

# Criminal Liability of Doctors in Telemedicine Services

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## ABSTRACT

The criminal liability of doctors in telemedicine services is often a focal point in legal proceedings, particularly when adverse outcomes occur for patients or their families. Meanwhile, inaccuracies in the information provided by patients are sometimes overlooked or given insufficient attention. Law No. 17 of 2023 on Health serves as the legal basis for clarifying criminal offences and the criminal liability of doctors in telemedicine services, particularly when issues arise from factors beyond their control, such as technological limitations, incomplete patient information, and the appropriateness of medical practice. This study aims to determine whether adverse outcomes from telemedicine services for patients or their families constitute criminal acts and can be held legally accountable. This research employs a legal methodology with a legal and conceptual approach. The findings reveal that patient dissatisfaction with the service or medical negligence can lead to legal issues classified as criminal acts. Acts considered criminal in telemedicine include those prohibited by law and subject to penalties under the Health Act. Criminal liability arises if a doctor's error results in serious harm, such as adverse outcomes from diagnosis or treatment carried out without adequate physical examination,

thereby subjecting the doctor to criminal sanctions under applicable law.

**Keywords:** Telemedicine, Doctors, Patients, Crime

## INTRODUCTION

Health is a key indicator of the well-being of the Indonesian people, determining the standard of living for every individual (1). Health refers to a person's state of physical, mental and social well-being, and is not merely the absence of disease, enabling them to lead a productive life. Optimal health allows individuals to work more efficiently, participate actively in social life, and pursue better educational and economic opportunities in order to achieve an adequate standard of living. Public health is also a key foundation supporting a nation's well-being and progress, serving as a vital foundation for national development, as a healthy population is the key to achieving a nation's progress and well-being.

The quality of public health in Indonesia is determined not only by the state of public health but is also supported by the availability of healthcare facilities that develop in line with community needs (1). Advancements in healthcare facilities are a crucial component supporting efforts to maintain and improve public health (2). With the advancement of medical science and technology, modern healthcare facilities

equipped with state-of-the-art equipment enable more efficient diagnosis and treatment (3). Good healthcare facilities encompass not only hospitals or clinics with adequate infrastructure, but also involve access to the latest technology, integrated health information systems, and provide maximum benefits for the community (4). With adequate facilities, people can receive faster, more effective, and more affordable care, which in turn supports efforts to improve overall health. The government's efforts to support public health are committed to advancing healthcare services that meet community needs, including telemedicine services.

Telemedicine services in Indonesia have emerged through various applications, such as Halodokter, Alodokter, and others (5). These applications serve as a communication channel or platform between doctors and patients, much like the feature allowing direct messaging to doctors available on the apps. With this feature, users can consult directly with doctors, anytime and anywhere. However, there are some limitations to telemedicine services, namely that not all illnesses can be consulted online. Certain medical conditions require a physical visit to a healthcare facility to necessitate a more direct approach.

In practice, telemedicine has become an innovative solution for expanding access to and improving the efficiency of healthcare services (6), yet its use can also pose criminal risks should undesirable situations arise for either party, whether the patient or the doctor. One of the main risks relates to legal issues arising from errors in diagnosis or treatment. Incorrect diagnosis or treatment in telemedicine services can occur due to limited face-to-face interaction and reliance on technology, which may not always be able to replace a direct physical examination. If a misdiagnosis occurs and impacts patient care, leading to loss or complications, a doctor may face criminal charges for their actions. Based on user reviews of Halodoc and Alodokter as

telemedicine service provider apps, there are many expressions of dissatisfaction with telemedicine services (7). Patients feel aggrieved by doctors in telemedicine services, where the practice is deemed to have erred in providing diagnoses and prescribing treatment intended to cure the patient. In 2022, a new mother named Milka Faisal shared her experience of consulting via the Halodoc app and repeatedly feeling dissatisfied with the service provided (7). Firstly, there was a misunderstanding on the doctor's part regarding the patient's information; whilst her child was suffering from constipation, the doctor prescribed diarrhoea medication. Secondly, the doctor also erred in prescribing the dosage for a 6-month-old child, instead prescribing a dose intended for a 6-year-old. Furthermore, the mother continued to experience the same dissatisfaction when consulting via the Halodoc app, where there was a misdiagnosis of her child's diarrhoea. The doctor's diagnosis was that the child had a nut allergy. However, after consulting directly at the hospital with a paediatrician, it turned out that the diarrhoea was caused by a change in the brand of milk.

The dissatisfaction experienced by users of telemedicine apps such as Halodoc and Alodokter reflects serious challenges within the remote healthcare system. The misdiagnosis and incorrect treatment experienced by Milka Faisal demonstrate that communication between doctors and patients often does not go smoothly. This not only has a negative impact on patients' health but also causes anxiety and a loss of trust in telemedicine services. Errors in prescribing, such as incorrect dosages, increase the risk to patients, particularly for children who are more vulnerable to the side effects of medication. Furthermore, criminal risks may also arise from potential miscommunication leading to ambiguity or unclear meaning. The accuracy of information provided by patients in telemedicine services is crucial to ensuring correct diagnosis and treatment (8). Criminal risks emerge when patients

provide inappropriate information during remote consultations. Inaccuracies in medical information, such as concealing symptoms, providing an incorrect medical history, or downplaying or exaggerating information about their health condition, can influence the decisions made by doctors. If the actions or prescriptions provided based on incorrect information result in negative health consequences for the patient—whether complications or a worsening of their condition—this may lead to legal issues for both parties.

