

CHAPTER I

INTRODUCTION

1.1 Background

We are all bestowed by God with the gift of life, and it is our obligation to take care of the life that has been given to us, hence that is the meaning of taking care of our own health. Law No.36 Year 2009 defines health as the healthy condition comprising all of physically, mentally, spiritually as well as socially that enables an individual to live productively both socially as well as economically.¹ Taking care of our health is important because it ultimately shows how much we appreciate this gift that has been bestowed upon all of us breathing today. However, despite our best efforts into taking measures to ensure that we optimally take care of our health, there will always exist a possibility that a tragic incident may occur to us, such as accidents, diseases and even pandemics. Hence, it is the foundation for the establishment of a healthcare system in a state. This is guaranteed by Article 28H Section (1) and (2) of the 1945 Constitution of the Republic of Indonesia, which states that everyone shall have the right to obtain medical care, and that every person shall have the right to receive facilitation and special treatment.²

The history of the medical profession in Indonesia is deeply entangled

¹ Law No. 36 of 2009 concerning Health

² 1945 Constitution of the Republic of Indonesia

with the country's colonial past and its subsequent journey towards independence. Before the arrival of Netherlands colonials, medical practices in Indonesia were influenced by local culture and traditional beliefs. Healing methods included the use of herbs, spiritual practices, and the help of shamans or healers. Despite their simplicity, these methods were effective in managing diseases prevalent at the time. According to Marsden in Sumatra, the term "Every parent or old woman is a doctor" appeared. The medical expertise of the Sumatran people is known to be renowned, despite the fact that they are not equipped with medical practices and methods from Western doctors. However, significant changes began to occur when the Netherlands began to colonize the country. Doctors from the Netherlands started to introduce and practice modern medical science in the archipelago.³

The history of medical education in Indonesia highlights a significant journey of struggle and transformation within the healthcare sector. During the Dutch colonial era, access to formal education, particularly in medicine, was severely restricted for the indigenous population. However, during the colonial era, specifically in 1847, the Dutch government established the Djawa Medical school, which was later changed and known as *School Tot Opleiding Van Inlandsche Artsen*, abbreviated to STOVIA, or Bumiputra Medical Education

³ Jasmine, Beautiful Ayusora. 2024. "Stovia History: The Work of Doctor Willem Bosch and the Pioneer of Female Doctors in Indonesia." S. Accessed October 14.
<https://sejarah.fkip.uns.ac.id/en/2024/08/02/sejarah-stovia-kiprah-dokter-willem-bosch-dan-pelopordokter-wanita-di-indonesia/>.

School. This school aimed to educate indigenous youths in modern medical practices to address the urgent need for medical personnel in the archipelago. The school's establishment marked a significant step forward in improving health and education systems in Indonesia. This all would have not happened if it was not for Dr. Willem Bosch, who proposed the idea of educating Javanese youths in health service practices, which led to the establishment of STOVIA. His initiative was supported by Governor General J.J. Rochisse, and the school began its operations with a budget allocation of 5400 Gulden, or Rp. 45.673.860 in today's Indonesian currency.⁴

STOVIA played a crucial role in the Indonesian nationalist movement. Many of its students were involved in the Boedi Utomo movement, which emerged in 1908. These students not only learned about health but also concerning nationalism and the importance for independence. The hybrid identity of STOVIA graduates, fusing European education with Javanese culture, contributed to their political and revolutionary thinking. This led to the stratification of the medical profession in the Dutch East Indies, where Dutch doctors held the highest position and salaries among others. This led to resentment among indigenous doctors, who felt that their capacity and intelligence were not recognized. However, by the second generation, native doctors began to emerge as leaders, fighting for equality and eventually receiving

