto et al., “Analisis Tanggungjawab Hukum Terhadap Kasus Mal Praktek Medis Pada Kecantikan (Studi Putusan Nomor: 233 K/PID. SUS/2021),” *Jurnal Autentik: Jurnal Hukum Dan Sosial Humaniora* 3, no. 2 (2025): 185–91.

<sup>26</sup> Y Prayuti et al., “Tanggung Jawab Dokter Kecantikan Dalam Perjanjian Terapeutik Dikaitkan Dengan Hak Konsumen,” *Jurnal Cahaya Mandalika* 3, no. 2 (2023): 1927–34.

must also strike a balance so that medical personnel who have worked in accordance with procedures are not criminalized. Therefore, criminal law must distinguish between unavoidable human error and gross negligence that is criminal in nature.

Under the old Criminal Code, there were no rules specifically regulating medical malpractice. Cases of malpractice are generally accommodated through general provisions on forgetfulness (*culpa*) in the Criminal Code, especially Article 359 and Article 360. In summary, Article 359 regulates forgetfulness resulting in death with a maximum penalty of five years, while Article 360 regulates forgetfulness that causes serious injury with a maximum penalty of three years. In addition, actions that are often related to deviant medical practices, such as fraud against patients (Article 378 of the Criminal Code), falsification of medical certificates (Articles 263 and 267 of the Criminal Code), or violations of medical secrets (Article 322 of the Criminal Code), can also be subject to criminal charges based on these provisions.

The old Criminal Code approach was generalist in nature, which assessed malpractice as a form of criminal act due to negligence or intentionality resulting in serious injury or death. The advantage of this approach is its flexibility, allowing the Criminal Code to ensnare various forms of harmful behavior. However, the shortcomings are seen in the aspects of specificity and *legal certainty* because there are no specific criminal rules governing medical malpractice, judges and public prosecutors often face the problem of interpreting elements of the medical profession (e.g., professional standards, proof of professional error), which require the help of expert evidence and complex technical analysis.

The new Criminal Code (Law No. 1 of 2023), which, according to the material, is scheduled to be implemented/effective in 2026, seeks to clarify the regulation of criminal acts of negligence, including those that may have implications for malpractice, while still being based on the principle of *culpa*. The key provisions of the new Criminal Code maintain a distinction between negligence resulting in death, serious injury, or minor injury (referring to the articles that are equivalent to Articles 359, 360, and 361 of the old Criminal Code).

The significance of the new Criminal Code lies in its efforts to codify the elements of forgetfulness and sanctions, which can help to minimize variations in judgments due to different interpretations between courts. However, in practice, the effectiveness of this provision depends heavily on harmonization with sectoral regulations (such as the Health Law) and on the availability of technical professional standards used as benchmarks to prove the elements of error. Without clear professional standards and

an operational verification mechanism, the provisions of the new Criminal Code still face the same challenges as those of the old Criminal Code in cases involving malpractice of a technical nature.

Law Number 17 of 2023 concerning Health provides more specific and contextual arrangements for medical practice, particularly regarding the accountability of medical personnel. This law includes several important provisions that strengthen the legal framework for the implementation of health services. First, Article 308 affirms the principle that recommendations from the Professional Disciplinary Council (MDP) are a prerequisite before legal proceedings can be initiated against medical personnel suspected of violations. This provision serves as an initial verification mechanism to ensure that alleged ethical or administrative violations are not brought directly into the criminal realm without first undergoing a professional assessment. This measure is designed to prevent the premature criminalization of medical personnel, while ensuring that any legal action is based on an objective, ethical, and disciplinary review. However, the effectiveness of this provision depends on the speed and independence of the MDP's process, as delays or non-neutrality can delay law enforcement.

