



Legal Liability of Military Doctors for Medical Malpractice within the Indonesian Legal System

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Abstract: Medical services provided by military doctors have distinctive characteristics due to their position under both health law and military law regimes. This dual legal framework raises specific legal issues when allegations of medical malpractice occur, particularly concerning the legal liability of military doctors. This study seeks to examine the legal accountability of military physicians for medical negligence within the Indonesian legal framework. This study utilizes a normative legal methodology incorporating legislative, conceptual, and case analyses. The legal resources comprise primary, secondary, and tertiary legal sources. The results demonstrate that military physicians are governed by national health legislation while adhering to the specific stipulations of military law. The legal accountability of military physicians for medical misconduct may manifest as criminal, civil, and administrative culpability, enforced through legal frameworks that ensure legal certainty, justice, and patient safeguarding. This research advances health law and the enforcement of legal accountability for military medical professionals in Indonesia.

Keywords: Medical Malpractice; Military Doctors; Legal Liability; Health Law; Indonesian Law

1. Introduction

Healthcare represents a core element in the protection and fulfillment of human rights, particularly the right to health, as expressly recognized and guaranteed within the Indonesian legal system. Physicians, as legally recognized healthcare professionals, occupy a central position in the delivery of medical services and bear legal and professional obligations to perform their duties in accordance with statutory provisions, professional standards, standard operating procedures, and other applicable regulatory frameworks (Hutagalung & Hoesein, 2025; Sihotang & Hoesein, 2025; Wahyudi, 2024). In the implementation of medical services, mistakes or acts of negligence may arise during medical procedures, which can result in patient injury and are legally categorized as medical malpractice. The legal complexity of medical malpractice cases increases significantly when the alleged actors are military physicians. Unlike civilian doctors, military doctors are governed not only by health and medical legislation but also by military law, as they are members of the Indonesian National Armed Forces (Abdullah, 2020). This dual legal status gives rise to a layered legal framework that influences the mechanisms of legal responsibility and accountability in cases of suspected medical malpractice. While military doctors carry out medical duties in a professional capacity similar to civilian physicians, they simultaneously operate within a military hierarchy characterized by command authority and disciplinary control.

Under Indonesia's positive law system, the regulation of medical practice and the legal accountability of physicians is primarily stipulated in statutory instruments such as the Law on Medical Practice and the Law on Health, which provide the legal foundation for assessing professional conduct and responsibility. At the same time, military doctors are governed not only by health-related legislation but also by the military legal framework, including the Military Criminal Code and internal regulations of the Indonesian National Armed Forces (Dewanto, 2025; Putri et al., 2025). The coexistence of these dis-

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tinct legal regimes gives rise to complex legal issues concerning the scope, nature, and boundaries of legal responsibility borne by military doctors when allegations of medical malpractice arise. Such issues encompass potential criminal, civil, and administrative accountability and require careful legal interpretation to determine the appropriate form of liability (Syukriani et al., 2018).

The academic discourse on medical malpractice has predominantly centered on civilian medical practice, with a strong emphasis on patient protection, professional accountability, and liability doctrines within the general health law system. Conversely, scholarly works that specifically examine the legal responsibility of military medical personnel remain limited and are often confined to particular jurisdictions or legal doctrines. For example, Dewar et al. (2020) explored the issue of medical malpractice involving military doctors in the United States by tracing the historical development of the *Feres* Doctrine, concluding that military physicians are largely insulated from personal liability for malpractice claims occurring in connection with military service, as such responsibility is generally assumed by the state. Similarly, Campbell (2021) conducted a critical analysis of judicial applications of the *Feres* Doctrine, asserting that its broad interpretation has significantly curtailed the ability of service members to pursue legal remedies compared to civilian patients, thereby creating a distinct and restrictive liability regime for military medical practitioners.