Incorrect diagnosis or treatment resulting in harm or adverse effects on the patient often also impacts the doctor as the party subject to investigation and criminal prosecution (9). Doctors may face criminal charges if undesirable outcomes occur for the parties involved, which may be caused by inaccuracies in the information provided by the patient, whilst the doctor has made their best efforts within the limits of their professional competence (10). The criminal liability of doctors in telemedicine services is often the primary focus of legal proceedings, particularly when events occur that the parties did not wish to see, whilst incorrect information from patients is sometimes overlooked or does not receive the same attention. This is because the legal system's primary focus is on the doctor's professional responsibility to ensure patient safety and security in accordance with applicable service standards (11).

It is important to establish clear guidelines regarding criminal offences and the criminal liability of doctors in telemedicine services, including ensuring accountability when undesirable outcomes arise for patients or their families due to factors beyond their control, such as technological limitations or inaccurate information about the patient's condition. Fair legislation and a deep understanding of the context of telemedicine services can help to direct criminal liability more appropriately to ensure legal certainty to protect their rights and prevent claims from the parties involved.

## MATERIALS & METHODS

This study employs a normative legal research methodology, also referred to as doctrinal legal research, which examines law as a set of rules and norms systematically applied to resolve specific legal issues (12). Normative legal research is appropriate for this study, as it focuses on the analysis of legal provisions governing criminal liability in the context of telemedicine services in Indonesia.

Two complementary problem-solving approaches are utilised in this research. First, the statutory approach, which involves examining all legislation and regulations relevant to the subject matter under study. This approach entails a comprehensive analysis of applicable legal instruments, including Law No. 17 of 2023 on Health, Government Regulation No. 28 of 2024 on the Implementing Regulations of the Health Law, and the Indonesian Criminal Code (KUHP), particularly Articles 359 and 360. By analysing these legislative frameworks, this study identifies the legal basis for establishing criminal offences and enforcing criminal liability against doctors practising telemedicine. Second, the conceptual approach, which refers to legal concepts and doctrines developed by legal scholars and derived from established legal science (13). This approach draws upon foundational concepts in criminal law — including criminal liability, *mens rea*, *dolus*, *culpa*, and the principle of *lex specialis derogat legi generali* — as well as medical law concepts such as inspanning verbintenis and medical malpractice. These concepts serve as the analytical framework for interpreting legal provisions and evaluating the conduct of doctors in telemedicine services.

The legal materials used in this study are classified into three categories (14). Primary legal sources consist of binding legal instruments, including Law No. 17 of 2023 on Health, Government Regulation No. 28 of 2024, the Indonesian Criminal Code (KUHP), the Indonesian Code of Medical Ethics (KODEKI), and relevant ministerial regulations concerning telemedicine

practice. Secondary legal sources comprise scholarly literature that explains and elaborates upon the primary sources, including legal textbooks, academic journal articles, and research publications pertaining to criminal law, medical law, and telemedicine. Non-legal sources encompass materials from disciplines outside the law that provide contextual understanding relevant to the subject (15), including medical literature on telemedicine practice, reports on healthcare service quality, and documentation of public complaints regarding telemedicine applications such as Halodoc and Alodokter.

## RESULT AND DISCUSSION

### **Criminal offences in telemedicine services that result in undesirable consequences for patients or their families**

An act classified as a criminal offence is an act prohibited by law that is punishable by criminal sanctions (16). Based on this description, for an act to be classified as a criminal offence, it must be a prohibited act punishable by criminal sanctions against the perpetrator of the offence or, in the formulation of criminal law, anyone who violates such a prohibition. Telemedicine services enable health consultations that frequently take place without a direct physical examination, which may give rise to various potential risks. Uncertainty regarding the health and safety of telemedicine services in the Milka Faisal case could lead to potential criminal liability if the actions taken fulfil the elements of a criminal offence. These elements serve not only as guidelines for law enforcement but also to protect the rights of patients and healthcare providers. The elements of a criminal offence are as follows:

#### ***Presence of a subject***

Legal subjects play a crucial role in the legal system (17). A natural person represents a human individual with direct legal capacity, whilst a legal person encompasses an entity created by law to function as a legal body with the capacity to act within the legal

sphere (18). Telemedicine services involve a relationship between a doctor and a patient, both of whom possess rights and obligations under the law, and are therefore referred to as legal subjects.

The interaction between doctor and patient is clearly a prerequisite for the fulfilment of the legal subject element in the elements of a criminal offence. The Milka Faisal case illustrates a situation where doctors are often the party facing criminal charges (the perpetrator) due to negligence in performing duties that fail to meet professional service standards, as alleged by the patient (the victim) or their family as the aggrieved party.

#### ***The element of fault***

Fault, which encompasses intent (*dolus*) or negligence (*culpa*), indicates the perpetrator's level of awareness regarding their actions (16). Intentionality (*dolus*) refers to the perpetrator being aware of their actions with the intent and will to carry them out. Negligence (*culpa*) is a form of fault that is less severe than intent but not mere carelessness (19), indicating that the perpetrator did not intentionally commit the act but nevertheless demonstrated undue carelessness or negligence.