Furthermore, Article 440 of the Health Law provides a basis for more specific criminal sanctions for medical personnel's negligence. This provision stipulates that negligence that causes serious injury can be subject to imprisonment for a maximum of three years or a maximum fine of two hundred and fifty million rupiah, while if the negligence causes death, the criminal threat increases to imprisonment for a maximum of five years or a fine of up to five hundred million rupiah. This regulation shows that the Health Law provides a more proportionate criminal framework than relying solely on general provisions in the Criminal Code, because it takes into account the specific characteristics of the medical profession, which are inherently risky and require professional prudence.

In addition, the Health Law affirms procedural protections for medical personnel by making the verification process by professional institutions an integral part of the law enforcement mechanism. Evidence of violations of professional standards must first be proven through ethical and disciplinary checks before it can be used as a basis for prosecution. This provision is intended to maintain a balance between protecting patients' rights and providing legal protection for medical personnel who have worked in accordance with applicable professional standards and procedures. Thus, the law not only punishes but also provides certainty and security for medical personnel in exercising their authority.

Furthermore, the Health Law expands the scope of legal liability through the concept of vicarious liability, which holds health service institutions responsible for the actions of medical personnel working under them. This means that hospitals, clinics, or other health institutions cannot be exempt from responsibility in the event of negligence arising from weaknesses in systems, internal procedures, or managerial supervision. In this context, health institutions can be held administratively or criminally liable if proven to be negligent in ensuring safe and legal service standards. This arrangement represents a paradigm shift in Indonesia's health legal system, where the legal protection of patients is not only imposed on individual doctors but also the collective responsibility of the institution that oversees medical practice.

The Makassar District Court Decision Number 1441/Pid.Sus/2019/PN Mks is one of the critical cases that reflects the dynamics of the application of criminal law to malpractice practices in the beauty sector. This case involves the defendant, Dr. Elisabeth Susana, M.Biomed, an aesthetic doctor who was charged with performing medical acts in the form of injecting nasal fillers into patients that led to blindness in the patient's left eye. The Public Prosecutor charged the defendant with Article 79, letter c jo. Article 360 paragraph (1) of the Criminal Code concerning forgetfulness that causes serious injury. These charges are cumulative, meaning the two provisions are used simultaneously to ensnare the same act. However, the panel of judges decided to acquit the defendant (vrijspraak) because the elements of intentionality or gross negligence (culpa lata) were not proven juridically, and the defendant's medical actions were considered to have been in accordance with the professional standards in force at that time.

This decision raises an academic debate because it contains the problem of applying legal norms that overlap between the general criminal provisions in the Criminal Code and special provisions in Law Number 17 of 2023 concerning Health. Based on the principle of *lex specialis derogat legi generali*, special provisions in the Health Law should be used on a priority basis and stand alone without the need to be combined with the Criminal Code. However, in practice, prosecutors and judges still apply both legal bases simultaneously. This creates ambiguity regarding criminal liability because each legal instrument has different elements and mechanisms of proof. This cumulative approach may lead to inconsistencies in the application of the principle of legal certainty (*rechtkerheid*) in similar cases in the future.

In addition, the analysis of the substance of the panel of judges' legal considerations shows that the element of "gross negligence" or *culpa lata* is not firmly established.

Based on the facts of the trial, the defendant demonstrated professional responsibility by immediately taking the victim to the hospital and bearing the post-incident medical expenses. Even if there is no written informed consent from the patient, it should be categorized as an administrative or ethical violation of the profession rather than a criminal act. In the realm of health law, *informed consent* is a form of legal protection for patients. Still, violations can only become a criminal basis if it is proven that the medical action was carried out intentionally to cause consequences, or with gross negligence that violates professional standards.<sup>27</sup> Thus, the judge's assessment that considers the absence of informed consent as a criminal element is considered juridally and legally proportional.