⁴ ibid

the same honors and salaries as European doctors.⁵

After Indonesia gained independence, only a handful of healthcare institutions remained operational, and the number of doctors and medical staff was far below the required levels. Tackling the country's health challenges necessitated the reconstruction and expansion of healthcare facilities, training a large number of doctors and paramedical staff, implementing public health initiatives, and conducting widespread health education campaigns. What was once nationalist physicians transitioned to national physicians, working in the state's health institutions. They played a crucial role in the country's health system, advocating for medical nationalism and international health cooperation.⁶ In recent years, Indonesia has implemented the Jaminan Kesehatan Nasional (JKN) program, which provides universal health coverage. This program has transformed primary care practices, emphasizing promotive and preventive care. General practitioners (GPs) now focus on managing 155 disease diagnosis in primary care, using online medical records to guide their practice.⁷ The medical

⁵ Sejarah, Oleh: 2017. "Indigenous Doctors and National Awakening." Department of History Indigenous Doctors and National Awakening Comments. April 17. <https://sejarah.fib.ugm.ac.id/indigenous-doctors-and-national-awakening/>.

⁶ Pols, Hans. 2024. "Medicine in Independent Indonesia: National Physicians and International Health (Chapter 9) - Nurturing Indonesia." Cambridge Core. Cambridge University Press. Accessed September 26. <https://www.cambridge.org/core/books/abs/nurturing-indonesia/medicine-in-independent-indonesia-national-physicians-and-international-health/E55251EA42980EF2EFC81EEDC44B0A32>.

⁷ Ekawati, Fitriana Murriya, and Mora Claramita. 2021. "Indonesian General Practitioners' Experience of Practicing in Primary Care under the Implementation of Universal Health Coverage Scheme (JKN)." *Journal of Primary Care & Community Health*. U.S. National Library of Medicine. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8202246/>.

profession in Indonesia has also developed its own laws and ethics, with the concept of medical malpractice to be introduced in an academic discourse in 1981, and Law No. 29 of 2004 concerning Medical Practice, which regulates the standards of medical practice.⁸

In recent years, especially after the COVID-19 pandemic, there has been a development in the foundation of the healthcare industry, hence it requires a transformation in the healthcare system. Therefore, on August 8 2023, the Republic of Indonesia has ratified a new healthcare law, namely Law No. 17 Year 2023 concerning Health. One of the reasons as to why the new Health law is ratified is to simplify the healthcare laws into one systematic codified law. As a result, due to this new law, there are 11 previous applicable laws that have become void, namely: Staatsblad 1949 No.419 regarding Hard Drugs Ordinance; Law No.4 Year 1984 regarding Infectious Disease Outbreaks; Law No.29 Year 2004 regarding Medical Practice; Law No.36 Year 2009 regarding Health; Law No.44 Year 2009 regarding Hospitals; Law No.20 Year 2013 regarding Medical Education; Law No.18 Year 2014 regarding Mental Health; Law No.36 Year 2014 regarding Health Workers; Law No.38 Year 2014 regarding Nursing; Law No.6 Year 2018 regarding Health Quarantine; Law No.4 Year 2019 regarding Midwife.⁹

⁸ Susila, Muh Endriya. 2015. "Medical Law in Indonesia: Its History and Development." *Jurnal Hukum PRIORIS* 5 (1): 63–76. doi:10.25105/prio.v5i1.398

⁹ Andrianto, Wahyu. 2024. "Secarik Catatan Untuk Undang-Undang Kesehatan." *Hukumonline.Com*.

There are several regulations that distinguish the new Health Law from its predecessor, especially the law that has been repealed by this Health Law, namely health service facilities can provide Telehealth and telemedicine services. Telemedicine services include: between health service facilities and between health service facilities and the public; Emphasizing the obligations of health service facilities regarding emergency situations. In emergencies, health service facilities are prohibited from refusing patients, asking for advance payments, and prioritizing administrative matters that delay healthcare services; Hospital leadership can consist of: Medical Personnel, Healthcare Personnel, or professionals with hospital management competencies; Hospitals are required to implement an integrated hospital information system with the National Health Information System (SIKN); Teaching hospitals can organize specialist/subspecialist programs as the primary organizer of education (college-based), with the condition that it is based on a permit from the Minister of Education and Culture and is only for specialist and subspecialist education programs; Healthcare Human Resources are divided into three categories: Medical Personnel (consisting of doctors and dentists), Healthcare Personnel (consisting of 11 groups of Healthcare Personnel), and supporting or auxiliary health personnel (those working in health service facilities or other health-related institutions); Registration Certificates (STR) are issued by the Council on behalf

