

Negligence in the Medical Profession: A Comparative Study of Islamic Law and Indonesian Law

Zul Fahmi ^{a,1,*}, Sopi Ade Fariza ^{b,2}, Nur Wasilah Agustina Mtd ^{c,3}

^a Sekolah Tinggi Agama Islam Negeri Mandailing Natal, Jl. Prof. Dr. Andi Hakim Nst, Pidoli Lombang, Mandailing Natal 22977, Indonesia

^b Sekolah Tinggi Agama Islam Negeri Mandailing Natal, Jl. Prof. Dr. Andi Hakim Nst, Pidoli Lombang, Mandailing Natal 22977, Indonesia

^c UIN Sjech M. Djamil Djambek Bukittinggi, Jl. Gurun Aua, Kubang Putih, Banuhampu, Kota Bukittinggi, Sumatera Barat 26181, Indonesia

¹ zulfahmi1901@gmail.com; ² sopiadefariza@gmail.com; ³ wasila0801@gmail.com

* Corresponding Author

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ABSTRACT

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This paper examines the phenomenon of medical malpractice through the dual lens of Indonesian positive law and Islamic criminal law. Medical malpractice, defined as professional negligence deviating from established medical standards, poses significant legal and ethical challenges when it results in severe patient harm or fatality. In Indonesian positive law, malpractice is regulated through a comprehensive framework, including the Medical Practice Act (UU No. 29 of 2004), the Health Act (UU No. 17 of 2023), the Criminal Code (KUHP), and civil law provisions, which collectively impose administrative, criminal, and civil sanctions. In contrast, Islamic criminal law addresses malpractice within the broader context of safeguarding human life (*hifz al-nafs*) and property (*hifz al-maal*), emphasizing moral accountability through mechanisms such as *diyat*, *qishash*, and *ta'zir*. This study employs a conceptual and normative legal approach to analyze both regulatory systems, highlighting their respective strengths and limitations in addressing professional negligence. The analysis reveals that while positive law ensures legal certainty through codified regulations and formal adjudication processes, Islamic law offers a restorative and flexible framework that integrates ethical and spiritual dimensions into legal accountability. The paper concludes that an integrated approach combining both systems could enhance the regulation of malpractice, ultimately promoting improved patient safety and accountability in medical practice.

1. Introduction

Medical practice is a profession that has a great responsibility in maintaining human health and safety. The trust placed by society in medical personnel is based on competence and strict ethical and legal standards (Sawicki, 2022; Shetty, 2023; Varkey, 2021). However, in practice, failure to fulfill these responsibilities can have serious physical, psychological, and financial consequences for patients and their families. Cases involving negligence or medical actions that are not in accordance with professional standards often become a public concern, especially when the impact leads to death or permanent disability (Ali & Tejada, 2024; Taniguchi et al., 2023; Zutah et al., 2021). This phenomenon emphasizes the importance of a comprehensive study of the concept and implementation of law in dealing with the issue of medical malpractice.

Medical malpractice is not only an issue in the realm of medical professional ethics, but also has a complex legal dimension. In the Indonesian positive legal system, various laws and regulations have regulated the legal aspects of medical malpractice to protect the rights of patients while providing legal certainty for medical personnel. Law No. 36 of 2009 on Health, Law No. 29 of 2004 on Medical Practices, and the Criminal Code (KUHP) are the main bases for assessing and adjudicating medical malpractice cases (Lajar et al., 2020; Pujiyono, 2023). On the other hand, in Islamic criminal law, principles such as *qishash-diyat*, *hudud*, and *ta'zir* also provide an approach to resolving medical

malpractice cases based on justice derived from Islamic law (Apriyani et al., 2024; Savariah & Arifin, 2024). Therefore, analyzing the differences and similarities in positive law and Islamic criminal law regulations is crucial to understanding how these two legal systems respond to medical negligence.

The urgency of this study has increased along with the number of medical malpractice cases in Indonesia that have led to legal disputes and criminal charges against medical personnel. This issue not only concerns justice for victims, but also protection for medical personnel from excessive or unfounded claims. Therefore, this study aims to provide a more comprehensive understanding of medical malpractice, including definitions, categories, and legal approaches used in its resolution. This discussion becomes very relevant, especially in the context of Islamic law and positive law studies, in order to provide greater academic insight in understanding this phenomenon from two different legal perspectives.

Based on the above background, this research examines medical malpractice in the perspective of Islamic criminal law and Indonesian positive law with a focus on the definition and concept of medical malpractice, its types in medical practice, as well as legal regulations that regulate and sanction such cases. This research aims to systematically and comprehensively explain the definition of medical malpractice, analyze its various types and their legal implications, and examine the applicable legal regulations in Indonesian positive law and Islamic criminal law, in order to provide a deeper understanding of the legal response to medical negligence and justice for all parties involved.

