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## Legal Protection for Doctors Providing Health Services: A Study of Decision Number 365 K/Pid/2012

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### Abstract

Legal protection for doctors in the provision of health care services remains an important issue within the Indonesian legal system. This study analyzes the application of *the principle of lex posterior derogat legi priori* in Supreme Court Decision Number 365 K/Pid/2012 as well as the legal protection afforded to doctors. Objectives: a. To determine how *the principle of lex posterior derogat legi priori* is applied in the case of Supreme Court Decision Number 365 K/Pid/2012. b. To determine how legal protection is provided to doctors who deliver medical services to patients. The method used is normative juridical research with a statutory approach, a conceptual approach, and a case study of Supreme Court Decision Number 365 K/Pid/2012. Results: In Supreme Court Decision Number 365 K/Pid/2012, a normative conflict occurred between the Criminal Code (KUHP) as general criminal law and the Medical Practice Law as a newer and more specific law. The judicial review decision that acquitted the defendant reflects the application of *the principle of lex posterior derogat legi priori* as well as the positioning of criminal law as *ultimum remedium*. In the context of current positive law, the enactment of Law Number 17 of 2023 on Health and Criminal Code Number 1 of 2023 further strengthens legal protection for doctors who carry out their practice in accordance with professional standards and operational procedures. 1. Supreme Court Decision Number 365 K/Pid/2012 demonstrates the application of *the principle of lex posterior derogat legi priori*. 2. The importance of legal protection for doctors.

**Keywords:** legal protection; *lex posterior derogat legi priori*; health care services.

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### INTRODUCTION

The medical profession entails substantial moral, ethical, and legal responsibilities, as it directly concerns human dignity, integrity, and the preservation of life. Physicians, as healthcare professionals, play a central role in the delivery of high-quality, safe, and accountable health services. Accordingly, medical practice is not solely grounded in clinical competence but must also comply with applicable legal norms and professional ethical standards. Within a rule-of-law framework, every medical intervention performed by a physician carries both public and private legal dimensions, potentially giving rise to criminal, civil, and administrative liability in cases of non-compliance with established professional standards (Sasongko, 2019).

The development of the health law system in Indonesia reflects ongoing efforts to balance the protection of patients with the protection of medical personnel (Heriani, Gunarto and Masdhurohatun, 2019; Firdaus, 2024; Widjaja and Yustanti, 2025). On the one hand, patients as recipients of services are entitled to guarantees of quality health care and treatment that is safe, dignified, and in accordance with professional standards. On the other hand, doctors are entitled to legal protection while carrying out their professional duties in accordance with applicable professional standards and standard operating procedures (Law Number 17 of 2023 concerning Health). The legal relationship between doctors and patients, which was originally paternalistic in nature, has since shifted into a therapeutic relationship grounded in the principles of equality, trust, and informed

consent (WHO, 2022). This paradigm affirms that patients are no longer mere objects of medical services, but legal subjects who possess the right to determine medical actions concerning themselves.

The growing legal awareness of society has had a positive impact on the enforcement of patients' rights; however, it has simultaneously given rise to a marked increase in reports and legal claims against doctors. Over the last decade, cases of alleged medical malpractice have frequently entered the legal domain without first undergoing mechanisms of ethical resolution and professional disciplinary proceedings (Kementerian Kesehatan Republik Indonesia, 2023). In fact, medical actions that inherently involve risk cannot always be construed as negligence. A conceptual distinction exists between medical malpractice and medical risk, and this distinction should serve as the basis for assessing the legal responsibility of doctors. If this boundary is not properly understood by law enforcement officials, it may result in the criminalization of the medical profession, which in turn may impede the effective delivery of health care services.

