

Compensation as Hospital Liability for Negligence in Medical Services Harming Patients: Empirical Study of Several Peace Agreements)

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ABSTRACT

Keywords:
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*Disputes arising from negligence in medical services that result in harm to hospital patients can be resolved using the Victim Forgiveness Model. This approach aims to efficiently resolve disputes and achieve win-win solutions, particularly in the context of criminal justice system reform. Fundamentally, the Victim Forgiveness Model offers benefits such as preventing the accumulation of court cases, ensuring balanced justice for both offenders and victims, removing the painful stigma of punishment, reducing prison overcrowding, and aligning with the principles of "quick, simple, and low-cost" justice. **This research aims** to obtain a legal policy formulation in recovery with compensation in dispute resolution in the health sector which aims to create an efficient and fair settlement process for victims and perpetrators of criminal acts. Another goal is to examine the conception of "forgiveness (afwan)" from the perspective of Islamic Law which then becomes a model that can be adopted in the Indonesian legal system. **This research uses a qualitative method**, which describes the facts with primary, secondary, and tertiary legal materials such as Laws, books, article and other sources relevant to the research. Furthermore, **the results shows** that dispute resolution for negligence in hospital medical services can be achieved through a non-litigation process involving both the hospital and the patient. Mediation is recommended as an approach to balance the interests of both parties in meeting their demands, thereby ensuring the relationship between the patient and the doctor.*

1. INTRODUCTION

Every citizen has a constitutional right to access healthcare services. To realize good healthcare services, it is necessary to have healthcare facilities and infrastructure that are easily accessible to every citizen. The legal foundation for guaranteeing healthcare services in Indonesia is regulated by the 1945 Constitution Article 28H

Paragraph,¹ which states that every individual has the right to a prosperous life both physically and mentally, decent housing, a good living environment, and access to healthcare services.

Furthermore, other legal policies regarding the implementation of healthcare services are regulated in Law Number 44 of 2009 on Hospitals (Hospital Act 2009) and Law Number 17 of 2023 on Health.² Healthcare services according to the Health Act 2009 include all forms of activities and/or a series of service activities provided directly to individuals or communities to maintain and improve public health status in promotive, preventive, curative, rehabilitative, and/or palliative forms. This indicates that hospitals, doctors, and other medical practitioners are obliged to play a role in ensuring the fulfillment of optimal healthcare services.

However, in practice, the lack of optimal healthcare services often presents various challenges, such as error in the administrative procedure of services at the hospital; unlawful act that brings harm in a civil perspective; or even a criminal offense that can be held criminally liable. The parties related to the provision of medical services are often not just legal relationships between doctors and their patients, or health workers and their patients, but can also make the hospital an institution that can be held accountable for everything that happens in the hospital.³

Currently, another problem in medical services leaves a dilemma, are doctors and health workers good at carrying out their professional duties? Have hospitals been able to provide adequate facilities for the implementation of hospitalization? Or how is the response of patients in receiving services provided by doctors, health workers, and hospitals? These questions will always be a benchmark in assessment in the community. Even the issue of hospital services has always been a topic of discussion that attracts attention, when there are conditions that adversely affect patients for services that fail to be provided by doctors and health workers, even such issues will be linked to who is responsible. What form of responsibility should be given, and what should be done in resolving such disputes?⁴

From the issues mentioned above, the most prominent example is malpractice. Efforts to resolve disputes arising from medical services that result in physical injury or

¹ Muhammad Prasetyo Wicaksono et al., "Quo Vadis: Legal Certainty of Informal Worker through Manpower Act," *JCH (Jurnal Cendekia Hukum)* 8, no. 2 (February 11, 2023): 301, <https://doi.org/10.33760/jch.v8i2.619>.

² Sabrina M D Rondonuwu, "Perlindungan Hukum Terhadap Pasien Miskin Berdasarkan Undang-Undang Nomor 44 Tahun 2009 Tentang Rumah Sakit," *LES* 6, no. 5 (June 5, 2018), <https://doi.org/10.35796/les.v6i5.20354>.