Furthermore, a report by the Congressional Research Service authored by Mendez & Lewis (2019) offered a systematic legal analysis of the relationship between the Federal Tort Claims Act and military law. The report noted recent statutory reforms that introduced administrative compensation schemes for injured service members while preserving the core principle of sovereign immunity. Taken together, these studies underscore the unique legal position occupied by military doctors as a result of the intersection between medical law and military law. However, they also expose notable gaps in existing scholarship, particularly the lack of comprehensive and comparative legal analyses of military medical malpractice liability beyond the contexts that have thus far dominated the literature.

The Indonesian legal system requires independent analysis because it is rooted in the **civil law tradition**, where written legislation and codified statutes are the primary sources of law, unlike the common law system that relies on judicial precedent. Legal reasoning in Indonesia emphasizes statutory interpretation and legal doctrine, and is shaped by distinct historical, constitutional, and institutional contexts. As a result, common law models cannot be directly applied without risking doctrinal inconsistency with Indonesia's legal structure

Notwithstanding their scholarly value, the existing studies largely situate the issue of medical malpractice by military doctors within the framework of United States law, with a predominant emphasis on concepts such as sovereign immunity and state-based compensation mechanisms. These analyses have not sufficiently explored legal systems rooted in civil law traditions, nor have they engaged with the distinct regulatory arrangements and institutional dynamics present in other jurisdictions. As a result, the question of how legal accountability for medical malpractice by military doctors is constructed and enforced within the Indonesian legal system remains underexplored. This study aims to fill this gap by undertaking an in-depth legal examination grounded in Indonesian health law and military law, thereby offering a novel and context-specific contribution to the broader academic discussion on the legal liability of military medical personnel. The main academic gap addressed by this study is the lack of Indonesia-specific analysis on the legal liability of military doctors for medical malpractice. Existing literature is largely dominated by foreign studies, particularly those based on the *Feres* Doctrine, which reflect common law concepts not fully compatible with Indonesia's civil law system. This study fills that gap by providing a normative analysis grounded in

Indonesian health law and military law, offering a contextually relevant alternative to foreign-centric models.

This paper examines the regulation of legal liability for medical negligence among military doctors within the Indonesian legal system and the enforcement mechanisms associated with it. This paper seeks to examine and elucidate the legal liabilities of military physicians within the context of Indonesian law. This research aims to enhance health law, legal certainty, and the safeguarding of patient rights in medical services delivered by military medical personnel.

2. Materials and Methods

This study adopts a normative legal research design aimed at examining and analyzing legal norms, principles, and statutory regulations governing the legal accountability of military doctors for medical malpractice within the Indonesian legal system. A normative juridical approach is employed because the research focuses on the analysis of positive law, legal doctrines, and authoritative legal concepts that are directly relevant to the legal issues under investigation (Johnny Ibrahim, 2005; Sidik, 2023; Syahrum, 2022).

To achieve the objectives of the study, several analytical approaches are applied, namely the statutory approach, the conceptual approach, and the case approach. The statutory approach is used to examine and interpret laws and regulations concerning medical practice, health services, and military law as the primary legal framework for determining the legal responsibility of military doctors. The conceptual approach is employed to analyze the notion of medical malpractice and the legal accountability of physicians based on legal doctrines and scholarly interpretations (Herianto, 2020). In addition, the case approach is utilized to examine the application of legal norms in practice through the analysis of judicial decisions related to alleged medical malpractice.

The selection of court decisions and legal materials must be based on their authority, relevance, and compatibility with the applicable legal framework to ensure a valid legal argument. Chosen sources should originate from competent courts and binding legislation, directly relate to the legal issue analyzed, and reflect current and operative law. Court decisions should contain clear legal reasoning and *ratio decidendi*, while supporting materials must align with the chosen research approach. These criteria ensure that the analysis is coherent, reliable, and legally defensible. This research relies on three categories of legal materials: primary, secondary, and tertiary sources. Primary legal materials consist of binding legal instruments, including the 1945 Constitution of the Republic of Indonesia, legislation regulating medical practice and health services, the Military Criminal Code, and other relevant statutory provisions. Secondary legal materials include legal textbooks, academic journal articles, and previous studies addressing issues related to health law and military law. Tertiary legal materials, such as legal dictionaries and encyclopedias, are used as supporting references to clarify legal terminology and conceptual frameworks. The collection of legal materials is conducted through systematic library research, and the materials are subsequently analyzed qualitatively using a deductive method, whereby general legal principles and norms are applied to interpret and resolve the specific legal issues examined in this study.