One of the cases that illustrates this issue is Supreme Court Decision Number 365 K/Pid/2012 (*Mahkamah Agung* Decision No. 365 K/Pid/2012), in which a doctor was subjected to criminal sanction on the grounds of alleged negligence in the performance of professional duties, despite having acted in accordance with the applicable standard operating procedures (SOP) and professional standards. This decision generated considerable controversy and concern among medical personnel, as it was widely regarded as disregarding the principle of *lex specialis derogat legi generali* — namely, that special law (*lex specialis*), in this case health law, ought to prevail over the application of general criminal law (*Kitab Undang-Undang Hukum Pidana/KUHP*). Uncertainty in the application of this principle has produced systemic consequences, including a tendency toward defensive medicine, whereby doctors exercise excessive caution in clinical decision-making out of fear of legal repercussions, with the potential to reduce the overall quality of health care services (Yulianti, 2020).

In response to these issues, the government enacted Law Number 17 of 2023 (*Law Number 17 Year 2023*) concerning Health, which substantially strengthens the legal protection afforded to medical personnel and health workers. This legislation provides clear provisions that medical personnel who carry out their practice in accordance with professional standards, ethics, and standard operating procedures (SOP) are entitled to legal protection from criminal as well as civil claims. Articles 303 through 411 of Law Number 17 of 2023 (*Law Number 17 Year 2023*) concerning Health explicitly stipulate that alleged violations of professional discipline must first be resolved by the Professional Discipline Council (*Majelis Disiplin Profesi/MDP*) before any further legal proceedings may be initiated (*Law Number 17 Year 2023*). This mechanism is intended to ensure that legal proceedings against doctors are conducted proportionally, with due regard for the complex and high-risk nature of the medical profession.

Nevertheless, despite the existence of a more comprehensive legal framework, the implementation of legal protection for doctors in practice continues to face considerable challenges. Chief among these is the inadequate coordination among professional

organizations, law enforcement authorities, and health care institutions in interpreting and applying the applicable legal norms. This lack of synchronization produces legal uncertainty that has the potential to undermine the professionalism of medical personnel (Kementerian Kesehatan Republik Indonesia, 2023). Accordingly, an in-depth juridical study is necessary to assess the degree to which legal protection for doctors in Indonesia has been effectively implemented.

This research is therefore conducted to analyze the form and implementation of legal protection for doctors providing health care services, with Supreme Court Decision Number 365 K/Pid/2012 as the primary case of reference. This study further aims to assess the extent to which Law Number 17 of 2023 (*Law Number 17 Year 2023*) can serve as a sound legal basis for guaranteeing legal certainty and legal protection for doctors in the performance of their professional duties. Employing a normative juridical approach, this study focuses on the analysis of legal norms, legal principles, and theories of legal protection as they relate to the professional responsibility of physicians within the national health law system (Kementerian Kesehatan Republik Indonesia, 2023; WHO, 2022).

## **RESEARCH METHODS**

### **1. Type and Nature of the Research**

This research constituted normative juridical legal research, namely research that focuses on the examination of prevailing positive legal norms, legal principles, and legal doctrines relevant to the object of study. Normative juridical research aims to examine how the law ought to be applied (*das sollen*) to a legal event that occurs (*das sein*) (Soekanto dan Mamudji, 2012).

This approach is selected because the main problem examined is not empirical in nature, but rather relates to the application of legal norms in providing legal protection for doctors who deliver health services. Therefore, this research seeks to identify and analyze legal principles governing responsibility and legal protection for doctors based on statutory regulations and relevant court decisions, particularly Mahkamah Agung Decision Number 365 K/Pid/2012.

The nature of this research is descriptive-analytical, namely describing and analyzing in depth the applicable positive legal provisions, their implementation in practice, and their conformity with the principles of legal protection and justice (Marzuki, 2017).

### **2. Research Approaches**

In normative legal research, several types of approaches are employed complementarily to ensure a comprehensive analysis. The approaches used in this research include:

#### **a. Statutory Approach**

This approach is used to examine and interpret statutory regulations related to medical practice and the legal protection of medical personnel, including:

- Law Number 29 of 2004 concerning Medical Practice;

- Law Number 17 of 2023 concerning Health;
- the Criminal Code (KUHP);
- Indonesian Medical Code of Ethics (KODEKI);
- and Regulation of the Minister of Health and related professional regulations.