Accessed September 12. <https://www.hukumonline.com/berita/a/secarik-catatan-untuk-undang-undang-kesehatan-lt64fe8593cfb16/?page=1>

of the Minister of Health and are valid for life; Practice Licenses (SIP) are issued by the District/City Government or the Minister of Health in certain conditions and do not require recommendations from professional organizations; The utilization of Medical and Healthcare Personnel who are Indonesian citizens (WNI) as well as foreign nationals (WNA) graduates from abroad can be done through a portfolio assessment for those who have practiced for at least two years (for WNI) and five years (for WNA) or are experts in certain outstanding fields of healthcare services; Disciplinary enforcement for Medical and Healthcare Personnel is carried out by a Council formed by the Minister of Health. This Council can be permanent or ad hoc, and its decisions can be reviewed by the Minister of Health; Medical or Healthcare Personnel suspected of committing unlawful acts in the performance of healthcare services that may be subject to criminal sanctions must first obtain a recommendation from the Council; And the allocation of Health Budgets by the Central and Regional Governments is outlined in the Health Sector Master Plan with Performance-Based Budgeting.¹⁰

According to the Ministry of Health of the Republic of Indonesia, there are several aspects that will be improved with the implementation of this new Health Law, this includes shifting the focus from treatment to prevention; facilitating access to healthcare services; preparing a resilient healthcare system to face disasters; improving efficiency and transparency in healthcare financing;

¹⁰ *ibid*, (2)

addressing the shortage of healthcare workers; encouraging the domestic independence of the healthcare industry and promoting the use of advanced healthcare technology; simplifying the healthcare licensing process; providing special protection for healthcare workers; and integrating the healthcare information system.¹¹

However, despite the ratification of the new Health Law, the healthcare industry still has not earned the trust of the Indonesian citizens, and that is because there are still numerous persistent issues and challenges in the country's healthcare system. One of those issues is medical malpractice conducted by medical professionals in Indonesia. Although Article 28H Paragraph (1) of the 1945 Constitution and Article 4 of the Health Law states that every person has the right to safe, quality, and affordable healthcare, medical malpractice by doctors towards patients sometimes may occur in healthcare services. In response to such medical malpractice, patients who feel harmed take legal action by reporting the doctor suspected of committing medical malpractice to the police on suspicion of a criminal act and even filing a lawsuit for unlawful acts. According to the Legal Aid Institute (LBH) for Health of the Indonesian Doctors Association (IDI) Central, there are approximately 210 cases of alleged medical malpractice per year in Indonesia, although most of these cases do not reach the

¹¹ Tabrani, Zulfikri. 2024. "Undang-Undang Kesehatan Nomor 17 Tahun 2023 Sah Berlaku... Ini Poin Pentingnya." Dinas Kesehatan. Accessed September 5. <https://dinkes.babelprov.go.id/content/undang-undang-kesehatan-nomor-17-tahun-2023-sah-berlaku-ini-poin-pentingnya>.

courts.¹² From 2006 to 2012, there were 182 recorded cases of alleged medical malpractice. Of these 182 cases across Indonesia, 60 were committed by general practitioners, 49 by surgeons, 33 by obstetricians, and 16 by pediatric specialists, with the remaining cases, less than 10, involving various other reported cases.¹³ Moreover, according to Prof. Dr Dante Saksono Harbuwono, medical malpractice cases continue to rise, with 370 medical malpractice cases in 2020.¹⁴ Lastly, in the last eight years, the Indonesian Medical Disciplinary Board (MKDKI) received 193 complaints of alleged medical malpractice. Of that number, 34 doctors received written sanctions, 6 doctors were required to undergo re-education programs, and, in the most severe cases, 27 doctors had their registration certificates revoked, which automatically rendered their practice licenses invalid.¹⁵