3. Results and Discussion

3.1. *The Concept of Medical Malpractice in Indonesian Law*

Medical malpractice can be understood as conduct or omissions by medical professionals that fall below accepted professional standards and procedural norms, thereby causing injury or loss to patients (Sinamo & Sibarani, 2020). In the context of Indonesian law, the notion of medical malpractice is not explicitly codified in a single statutory definition. Rather, it is derived from a set of legal rules that govern physicians'

professional obligations and the required standards of medical care in healthcare delivery. Medical practice in Indonesia is primarily regulated by Law Number 29 of 2004 on Medical Practice and Law Number 17 of 2023 on Health. These laws establish that physicians are legally required to carry out their professional duties in compliance with professional standards, healthcare service standards, and applicable standard operating procedures. Failure to adhere to these requirements, particularly when such failure results in harm to patients, may constitute a legal basis for holding medical practitioners accountable.

From the perspective of health law doctrine, medical malpractice is generally linked to the presence of fault, which may take the form of intentional wrongdoing (*dolus*) or negligence (*culpa*), serving as a foundational element in determining legal liability for medical professionals (Ujiyanto & Putra, 2019). The presence of fault constitutes a decisive element in assessing whether a physician can be held legally responsible for alleged medical malpractice. Consequently, adverse medical outcomes experienced by patients cannot automatically be classified as malpractice if the medical actions in question were performed in accordance with professional standards and the principle of due medical care. The law therefore distinguishes between unavoidable medical risks and conduct that deviates from accepted medical norms.

Moreover, medical malpractice may give rise to multiple forms of legal accountability, including civil, criminal, and administrative liability (Brine, 2003; Nguyen, 2018). Civil liability generally concerns claims for compensation arising from contractual breaches or unlawful acts, whereas criminal liability is imposed when the conduct fulfills the constituent elements of a criminal offense. Administrative liability, on the other hand, involves professional disciplinary measures, such as written warnings, temporary suspension, or the revocation of a physician's license to practice. Accordingly, the concept of medical malpractice within the Indonesian legal system must be comprehensively understood by considering statutory regulations, legal doctrine, and law enforcement practices. Such a holistic understanding is essential for analyzing the legal responsibility of military doctors, whose professional accountability is characterized by unique complexities due to their simultaneous subjection to health law and military law.

3.2. Legal Standing and Professional Accountability of Military Doctors in Indonesia

Military doctors are medical practitioners who carry out healthcare functions while concurrently serving as active-duty members of the Indonesian National Armed Forces. As a result, their legal standing is shaped by the convergence of two separate but interrelated legal frameworks, namely the regime governing health services and the regime governing military affairs. In performing their professional responsibilities, military doctors are required not only to comply with statutory rules regulating medical practice but also to adhere to the military legal system and internal disciplinary mechanisms applicable to armed forces personnel (Budi Pramono, 2020; Pramono, 2021).

Viewed from the perspective of health law, military doctors are legally categorized as physicians under Law Number 29 of 2004 concerning Medical Practice and Law

Number 17 of 2023 concerning Health. Accordingly, they are subject to the same professional obligations as civilian doctors, including adherence to professional standards, healthcare service standards, and established medical operational procedures, as well as compliance with ethical principles in the provision of medical services to both military members and civilian patients.