³ D Ferorelli et al., "Medical Legal Aspects of Telemedicine in Italy: Application Fields, Professional Liability and Focus on Care Services during the COVID-19 Health Emergency," *J. Prim. Care Community Health* 11 (2020): 215013272098505, <https://doi.org/10.1177/2150132720985055>.

⁴ Yao-Tai Li and Jenna Ng, "Moral Dilemma of Striking: A Medical Worker's Response to Job Duty, Public Health Protection and the Politicization of Strikes," *Work Employ. Soc.* 36, no. 5 (2022): 967–76, <https://doi.org/10.1177/0950017020981554>.

death to the patient can end up in court. But is this fair and fulfills the will of the parties? Or should it be settled out of court?⁵ Therefore, this study will try to discuss the crucial issue of dispute resolution due to negligent medical services that harm patients, by reviewing several Peace Agreements between Patients, Doctors, Health Workers, and Hospitals.

With regard to this, in principle, every citizen has the hope of protecting their human rights and avoiding events that bring harm.⁶ Therefore, the state needs to make various efforts to optimize the rule of law, including the law-making process, the law enforcement process, and the law-applying process which is oriented toward justice, expediency, and legal certainty.

Despite this, alternative dispute resolution on medical negligence can also be considered through out-of-court settlements can be considered to have a positive impact, namely provide a sense of justice to victims and/or their families, do not cause resentment for the parties involved, create harmonization in the social order of community life without neglecting justice for victims, and assist legal officials (police, prosecutors and judges) in resolving disputes efficiently. In addition to these four things, an out-of-court settlement is also motivated by the aim of reducing the stagnation or accumulation of cases and simplifying the judicial process.⁷

Thus, researchers offer dispute resolution on negligence in the provision of medical services by providing compensation and peace that aims at efficiency and justice so that it is in line with the principles of fast, simple, and low-cost justice. Therefore, the researchers formulated the problems of this study, among others: (1.) Is the payment of compensation as a form of restoration of patient rights an appropriate way of resolving disputes on negligence in medical services? (2.) What are the responsibilities of the parties that must be fulfilled in the Peace Agreement in the event of negligent medical services that harm patients?

2. RESEARCH METHOD

This research uses a qualitative method, which describes the facts with primary, secondary, and tertiary legal materials. Primary legal materials are authoritative legal materials (have authority), and primary legal materials are binding legal materials in the form of basic norms or rules as contained in legislation, official records, or minutes in making legislation, as well as the *Qur'an* and *Hadith*. Secondary legal materials are all

⁵ Ilias Bantekas, "Equal Treatment of Parties in International Commercial Arbitration," *Int. Comp. Law Q.* 69, no. 4 (July 30, 2020): 991–1011, <https://doi.org/10.1017/s0020589320000287>.

⁶ John Gerard Ruggie, "The Social Construction of the UN Guiding Principles on Business and Human Rights," in *Research Handbook on Human Rights and Business* (Cheltenham, England: Edward Elgar Publishing, 2020), 63–86, <https://doi.org/10.4337/9781786436405.00009>.

⁷ Brian Septiadi Daud and Irma Cahyaningtyas, "Criminal Justice System toward Children with Legal Conflict Seen in Justice Restorative Presfective," *Jurnal Hukum Prasada* 7, no. 1 (July 30, 2020): 14–26, <https://doi.org/10.22225/jhp.7.1.2020.14-26>.

publications on law that are not official documents that can help analyze and understand primary legal materials in the form of research results, writings of experts in the field of law both nationally and internationally, as well as scientific journals obtained through literature studies related to the criminal justice system. Tertiary legal materials are legal materials that provide guidance and explanation of primary and secondary legal materials, namely legal dictionaries, encyclopedias, and so on. As well as conducting empirical tests through several health dispute Peace Agreement Documents.