**b. Conceptual Approach**

This approach is conducted by examining legal concepts that have developed in academic literature, including the theory of legal protection, the theory of criminal liability, and the theory of progressive law (Rahardjo, 2006), in order to understand the position and rights of doctors within the national health law system.

**c. Case Approach**

This approach is used to examine Mahkamah Agung Decision Number 365 K/Pid/2012 as a case study. Analysis of this decision is carried out to understand how criminal law is applied to doctors who perform medical actions, as well as to assess the extent to which the principle of *lex specialis derogat legi generali* is applied in judicial practice.

These approaches are used integrative to provide a comprehensive understanding of the legal issues examined.

**3. Types and Sources of Legal Materials**

In normative juridical research, legal materials constitute the primary element forming the basis of analysis. The types and sources of legal materials used are as follows:

**a. Primary Legal Materials Primary legal materials are authoritative legal sources, including:**

- Relevant statutory regulations (Law No. 29 of 2004, Law No. 17 of 2023, Criminal Code);
- Mahkamah Agung Decision Number 365 K/Pid/2012;
- The Indonesian Medical Code of Ethics (KODEKI, 2022).

**b. Secondary Legal Materials**

Secondary legal materials provide explanations and interpretations of primary legal materials, including:

- Textbooks and scientific literature (Simanjuntak, 2018);
- Health law journal articles;
- Guidelines issued by the Kementerian Kesehatan Republik Indonesia (Kemenkes RI, 2023);
- Legal doctrines and opinions of legal scholars.

**c. Tertiary Legal Materials**

Tertiary legal materials provide supplementary or supporting information for primary and secondary legal materials, such as legal dictionaries, legal encyclopaedias, and statutory indexes.

**4. Techniques for Collecting Legal Materials**

Legal materials are collected through library research, by tracing statutory regulations, court decisions, legal books, scientific journals, and other relevant academic

sources. Data collection is conducted systematically by taking into account the credibility and validity of the sources.

In addition, an examination of Mahkamah Agung Decision Number 365 K/Pid/2012 is carried out to obtain a comprehensive description of the legal considerations of the panel of judges, relevant legal facts, and the legal arguments used in the decision.

## **5. Techniques for Analyzing Legal Materials**

The analysis of legal materials is conducted using normative qualitative analysis, namely interpreting legal provisions and legal doctrines to draw deductive conclusions. The stages of analysis include:

- a. Inventory and classification of legal materials based on their relevance to the research topic.
- b. Legal interpretation, namely interpretation of statutory provisions and court decisions using grammatical, systematic, and teleological methods (Marzuki, 2017).
- c. Comparative analysis between legal norms and their application in practice to assess the extent to which legal provisions provide protection for doctors.
- d. Deductive conclusion-drawing, namely from general legal principles toward the assessment of a concrete case (Mahkamah Agung Decision No. 365 K/Pid/2012).

Through this method, it is expected that a comprehensive understanding will be obtained regarding the effectiveness of legal protection for doctors, as well as normative recommendations for the reform of health law policy in Indonesia.

## **RESULTS AND DISCUSSION**

The law in Indonesia fully grants its people the right to obtain justice, and to obtain it this is carried out by submitting applications, complaints, reports, and lawsuits. This includes reports or legal claims filed by the public directed at doctors who provide medical services.

The existence of several legal cases filed by the public against doctors in relation to medical services has caused doctors, in carrying out their service duties, to feel less comfortable because they are threatened by the risk of being involved in legal cases initiated by the public.

### **1. The Application of *the principle of lex posterior derogat legi priori* in the Case of the Mahkamah Agung Decision Number 365 K/Pid/2012**

The incident that befell dr. Dewa Ayu Sasiary Prawani, SpOG, occurred in April 2010. At that time, dr. Dewa Ayu Sasiary Prawani, SpOG, together with her colleagues, namely dr. Hendry Simanjuntak and dr. Hendy Siagian, was handling a referral patient from a Community Health Center (*Puskemas*) in the Manado area. Due to an emergency situation, dr. Dewa Ayu Sasiary Prawani, SpOG, performed an emergency caesarean section (*cito sectio caesarea*) (Endang S., Elya K.D., 2016).