2. Literature Review

The literature review in this study includes various relevant literature to understand the concept and implementation of law in medical malpractice cases. Several previous studies have shown that medical malpractice is a complex issue that covers not only legal aspects, but also ethics and standards of the medical profession. The study conducted by Shetty (2023) highlights the importance of legal regulation in preventing and handling medical malpractice cases, emphasizing that an effective legal system must be able to balance between the protection of patients' rights and the protection of medical personnel from unwarranted claims. In the context of positive law in Indonesia, research conducted by Pujiyono (2023) examined various laws and regulations governing medical malpractice and highlighted obstacles in their legal implementation. The study shows that there are still legal loopholes that cause uncertainty in medical dispute resolution.

Meanwhile, the study conducted by Apriyani et al. (2024) discusses the application of Islamic criminal law in dealing with medical negligence. This study highlights how the principle of *qishash-diyat* can be applied in the context of medical malpractice and how Islamic law provides a restorative justice mechanism in resolving such cases, as well as comparing the approaches of positive law and Islamic criminal law in dealing with medical malpractice. The results of this study show that despite fundamental differences in the legal principles used, both legal systems have the same goal, which is to provide justice for all parties involved. Therefore, this research will expand on the analysis of previous studies by digging deeper into the differences and similarities between Indonesian positive law and Islamic criminal law regulations in dealing with medical malpractice.

3. Methods

This research uses normative juridical method to analyze the concept of medical malpractice in the perspective of Islamic criminal law and positive law in Indonesia (Marzuki, 2013). The data sources in this research consist of primary and secondary legal sources. Primary legal sources include the Qur'an, Hadith, and *fiqh* books that discuss the concept of responsibility in medical negligence, as well as Law Number 36 of 2009 concerning Health, Law Number 29 of 2004 concerning Medical Practice, and the Criminal Code (KUHP). Secondary legal sources are books, scientific journals, and previous research relevant to the discussion of medical malpractice in the perspective of positive law and Islamic criminal law.

Data collection techniques are carried out through library research by examining various relevant literature. The data that has been collected is then analyzed using the descriptive-analytical method (Creswell & Creswell, 2018), namely by describing legal regulations related to medical

malpractice and analyzing them from the perspective of positive law and Islamic criminal law. A comparative approach is also used to see the similarities and differences between the two legal systems in handling medical malpractice cases (Benuf & Azhar, 2020), so that a more comprehensive understanding of the application of law to medical malpractice cases in Indonesia can be obtained.

4. Results and Discussion

4.1 Definition and Types of Medical Malpractice Actions

Medical malpractice is a serious violation of the standards of medical care that occurs when a medical professional fails to fulfill his or her professional obligations, either through improperly performed actions or through negligence in performing actions that should have been performed (Ali & Tejada, 2024; Varkey, 2021). According to *Black's Law Dictionary*, as cited by Zutah et al. (2021) the term medical malpractice refers to an act or omission of a health professional that deviates from professional standards, causing injury to the patient. The standards of the medical profession become the main benchmark for assessing whether a medical action can be categorized as malpractice (Sawicki, 2022; Shetty, 2023).

Fremgen in his book, *Medical Law and Ethics* (2009) emphasizes that medical malpractice occurs when a health worker fails to provide services in accordance with established standards, either due to omission or commission. This perspective highlights the importance of the causal relationship between medical actions and patient harm (Pujijono, 2023). Meanwhile, Leape in his research *Error in Medicine* (1994) underlines that these professional errors are often caused by a health system that does not support the consistent implementation of medical service standards, rather than solely due to individual negligence. Another definition in Law No. 29 of 2004 on Medical Practice defines medical malpractice as a violation of the discipline of the medical profession caused by the negligence of medical personnel, which results in physical, psychological, or financial harm to the patient (Jaya et al., 2023). Based on these various views, medical malpractice can be formulated as a violation of medical service standards committed intentionally or due to negligence, which results in patient harm.

Each type of medical malpractice has different characteristics and has different legal implications that need to be understood to identify and prevent patient harm (Taniguchi et al., 2023). This discussion covers medical negligence, professional misconduct, lapses in diagnosis and treatment, and lapses in medical ethics. The following is an explanation of the different types of medical malpractice that often occur in medical practice, see Table 1 below:

Table 1. Types of Medical Malpractices

No.	Medical Malpractice	Explanation
1.	Medical Negligence	Negligence in medical practice is the failure of medical personnel to fulfill their obligations to act according to established standards of medical care (Odunsi, 2023). Negligence can take many forms, such as not making a timely diagnosis, ignoring important symptoms, or failing to provide necessary care. This concept is at the core of many malpractice cases as it reflects a breach of professional standards that causes harm to patients (Miziara & Miziara, 2022).
2.	Professional Misconduct	Professional misconduct includes actions or behaviors that violate the medical profession's code of ethics or applicable laws. Examples are abuse of authority, falsification of medical documents, or performing procedures without patient consent. This type reflects moral and legal violations that can undermine public trust in the medical profession (Mariani et al., 2021).
3.	Lapses in Diagnosis and Treatment	These lapses occur when medical personnel fail to provide an accurate diagnosis or perform treatment that is inappropriate for the patient's condition. Examples include misdiagnosing a serious illness resulting in ineffective treatment, or prescribing the wrong