3. RESULTS AND DISCUSSION

3.1. The Role of Hospitals in Society

People's need for health is something very important, therefore in everyday life, everyone needs to maintain their health. However, without exception, sometimes a person's health condition is not always in good health, in which case a person can be in a sick condition and require health and medical facilities to treat it. To be able to support the creation of complete health in the community, the hospital has a very important task in the community as the main provider of health services.⁸

These roles cover a wide range of aspects, from providing medical care to participating in education and research, for instance providing primary and advanced health care to patients with a wide range of diseases and conditions, providing outpatient and inpatient services to treat patients of varying severity, providing emergency services for cases that require immediate attention, such as accidents, heart attacks, or serious injuries, serving as education and training centers for health professionals, such as doctors, nurses, and other medical personnel, providing a venue for medical and other health students for internships and clinical practice, conducting medical research to improve understanding of disease, diagnosis, and treatment, contributing to scientific research that can lead to the development of new therapies and innovations in Healthcare; providing rehabilitation services for patients who require post-operative or post-traumatic care, helping patients recover and restore physical functionality after experiencing certain medical conditions, as well as organizing wellness and screening programs to support the overall health of the community.⁹

Hospitals contribute significantly to the well-being of society and play a central role in a country's healthcare system. Every user of medical services expects to be able to

⁸ Jameela Al-Jaroodi, Nader Mohamed, and Eman Abukhousa, "Health 4.0: On the Way to Realizing the Healthcare of the Future," *IEEE Access* 8 (2020): 211189–210, <https://doi.org/10.1109/access.2020.3038858>.

⁹ Bahman S Roudsari et al., "Emergency Medical Service (EMS) Systems in Developed and Developing Countries," *Injury* 38, no. 9 (2007): 1001–13, <https://doi.org/10.1016/j.injury.2007.04.008>; Michael J Goldacre and Trevor W Lambert, "Participation in Medicine by Graduates of Medical Schools in the United Kingdom up to 25 Years Post Graduation: National Cohort Surveys," *Acad. Med.* 88, no. 5 (June 5, 2013): 699–709, <https://doi.org/10.1097/acm.0b013e31828b364f>.

receive the same treatment, namely getting the best service in accessing health from all existing health and medical facilities. So in terms of realizing the best service for the community, the central government and local governments are also required to be responsible, namely by providing health facilities for the community, as regulated in Article 6 paragraph (1) of Law of the Republic of Indonesia Number 44 of 2009 concerning Hospitals, regulating the Government and local governments are responsible for:¹⁰

1. Providing hospitals based on community needs;
2. Guaranteeing the financing of medical services in hospitals for the poor, or people who cannot afford it following statutory provisions;
3. Fostering and supervising the organization of the Hospital;
4. To provide protection to hospitals to provide medical services professionally and responsibly;
5. Providing protection to the public users of hospital services following the provisions of laws and regulations.

This is also related to the purpose of the Hospital itself, in accordance with Article 4 of Law Number 44 of 2009 concerning Hospitals which stipulates, "Hospitals have the task of providing comprehensive individual medical services". Every time there is an unpleasant act against the patient or when there is negligence by the health worker, of course, in this case, the greatly disadvantaged one is the patient. In getting medical services, it also does not rule out the possibility of errors and omissions from health workers. Negligence and errors from health workers in carrying out their duties, of course very detrimental to the patient as a consumer. This is contrary to the therapeutic transaction agreement between the doctor and the patient, in the form of a legal relationship that gives birth to rights and obligations for both parties, it is not surprising that many patient lawsuits have been found against doctors.

To effectively fulfill the role of hospitals in providing quality services, the principles and objectives of hospitals are outlined in Articles 2 and 3 of the Hospital Act of 2009, which state: "Hospitals are organized based on Pancasila and founded on values of humanity, ethics and professionalism, benefits of justice, equality of rights and non-discrimination, equity, patient protection and safety, and social function." However, in many places in Indonesia, the quality of hospital health services remains low.¹¹

This situation inevitably leads to legal consequences, often referred to as malpractice, which occurs when a professional acts erroneously or wrongly, resulting in

¹⁰ Endra Prabowo, Zudan Fakrulloh, and Evita Israhadi, "Legal Study on Hospital Responsibilities in Providing Health Services," *Proceedings of the 3rd International Conference on Law, Social Science, Economics, and Education, ICLSSEE 2023, 6 May 2023, Salatiga, Central Java, Indonesia* (EAI, 2023), <https://doi.org/10.4108/eai.6-5-2023.2333538>.