However, the medical action failed to save the patient. Sometime after the incident, dr. Dewa Ayu Sasiary Prawani, SpOG, and her colleagues instead received an

“invitation” from the police. She was reported by the patient’s family for allegedly performing surgery without consent (Heni W. et al., 2016).

In the trial at the Manado District Court (*Pengadilan Negeri Manado*), dr. Dewa Ayu Sasiary Prawani, SpOG, and her colleagues were charged with 10 months of imprisonment. However, the Decision of the *Pengadilan Negri Manado* Number 90/PID.B/2011/PN.MDO dated 22 September 2011 ruled that dr. Dewa Ayu Sasiary Prawani, SpOG, and her colleagues were acquitted because they were not proven guilty of committing medical malpractice (*Putusan Pengadilan Negri Manado* Number 90/PID.B/2011/PN.MDO).

The Public Prosecutor (Jaksa Penuntut Umum/JPU) handling the case filed a cassation, which was granted by the Supreme Court (Mahkamah Agung/MA) through a decision issued on 18 November 2012. The cassation ordered dr. Dewa Ayu Sasiary Prawani, SpOG, and her colleagues to be imprisoned for 10 months. The cassation panel was chaired by Supreme Court Justice Artidjo Alkotsar, assisted by Dudu Duswara and Sofyan Sitompul as member judges (Decision of the Supreme Court of the Republic of Indonesia Number 365 K/Pid/2012 concerning Doctor’s Negligence in Medical Practice).

The legal consideration of the cassation panel at that time was that dr. Dewa Ayu Sasiary Prawani, SpOG, and her colleagues were proven to have committed malpractice based on Article 66 paragraph (3) of Law Number 29 of 2004 concerning Medical Practice (“Complaints as referred to in paragraph (1) and paragraph (2) do not eliminate the right of every person to report an alleged criminal act to the competent authority”) (Decision of the Supreme Court of the Republic of Indonesia Number 365 K/Pid/2012 concerning Negligence of Doctors in Medical Practice).

Dr. Dewa Ayu Sasiary Prawani, SpOG, and her colleagues were sentenced to 10 months of imprisonment by the cassation panel chaired by Artidjo Alkotsar because they were proven guilty of committing a criminal act of “an act which due to negligence causes the death of another person” while handling the caesarean operation of a patient named Julia Frasisca Maketeyn at Prof. R. D. Kandou General Hospital, Malalayang, Manado, in April 2010 (Decision of the Supreme Court of the Republic of Indonesia Number 365 K/Pid/2012 concerning Negligence of Doctors in Medical Practice).

The criminal charges directed at dr. Dewa Ayu Sasiary Prawani, SpOG, and her colleagues were as follows:

1. Article 359 of the *Undang-Undang Hukum Pidana* (KUHP) in conjunction with Article 361 of the KUHP and Article 55 paragraph (1) point 1 of the KUHP.
  - a. Article 359 of the KUHP stipulates: whoever due to negligence causes another person to die shall be punished with imprisonment for a maximum of five years.
  - b. Article 361 of the KUHP stipulates: if the crime described in this chapter is committed in the exercise of an office or occupation, the penalty shall be increased by one third and the right of the convicted person to exercise the occupation in which the crime was committed may be revoked, and the judge may order the publication of the decision.