There are some notable cases that have captured the media's attention regarding this highlighted issue. One of which is a case which occurred in the Aceh Tamiang Regional General Hospital in Aceh on June 28 2023. The

¹² Andi Ervin Novara Jaya, Mulyadi A. Tajuddin, Zegovia Parera, Nurul Widhanita Y. Badilla, and Rudini Hasyim Rado. 2022. "Perlindungan Hukum PROFESI Dokter Dalam Menghadapi Sengketa MEDIS." *Jurnal Komunitas Yustisia* 5 (2): 679–90. doi:10.23887/jatayu.v5i2.51747.

¹³ Salindeho, Theresa Almarani, Jeany Anita Kermite, and Caecilia J.J. Waha. "Perlindungan Hukum Terhadap Dokter Atas Kelalaian Dalam Melaksanakan Tugas Yang Berkaitan Dengan Profesi." *Jurnal Fakultas Hukum Universitas Sam Ratulangi* 12. 3 (October 2023).

¹⁴ Tirtana, Meishiana. 2023. "Magister Hukum UPH Hadirkan Narasumber Kompeten, Soroti Perlindungan Hukum Bagi Tenaga Medis Dan Pasien - UPH: Universitas Pelita Harapan - UPH: Universitas Pelita Harapan." UPH. October 17. <https://www.uph.edu/en/2023/10/17/magister-hukum-uph-hadirkan-narasumber-kompeten-soroti-perlindungan-hukum-bagi-tenaga-medis-dan-pasien/>.

¹⁵ Indonesia, Kebijakan Kesehatan. 2024. Ketua Mkdki: Kami Tak Mengetahui Istilah Malpraktek. Accessed September 17. <https://kebijakankesehatanindonesia.net/25-berita/167-ketua-mkdki-kami-tak-mengetahui-istilah-malpraktek>.

malpractice incident occurred after the victim, with the initials RD, gave birth naturally and was attended by a midwife. An hour after the baby was born, the victim was said to have experienced retained placenta, where the baby's placenta did not come out of the mother's womb within 30 minutes of delivery. The victim was eventually referred to the Aceh Tamiang Regional General Hospital (RSUD Aceh Tamiang) for surgery to remove the placenta from her womb. After undergoing surgery following childbirth, the victim experienced abnormal symptoms and severe pain. It was then found that there was a piece of gauze the size of a fist stuck in the victim's genital area, and the gauze was stuck in the victim's genital area for months. It was discovered that during the surgery following childbirth, the medical team of the general hospital allegedly made a mistake, leaving the gauze inside the victim's genital area.¹⁶ Another example is a case which occurred in Palembang on February 4 2022. The incident occurred when the victim, a 8 month old baby, who was suffering from a fever was initially taken by their parents to the hospital. The victim was attended by a nurse, with the initials ND, who had worked at the hospital for 18 years. During the incident, ND was about to replace the baby's IV line. The victim's mother had already reminded the nurse to remove the bandage, but the nurse did not listen and instead used large scissors, which resulted in the victim's pinky finger to be cut

¹⁶ Sitompul, Almaidha. 2023. 5 Kasus Malpraktik Terbaru Di Indonesia Yang Bikin Ngeri. November 24. <https://www.inilah.com/5-kasus-malpraktik-terbaru-di-indonesia-yang-menggemparkan>.

