
Literature Review: Law of Evidence of Medical Crimes in Indonesia Based on Law No. 8 of 2010

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Abstract

This literature review examines the evidentiary law relating to medical criminal offenses within the Indonesian legal framework. The intersection of specialized medical knowledge and established legal principles presents unique challenges in substantiating culpability when medical interventions result in adverse patient outcomes. Proving such offenses requires a nuanced understanding of complicated medical procedures, standards of care, and a clear demonstration of causation, compounded by adherence to Indonesian criminal procedure, particularly concerning the admissibility and weight of evidence. The Indonesian criminal justice system operates on the principle of minimum evidence (at least two valid pieces of evidence) as specified in Article 183 of the Criminal Procedure Code (KUHAP), with Article 184 KUHAP delineating admissible evidence types: witness testimony, expert testimony, documentary evidence (including medical records and *Visum et Repertum*), indications, and the defendant's statement. The judiciary employs a free evaluation of evidence. Key evidentiary aspects in medical criminal cases include the burden of evidence resting on the public prosecutor, the critical role of medical records, and the indispensable nature of expert testimony. The Indonesian Medical Disciplinary Council (MKDKI) findings also play a role. Notably, Law No. 17 of 2023 concerning Health introduces significant procedural changes, mandating a recommendation from the relevant professional disciplinary council before criminal sanctions can be imposed on healthcare professionals, thereby formalizing the council's pre-prosecutorial involvement. This review synthesizes existing literature and legal frameworks to offer a comprehensive understanding of the current evidentiary landscape and identify areas for enhancing fair and effective legal processes for medical criminal offenses in Indonesia.

Keywords: *Medical Criminal Offenses, Evidentiary Law, Indonesia, Burden of Evidence.*

INTRODUCTION

The increasing legal scrutiny of medical practice in Indonesia has highlighted the law of evidence in medical crimes. The intersection of highly specialized medical knowledge with legal principles poses unique challenges in establishing culpability when medical interventions result in adverse patient outcomes. Understanding the intricacies of the law of evidence in this context is critical to upholding justice and ensuring accountability in the health care system.

Proving medical crimes is inherently complex. It requires an understanding of complex medical procedures, the standards of care expected of health professionals, and a clear demonstration of a link between the deviation from these standards and harm to the patient. This complexity is compounded by the need to comply with Indonesian criminal procedure principles, particularly regarding the admissibility and weight of evidence.

This literature review aims to provide a comprehensive analysis of the law of evidence as it applies to medical crimes in Indonesia. It will explore key legal principles, examine the types of evidence commonly presented in such cases, and discuss the challenges faced in their application. It will further consider the impact of recent legislative developments, particularly Law No. 17 of 2023 on Health, on the evidentiary landscape. By synthesizing the existing literature and legal framework, this review seeks to offer a nuanced understanding of the

current state of the law and identify potential areas for improvement in ensuring a fair and effective legal process for dealing with medical crimes in Indonesia.

METHOD

This research is a normative legal research using a literature review approach. The data in this study are sourced from secondary legal materials, including scientific publications, law journals, textbooks, research results, and other literature relevant to the law of medical criminal evidence in Indonesia. Data collection was carried out through a systematic literature study, namely by identifying, selecting, and analyzing legal materials and related literature. The collected data were then analyzed qualitatively to gain an in-depth understanding of the legal landscape of evidence, the challenges faced, the types of relevant evidence, and the latest regulatory developments, which were then synthesized to formulate conclusions and recommendations.

RESULTS AND DISCUSSION

General Principles of Legal Evidence in Indonesian Criminal Law:

The Indonesian criminal justice system operates on the principle of minimal evidence (minimum bewijs). This fundamental principle, enshrined in Article 183 of the Criminal Procedure Code, stipulates that criminal sentencing requires the presentation of at least two pieces of valid evidence that convince the judge of the defendant's guilt. This requirement underscores the importance of corroborating evidence in criminal proceedings. Article 184 of the Criminal Procedure Code outlines five categories of evidence that are admissible in Indonesian criminal courts:

1. Witness Testimony: Information given by an individual who has direct knowledge of the events at issue.
2. Expert testimony: Opinions and analysis provided by individuals recognized as having specialized knowledge in a relevant field, such as medical professionals in medical criminal cases.
3. Letters: Written or recorded materials, including medical records, forensic reports (Visum et Repertum), and other relevant documents.
4. Instructions: A conclusion drawn from established facts that can lead to a conclusion about the event in question.
5. Defendant's Statement: Statements made by the defendant during the legal process.