- c. Article 55 paragraph (1) point 1 of the KUHP stipulates: perpetrators of criminal acts are those who commit the act (*pleger*), those who order another to commit the act (*doenpleger*), and those who participate in committing the act (*medepleger*) (Decision of the Mahkamah Agung Republik Indonesia Number 365 K/Pid/2012 concerning Doctor's Negligence in Medical Practice).
2. Article 76 of Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice (Every doctor or dentist who intentionally practices medicine without having a practice license as referred to in Article 36 shall be punished with imprisonment for a maximum of three (3) years or a fine of up to IDR 100,000,000.00 (one hundred million rupiah)), in conjunction with Article 55 paragraph (1) point 1 of the KUHP (Decision of the Mahkamah Agung Republik Indonesia Number 365 K/Pid/2012).
3. Article 263 paragraph (1) of the KUHP ("Against a court decision that has obtained permanent legal force, except for acquittal or release from all legal charges, the convicted person or his/her heirs may submit a request for judicial review to the Supreme Court"), in conjunction with Article 55 paragraph (1) point 1 of the KUHP (Decision of the Mahkamah Agung republic Indonesia Number 365 K/Pid/2012 concerning Doctor's Negligence in Medical Practice).
4. Article 263 paragraph (2) of the KUHP (A request for judicial review is submitted on the basis of:
  - a. the existence of new circumstances giving rise to a strong suspicion that, had such circumstances been known at the time of trial, the result would have been an acquittal or release from all legal charges, or the public prosecutor's claim would have been declared inadmissible, or a lighter criminal provision would have been applied;
  - b. conflicting statements in various decisions regarding facts declared to have been proven;
  - c. the decision clearly demonstrates a judicial error or an obvious mistake), in conjunction with Article 55 paragraph (1) point 1 of the KUHP (Decision of the Mahkamah Agung Republik Indonesia Number 365 K/Pid/2012 concerning Doctor's Negligence in Medical Practice).

At the level of judicial review (*Peninjauan Kembali/PK*) in February 2014, dr. Dewa Ayu Sasiary Prawani, SpOG, and her colleagues were acquitted. The basis for granting the PK was that the convicted parties had not violated the Standard Operating Procedures (SOP) in handling the caesarean operation, so that the consideration of the *judex facti* at the Manado District Court was correct and proper (Decision of the Mahkamah Agung Republik Indonesia Number 365 K/Pid/2012 concerning Doctor's Negligence in Medical Practice).

The judicial review panel chaired by Mohammad Saleh acquitted dr. Dewa Ayu Sasiary Prawani, SpOG, and her colleagues of all charges. The reason was that the PK applicants had not violated the Standard Operating Procedures (SOP) in handling the emergency caesarean operation. The judicial review (JR) panel considered that the

reasoning of the *judex facti* (district court) was correct and appropriate (Decision of the Mahkamah Agung Republik Indonesia Number 365 K/Pid/2012 concerning Doctor's Negligence in Medical Practice).

In the Mahkamah Agung Decision Number 365 K/Pid/2012, the public prosecutor based the indictment on Article 359 of the KUHP (negligence causing death). Meanwhile, at the time the case was examined, Law Number 29 of 2004 concerning Medical Practice was already in force, which specifically regulates professional standards, doctor discipline, and accountability mechanisms through the Indonesian Medical Discipline Honorary Council (MKDKI) (Supreme Court of the Republic of Indonesia, 2012).

In this case, a conflict of norms occurred between: (1) the KUHP as older general criminal law, and (2) the Medical Practice Law as newer and more specific law governing the medical profession.

The Medical Practice Law does not automatically classify professional errors by doctors as criminal acts, but requires prior assessment through professional disciplinary mechanisms. This emphasizes that not every adverse medical outcome suffered by a patient can be directly criminalized.

The Mahkamah Agung in Decision Number 365 K/Pid/2012 substantively applied *the principle of lex posterior derogat legi priori* in the following ways (Mahkamah Agung Republik Indonesia, 2012):

a. Prioritization of the newer law

The Court considered that the Medical Practice Law as the newer and more relevant regulation should be prioritized over rigid application of the KUHP. Consequently, the element of criminal negligence under Article 359 of the KUHP could not be applied automatically without proof of violation of professional standards.

b. Failure to prove the element of fault (*culpa*)

The panel of judges assessed that:

- the defendants had acted in accordance with professional standards and medical procedures;
- there was no gross negligence (*culpa lata*) that could be held criminally accountable.