¹¹ Jennifer L Hefner et al., "Defining Safety Net Hospitals in the Health Services Research Literature: A Systematic Review and Critical Appraisal," *BMC Health Serv. Res.* 21, no. 1 (2021), <https://doi.org/10.1186/s12913-021-06292-9>.

legal liability if it causes specified damages as regulated by law. Furthermore, criminal liability in cases of malpractice is often blurred by the current legal framework, particularly concerning the urgency of providing compensation for malpractice victims.

3.2. Conception of Malpractice in Medical Service Negligence

Doctors are part of society, therefore doctors also recognize various responsibilities towards the norms that apply in the community where doctors work. Responsibility as a member of society has to do with the rules that apply in society, among others, are legal norms/legal orders that contain orders/prohibitions for all parties who violate them and provide strict sanctions for the sake of peace and order in the community concerned. Legal responsibility itself arises and there are many kinds, namely responsibility according to civil law, according to criminal law, according to administrative law, as well as according to the rules or laws determined by the profession itself.¹²

In Indonesia, the term malpractice, which is well known by health workers, is only a form of medical malpractice. According to Gonzales in his book *Legal Medical Pathology and Toxicology* states that "malpractice is the term applied to the wrongful or improper practice of medicine, which results in injury to the patient". Malpractice according to Azrul Azwar has several meanings. First, malpractice is any professional mistake made by a doctor, because, at the time of doing his professional work, he did not examine, did not assess, did not do or leave things that were examined, or assessed performed by doctors in general, in the same situation and conditions. Second, malpractice is any wrongdoing committed by a doctor, due to performing medical work below the standard that is actually on average and reasonable, and can be done by every doctor in the same situation or place. Third, malpractice is any professional misconduct committed by a doctor, which includes misconduct due to unreasonable acts as well as misconduct due to lack of skill or loyalty in carrying out professional obligations or trusts.¹³

Meanwhile, according to Munir Fuady, malpractice has the meaning of any medical action carried out by doctors or people under their supervision, or health service providers carried out against their patients, both in terms of diagnosis, therapy, and disease management carried out in violation of law, decency, morality and professional principles whether carried out intentionally or due to lack of care which causes wrongful acts of pain, injury, disability, bodily damage, death and other losses that cause doctors or nurses to be held responsible either administratively, civilly or criminally. Thus, it can

¹² Sri Wulandari and Indonesia University of 17 Agustus 1945 Semarang, "Legal Formulation Patient Protection in Medical Malpractice," *International Journal of Social Science and Human Research* 06, no. 05 (2023), <https://doi.org/10.47191/ijsshr/v6-i5-88>.

¹³ Bambang Heryanto, "MALPRAKTIK DOKTER DALAM PERSPEKTIF HUKUM," June 5, 2010, <https://dinamikahukum.fh.unsoed.ac.id/index.php/JDH/article/download/151/98>.

be said, that medical malpractice is a form of professional negligence for which the patient can seek compensation in the event of injury or disability caused directly by the doctor in carrying out measurable professional actions. In terms of examining the opinion of Benard Knight in daily practice there are 3 (three) criteria for determining the existence of professional errors:¹⁴