Another aspect that is highlighted in this case is the implementation of medical aesthetic competency certification (PERDAWERI). The judge, in his consideration, used the provisions regarding aesthetic accreditation as a basis for assessing the defendant's professional negligence. In fact, at the time of the incident (in 2017), the provisions regarding aesthetic certification had not been applied nationally. They were not a generally binding legal requirement for all aesthetic doctors. Therefore, the use of this norm as a basis for retroactive assessment is contrary to the principle of legality (*nullum delictum nulla poena sine lege*) as stipulated in Article 1 paragraph (1) of the Criminal Code. Thus, it can be concluded that there is an error in application of law, namely a mistake in the application of the law due to the use of norms that have not yet been formally applied at the time the act is committed.

When analyzed more deeply, this decision also shows a shift in the function of criminal law in medical practice from a tool of justice enforcement to an instrument of ethical control. The judge in this case seems to focus more on the results of the professional ethics examination conducted by the Professional Disciplinary Council (MDP) than on conducting an independent juridical analysis of the fulfillment of the elements of criminal error. This approach is indeed in line with the spirit of protecting medical personnel from excessive criminalization, but on the other hand it has the potential to blur the line between ethical violations and criminal acts, as well as reduce the independence of the judiciary in assessing the element of culpa objectively. In fact, based on the principles of criminal law, as long as the element of forgetfulness and consequences in the form of serious injury can be proven juridically, Article 360 of the Criminal Code can still be applied without having to wait for the results of professional ethical decisions.

<sup>27</sup> Redaksi Bhafana Publishing, *Kitab Undang-Undang Hukum Pidana (KUHP Lama)* (Bhafana Publishing, 2012).

If this case is examined under the latest legal framework, namely Law Number 17 of 2023 concerning Health, the verdict is likely to be significantly different. The 2023 Health Law introduces the provisions of Article 440, which explicitly regulates criminal sanctions for medical personnel who due to their negligence cause serious injury or death of patients. The threat of punishment is in the form of a maximum prison sentence of three years or a maximum fine of two hundred and fifty million rupiah for serious injury, and a maximum prison sentence of five years or a maximum fine of five hundred million rupiah if it causes death. This provision provides a more specific and proportionate legal basis than Article 360 of the Criminal Code, because it explicitly places professional standards and the level of negligence as the main elements of proof. Thus, if the evidence shows that the defendant's actions are not in accordance with operational standards and cause serious losses, then the criminal element can be fulfilled without depending on professional ethical decisions.

In addition, the 2023 Health Law also expands the scope of legal responsibility, not only to individual medical personnel, but also to health service institutions, such as hospitals or clinics where medical personnel work. This means, if in the case of Dr. Elisabeth Susana there is evidence that negligence occurred due to an inadequate supervision system or clinical procedures, then the institution should also be held legally accountable. This approach is in line with the principle of vicarious liability, which is the legal responsibility of corporations for the actions of their employees in carrying out public service functions. Thus, the 2023 Health Law brings a new paradigm: that the resolution of malpractice cases no longer focuses on individual faults alone, but also includes institutional obligations in ensuring the safety and quality of medical services.

Furthermore, the role of the Professional Discipline Council in the 2023 Health Law is also an important factor in the context of criminal liability. Article 308 of the Health Law emphasizes that recommendations from the professional disciplinary panel are a prerequisite before the case is brought to the criminal realm. The goal is to ensure that the alleged violations are truly criminal in nature, not just administrative or ethical errors. However, in the context of legal effectiveness, this mechanism has the potential to be a double-edged sword: on the one hand it provides protection for medical personnel from being prematurely criminalized, but on the other hand it can lead to delays or even potential impunity if the assembly process takes a long time or is not

independent.<sup>28</sup> Therefore, the effectiveness of this system is highly dependent on the integrity, transparency, and professionalism of the disciplinary institution concerned.