Indonesian law adheres to the principle of independent evaluation of evidence (asas bebas), as stated in the snippet. This means that judges are not bound by a rigid hierarchy of evidence or predetermined rules regarding its weight. Instead, they are tasked with assessing the credibility and probative value of each piece of evidence based on their own reasoned considerations and beliefs, aimed at establishing the truth of the matter.

The primary objective of the criminal process in Indonesia is to ensure material truth. This signifies the court's obligation to uncover the true facts of the case, going beyond mere formal legal compliance to achieve a substantive understanding of what happened. The process of evaluating evidence is thus directed towards achieving this material truth.

Aspects of Evidence in Medical Crimes

1. *Burden of Proof*

In Indonesian criminal law, the fundamental principle is that the burden of proof lies with the public prosecutor to show the guilt of the accused beyond a reasonable doubt. This means that the public prosecutor must present sufficient evidence to convince the court that all elements of the alleged medical crime have been met.

Specifically, in cases of alleged medical malpractice that escalate to a crime (usually through negligence causing harm), the prosecution must prove that the health care provider failed to meet the accepted standard of care expected of a reasonably competent professional under similar circumstances, and that the deviation from this standard of care proximately caused the patient's injury or death.

There are significant challenges that patients (or their families) face in meeting this burden of proof. There is often a significant asymmetry of information and expertise between patients and medical professionals. Patients may lack the medical knowledge to understand what constitutes a deviation from the standard of care or to effectively gather and present complex medical evidence.

Although the general rule places the burden of proof on the prosecutor, the concept of reverse burden of proof. However, this is not a standard approach in Indonesian criminal law, and its application in medical criminal cases is likely to be limited to very specific circumstances, if any, and will require a strong legal basis.

2. *Medical records*

Medical records are an important form of documentary evidence (Letter) and are generally acceptable under Article 184 of the Criminal Procedure Code. These records serve as a contemporary record of the patient's medical history, examination findings, diagnosis, treatment plan, and procedures performed.

Legal requirements for medical records to be complete, accurate, and timely recorded. These requirements are often detailed in specific health regulations, which will likely be issued under the new Law No. 17 of 2023. Proper recording is essential for medical records to be considered reliable and to have significant evidentiary value. Medical records are essential in establishing the sequence of events leading to an alleged crime, documenting specific medical procedures performed, and providing evidence of a patient's condition before, during, and after treatment.

That electronic medical records (Electronic Medical Records or EMR) are also legally recognized as valid evidence in Indonesia, especially with the advancement of laws governing electronic information and transactions, such as Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE). Although medical records are undeniably valuable, their evidentiary weight is ultimately subject to the judge's assessment based on their completeness, accuracy, and consistency with other evidence presented in the case.

3. *Expert Statement*

In medical criminal cases, expert testimony from medical professionals is essential. These experts have the specialized knowledge necessary to explain complex medical issues, interpret medical records, and establish applicable standards of care to the court. That expert opinion is admissible under Article 184 of the Criminal Procedure Code. To qualify as a medical expert, an individual usually needs to demonstrate relevant medical qualifications, experience, and expertise in a specific area of medicine relevant to the case.

4. *Indonesian Medical Discipline Honorary Council (MKDKI)*

The MKDKI is an autonomous body established under Law Number 29 of 2004 (now repealed but its function may be continued under the new law) to investigate and prosecute alleged violations of medical discipline and ethics by doctors and dentists. The

MKDKI process for receiving complaints, conducting investigations, and issuing decisions regarding disciplinary violations. This process is usually internal to the medical profession.

The legal status and evidentiary value of MKDKI decisions in formal criminal proceedings have been the subject of debate and inconsistent interpretation in Indonesian jurisprudence. Some argue that MKDKI findings should be considered expert opinions, providing valuable insight into whether a medical professional's actions deviate from the standard of care. Others argue that MKDKI's role is primarily disciplinary, and its decisions may not automatically constitute formal legal evidence in criminal trials.