From the standpoint of military law, however, military doctors retain their status as active soldiers and are therefore governed by Law Number 34 of 2004 on the Indonesian National Armed Forces and the Military Criminal Code (*KUHPM*). This dual status means that actions undertaken by military doctors, including those related to medical treatment, may also be assessed under military disciplinary rules and military criminal law, particularly when such actions are performed in the execution of official duties or bear a direct connection to military service.

The dual legal status of military doctors carries significant implications for the determination of legal responsibility. In cases involving alleged medical malpractice, it is essential to first ascertain the legal context in which the act occurred, whether within the framework of general public healthcare services or within the scope of military duties. This contextual determination directly affects the applicable legal mechanisms, the competent judicial or adjudicative institutions, and the types of sanctions that may be imposed (Atmaja et al., 2025). The dual status of military doctors has significant practical implications for due process, particularly the risk that professional medical judgment may be influenced by military command interests. Because military doctors are simultaneously bound by medical ethics and military hierarchy, there is potential for subordination of independent medical decision-making to orders, discipline, or institutional priorities. This condition may affect the impartial handling of malpractice allegations, including investigations, evidence assessment, and forum selection, potentially limiting transparency and patient access to justice. As a result, the dual status raises due process concerns that require clear safeguards to ensure that medical accountability is assessed objectively, independently, and in accordance with health law standards rather than solely military command considerations.

Accordingly, the legal position of military doctors differs fundamentally from that of civilian physicians. This distinctiveness necessitates a careful, balanced, and proportional legal analysis to ensure that the enforcement of law in cases of alleged medical malpractice involving military doctors upholds legal certainty, justice, and the protection of patients' rights, while simultaneously respecting the unique characteristics and requirements of the military legal system.

3.3. Forms of Legal Liability for Military Doctors Regarding Medical Malpractice

From the standpoint of health law, the legal responsibility borne by military doctors in cases of alleged medical malpractice is fundamentally equivalent to that applicable to civilian physicians. Military doctors may be subject to legal accountability when it can be established that they have engaged in acts of error or negligence in the performance of their medical duties, particularly where such conduct constitutes a breach of professional

standards and standard medical operating procedures and results in harm to patients (Haiti, 2017).

a. Civil Liability of Military Doctors

The civil responsibility of military doctors is rooted in the existence of a legal relationship between the medical practitioner and the patient, which gives rise to mutual rights and obligations. This relationship is based on a therapeutic contract, namely a legal engagement between doctor and patient that emphasizes the obligation to exercise due care and professional effort rather than to guarantee a particular medical outcome. Such a contractual understanding corresponds with Article 1313 of the Civil Code, which characterizes an agreement as a legal act through which one or more parties bind themselves to others.

In carrying out their obligations under a therapeutic relationship, physicians, including military medical personnel, are required to act in accordance with professional standards, standard medical operating procedures, and ethical norms governing the medical profession, as stipulated in Article 50 letter (a) of Law Number 29 of 2004 on Medical Practice. Where a military doctor fails to meet these professional requirements and such failure results in harm to a patient, civil liability may arise for the losses suffered.

Civil liability in this context may be established on two principal legal grounds. First, it may be based on contractual non-performance, as regulated under Article 1239 of the Civil Code, when the physician does not properly fulfill the obligations arising from the therapeutic agreement. Second, liability may also be founded on an unlawful act, as provided under Article 1365 of the Civil Code, where the doctor's conduct violates general legal duties, infringes upon the patient's legally protected interests, or falls short of the standard of care expected in medical practice. In addition, the right of patients to claim compensation is expressly guaranteed by Article 58 paragraph (1) of Law Number 36 of 2009 on Health, which affirms that individuals who suffer harm as a result of errors or negligence in healthcare services are entitled to seek compensation from healthcare professionals and/or providers.