The Milka Faisal case illustrates a form of negligence (*culpa*) on the part of the doctor, who has admitted to errors in interpreting the information provided by Milka Faisal; these included misunderstandings regarding dosages for children aged 6 months to 6 years, a misdiagnosis of constipation as diarrhoea, and a diagnosis of a nut allergy when the pain experienced was actually caused by a change in the brand of milk. This case demonstrates that telemedicine services do not necessarily function effectively, particularly in terms of communication, which can lead to harmful misunderstandings and poses the greatest challenge due to the absence of a direct examination of the patient by the doctor. The fulfilment of the elements of negligence in the fulfilment of the elements of a criminal offence in this case indicates that

similar errors, such as negligence (culpa) or even intent (dolus), may continue to occur and have the potential to become serious issues in the future.

### ***Unlawful acts***

Unlawful acts in telemedicine services refer to actions taken by healthcare providers that contravene legal norms and may endanger patients (17). In the context of telemedicine services, misdiagnosis and incorrect dosages are matters that can harm patients and constitute unlawful acts as elements of a criminal offence.

The doctor's actions in the Milka Faisal case regarding incorrect dosages and diagnoses have the potential to harm the patient if no confirmation is sought; for instance, prescribing two bottles of Yakult per day for a six-month-old child and administering medication unsuitable for the pain experienced could lead to a deterioration in health or other undesirable outcomes. These actions may be considered unlawful as the doctor has neglected their duty to provide appropriate medical care and may be held liable for the harm suffered by the patient or their family.

### ***Actions prohibited or required by law***

Actions prohibited or mandated by law/statutory regulations include legal provisions that, in this context, govern doctors and patients in establishing the telemedicine services expected by the public. To create effective and safe telemedicine services, it is essential to ensure that the rights and obligations stipulated in the law are fulfilled by all parties involved (17).

Article 274 of the Health Act requires doctors, in this case medical personnel, when practising, to: Provide healthcare services in accordance with professional standards, service standards, standard operating procedures, and professional ethics, as well as the patient's healthcare needs; Obtain consent from the patient or their family regarding the actions to be taken; Maintain patient confidentiality;

Maintain and store records and/or documents regarding examinations, treatments, and procedures carried out; and Refer the patient to other medical or healthcare personnel possessing the appropriate competence and authority.

Furthermore, Article 562(2) of Government Regulation No. 28 of 2024 on the Implementing Regulations of the Health Law also stipulates that "Medical and Healthcare Personnel as referred to in paragraph (1)(a) and (b) who practise telemedicine must hold a STR and SIP".

Article 277 of the Health Law requires patients to fulfil the following obligations: To provide complete and truthful information regarding their health issues; To comply with the advice and instructions of medical and health personnel; To comply with the applicable regulations for healthcare facilities; and To pay for the services received.

The rights and obligations between doctors and patients are interrelated, whereby the patient's rights are the doctor's obligations and the doctor's rights are the patient's obligations. An act prohibited or mandated by law as a criminal offence in the Milka Faisal case was not complied with by the doctor in providing a standard of care appropriate to the patient's needs, thereby becoming a matter of complaint in the telemedicine service.

### ***Those who violate these provisions face criminal penalties***

Violations committed by doctors as part of the medical workforce in relation to telemedicine services have been explicitly criminalised under the Health Act. Article 306(1) of the Health Act stipulates that disciplinary violations by medical or healthcare personnel, as referred to in Article 304(3), shall be subject to disciplinary sanctions in the form of: A written warning; An obligation to undertake education or training at an educational institution in the field of health or the nearest teaching hospital competent to conduct such training; Temporary

suspension of the STR; and/or A recommendation to revoke the SIP.

Section 313(1) of the Health Act stipulates that “Any medical or health worker practising without holding a STR and/or SIP as referred to in Section 312(c) shall be subject to administrative sanctions in the form of an administrative fine”. Sections 359 and 360 of the Criminal Code also highlight the importance of liability for negligence that may cause harm to others. Non-compliance with these criminal provisions, particularly where it results in serious injury or the death of a person, may be subject to criminal sanctions. However, the principle of *lex specialis derogat legi generali* emphasises that specific legal provisions, such as those contained in the Health Act, will override the general provisions of the Criminal Code (KUHP) when dealing with matters relating to telemedicine services. Article 63(2) of the Criminal Code states that “If an act falls under general criminal provisions but also under specific criminal provisions, only the specific provision shall apply”. Thus, the Health Act provides more specific and relevant provisions for medical practice within healthcare services, meaning that those who violate them face criminal penalties.

Section 440 of the Health Act stipulates that any Medical Practitioner or Healthcare Worker who commits negligence resulting in serious injury shall be liable to imprisonment for a maximum of 3 (three) years or a fine of up to Rp250,000,000.00 (two hundred and fifty million rupiah). Furthermore, if the negligence referred to in paragraph (1) results in death, any medical or healthcare professional shall be liable to imprisonment for a maximum of 5 (five) years or a fine of up to Rp500,000,000.00 (five hundred million rupiah).