From the normative analysis, it can be concluded that the Makassar District Court Decision Number 1441/Pid.Sus/2019/PN Mks shows two opposite sides. Formally, the panel of judges has applied the principles of legality and *lex specialis* appropriately, but materially there appears to be weaknesses in the interpretation of the elements of error and excessive reliance on professional ethical decisions, which has the potential to cause impunity for negligent medical personnel but are not sentenced to criminal sanctions because there has been no ethical decision. This condition emphasizes the need to reformulate the criminal liability system for medical personnel in Indonesia so that the boundaries between ethical, discipline, and criminal violations become clearer. The government together with professional organizations such as the Indonesian Doctors Association (IDI) need to encourage the implementation of a restorative justice approach that focuses on the recovery of victims without neglecting the honor of the medical profession. With the strengthening through Law Number 17 of 2023 concerning Health, the legal system is expected to be more able to realize substantive justice in resolving medical malpractice cases in the future.

## 2. Legal Protection for Victims of Beauty Malpractice

Legal protection for victims of aesthetic malpractice is a tangible manifestation of the state's responsibility in guaranteeing patients' rights to safety, justice, and legal certainty. In practice, cases of beauty malpractice often cause physical, psychological, and social losses for victims due to the negligence of medical personnel or service providers who do not meet professional and ethical standards.<sup>29</sup> This discussion outlines two main forms of approaches in the legal protection system, namely preventive efforts (prevention before a violation occurs) and repressive efforts (law enforcement after a violation occurs), which conceptually describes the function of law as an instrument of social control and protection of human rights.

In analyzing this legal protection, this chapter uses a number of main normative foundations, including Law Number 17 of 2023 concerning Health as the latest legal umbrella that explicitly regulates the obligations and sanctions for medical personnel and beauty clinic business actors; The Criminal Code (KUHP), both the old and new

<sup>28</sup> I. M. D Jayantara et al., "Analisis Pertanggungjawaban Pidana Dan Penyelesaian Terhadap Tenaga Medis Yang Melakukan Malpraktik Medis Ditinjau Dari Perspektif Undang-Undang Nomor 17 Tahun 2023 Tentang Kesehatan," *Jurnal Hukum Lex Generalis* 5, no. 7 (2024).

<sup>29</sup> Pramesti and Raditya, "Analisis Perlindungan Hukum Terhadap Konsumen Yang Overdosis Anestesi Pada Klinik Kecantikan."

versions (Law No. 1 of 2023), as a basis for punishment for acts of forgetfulness or intentionality that cause serious injury or death. The discussion also included the role of related institutions such as the Professional Disciplinary Council, the Indonesian Medical Council (KKI), the Indonesian Doctors Association (IDI), the Health Office, the Consumer Dispute Resolution Agency (BPSK), the Police, and the Prosecutor's Office, which together form an ecosystem of legal protection for victims. With such a broad legal framework, this chapter aims to examine the extent to which the Indonesian legal system has provided effective, fair, and balanced protection between the rights of patients as victims and the responsibilities of medical personnel in carrying out their profession.

The normative framework for legal protection for victims of beauty malpractice in Indonesia is built on the basis of a number of complementary legal instruments, including laws in the fields of health, criminal law, civil law, and consumer protection, as well as administrative rules governing the implementation of medical practices.<sup>30</sup> This overall regulation is intended to create a legal system that ensures a balance between the rights of patients as recipients of health services and the responsibilities of medical personnel and beauty clinic business actors as service providers. Each legal norm has a different role, but it is oriented towards the same goal, which is to provide fair, effective, and equitable legal protection for all parties involved in the practice of aesthetic health services.<sup>31</sup> In this context, Law Number 17 of 2023 concerning Health is the main basis because it comprehensively regulates the authority, responsibilities, and legal sanctions for medical personnel as well as protection mechanisms for disadvantaged patients.

Law Number 17 of 2023 concerning Health is a new milestone in the health legal system in Indonesia that emphasizes legal protection for patients, including in the context of beauty malpractice. Article 257 affirms the obligation of medical personnel to provide services in accordance with professional standards and medical ethics, which are the moral and legal basis in carrying out medical practice. This provision implicitly affirms the principles of prudence (prudentia) and professionalism in every medical procedure. Violations of this provision can not only incur ethical and administrative sanctions, but also open up the possibility of criminal liability in the event of negligence

<sup>30</sup> Istikharoh et al., "Pertanggung Jawaban Hukum Dokter Bedah Plastik Melakukan Tindakan Perubahan Bentuk Wajah Menurut Hukum Di Indonesia."