4. Medical Ethical Lapses	medication. Errors in diagnosis and treatment often have a fatal impact or worsen the patient's condition (Humbert et al., 2023). Medical ethical lapses include violations of the ethical principles on which the medical profession is based. This can involve breaches of patient confidentiality, performing medical acts without valid consent, or conflicts of interest in health care. This type highlights the importance of integrity and ethics in performing medical duties (Fremgen, 2009; Shetty, 2023; Varkey, 2021).
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This definition and classification of medical malpractice provides an important foundation in analyzing how deviations from service standards can lead to legal consequences, both in the Indonesian positive legal system and in the perspective of Islamic criminal law. A comprehensive understanding of the types of medical malpractice is crucial for formulating measures to prevent and uphold justice in the context of health services.

4.2 Medical Malpractice in the Review of Positive Law in Indonesia

Medical malpractice or negligence in health care is a serious issue that receives great attention in Indonesia's positive legal system. Regulations related to medical malpractice are designed to protect patients' rights and uphold the professionalism standards of medical personnel through various laws, such as Law No. 29 of 2004 on Medical Practice, Law No. 17 of 2003 on Health, as well as provisions in the Criminal Code (KUHP) and Civil Code (KUH Perdata) (Jaya et al., 2023). Article 51 of Law No. 29 of 2004 emphasizes that every medical personnel is obliged to practice in accordance with established professional standards and standard operating procedures, where violation of this obligation can result in administrative sanctions, such as written warnings or revocation of practice licenses, as well as criminal sanctions for cases of serious negligence (Apriyani et al., 2024).

Criminal provisions for medical malpractice are also regulated in the Criminal Code, where Article 359 stipulates a maximum imprisonment of five years or a fine for those who cause death due to negligence, and Article 360 provides similar sanctions for acts that cause serious injury (Soesilo, 1988). In addition, regulatory updates through Law No. 17 of 2023 on Health further strengthened patient protection by emphasizing that health workers who violate service standards and cause serious harm may be subject to criminal sanctions, fines, or revocation of practice licenses. This law also emphasizes the importance of implementing a risk management system (Article 282) as well as the obligation of health facilities to have effective patient complaint handling procedures (Article 284), as a preventive effort and internal dispute resolution (Republik Indonesia, 2023).

In terms of civil law, Article 1365 of the Civil Code provides a legal basis for patients to file a lawsuit for compensation against negligent medical personnel or health facilities, with the aim of compensating for material and immaterial losses experienced (Subekti & Tjitrosudibio, 2009). In the judicial process, the court will assess the elements of fault, the causal relationship between negligence and loss, and the amount of loss experienced by the patient (Lajar et al., 2020). Overall, positive legal regulation in Indonesia reflects a systematic effort to balance the protection of patients' rights and the enforcement of professional discipline for medical personnel, which is expected to improve the quality of health services, prevent negligence, and provide a fair and effective dispute resolution mechanism.

4.3 Islamic Law's View on Medical Malpractice

Acts of medical malpractice in Islamic criminal law are seen as serious violations of the principle of *hifz al-nafs* (protection of life), one of the main objectives of *maqashid al-syariah* (Al-Raisūnī, 1995). This principle emphasizes that any action that threatens human life and safety must be prevented and dealt with strictly. Therefore, medical personnel are expected to carry out their duties with trust, prudence and professionalism, in line with the fiqh rule that states "*al-dhararu yuzal*" (all forms of harm must be eliminated) (Ibrahim, 2019).

In the event of negligence that results in injury, loss, or even death of the patient, Islamic law demands moral and legal accountability (Apriyani et al., 2024). Sanctions for medical malpractice in this context can be in the form of *diyat* (financial compensation) or *kafarah* (ransom) for the wrong that has occurred, as regulated in the Qur'anic texts, for example QS. Al-Baqarah (2:178) which stipulates the

obligation to pay diyat in certain cases (Ibn Qudamah, 2004). In cases where the negligence is unintentional (*kbatha*), such as misdiagnosis due to lack of caution, a light diyat is imposed; for example, if the negligence leads to death, the perpetrator is required to pay a diyat of the value stipulated in QS. An-Nisa (4:92). Conversely, if the malpractice is intentional (*amd*), such as performing a medical procedure without the patient's consent that results in a fatal outcome, qishash or severe diyat may be applied, in accordance with the principle of "*an-nafsu bil-nafs*" as stated in QS. Al-Maidah (5:45) (Nur, 2021).