The Milka Faisal case highlights the potential criminal liability for doctors who breach legal provisions in telemedicine services, particularly regarding patient safety. Doctors have a duty to provide care in accordance with ethical and professional

standards. Violations such as negligence in diagnosis or treatment that harms patients may be considered legal breaches leading to criminal sanctions. These criminal penalties aim to ensure that healthcare services remain safe, of high quality, and protect patients’ rights. Doctors must exercise caution and understand their responsibilities regarding telemedicine services.

The regulations governing criminal penalties for doctors who commit breaches provide a strong legal basis for establishing the elements of a criminal offence within the context of telemedicine services. Therefore, with the existence of provisions regarding criminal penalties, criminal liability can be enforced against doctors who commit breaches in telemedicine services.

#### ***At a specific time, place, and under specific circumstances***

These elements are crucial in determining criminal offences, as they provide a clear context regarding when and where an act is deemed unlawful. Furthermore, specific circumstances, such as emergency situations or stress, may also influence how an action is assessed within a legal context. However, the provision of telemedicine services is not intended for patients in emergency situations, as patients in such situations naturally require immediate action rather than merely written medical advice (20).

The importance of the elements of time, place, and circumstances in criminal offences lies in their ability to provide a complete picture of the context of the unlawful act.<sup>35</sup> The doctors involved in the Milka Faisal case were unable to provide adequate care due to limitations in information and direct interaction. Consequently, a deep understanding of these elements is crucial for upholding justice and ensuring that each case is handled fairly in accordance with its context.

The case experienced by Milka Faisal serves as a significant example in highlighting the relevance of Article 440 of the Health Act regarding the criminal liability of doctors in

telemedicine services. This provision states that any medical or healthcare professional who commits negligence resulting in a patient suffering serious injury may be subject to imprisonment or a fine. Telemedicine services place a crucial emphasis on the doctor's responsibility to ensure the accuracy of diagnosis, medication dosages, and the patient's understanding of information. Negligence in these areas not only has the potential to endanger the patient's life but may also fulfil the elements of a criminal offence as referred to in Section 440 of the Health Act. Medical negligence on the part of doctors occurs in such cases, where negligence in interpreting patient information and providing incorrect dosages or diagnoses can have fatal consequences. A doctor's actions cannot be categorised as a criminal offence in the context of telemedicine services, even if they result in fatal consequences, provided that the patient and their family respond wisely to the misdiagnosis and incorrect dosage administered, thereby preventing undesirable consequences such as serious injury or death, in accordance with the provisions of Section 440 of the Health Act. However, if the doctor's negligence is not handled wisely by the patient or their family, and results in serious injury or death, then such actions may fulfil the elements of a criminal offence as referred to in Article 440 of the Health Act. In such a situation, the doctor may be held legally liable for their negligence. This underscores the importance of healthcare professionals being thorough in reviewing patient information, determining the correct medication dosage, and providing an accurate diagnosis to avoid adverse effects on the patient's health. On the other hand, patients also have a responsibility to provide clear and precise information during consultations to prevent misunderstandings that could lead to misdiagnosis or incorrect medication dosages. Accuracy on both sides is key to maintaining the quality of

telemedicine services and preventing undesirable outcomes.

The Health Act also regulates other relevant mechanisms for imposing appropriate sanctions in the case of Milka Faisal, who has been found to have committed a breach of professional discipline as stipulated in Article 304(3) or an ethical breach as regulated in the Indonesian Code of Medical Ethics (KODEKI). Doctors who commit serious negligence, such as errors in interpreting patient information or determining medication doses, may be subject to administrative sanctions in accordance with Article 304(3) of the Health Act. This provision addresses professional disciplinary breaches by healthcare professionals, encompassing incorrect actions in the performance of their duties that endanger patient health. These administrative sanctions may take the form of a written reprimand, restrictions on practice, and the revocation of a practising licence, depending on the severity of the violation committed.

The case experienced by Milka Faisal is a concrete example of public complaints regarding telemedicine services sought by patients or their families. The doctor's actions constitute a breach of the law and could be categorised as a criminal offence if the patient takes a firmer stance in prioritising their rights, which are not aligned with the doctor's fully fulfilled obligations. Issues such as this do not always focus solely on doctors failing to fulfil their obligations, but must also consider patients' compliance with their own obligations, particularly matters that support effective communication between doctor and patient in the delivery of telemedicine services.

### **Criminal liability of doctors in telemedicine services in the event of adverse outcomes for patients or their families**

Criminal liability is a concept that ensures that an act committed by a legal person is deemed justifiable in committing a criminal

offence or playing a role in violating the law, for which criminal sanctions may be imposed (16). In the criminal justice system, criminal liability serves as a mechanism to link unlawful acts with legal consequences and ensures that the punishment imposed is commensurate with the perpetrator's actions.