<sup>31</sup> Muhammad Purnomo et al., "Legal Protection Regulation for Healthcare Professionals in Private Hospitals in Indonesia from the Perspective of Justice Values," *International Journal of Management Studies and Social Science Research* 07, no. 02 (2025): 183–93, <https://doi.org/10.56293/IJMSSR.2025.5523>.

that causes serious harm to patients. Furthermore, Article 308 stipulates that before an alleged violation is brought to the criminal realm, it must first go through the Professional Disciplinary Council as an ethical institution authorized to assess the alleged violation of medical personnel discipline. This mechanism functions as a form of legal filter so that medical personnel are not immediately criminalized without an objective professional evaluation, while ensuring the principle of *due process of law* in the enforcement of health laws.

In addition, Article 440 of the 2023 Health Law strengthens the criminal aspect by stipulating the threat of sanctions for medical personnel who, due to their negligence, cause serious injury or death of patients. The criminal threat is in the form of imprisonment for a maximum of five years or a fine of up to five hundred million rupiah, depending on the level of consequences caused. This provision is specific and is a *lex specialis* of the Criminal Code, because it focuses on the element of negligence (*culpa*) that occurs in the context of medical actions. Not only medical personnel, business actors in the aesthetic sector are also strictly regulated through Article 138 and Article 439, which provide severe sanctions for illegal clinical practices or serious violations in the field of aesthetics. The sanctions reach 12 years in prison and a fine of up to five billion rupiah, which is intended to have a deterrent effect and maintain public security and safety. Thus, the 2023 Health Law reflects a more strict and comprehensive legal protection system, both for patients as victims and for medical personnel who work professionally in accordance with legal standards.

In Indonesia's criminal law system, the regulation of medical malpractice has basically been accommodated in the Criminal Code (KUHP), although it is not explicitly regulated. Article 359 of the Criminal Code regulates the act of forgetfulness (*culpa*) that results in the death of a person, with a maximum penalty of five years in prison. Meanwhile, Article 360 of the Criminal Code regulates forgetfulness that causes serious injury with a maximum penalty of three years in prison. These two articles are often used as a basis by law enforcement officials to ensnare medical personnel who are suspected of negligence in medical practice, including in aesthetic cases. Although they do not explicitly mention the term "malpractice", these articles represent the principle of "no crime without fault" (*geen straf zonder schuld*), where a person can only be convicted if proven guilty of an offence with a level of negligence that can be accounted for.

However, as modern medical practice develops and the complexity of the legal relationship between doctors and patients increases, the old Criminal Code was

considered inadequate in accommodating the special characteristics of medical crimes. Therefore, the new Criminal Code (Law No. 1 of 2023) which will take effect in 2026 presents more systematic provisions while maintaining the principle of culpa. In the new Criminal Code, the articles relevant to malpractice are reflected in Articles 473-474, which regulate negligence that causes serious injury or death, but with clearer redaction and proof. This update has a positive impact on the law enforcement process, as it provides certainty and a more proportionate limit between minor negligence, gross negligence, and willfulness. In addition, the existence of this new Criminal Code is expected to strengthen synchronization with the provisions of the 2023 Health Law, so that the application of criminal sanctions against medical personnel becomes more consistent, fair, and does not criminalize medical acts carried out in good faith.