In addition to diyat and *qishash* mechanisms, Islamic criminal law also provides room for the application of *ta'zir*, which is a punishment imposed based on consideration of *maslahat* (public interest) and the severity of the offense. *Ta'zir* allows judges to impose more flexible sanctions (Djalaluddin et al., 2023), which can be in the form of corporal punishment, fines, or revocation of medical practice licenses if the negligence that occurs is considered to threaten the safety of the community at large. This approach is in line with the views of contemporary scholars, such as Wahbah Az-Zuhaili (1984), who emphasize that *ta'zir* is relevant in dealing with malpractice cases that do not reach the level of murder, but still harm patients both physically and mentally.

Islamic texts further emphasise the obligation to maintain professionalism in medical services. The hadith narrated by Abu Dawud, '*Whoever practices medicine without knowledge is responsible for the consequences,*' emphasises that every medical personnel must have adequate knowledge and act in accordance with existing scientific standards (Savariah & Arifin, 2024). This principle is reinforced by the fiqh rule, '*Man istaraka ghairahu bi amrin fa ahlaka, dlamam,*' which states that a person who is entrusted with a task but fails to perform it properly, must bear the consequences for the losses incurred (Ibrahim, 2019).

The Islamic legal view of medical malpractice emphasises the importance of moral, social and legal responsibility in every action of medical personnel. The implementation of sanctions through the mechanisms of *diyat*, *qishash*, and *ta'zir* aims not only to punish the perpetrators, but also to encourage the improvement of the quality of health services and prevent future negligence. This system reflects the balance between justice (*al-adl*) and mercy (*ar-rahmah*) in Islamic law, as well as providing rehabilitation space for perpetrators to correct mistakes that have occurred.

4.4 Comparison of Islamic Law and Positive Law on Medical Malpractice

Both legal systems, Indonesian positive law and Islamic law, demand accountability in medical practice and provide settlement mechanisms for negligence that results in harm to patients. Indonesian positive law regulates medical malpractice through structured legislation, ranging from administrative to criminal and civil sanctions, with an emphasis on the application of operational standards and legal certainty. Meanwhile, Islamic law bases medical responsibility on the principle of *hifz al-nafs* (protection of the soul) and emphasises moral and ethical values in health practices.

The fundamental difference is seen in the approach and legal sources used. Positive law is codified, with clear and unequivocal provisions in Law No. 29 of 2004, Law No. 17 of 2023, as well as provisions in the Criminal Code and Civil Code (Jaya et al., 2023; Lajar et al., 2020; Republik Indonesia, 2023). On the other hand, Islamic criminal law relies on sharia principles and *fiqh* rules, using instruments such as *diyat*, *qishash*, and *ta'zir* that are tailored to the level of intent and the impact of medical negligence. The Islamic legal approach allows for flexibility in sanctions based on *maslahat* considerations and a balance between justice and mercy (Al-Raisūnī, 1995; Apriyani et al., 2024; Djalaluddin et al., 2023; Ibrahim, 2019).

Although the two systems have different bases and methods of enforcement, the end goal remains the same, which is to protect patients and ensure justice in medical practice. Positive law focuses on legal certainty through formal judicial procedures, while Islamic law emphasises moral and restorative responsibility, which provides a more contextualised alternative. The integration of these two perspectives can enrich the understanding and application of regulations in the health sector, creating a system that is not only legally just, but also ethical and humane.

5. Conclusion

The positive law approach in addressing medical malpractice emphasises legal certainty through strict regulations, such as the Criminal Code, Law No. 36 of 2009 on Health, and Law No. 29 of 2004 on Medical Practice. This system provides administrative, criminal, and civil sanctions, which are implemented based on the level of negligence or intent and the impact on the patient. On the other hand, Islamic criminal law focuses on sharia principles, such as *hijz al-nafs* and *hijz al-maal*, as well as sanction mechanisms that include *qishash-diyat*, *ta'zir*, and *kefarah*, which not only aim to punish but also demand moral and restorative accountability. These two approaches, although different in source and methodology, share the same goal of protecting patients and enforcing accountability in medical practice.

In order to improve the handling of medical malpractice cases, synergy between positive legal approaches and Islamic legal values is needed through the integration of restorative justice principles. Positive law reform efforts can be realised through tightening standards and supervision of medical practices, improving ongoing training for medical personnel, and implementing a stricter accreditation system for health facilities. In addition, moral and spiritual education for medical personnel needs to be emphasised to strengthen their ethical responsibilities. The establishment of a specialised body for medical dispute resolution with a multidisciplinary approach, which prioritises mediation and reconciliation, can create a balance between the interests of victims, perpetrators, and society, and encourage the improvement of safer and more integrity health services.

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