Doctors may be held criminally liable in the event of a breach of the law, whilst still taking into account the doctor's compliance with professional standards, as set out in the Health Act and the Indonesian Code of Medical Ethics, particularly in the provision of telemedicine services. Telemedicine services, as a form of remote healthcare consultation, must also take into account patients' obligations as stipulated in the Health Act. Inaccuracies in providing medical information, such as concealing symptoms, providing an incorrect medical history, or underplaying or exaggerating information about their health condition, may influence the decisions made by the doctor. Patients must also be aware, prior to undertaking an online consultation with an available doctor, that the outcome of the consultation is merely a medical recommendation that should not be acted upon immediately. Given that in emergency situations, patients require immediate action, this is not limited to recommendations or medical advice that may be considered first.

Culpability is a key element of paramount importance in determining criminal liability. In this context, a criminal act does not automatically encompass the aspect of criminal liability, as a criminal act refers more to an act that violates the law and is prohibited by law. Meanwhile, the imposition of criminal sanctions on the perpetrator depends on the presence of the element of culpability inherent in the act (21). If the element of culpability can be proven, then a person may be punished. In the common law system, criminal liability is closely linked to the concept of *mens rea* (criminal intent) and criminalisation, which form an essential basis for determining

whether a person deserves punishment for the criminal act they have committed (22). Furthermore, criminal liability is closely linked to society and serves as a means of maintaining social order. This function is evident in its ability to impose criminal sanctions on offenders, which also acts as a mechanism for social control within society (22).

A doctor's criminal liability in telemedicine services encompasses various aspects, including ethical responsibilities towards patients, families, the community, and peers (23). If a doctor acts contrary to medical disciplinary standards, resulting in misdiagnosis, incorrect dosages—such as in the case of Milka Faisal—or other undesirable outcomes, the doctor may be deemed to have breached professional discipline. The Indonesian Code of Medical Ethics, drafted jointly by professional organisations and the government, serves as a guideline for the minimum standards of conduct that every doctor must adhere to. Violations of this code of ethics may result in disciplinary sanctions, ranging from a warning to the revocation of the Licence to Practise (SIP).

The legal steps that may be taken when a patient feels their interests have been harmed by a doctor's actions suspected of breaching professional discipline are to first lodge a complaint with the Professional Disciplinary Board as stipulated in Article 305(1) of the Health Law. The Professional Disciplinary Board is accountable to the Minister for supporting the duties and functions of the Indonesian Health Council in enhancing the quality and technical competence of the medical and health professions.

The Professional Disciplinary Board plays a vital role in the Indonesian health system, particularly in supporting the duties and functions of the Indonesian Health Council. The Professional Disciplinary Council is established by the Minister to ensure that medical and health personnel practise in accordance with established standards, as well as to improve the quality and technical

competence of their professions. Consequently, the Professional Disciplinary Council is responsible for upholding professional discipline, which includes receiving and verifying complaints, investigating alleged disciplinary breaches, and deciding on the sanctions to be imposed.

A complaint is a notification submitted to the competent authority to address an issue. Article 305(2) of the Health Law states that the complaint referred to in paragraph (1) must, at a minimum, contain the identity of the complainant; the name and address of the medical practitioner's or healthcare worker's practice and the time of the action taken; and the grounds for the complaint.

This provision provides a mechanism for patients to lodge a complaint when they feel they have been wronged by the actions of medical staff. Such a complaints mechanism is vital to ensure that patients' rights are protected and that they have an official channel to seek justice. This complaint must include several key requirements, such as the complainant's identity, the doctor's name and practice address, and the grounds for the complaint. This aims to provide clarity and facilitate the investigation process of the complaint submitted.

The case of Milka Faisal is a clear example of how this provision can be applied. Milka Faisal suffered harm due to a doctor's error in reading patient information, resulting in incorrect dosage and diagnosis. Article 305(2) states that she is entitled to lodge a formal complaint against the doctor so that negligent acts causing harm can be examined and followed up by the Professional Disciplinary Board. Without a complaint being lodged by an individual, the Professional Disciplinary Board cannot take action if a case of telemedicine malpractice is reported by a healthcare provider, whether a doctor or other healthcare professional. This provision also encourages doctors to exercise greater caution in their practice, particularly in telemedicine services where interaction with patients is not conducted face-to-face.

Misdiagnosis is a form of risk in the provision of healthcare via telemedicine (24). The risk of diagnostic or treatment errors in telemedicine services may increase if there is a lack of clear communication between the doctor and the patient. Doctors' discipline and accountability are crucial to ensuring that the services provided to patients meet high professional and ethical standards. Breaches of these standards can not only directly endanger patients but also erode public trust in the healthcare system as a whole. Therefore, it is essential to have clear mechanisms in place to address potential breaches of professional discipline in medical practice, including in telemedicine services where interactions between doctors and patients take place remotely.

The Health Act provides the necessary legal framework for enforcing discipline amongst doctors as medical practitioners and other healthcare workers. The disciplinary sanctions that may be imposed for breaches are intended to encourage doctors, in this context, to be more cautious and responsible in their practice. These sanctions are designed not only to punish breaches but also to provide doctors with an opportunity to enhance their competence through education and training. This is particularly important in the context of evolving healthcare services, including telemedicine, where errors can have serious consequences for patients.

Article 306(1) of the Health Act stipulates that disciplinary violations by medical or healthcare personnel as referred to in Article 304(3) shall be subject to disciplinary sanctions in the form of: A written warning; An obligation to undertake education or training at an educational institution in the health sector or the nearest teaching hospital competent to conduct such training; Temporary suspension of the STR; and/or A recommendation to revoke the SIP.