The significant legal impact of Law Number 17 of 2023, which in Article 308(1) requires that before criminal sanctions can be imposed on health professionals for alleged unlawful acts during the provision of health services, recommendations must first be sought from the relevant professional disciplinary board (possibly including the MKDKI for medical doctors). This new provision increases the formal role of professional medical bodies in the early stages of handling potential medical crimes.

5. *Visum and Repertum*

Visum et Repertum is a formal written report prepared by a forensic medical expert at the request of law enforcement officials (police or prosecutors) to document the findings of a medical examination conducted in the context of a criminal investigation. It is an important piece of evidence in cases involving physical injury or death.

That Visum et Repertum has legal standing as a form of expert testimony (because it reflects expert medical opinion) and documentary evidence (because it is a written report) based on the Criminal Procedure Code. Its main role is to establish the nature and extent of injuries, determine the cause of death if applicable, and provide expert medical opinion that can help link the findings to alleged medical negligence or intentional acts. The admissibility and weight of Visum et Repertum depend largely on whether the report is prepared following proper forensic medical procedures and upon official request from law enforcement officers.

6. *Other Forms of Evidence*

In addition to medical records, expert testimony, and the Visum et Repertum, other forms of evidence may be relevant in proving a medical crime. Witness testimony from nurses, other medical staff, or family members who may have observed the events leading up to the alleged act. In certain cases, forensic evidence such as toxicology reports (to detect poisoning or medication errors) or other laboratory findings may also be crucial.

Impact of Law Number 17 of 2023 on the Law of Evidence in Medical Crimes:

Law No. 17 of 2023 on Health, after repealing the previous major health law, introduces significant changes that are likely to impact the law of evidence in medical crimes. While its full implications are still developing, several provisions are worth noting.

The new law does not explicitly redefine medical malpractice or negligence in a way that fundamentally changes its conceptual understanding. However, the emphasis on professional standards, standards of care, and standard operating procedures will likely play a significant role in determining whether there has been a departure from expected conduct, which is central to proving negligence.

A significant change is the explicit requirement in Article 308(1) to obtain a recommendation from a professional disciplinary board (such as the MKDKI for medical doctors) before criminal sanctions can be imposed on a health professional for alleged unlawful acts committed in the course of providing health services. This provision introduces a mandatory pre-prosecu-

tion step that will rely heavily on the investigative and assessment processes of these professional bodies. The evidence gathered and conclusions reached by the disciplinary board will likely form an important component of the evidentiary landscape in any subsequent criminal proceedings.

The new legal provisions on patients' rights and access to information may indirectly impact the collection of evidence by patients alleging medical crimes. Enhanced rights to information about their health condition, treatment and medical records may empower patients to collect and present evidence more effectively in legal proceedings. The repeal of Law No. 29 of 2004 and Law No. 36 of 2009 means that the jurisprudence based specifically on these laws on the issue of evidence in medical cases will need to be re-evaluated in light of the new legal framework. Courts will likely need to determine the extent to which precedents set under the repealed laws remain applicable under Law No. 17 of 2023.

CONCLUSION

Proving medical crimes in Indonesia is a complex process, requiring a combination of medical and legal understanding, as well as an appreciation of definitions such as medical malpractice and negligence in the context of criminal procedure law. Essential challenges include medical complexity, information asymmetry, issues of causality, and distinguishing negligence from inherent risk, in addition to the potential for a "conspiracy of silence". Various crucial evidence tools are used, including medical records as primary documentary evidence, expert testimony (including the views of the MKDKI) as medical interpretation, and Visum et Repertum for forensic findings. Law Number 17 of 2023 has formally strengthened the role of professional disciplinary bodies at the pre-prosecution stage.

To improve the legal framework, legislative clarification of the definition of malpractice/negligence, affirmation of the weight of proof and the procedural role of the MKDKI, standardization and digitization of medical records, and specific training for law enforcement officers related to medical law and evidence are recommended. The development of specific legal procedures for medical criminal cases and increasing patient access to medical information are also important. These efforts are vital to achieving a fair legal system, protecting patient rights, and ensuring the accountability of health workers, especially in the face of recent legislative changes.