With respect to military doctors, although they hold the status of active members of the Indonesian National Armed Forces, their provision of healthcare services to civilian patients remains subject to general civil law mechanisms. This is consistent with Law Number 31 of 1997 concerning Military Justice, which restricts the jurisdiction of military courts to specific categories of criminal offenses committed by military personnel. Accordingly, the military status of a physician does not negate or diminish the civil law rights of civilian patients to obtain legal protection and compensation for losses arising from medical malpractice.

b. Criminal Liability

Apart from civil accountability, military doctors may also incur criminal liability when their actions fulfill the legal requirements of a criminal offense under applicable criminal legislation. This form of liability is governed by the Criminal Code as the

general criminal law framework, as well as the Military Criminal Code, which specifically applies to members of the Indonesian National Armed Forces. In cases involving alleged medical malpractice, criminal responsibility may be imposed on physicians, including military medical practitioners, where it can be established that the harmful conduct resulted from culpable behavior, whether in the form of intentional wrongdoing or negligence, and led to serious injury or loss of life to a patient (Cristian, 2015). This understanding aligns with the provisions of Articles 359 and 360 of the Criminal Code, which regulate criminal negligence causing death or severe bodily harm.

Where the alleged criminal act is committed by a military doctor in the execution of official duties, jurisdiction over the case is assigned to the military justice system pursuant to Article 9 of Law Number 31 of 1997 on Military Justice. In such cases, the substantive rules of the Criminal Code may still be applied, provided that the conduct in question is not expressly governed by the Military Criminal Code.

On the other hand, if the alleged offense occurs outside the context of official military service or involves civilian victims, the authority to adjudicate the case may rest with the general courts. This approach reflects the principle of jurisdictional competence within the criminal justice system and corresponds with judicial developments that prioritize the protection of civilian legal interests. Such an approach is further reinforced by Article 65 of Law Number 34 of 2004 on the Indonesian National Armed Forces, which permits the application of general criminal law to military personnel under certain conditions.

Therefore, the determination of the competent criminal forum for cases involving military doctors cannot be based solely on their military status. Instead, it must consider the nature of the alleged conduct, its relationship to official military duties, and the status of the victim, in order to uphold legal certainty, fairness, and justice for all parties concerned.

c. Administrative and Ethical Liability

Apart from exposure to civil and penal sanctions, military physicians may likewise incur administrative censure and ethical reproach for transgressions arising in the exercise of medical practice. Administrative accountability emanates from the State's supervisory and regulatory prerogative to discipline medical professionals, particularly through the imposition of corrective measures such as formal admonitions, curtailment of professional functions, provisional interdiction, or the definitive annulment of licensure to practice medicine (Riedl, 2019; Zaring, 2009). From a normative standpoint, this regime of accountability is anchored in Law Number 29 of 2004 concerning Medical Practice, which delineates physicians' duties and prescribes juridical consequences for regulatory noncompliance.

The institutional enforcement of medical professional discipline is entrusted to the Indonesian Medical Disciplinary Honorary Council (MKDKI), which functions as a quasi-adjudicative body vested with the authority to scrutinize and adjudge alleged breaches of medical discipline committed by physicians and dentists. In accordance with Article 55 of Law Number 29 of 2004, determinations issued by MKDKI may culminate in administrative sanctions, including recommendations for the revocation of

professional credentials such as the Registration Certificate (STR) or the Practice License (SIP).

Beyond disciplinary proceedings, military doctors are also normatively bound by the Indonesian Code of Medical Ethics, which articulates the moral canons governing physicians' comportment in their relationships with patients, professional peers, and the broader public. Violations of these ethical prescriptions constitute autonomous ethical delicts, which may be addressed independently of any concurrent civil or criminal adjudication.

With specific regard to military medical personnel, the imposition of administrative or ethical sanctions does not extinguish the applicability of military disciplinary measures. This is attributable to the dual juridical persona of military doctors, who simultaneously function as licensed medical practitioners and active-duty members of the Indonesian National Armed Forces. Consequently, they remain subject to the military legal order, including the disciplinary regime established under Law Number 25 of 2014 concerning Military Discipline, which authorizes punitive measures for derelictions of official duty and breaches of military obligations.