In the context of the Milka Faisal case, if the doctor providing the telemedicine service is found to have erred in interpreting the patient's information, resulting in incorrect

dosages and diagnoses, this may be considered a disciplinary offence. Milka Faisal's dissatisfaction with the service she received indicates potential negligence or oversight on the part of the doctor. In this instance, if it is proven that the error was caused by a lack of attention or competence in providing telemedicine services, the doctor's actions may be subject to disciplinary sanctions in accordance with the provisions of Article 306. For example, the doctor may be issued a written warning or required to undertake training to enhance their competence in telemedicine practice. Furthermore, if the error is sufficiently serious and has the potential to significantly endanger the patient, there is a possibility that more severe sanctions, such as the suspension of the STR or a recommendation for the revocation of the SIP, may be applied. This demonstrates that the legal system has mechanisms to address cases of malpractice in healthcare services, including within the context of telemedicine.

The Milka Faisal case also highlights the importance of proper documentation and effective communication between doctors and patients in telemedicine practice. Errors in interpreting patient information can arise from a lack of clear information or a lack of direct interaction. Therefore, it is crucial for doctors to ensure they fully understand the patient's condition before providing a diagnosis or treatment. Thus, Article 306(1) of the Health Act serves as a vital legal framework for upholding professional discipline among doctors and protecting the rights of patients such as Milka Faisal. This encourages doctors to continually enhance their competence and adhere to healthcare standards to prevent errors that could harm patients, particularly within the increasingly prevalent practice of telemedicine.

In addition to ethical responsibilities, doctors also bear legal liabilities, including criminal liability in cases of alleged malpractice (24). Any act of negligence or error in providing telemedicine services may lead to legal action. In a criminal context, telemedicine malpractice may

occur when a doctor makes a diagnosis without conducting a direct physical examination of a condition requiring immediate care, thereby contravening the principle of due diligence. Criminal malpractice must fulfil the elements of a criminal offence, such as a reprehensible act and the wrong mental state (*mens rea*), namely intent (*dolus*) or negligence (*culpa*). A doctor's criminal liability arises if there is a provable medical error (4).

Medical malpractice in telemedicine services is established where there is a risk of misdiagnosis if an error or negligence causes harm or injury to the patient<sup>48</sup> due to the limitations of direct interaction between doctor and patient. If a doctor fails to meet expected professional standards, such as providing inadequate information or performing procedures beyond their competence, resulting in the patient's health deteriorating or even causing complications, such actions may be deemed malpractice. This has the potential to lead to serious legal consequences, whereby the doctor may be held criminally liable for negligence causing harm to the patient or their family. Section 440 of the Health Act stipulates the following criminal penalties: Any medical or healthcare professional who commits negligence resulting in serious injury shall be liable to imprisonment for a maximum of 3 (three) years or a fine of up to Rp250,000,000.00 (two hundred and fifty million rupiah).

Furthermore, if the negligence referred to in paragraph (1) results in death, any medical or healthcare professional shall be liable to imprisonment for a maximum of 5 (five) years or a fine of up to Rp500,000,000.00 (five hundred million rupiah).

Section 440 of the Health Act sets out criminal penalties for medical or healthcare personnel who commit negligence resulting in serious injury or the death of a patient. In the case of Milka Faisal, if an error occurred in reading the patient's information, leading to incorrect dosage and diagnosis, such an act could be considered negligence that has the potential to cause serious harm to the

patient in relation to matters not desired by the patient or their family. If it is proven that a doctor has been negligent in providing telemedicine services, they may be subject to sanctions in accordance with the provisions of this article, namely imprisonment for a maximum of three years for serious injury or five years for death, as well as a significant fine.

Telemedicine services, which emphasise that interaction between doctor and patient is not conducted in person, present additional challenges in ensuring the accuracy of diagnosis and treatment. Therefore, Article 440 of the Health Act serves as a reminder that doctors must continue to adhere to professional standards even when operating remotely. Errors in providing a diagnosis or treatment via telemedicine, such as in the case of Milka Faisal, can result in legal consequences for the medical professionals involved.

This case also highlights the need for proper documentation in medical records during the telemedicine process, as healthcare requires every interaction to be properly documented to protect all parties involved. Should complaints or issues arise, documentation can serve as crucial evidence in legal proceedings. Thus, Article 440 of the Health Act not only provides legal protection for patients such as Milka Faisal but also encourages healthcare professionals to act with greater care and professionalism in telemedicine services. It is vital to maintain public trust in the healthcare system and ensure that remote healthcare services are conducted in a safe and effective manner. Interactions between doctors and patients in telemedicine services conducted remotely present a challenge in upholding professional ethics, which are becoming increasingly complex. Doctors must ensure that the services provided meet professional standards and do not disregard patients' rights, even though technological limitations may pose obstacles. In this regard, the application of the principles of restorative justice is highly relevant as an

approach focused on restoring the relationship between doctor and patient.

Disciplinary breaches by medical or healthcare personnel will be processed by the Professional Disciplinary Board, and where criminal offences are suspected, law enforcement authorities must prioritise a restorative justice approach (25). Article 310 of the Health Act states that "where a medical practitioner or healthcare worker is suspected of having committed a professional error causing harm to a patient, disputes arising from such errors shall first be resolved through alternative dispute resolution outside the courts".