Legal protection for victims of beauty malpractice is also guaranteed through administrative legal mechanisms.<sup>32</sup> This administrative regulation aims to supervise and regulate the implementation of medical practices, both by medical personnel and health service providers. The form of administrative sanctions can be in the form of revocation of the Practice License (SIP), temporary or permanent closure of the clinic, and revocation of operational permits by the Health Office if it is proven to violate service standards or applicable legal provisions.<sup>33</sup> This administrative mechanism functions as a form of preventive supervision so that violations do not develop into more serious legal problems. In addition, in the context of professional development, institutions such as the Indonesian Medical Council (KKI) and the Indonesian Doctors Association (IDI) have a strategic role in ensuring that the competency and ethical standards of the medical profession are always maintained.

The administrative regulation also highlights the importance of a Registration Certificate (STR) as proof of legality and professional competence for every medical personnel. STR is an absolute requirement before doctors can obtain a practice license, so its existence functions as an instrument of state control over the quality of medical services. However, in practice, there are still problems related to aesthetic certification retroactivity, where several cases of malpractice are tried with reference to certification standards that are not yet applicable nationally at the time of the incident. This condition has given rise to legal debates related to the application of the principles of

<sup>32</sup> Ayşe Kurtuluş Dereli et al., “Evaluation of Medical Malpractice Claims Arising from Minimally Invasive Cosmetic Procedures in the Context of Supreme Court Decisions,” *TURKDERM* 59, no. 1 (2025): 1–6, <https://doi.org/10.4274/turkderm.galenos.2025.89238>.

<sup>33</sup> Aulia Putri and Ifahda Pratama Hapsari, “Administrative Criminal Reform in Providing Accountability for Skincare Actors Who Have Not Registered with BPOM,” *JUSTISI* 11, no. 1 (2024): 174–91, <https://doi.org/10.33506/js.v11i1.3751>.

legality and substantive justice. Therefore, it is necessary to update regulations that are more stringent regarding competency certification in the field of medical aesthetics, so that the administrative supervision mechanism can run consistently and in line with the principles of legal certainty.

Legal protection for victims of beauty malpractice can basically be realized through two forms of approaches, namely preventive and repressive. These two mechanisms complement each other to create a balance between the prevention of violations and the enforcement of justice after the violation has occurred. Preventive efforts occupy a strategic position because they aim to minimize the potential for violations through strengthening regulations, improving competence, and strict supervision of the practice of aesthetic medical services. Meanwhile, repressive efforts play a role when violations have occurred, by enforcing legal sanctions to provide a deterrent effect, restore victims' rights, and maintain the integrity of the medical profession in the eyes of the public.

Preventively, legal protection is carried out through strict regulation and supervision of medical personnel, health facilities, and service procedures. The government, through the Health Office and professional institutions, plays a role in ensuring that every medical worker has standardized competencies and is equipped with a Certificate of Registration (STR) and a valid practice license. At the clinic level, the implementation of Standard Operating Procedures (SOPs), the implementation of written informed consent, the preparation of accurate medical records, and internal medical audits are important steps to ensure service accountability. In addition, continuing education and certification in the field of medical aesthetics must be strengthened so that medical personnel have expertise that is in accordance with professional standards. On the other hand, the public also needs to be provided with legal and health education through public campaigns about the dangers of using illegal cosmetic ingredients and the importance of choosing licensed medical services. This kind of preventive approach shows that the law is not only present after the violation has occurred, but also serves to proactively create a safe, professional, and dignified medical service system.

Meanwhile, repressive efforts are carried out when there is an alleged violation or negligence that causes losses to patients. In the context of administrative law, the supervision mechanism is carried out through the Professional Discipline Council (MDP) as stipulated in Article 308 of Law Number 17 of 2023 concerning Health. This institution has the authority to assess and sanction medical personnel who are proven to violate professional discipline, ranging from reprimands, temporary suspensions, to

revocation of practice licenses. This ethical process is an initial screening to ensure that administrative or ethical violations are not immediately criminalized, thus ensuring a balance between patient protection and the professional rights of medical personnel.