Thus, the main element of the criminal offense under the KUHP was not fulfilled, rendering the application of criminal law irrelevant.

c. Criminal law as *ultimum remedium*

The Supreme Court emphasized that in medical disputes, criminal law is a last resort (*ultimum remedium*). As long as there remain mechanisms of:

- ethics,
- professional discipline, and
- civil law,

the use of criminal law must be strictly limited.

Based on the application of *the principle of lex posterior derogat legi priori*, the Supreme Court held that (Mahkamah Agung Indonesia, 2012):

- a. the Medical Practice Law as *lex posterior* has provided an accountability mechanism different from the old KUHP.
- b. there was no proven violation of professional standards of a criminal nature.
- c. the medical outcome constituted a medical risk (*medical risk*), not criminal negligence.

Therefore, the defendants were acquitted of all legal charges (*vrijspraak*).

Mahkamah Agung decision number 365 K/Pid/2012 has an important meaning because: (Mahkamah Agung Republik Indonesia, 2012).

- a. To become a jurisprudence of legal protection for doctors,
- b. Affirming the application of *the principle of lex posterior derogat legi priori* in medical cases,
- c. Serving as a basis for limiting the criminalization of medical practice.

The acquittal of the defendants in Mahkamah Agung Decision Number 365 K/Pid/2012 constitutes a logical consequence of the application of *the principle of lex posterior derogat legi priori*, whereby the Medical Practice Law as the newer regulation sets aside the direct application of the old Criminal Code (*Kitab Undang-Undang Hukum Pidana/KUHP*). With the absence of proven criminal fault and the positioning of criminal law as *ultimum remedium*, the Mahkamah Agung declared the defendants free from all charges.

The application of *the principle of lex posterior derogat legi priori* in the present era, if a case occurs that is substantially the same as the case in the decision of Mahkamah Agung number 365 K/Pid/2012 concerning medical negligence in medical practice, then the application of the law must refer to the latest regulations, namely the KUHP Number 1 Year 2023 and Law Number 17 Year 2023 concerning health. Based on *the principle of lex posterior derogat legi priori*, old provisions can no longer be used as a basis for criminalization. (Asshiddiqie, 2010; Marzuki, 2017).

At the time the Mahkamah Agung decision number 365 K/Pid/2012 was decided, the health and criminal law framework was still dominated by:

- a. The old of KUHP (Wetboek van Strafrecht)
- b. Medical Practice Law Number 29 Year 2004 (UU No. 29 Year 2004)
- c. Old health law (Law Number 36 Year 2009).

Currently, there are fundamental changes in the Indonesian legal system, namely:

- a. KUHP Number 1 Year 2023, which replaces the old KUHP
- b. Law Number 17 Year 2023 concerning health, which consolidates and updates the regulation of health services and the accountability of medical personnel.

This change makes the application of *the principle of lex posterior derogat legi priori* increasingly relevant (Mahkamah Agung RI, 2012).

If a case occurs that is substantially the same as the case in Decision of mahkamah agung Number 365 K/Pid/2012 at the present time, then the application of the law must refer to the latest regulations, with the following logic: : (UU No. 1 Year 2023; UU No. 17 Year 2023).

a. Waiver of the Old KUHP

The old KUHP is no longer applicable because it has been revoked and replaced by KUHP Number 1 Year 2023. Based on the principle of *lex posterior*, all criminal provisions must refer to the new KUHP. (UU No. 1 Year 2023) This means that doctors cannot be charged under the negligence or omission articles of the old KUHP if their actions occurred after the new KUHP came into effect.

b. Prioritization of Law Number 17 Year 2023 concerning health the latest health law regulates in more detail: (UU No. 17 Year 2023).

- Health service standards
- Coaching and supervision mechanisms
- resolution of violations through administrative, ethical and professional disciplinary channels.