off.¹⁷

Indonesia has been very passionate to develop its healthcare system and the health industry as a whole, with the number of hospitals increasing every year. As of 2022, the number of hospitals in Indonesia amounted to 3072, to which 2561 units are general hospitals, and the remaining 511 units are specialty hospitals. In 2023, the number of hospitals in Indonesia increased to 3155, to which 2636 units are general hospitals, and the remaining 519 units are specialty hospitals.¹⁸ However, due to the high incidence of malpractice cases, although these cases do not go through court proceedings, it has contributed to a negative perception of the medical industry in Indonesia.¹⁹ As a result, many Indonesian citizens, especially those who are middle or upper-class, prefer to go to hospitals in foreign countries. According to Joko Widodo, the President of the Republic of Indonesia, over a million Indonesian citizens chose to seek medical treatment in countries such as Singapore, Malaysia, Japan, Korea, America and Europe.²⁰ He also said that it resulted in a loss amounting to \$11.5 billion dollars or 180 trillion

¹⁷ *ibid*

¹⁸ Sadya, Sarnita. 2023. "Ada 3.072 Rumah Sakit Di Indonesia Pada 2022." Data Indonesia: Data Indonesia for Better Decision. Valid, Accurate, Relevant. dataindonesia.id. April 11. [https://dataindonesia.id/kesehatan/detail/ada-3072-rumah-sakit-di-indonesia-pada-2022#:~:text=Jumlah%20Rumah%20Sakit%20Indonesia&text=Badan%20Pusat%20Statistik%20\(BPS\)%20mencat%20rumah%20sakit%20umum%20\(RSU\)](https://dataindonesia.id/kesehatan/detail/ada-3072-rumah-sakit-di-indonesia-pada-2022#:~:text=Jumlah%20Rumah%20Sakit%20Indonesia&text=Badan%20Pusat%20Statistik%20(BPS)%20mencat%20rumah%20sakit%20umum%20(RSU)).

¹⁹ Dhamanti, I., Rachman, T., & Amiati, M. (2024). Analisis Kasus Malapraktik di Rumah Sakit di Indonesia.

Jurnal Kebijakan Kesehatan Indonesia, 13(2). <https://doi.org/10.22146/jkki.93363>

²⁰ Binekasri, Romys. 2024. Jokowi: 1 Juta Warga Indonesia Masih Berobat Ke Luar Negeri. April 24. <https://www.cnbcindonesia.com/lifestyle/20240424101827-33-532905/jokowi-1-juta-warga-indonesia-masih-berobat-ke-luar-negeri>.

Rupiah. Furthermore, Dr. Effiana from the Bioethics Masters Program of Universitas Gadjah Mada states that “there is a logical need that someone feels that there is a risk and concern about treatment in Indonesia, thus justifying the perception that traveling abroad to receive medical treatment is a rational decision.²¹ From the above statement, it is evident that the healthcare industry is still being doubted by the Indonesian citizens and has not earned the trust of the Indonesian citizens.

However, there still exists a ray of hope for the Indonesian health industry to obtain faith and conviction from its citizens, and that is in the form of the new Indonesian health law, as Law No. 36 of 2009 concerning Health as well as Law No. 29 Year 2004 concerning Medical Practice has been revoked and is replaced by this new Indonesian health law. Therefore, the author hopes to provide clarity for the concerns raised with respect to this newly ratified law in regard to governing medical malpractice to ensure that this country will really reap benefits from this new law.

²¹ Yaputra, Hendrik, and Ninis Chairunnisa. 2024. “1 Juta Warga Indonesia Berobat Ke Luar Negeri, Kemenkes: Layanan Kesehatan Belum Merata.” *Tempo*. Tempo. April 26. <https://nasional.tempo.co/read/1861236/1-juta-warga-indonesia-berobat-ke-luar-negeri-kemenkes-layanan-kesehatan-belum-merata>.

1.2 Formulation of Issues

In regards to the topic of the thesis, the Author will discuss the following formulation of issues:

1. How effective is it in regulating medical malpractice in hospitals, when compared to its predecessors?
2. How effective is the new Healthcare Law in combating and resolving the recurring issues in hospitals in terms of medical malpractice, and will this law can finally earn the trust of Indonesian citizens towards hospitals, leading to an advancement in the development of the healthcare industry?