Restorative justice is a process focused on restoration, involving stakeholders to collectively identify the impact, needs and obligations, whilst ensuring everything is as fair as possible (26). Restorative justice emphasises the importance of restoring the relationship between doctor and patient, as well as providing space for both parties to communicate openly about the issues faced. Most medical disputes do not occur intentionally, but are more often triggered by communication issues between doctors and patients. The challenges of remote communication in telemedicine services can further increase the potential for misunderstandings. The resulting harm is generally caused by negligence or even purely unintended accidents (pure accidents) (26).

The principle of *inspanning verbintenis* establishes that a doctor's responsibility is to seek the best possible outcome based on their professional competence, rather than promising absolute cure (*resultaat verbintenis*) (27). Under this approach, doctors are not merely regarded as liable for errors, but also as individuals entitled to legal protection whilst performing their duties to the best of their ability. Doctors are entitled to protection from unfair legal claims, particularly when they perform their professional duties in good faith. Within the framework of restorative justice, it is important to recognise that many medical disputes arise not from malicious intent, but

from unintentional errors or shortcomings within the system.

Restorative justice enables doctors to explain the situation and defend their rights within the legal process. This can help reduce the negative stigma surrounding doctors and create a more supportive environment for them to practise medicine with confidence. The application of restorative justice in the resolution of medical disputes can also strengthen the relationship between healthcare professionals and the community. By involving all parties in the conflict resolution process, including patients and their families, restorative justice creates an opportunity to understand one another's perspectives. This process focuses not only on compensation or punishment, but also on repairing relationships damaged by medical disputes. When doctors feel valued and protected in carrying out their duties, they will be more motivated to provide quality care to patients. Thus, restorative justice not only delivers justice for patients but also protects the rights of doctors as professional healthcare providers.

Medical disputes brought by patients or their legal advisers to court also frequently face difficulties in proving whether the side effects experienced by the patient were caused by medical negligence rather than medical risk, due to a lack of understanding of medical discipline. Only the doctor themselves fully understands whether the incident was caused by medical negligence or medical risk. Although the doctor is ultimately found not guilty, this still has a significant impact on the doctor's reputation, the psychological burden on the family, and the loss of patient trust. This is a crucial foundation in striking a balance between patients' rights and legal protection for doctors in telemedicine services.

The criminal liability of doctors, as medical professionals playing a vital role in providing telemedicine services, entails not only moral and professional responsibilities but also legal liabilities. The Indonesian legal system distinguishes between two

main forms of liability: liability for breaches of professional discipline before the Professional Disciplinary Board, and criminal liability (Gunawan, 2023). These two forms of liability aim to ensure that doctors practise medicine ethically and professionally, whilst also providing legal protection for patients who may be harmed by errors or negligence in medical care.

## **CONCLUSION**

Telemedicine services that result in outcomes undesirable to the patient or their family constitute a criminal offence if they fulfil the elements of such an offence. Acts classified as criminal offences are those prohibited by law and punishable by criminal sanctions; that is, a doctor providing telemedicine services commits a prohibited act and is liable to criminal punishment, as is the subject of the criminal offence who commits it, or, in the formulation of criminal law, "anyone who violates the provisions set out in the Health Act".

The criminal liability of doctors in telemedicine services in the event of undesirable outcomes for the patient or their family is determined by considering the doctor's duty to comply with professional standards and the patient's best interests in the performance of their duties. Criminal liability of doctors in telemedicine services arises if the element of *mens rea* is proven—whether intentionally or through negligence—failing to meet the expected standards of care, such as a doctor treating a patient requiring immediate in-person care contrary to the professional standards of care set out in the Health Act, thereby posing a risk to patient safety. The Health Act stipulates criminal sanctions for breaches of professional discipline and negligence in the form of malpractice. Furthermore, the Professional Disciplinary Council shares the duties and functions of the Indonesian Health Council in enhancing the quality and technical competence of the medical and health professions, as regulated by the Health Act, whilst prioritising a

restorative justice approach in cases of professional disciplinary breaches.