This approach is in line with the spirit of Mahkamah Agung decision number 365 K/Pid/2012 which rejects the rigid and repressive application of criminal law to certain professions.

The relationship between the principle of *Lex Posterior* and the principle of *Ultimum remedium* (criminal law as a last resort) (UU No. 17 Year 2023)

In modern health law, *the principle of lex posterior derogat legi priori* does not stand alone, but rather works hand in hand with the principle of *ultimum remedium*. Recent provisions place criminal law as a last resort after:

- a. ethical mechanisms,
- b. professional disciplinary mechanisms,
- c. administrative mechanisms.

Therefore, if a similar case occurs today, the judge is obliged to: (Marzuki, 2017).

- Prioritize settlements based on the latest health laws,
- Use the new Criminal Code only if the elements of gross misconduct or intent are met.

The Relevance of Mahkamah Agung Jurisprudence Number 365 K/Pid/2012 in the New Legal Era

Although Mahkamah Agung Decision Number 365 K/Pid/2012 was issued before the enactment of the 2023 KUHP and the 2023 Health Law, its legal value remains relevant as follows: (Mahkamah Agung RI, 2012).

- guidelines for legal interpretation,
- the basis for the doctor's defense argument,
- precedents for applying *the principle of lex posterior derogat legi priori*.

This ruling strengthens the argument that doctors should not be punished using outdated norms abandoned by lawmakers.

Thus, *the principle of lex posterior derogat legi priori* serves as substantive legal protection for doctors, preventing the criminalization of medical procedures, and ensuring that criminal law is applied fairly, proportionally, and in accordance with developments in the national health legal system (UU No. 17 Year 2023).

## **2. Legal protection for doctors who provide services to patients**

Doctors are also ordinary human beings who, by their very nature, are not free from various shortcomings, errors, and negligence. As humans who are not free from limitations and shortcomings, doctors, even after undergoing formal education and intensive training, remain susceptible to various errors. Whether caused by intentional factors or negligence, doctors as healthcare providers are still inseparable from their fallible human nature. In every decision and action, they take, there is the potential for error. The nature of human nature, with all its complexity, underlies the fact that no one, including doctors, is completely free from errors, which are considered to be in violation of criminal law (Isfandyarie A, 2012).

Furthermore, the medical profession is not a field of study where everything can be measured. According to Hippocrates, the medical profession is a combination of knowledge, art, and skill. For example, making a diagnosis is an art in itself for doctors. After listening to a patient's complaints, doctors will use their imagination and make careful observations of their patients.

Medical knowledge or theories and experience that have been received so far become the basis for making a diagnosis of the patient's illness and it is hoped that the diagnosis will be close to the truth and based on this diagnosis, treatment will be carried out with the knowledge, art and skills of the doctor, in other words, medical science is not a science that can measure with concrete results in the form of numbers but medical science tries to do something by trying to get closer to the truth, both diagnosis and treatment.

In carrying out their profession, doctors have the rights to legal protection which are regulated generally in carrying out medical practice. There are several laws and regulations which provide legal protection to doctors in providing health services:

### **a. Constitution of the Republic of Indonesia 1945. (UUD 1945 RI)**

- Article 28D paragraph (1) of the UUD NRI 1945  
Guaranteeing everyone, including doctors, fair recognition, guarantees, protection and legal certainty.
- Article 28D paragraph (1) of the UUD NRI 1945  
Guarantee personal protection, a sense of security, and freedom from the threat of fear in carrying out the profession

### **b. Law number 17 of 2023 concerning health**

- Article 273  
Medical and health personnel have the right to legal protection as long as they carry out their duties in accordance with professional standards, service standards, and standard operational procedures.
- Article 274  
Regulates the rights of medical personnel to:
  - o Legal protection
  - o Legal certainty in practice
  - o Protection from violence and intimidation