Accordingly, the legal responsibility of military doctors is intrinsically stratified and cumulative, encompassing administrative regulation, ethical accountability, and military discipline, all of which may operate concurrently with civil and criminal liability. This intricate constellation of accountability demands an exceptional degree of professional probity, legal circumspection, and rigorous compliance with both medical and military normative frameworks in the performance of medical duties by military physicians.

3.4. Legal Enforcement Mechanisms Applicable to Military Doctors in Medical Malpractice Cases

The legal response to allegations of medical malpractice involving military doctors generally conforms to the orthodox paradigms of healthcare law enforcement, albeit subject to calibrated adaptations necessitated by the doctors' concurrent status as active-duty military personnel. As a consequence, enforcement may be pursued through a plurality of legal pathways namely civil, criminal, administrative, and ethical channels each operating under distinct procedural regimes and institutional competencies.

From the standpoint of private law, patients or other aggrieved parties retain the entitlement to institute claims for pecuniary reparation before courts of general jurisdiction where alleged malpractice is committed by a military physician in the context of providing medical services to civilians. This avenue of redress embodies the doctrine of equality before the law, affirming that military medical practitioners are not immunized from legal responsibility for conduct that inflicts harm upon others (Parks-Savage et al., 2018).

With respect to penal enforcement, proceedings against military doctors are principally governed by Law Number 31 of 1997 on Military Justice. Where the alleged malpractice is perpetrated in the execution of official military functions, the investigative, prosecutorial, and adjudicative processes fall within the purview of the military justice system. Notwithstanding this formal allocation of jurisdiction, practical realities

frequently necessitate inter-institutional coordination between military and civilian law enforcement bodies, particularly in cases implicating civilian victims or matters of significant public interest, reflecting a gradual recalibration of accountability norms and civilian legal safeguards (Kels, 2012).

In addition to adjudicatory mechanisms, allegations of medical malpractice may also be addressed through administrative and ethical enforcement processes. In this respect, the Indonesian Medical Disciplinary Honorary Council (MKDKI) occupies a pivotal role in determining whether a physician has transgressed professional standards of medical discipline. Determinations rendered by the MKDKI may serve as the juridical foundation for the imposition of administrative sanctions and may further function as corroborative material in subsequent civil or criminal proceedings. Accordingly, the enforcement architecture applicable to military doctors in cases of alleged medical malpractice is intrinsically intricate, characterized by the confluence of multiple legal regimes and institutional actors, all operating to ensure accountability, legal certainty, and the effective protection of patients' rights.

4. Conclusions

Based on the foregoing analysis, it may be concluded that military doctors occupy a distinct legal position due to their simultaneous subjection to two interrelated legal regimes, namely health law and military law. In the performance of medical services, military doctors are required to comply with professional standards and standard operating procedures in the same manner as civilian physicians. Consequently, when allegations of medical malpractice arise, military doctors may be held accountable under multiple forms of legal responsibility, including civil, criminal, administrative, and ethical liability. The mechanisms for enforcing such liability are determined by the specific context in which the alleged conduct occurs, as well as by the official status of the military doctor at the time of the act. Nevertheless, these procedural distinctions must not undermine or restrict patients' fundamental rights to legal protection and access to justice. Harmonization of health law and military law in military doctor malpractice cases can be improved by establishing clear rules on jurisdiction and applicable legal standards, strengthening coordination between medical disciplinary bodies and military justice institutions, and aligning military medical practice protocols with national health regulations. In addition, continuous legal and ethical training for military doctors is necessary to ensure compliance with both legal regimes and to enhance legal certainty and patient protection. Accordingly, the existence of clear regulatory frameworks and effective institutional coordination is essential to ensure that law enforcement against military doctors is implemented in a proportional, equitable, and legally certain manner, while balancing the requirements of professional medical accountability and the unique characteristics of the military legal system.

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