If the violation is proven to contain elements of gross error or serious negligence, then criminal action can be taken as a form of repressive law enforcement. The legal basis includes Articles 359 and 360 of the Criminal Code, Articles 473-474 of the new Criminal Code, Article 79 letter c jo. Article 51 letter a of the Medical Practice Law, as well as Article 440 of the Health Law of 2023 which specifically regulates the negligence of medical personnel who cause serious injury or death of patients. In this process, the role of forensic experts, medical audits, and MDPs is very important to ensure the objectivity of proving the element of culpa (negligence) and the causal relationship between medical actions and the consequences that arise. This criminal route not only serves to punish the perpetrator, but also to uphold justice for the victim and strengthen public trust in the legal system in the health sector.

In the context of the implementation of legal protection for cases of medical malpractice, the handling process follows the procedural stages regulated in Law Number 17 of 2023 concerning Health. Based on the provisions of Article 308, any alleged violation of the discipline of medical personnel must first be examined by the Professional Discipline Council (MDP) before it can be brought to the realm of criminal or civil law. This process is intended as an initial filter so that every alleged violation is assessed first from an ethical and professional aspect, so that medical actions that are still in accordance with standards are not immediately criminalized.

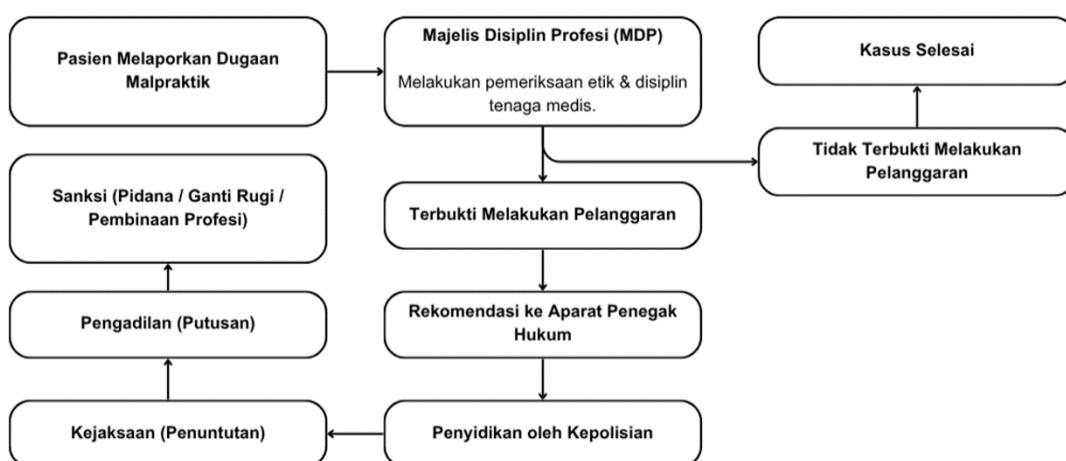


Figure 2. Procedural Stages of Handling Cases of Medical Malpractice  
Source: Author's Processing (2025)

Based on the visualization in Figure 2, after the patient reported alleged malpractice and MDP in the results of his examination stating that the medical personnel were proven to have committed serious disciplinary violations or negligence that resulted in serious losses for the patient, the results of the recommendation became the basis for the police to conduct further investigation and investigation. In this stage, law enforcement officials will assess the fulfillment of the elements of culpa (negligence) and *causaliteit* (causal relationship) in accordance with the provisions of Article 440 of the 2023 Health Law or Articles 359–360 of the Criminal Code. Furthermore, the case file that has been declared complete (P-21) will be handed over to the prosecutor's office for prosecution in the district court. On the other hand, patients or victims' families can also take civil channels to claim compensation, as well as file a complaint with the Consumer Dispute Resolution Agency (BPSK) if the case is related to aesthetic services that are commercial in nature.

Thus, the mechanism for resolving medical malpractice cases cannot directly involve the police without going through ethical verification from the MDP. This stage not only provides protection for medical personnel from premature criminalization, but also ensures that the legal process runs on an objective and proportionate professional judgment. The following scheme describes the procedural stages of handling cases of medical malpractice in Indonesia, starting from examinations by the Professional Disciplinary Council to legal proceedings in the police and courts.