This law is the main legal umbrella for protecting doctors today

c. *Kitab Undang-Undang Hukum Pidana* (KUHP) Number 1 Year 2023

- Article 39  
Affirming the principle of no crime without fault, so that doctors cannot be punished without an element of intent or gross negligence.
- Articles 474–476 of the 2023 KUHP  
Regulates the criminal liability of medical personnel, which requires:
  - o Fault
  - o Gross negligence
  - o Causal relationship to the effectProvides protection from the criminalization of risk-based medical procedures.

d. Implementing Regulations

1. Government Regulation Number 28 of 2024 concerning the implementation of the Health Law, including:
  - o Professional standards
  - o Discipline of medical personnel
  - o Guidance and supervision mechanisms
2. Regulation of the Minister of Health
  - o Regulation of the Minister of Health (PMK) concerning professional standards for physicians
  - o Regulation of the Minister of Health (PMK) concerning Medical Records
  - o Regulation of the Minister of Health (PMK) concerning consent for medical procedures (Informed Consent)

e. Professional Ethics and Discipline

1. Indonesian Code of Medical Ethics (*Kode Etik Kedokteran Indonesia*/KODEKI)  
Serves as the basis for assessing the ethics and professionalism of doctors.
2. Professional Disciplinary Council  
Medical disputes must first be assessed from a professional disciplinary perspective before entering the criminal realm.

f. Underlying Legal Principles (KUHP, 2023; Ridwan HR, 2016; Asshiddiqie, 2011; Muladi and Arief, 2010).

- Principle of Legality
- Principle of Legal Certainty
- Principle of Good Faith
- Principle of *Lex Specialist Derogat Legi Generali*
- Principle of *Lex Posterior Derogat Legi Priori*
- Principle of *Ultimum remedium* (criminal action as a last resort)

Based on the above regulation, doctors or dentists cannot be criminally prosecuted if they have provided medical care or practiced medicine in accordance with professional standards and operational procedures. This confirms that a doctor has a strong legal basis to face any lawsuits or legal disputes when they work within a clear legal framework (Kusbianto, Ariman S, Rudi M, 2023). This provision provides the basis for the continuation of fair medical practice and without excessive legal burdens for doctors who have met the standard criteria. This is in line with the spirit of providing legal certainty

and protecting the rights of doctors in providing quality medical services. It also encourages doctors to continuously improve the quality of their services without fear of unwarranted lawsuits. In a legal context, this provision strengthens the argument that doctors or dentists who have operated in accordance with professional and operational standards cannot be subject to legal sanctions. This reflects the belief that punishment should be applied only in cases where there is a serious violation of the law and accompanied by intent or gross negligence.

## CONCLUSION

Based on the analysis of, the study concludes that the application of *the principle of lex posterior derogat legi priori* in Supreme Court Decision Number 365 K/Pid/2012 plays a crucial role in ensuring fair and proportional legal protection for doctors in Indonesia. The decision demonstrates that newer and more specific regulations, particularly the Medical Practice Law and reinforced by Law Number 17 of 2023 on Health, must take precedence over general criminal provisions in the Criminal Code. The findings confirm that medical actions performed in accordance with professional standards, ethics, and standard operating procedures cannot be directly categorized as criminal acts, but rather should be assessed through professional and disciplinary mechanisms. Furthermore, the positioning of criminal law as *ultimum remedium* strengthens the legal certainty for medical practitioners and prevents the over-criminalization of medical risks that are inherent in healthcare services. For future research, it is recommended to expand the scope beyond normative juridical analysis by incorporating empirical studies involving stakeholders such as doctors, legal practitioners, and patients to assess the practical implementation of legal protection in real healthcare settings. In addition, comparative studies between Indonesia and other jurisdictions could provide broader insights into best practices in balancing patient rights and doctor protection. Future studies should also explore the effectiveness of the newly enacted Law Number 17 of 2023 on Health and Criminal Code Number 1 of 2023 in resolving medical disputes and minimizing legal uncertainty, particularly in the context of evolving healthcare technologies and increasingly complex medical procedures.

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