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### **REFERENCES**

1. Sukertayasa IMA, Arjawa A. GP. Perlindungan Hukum Pasien Dalam Layanan Konsultasi Kesehatan Online. *J Huk Kesehat Indones* [Internet]. 2023 Oct 28;3(02):81–90. <https://doi.org/10.53337/jhki.v3i02.99>
2. Hamzah IF. Telekesehatan dan telemedisin: perspektif hukum kesehatan. *J Ilmu Sos Dan Pendidik*. 2024;2(2):125–31.
3. Andrianto W, Athira AB. Telemedicine (Online Medical Services) Dalam Era New Normal Ditinjau Berdasarkan Hukum Kesehatan (Studi: Program Telemedicine Indonesia/Temenin di Rumah Sakit dr. Cipto Mangunkusumo). *J Huk Pembang* [Internet]. 2022 Mar 31;52(1):220–50. <https://doi.org/10.21143/jhp.vol52.no1.3331>
4. Gunawan A. Pengantar Sistem Informasi Kesehatan. Malang: Literasi Nusantara Abadi Grup; 2023.
5. Primavita S, Alawiya N, Afwa U. Tanggung Jawab Hukum Dokter Dalam Pelayanan Telemedicine. *Soedirman Law Rev*. 2021;3(4):580–98. <https://doi.org/https://doi.org/10.20884/1.slr.2021.3.4.103>
6. Haleem A, Javaid M, Singh RP, Suman R. Telemedicine for healthcare: Capabilities, features, barriers, and applications. *Sensors Int* [Internet]. 2021;2:100117. <https://doi.org/10.1016/j.sintl.2021.100117>
7. Quora. Bagaimana kesan kamu jika pernah menggunakan aplikasi Halodoc ataupun Alodokter [Internet]. id.quora.com. [cited 2024 Aug 25]. <https://id.quora.com/Bagaimana-kesan-kamu-jika-pernah-menggunakan-aplikasi-Halodoc-ataupun-Alodokter> (accessed 2024 Aug 25)
8. Kusumastuti W, Budiyan RT. Keabsahan Layanan Telemedisin terkait Surat Keterangan Sakit Online dalam Persepsi dan Ekspektasi Pengguna. *MEDIA Kesehat Masy Indones* [Internet]. 2023 Dec 1;22(6):352–7. <https://doi.org/10.14710/mkmi.22.6.352-357>
9. Agustina Z, Hariri A. Pertanggung jawaban Pidana Atas Kelalaian Diagnosa Oleh Dokter Hingga Mengakibatkan Kematian Anak Dalam Kandungan. *IBLAM LAW Rev* [Internet]. 2022 May 31;2(2):108–28. <https://doi.org/10.52249/ilr.v2i2.79>
10. Sumeru FAK, Tanawijaya H. Inspanning verbintenis dalam tindakan medis yang dikategorikan sebagai tindakan malpraktek. *J Huk Adigama* [Internet]. 2022;5(2):490–512.
11. Azhar M, Handayani U. Perlindungan Hukum Terhadap Korban Malpraktik Layanan Kesehatan Berbasis Telemedicine. *Law, Dev Justice Rev* [Internet]. 2023 Apr 24;6(1):51–65. <https://doi.org/10.14710/ldjr.6.2023.51-65>
12. Soerjono S, Mamudji S. Penelitian Hukum Normatif, Suatu Tinjauan Singkat. Depok: Rajagrafindo Persada; 2017.
13. Marzuki PM. Penelitian Hukum. Jakarta: Kencana; 2016.
14. Ibrahim J. Teori dan Metodologi Penelitian Hukum Normatif. Malang: Bayumedia; 2006.
15. Sunggono B. Metodologi penelitian hukum: suatu pengantar [Internet]. PT RajaGrafindo Persada; 1997.
16. Sianturi S. Asas-Asas Hukum Pidana Indonesia dan Penerapannya. Jakarta: Alumni Ahaem-Petehaem; 1996.
17. Sianturi S. Asas-Asas Hukum Pidana. Jakarta: Stora Grafika; 2002.
18. Kansil C. sistem pemerintahan Indonesia. IKAPI; 1983.
19. Sudarto. Hukum Pidana I. Semarang: Badan Penyediaan Bahan-Bahan Kuliah Fakultas Hukum Universitas Diponegoro; 1987.
20. Prasetyo A, Prananingrum DH. Disrupsi Layanan Kesehatan Berbasis Telemedicine: Hubungan Hukum dan Tanggung Jawab Hukum Pasien dan Dokter. *Refleks Huk J Ilmu Huk* [Internet]. 2022 Jun 8;6(2):225–46. <https://doi.org/10.24246/jrh.2022.v6.i2.p225-246>
21. Toule ERM, Sopacua MG. Pertanggungjawaban pidana aparat kepolisian yang melakukan kekerasan terhadap demonstran. *TATOHI J Ilmu Huk*. 2022;2(1):79–90.
22. Syahrin A, Anggusti M, Alsa AA. Dasar-dasar Hukum Pidana: Suatu Pengantar

- (Buku Kesatu Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana) [Internet]. Merdeka Kreasi Group; 2023.
23. Watulingas AM, Kristanto EG, Waha CJ. Implementasi Perlindungan Hukum Profesi Dokter Terhadap Layanan Telemedicine di RSUP Prof. Dr RD Kandou Manado Med Scope J. 2023;5(2):247–52.
24. Ernawan DS. Tanggung Gugat Dokter Akibat Kesalahan Diagnosa Terhadap Pasien Dalam Layanan Kesehatan Telemedicine. *Jurist-Diction*. 2022;5(5):1711–24.
25. Nurhasanah N, Yusuf H. Penyelesaian Sengketa Medik melalui Restorative Justice untuk Memberikan Keadilan bagi Pasien dan Dokter. *J Intelek Dan Cendekiawan Nusant*. 2024;1(5):8157–72.
26. Zehr H. *Changing Lenses: A New Focus for Crime and Justice* [Internet]. Herald Press; 1990. (Christian Peace Shelf).
27. Sutarno. *Etikolegal: Hubungan Dokter-Pasien dalam Pelayanan Kesehatan*. Surabaya: MIC Publishing; 2017.
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