As a complement to the preventive and repressive approach, the concept of restorative justice is now beginning to be applied in the settlement of beauty malpractice cases. This approach emphasizes the recovery of victims and the improvement of the medical service system, not solely the punishment of the perpetrators. Through dialogue between victims, medical personnel, and health care institutions, settlements can be carried out constructively through compensation, rehabilitation, and improvement of clinical procedures so that similar incidents do not recur. This concept is in line with the principle of non-criminalization of medical acts, which emphasizes that not all professional misconduct should end in criminal sanctions. Thus, the application of restorative justice has the potential to be a bridge between patient protection and the protection of the medical profession, as well as strengthening public trust in the national health system.

The legal protection process for victims of beauty malpractice should ideally begin through preventive measures to ensure that medical actions are carried out in accordance with the provisions of the law and professional ethics. Before undergoing

aesthetic procedures, patients need to verify the validity of the Registration Certificate (STR) and Practice License (SIP) of the medical personnel who handle them, ensure that there is written informed consent explaining the risks of the action, and document the physical condition before the action as comparative evidence if complaints arise in the future. This preventive effort is a form of initial legal protection that is very important because it can be the basis for proof in the event of a violation or negligence on the part of medical personnel.

In the event of suspected malpractice, the victim must immediately take legal emergency response measures by collecting as complete evidence as possible, including the results of *visum et repertum* from independent experts, complete medical records, and documentation of communication with the clinic. This evidence is necessary to ascertain the causal relationship between the medical action and the resulting consequences, such as severe injury or permanent impairment. After the initial evidence is collected, the victim can take the administrative route by filing a complaint with the Health Office or the Professional Discipline Council (MDP) to obtain an ethical and disciplinary assessment. Based on Article 308 of Law Number 17 of 2023 concerning Health, an ethical examination by the MDP is the initial stage that must be taken before the case can be brought to the criminal realm, so this panel's recommendation plays an important role as a basis for law enforcement to continue the investigation and investigation process.

If the results of the MDP examination show gross negligence, the victim can continue the process through criminal channels by reporting to the Indonesian National Police (Polri) accompanied by supporting documents such as medical records, medical audit results, and MDP recommendations. This process then proceeds to the prosecution and examination stage in court based on the provisions of Articles 359 and 360 of the Criminal Code or Article 440 of the 2023 Health Law. In proof, the role of forensic experts, aestheticians, and independent medical audit teams is essential to assess the fulfillment of the elements of negligence (*culpa*) and *causality*. The results of the ethics examination from the MDP can also be used as supporting evidence even though it is not criminally binding. Thus, the legal protection system for cases of beauty malpractice requires the integration of medical, legal, and ethical evidence so that justice for victims and protection for medical personnel can be realized in a balanced and proportionate manner.

#### D. CONCLUSION

The results of the study show that the Indonesian legal system already has a comprehensive normative framework through Law Number 17 of 2023 concerning Health as a lex specialis in resolving medical malpractice cases. The findings of the study show that there is an overlap between the Criminal Code and the Medical Practice Law in the application of the principle of lex specialis derogat legi generali, as well as the need to affirm the recommendation mechanism of the Professional Disciplinary Council as a prerequisite before the case is brought to the criminal realm. The novelty of this research lies in the identification of the need for harmonization between general criminal law and health law in enforcing the criminal responsibility of medical personnel in the field of aesthetics, so that there is no excessive criminalization of doctors who act according to professional standards. In conclusion, effective legal protection must be able to strike a balance between the patient's right to justice and the protection of medical personnel from disproportionate demands. Therefore, it is recommended to strengthen certification regulations and supervision of aesthetic practices, increase the independence of the Professional Disciplinary Council, and implement a restorative justice approach so that case resolution is more oriented towards victim recovery, professional development, and improving the quality of safe, ethical, and professional health services.

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