BIBLIOGRAPHY

- Alfina, ST, & Mangesti, YA (2025). The Role of the Professional Disciplinary Council in Resolving Medical Disputes Reviewed from Law Number 17 of 2023 Concerning Health. *Quantum Juris: Journal of Modern Law*, 7(1).
- Apnita, S. (2017). The process of proving medical malpractice resulting in patient death (Analysis of Supreme Court Decision No: 79/PK/PID/2013) [Thesis, Muhammadiyah University of North Sumatra].
- Darmawan, RF, Soewondo, SS, & Alwi, S. (2021). The Use of the Reverse Burden of Proof Principle as a Settlement of Cases of Errors Committed by Doctors. *Sasi*, 27(2), 136-148.
- Descaperine, M., Zarzani, TR, Anwar, Y., Sinaga, HA, & Fauzan, F. (2020). New Autopsy Evidence Method in Murder Cases. In *Scenario (Seminar of Social Sciences Engineering and Humaniora)* (pp. 558-563).

- Djarmiko, DSA (2023). The Probative Power of Medical Records as Evidence in Criminal Cases (Doctoral Dissertation, Muhammadiyah University of Surabaya).
- Ernika, KR, & Sudibya, K. (2018). Analysis of Civil Liability of a Doctor in Malpractice Case. Kertha Semaya: Journal of Legal Science.
- Gede, IK (2017). Decision of the Indonesian Medical Disciplinary Honorary Council as Evidence in Criminal Procedure Law. *Yuridika*, 32(1).
- Gultom, H. J., Halawa, I., & Sidi, R. (2023). An Evidentiary Management Of Medical Error Elements In The Field Of Beauty And Aesthetics. *Journal of Economics*, 12(02), 1338-1342.
- MZ, PSC, & Sidi, R. (2025). Professional Ethics and Health Law in the Digital Era and the Challenges of Patient Medical Data Protection in Electronic Medical Record Systems. In *International Conference on Artificial Intelligence, Navigation, Engineering, and Aviation Technology* (Vol. 2, pp. 82-89).
- Nadriana, L. (2015). Proving Malpractice Cases in Indonesia. *Lex Publica*, 2(1), 239-254.
- Pangaribuan, R., & Sembiring, TB (2024). Legal Review of the Implementation of Informed Consent in High-Risk Medical Procedures in Indonesia Based on Health Law No. 17 of 2023. *Law Synergy Conference*, 1(1), 263-271. Taken from <https://conference.sinergilp.com/index.php/lsc/article/view/37>
- Radinda, F., & Nurhafifah, N. (2021). THE FUNCTION OF MEDICAL RECORDS AS LETTERED EVIDENCE IN DISCLOSING MEDICAL MALPRACTICE (A Study in the Jurisdiction of the Meulaboh District Court). *Scientific Journal of Criminal Law Students*, 5(3), 414-422.
- Risdawati, I., & Zarzani, TR (2023). Juridical Review Of Health Service Facilities Based On Law No 17 Of 2023. In *International Conference on Health Science, Green Economics, Educational Review and Technology* (Vol. 5, No. 1, pp. 15-20).
- Rokayah, S., & Widjaja, G. (2022). Negligence and Medical Malpractice. *Cross-border*, 5(1), 463-473.
- Siregar, R., & Krisna, R. (2023). Legal Analysis of the Power of Forensic Expert Evidence in Serious Assault Crimes. *INNOVATIVE: Journal Of Social Science Research*, 3(4), 9337-9349.
- Syarifudin, S. (2024). Problems of proof in criminal acts of medical malpractice reviewed from Law Number 17 of 2023 concerning health. *Justitia et Pax*, 40(2), 295-330.
- Tarigan, DJR, Zarzani, TR, & Siregar, MA (2025). LEGAL ANALYSIS OF THE EVIDENCE ASPECTS IN DEFAMATION CASES. *International Journal of Synergy in Law, Criminal, and Justice*, 2(1), 497-504.
- Utami, GA, Tajuddin, MA, Klau, RG, & Fahmi, MS (2022). Legal Review of Medical Records as Evidence of Malpractice. *Jurnal Komunitas Yustisia*, 5(3), 498-503.
- Widhiantoro, DC (2021). Legal aspects of medical malpractice in Indonesian legislation. *Lex Privatum*, 9(9).
- Zarzani, TR, Ismaidar, I., & Sirait, AR (2024). Criminal Law Policy Against Corporations for the Occurrence of Medical Malpractice by Doctors Working in Hospitals. *Innovative: Journal*

Of Social Science Research,
5604. <https://doi.org/10.31004/innovative.v4i3.11041>

4(3),

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