1.3 Research Purposes

The Author's purpose of writing this thesis is to answer the formulation of issues stipulated above, namely:

- 1 To investigate the effectiveness of the newly established Health Law in regulating medical malpractice to healthcare compared to its predecessors.
- 2 To investigate the effectiveness of this new Law in combating and resolving recurring issues in hospitals in terms of medical malpractice, and to investigate whether this law can become the solution to bring advancements in the development of the healthcare industry.

1.4 Research Benefits

1.4.1 Theoretical Benefits

Theoretically, the Author hopes that this research will give an insight regarding the provisions found in this newly established Healthcare Law and will compare it to its predecessors which have been recently abolished, namely Law No.36 Year 2009 regarding Health as well as Law No. 29 Year 2004 regarding Medical Practice. From this comparison, the Author hopes that this research will successfully outline the benefits that this newly established Healthcare Law contains that its predecessors do not have. Overall, the Author hopes that this research will underline that the new Healthcare Law is prominent in regulating medical malpractice occurring in hospitals around Indonesia compared to its predecessors.

1.4.2 Practical Benefits

Practically, the Author hopes that this research can provide clarity to many individuals, including consumers or healthcare providers, that this new Law will bring countless benefits as well as solutions towards medical malpractice experienced by individuals in Indonesia. Furthermore, the Author hopes that this research would inspire many individuals to have optimism that Indonesia's new Health Law will effectively address the issues concerning medical malpractice within the Indonesian healthcare system and be a positive influence on the country's healthcare system in the future.

1.5 Framework of Writing

This thesis is arranged into five main chapters that will ease the readers to understand the discussion of this thesis.

CHAPTER I: INTRODUCTION

This chapter consists of the introduction, which is further divided into five parts, which are background, research problems, research purposes and research benefits.

CHAPTER II: LITERATURE REVIEW

In this literature review chapter, the Author will divide this chapter into 11 sub-chapters. First, the Author will cover the legal agreement between doctors and patients, followed by the legal protections that patients and doctors can take. Next, the author will cover the history and concept of healthcare law in Indonesia, as well as the concept of medical malpractice and negligence in Indonesia. The author will then cover how medical malpractice is governed in Indonesia according to the previous health laws as well as quality of service that should be upheld in Indonesia's healthcare industry. It is then followed by the rights and obligations of patients, doctors, and hospitals. Lastly, the author will cover the concept of the

Hippocratic Oath, which serves as the promise that doctors should abide in their professional career.

CHAPTER III: RESEARCH METHODOLOGY

This chapter will discuss in general about the type of research, the type of data, data analysis technique and the type of research approach. Followed by the types of research, data, data analysis technique and research approach that the Author uses to discuss the issues in this thesis.

CHAPTER IV: DISCUSSION AND ANALYSIS

The fourth chapter will discuss the research problems along with its analysis. This chapter will be divided into two further sub-chapters and each sub-chapter will answer the respective research question as stipulated in chapter two of this thesis.

The first sub-chapter will consist of analysis on how medical malpractice is regulated in this new law. It is then followed by a comparative analysis between this new law with laws from other countries in regulating medical malpractice, as well as a case analysis to which the author will apply the provisions of the new healthcare law towards the case decision stipulated under chapter two of this thesis. The second sub-chapter will analyze whether this new law does bring benefits to Indonesian citizens, with respect to how the new law governs

medical malpractice in Indonesia.

CHAPTER V: CLOSING

In this last chapter, the Author will explain the conclusion as an answer to the issues that have been analyzed in chapter four. Aside from giving a conclusion, the Author will also call out a number of issues (if found) that has not been addressed in this new law so that the government may issue a new regulation in the future to address and tackle the recurring problems concerning medical malpractice found within hospitals and the healthcare system in Indonesia that the new law has not been able to fulfill.