First, the obligation of doctors to provide medical services for their patients, the starting point of the possibility of professional errors that cause harm to others is the obligation of doctors to carry out medical actions or medical services for their patients, the obligations referred to here, which are subject to the law of the agreement, as well as having several special characteristics and if simplified can be distinguished from professional duties, doctor-patient relationships, informed consent, professional medical standards, the professional scope that is owned is only for efforts that will be carried out, not for the final result. Second, there is a violation of the doctor's obligations towards his patient, by the definition of obligations as stated above, the violations referred to here are only those that follow the five characteristics of a doctor's professional obligations, for example, not carrying out the professional obligations of a doctor as is usually done by every doctor; there has been a therapeutic counter, but the doctor does not carry out his professional obligations, as is commonly done by a doctor in every medical service; not asking for the patient's consent before carrying out a medical action and or medical service; not carrying out medical actions or medical services following professional standards; as a result of the breach of duty, there is a loss to the patient, the loss is solely due to professional error, not because of the risk of a medical action. Third, as a result of the breach of obligation, there is a loss to the patient, the loss referred to here solely occurs due to professional error, not because of the risk of a medical action.

Medical malpractice, in the practice of medicine, leads to either criminal or civil legal liability, depending on the nature of the resulting harm. There are three criteria for categorizing malpractice in healthcare: actions that deviate from established norms, negligence (*culpa*), and resulting legal harm. These criteria are outlined in the following regulations related to medical malpractice:

1. Law No. 36 of 2009 on Health.
2. Law No. 44 of 2009 on Hospitals.
3. Law No. 29 of 2004 on Medical Practice.
4. Law No. 36 of 2014 on Health.
5. The Indonesian Criminal Code (KUHP) and Civil Code (KUHPperdata).

According to these laws, patients who are victims of malpractice are protected under the Hospital Act of 2009, specifically in Article 32(q) and Article 46. Article 32(q)

¹⁴ Anne-Catherine Delafontaine et al., "Impact of Confrontation to Patient Suffering and Death on Wellbeing and Burnout in Professionals: A Cross-Sectional Study," *BMC Palliat. Care* 23, no. 1 (2024), <https://doi.org/10.1186/s12904-024-01393-8>.

stipulates that patients have the right to sue or file complaints against hospitals if they believe the hospital provided services not in accordance with standards, whether in civil or criminal court. Article 46 states that hospitals are legally liable for any damages caused by the negligence of their healthcare workers.¹⁵

The initial step in addressing malpractice cases is through non-litigation methods such as mediation. Articles 29 and 58 of the Health Act of 2009 state: "In the event that a healthcare worker is suspected of negligence in performing their duties, the negligence must first be resolved through mediation." Mediation aims to bring the disputing parties together to reach an amicable solution without harming either party. An advantage for healthcare workers in resolving disputes through mediation is that the conflict remains confidential and does not tarnish their reputation.

Furthermore, since the enactment of the Medical Practice Law in 2004, doctors suspected of malpractice are no longer examined by the Medical Ethics Honor Council (MKEK) but by the Indonesian Medical Discipline Honor Council (MKDKI). However, the Medical Practice Law also reinforces the right of any individual who knows or believes they have been harmed by a doctor's actions to file a complaint. This does not eliminate the right of individuals to report suspected criminal acts to the authorities or to file a lawsuit in court.¹⁶

3.3. The Importance of Victim Forgiveness in Case Settlement (Criminal Law Perspective)

When examining criminal law enforcement, it will always be remembered that "there is no criminal offense without victims", "there is no punishment without victim justice", or "there is no law enforcement without victim protection". The same applies to the extent of the perpetrator's responsibility for the harm suffered by the victim. However, in the idea of restorative justice which is now being popularized in European countries, criminal law enforcement no longer only punishes the perpetrator with retaliation, but there must be a balance for the victim. Without closing the possibility, punishment in the form of imprisonment has been greatly reduced and replaced with recovery efforts for victims (compensation, treatment, and compensation).¹⁷

In this conception, the role of the victim can determine the criminal law enforcement process, for example, the victim can conduct a joint prosecution to convey complaints and demands against the perpetrator of the crime. The settlement of criminal

¹⁵ Hasbuddin Khalid, "Legal Protection for Victims of Medical Malpractice during the COVID-19 Pandemic: A Study on Legislation," *Sjh* 5, no. 2 (2023): 263–75, <https://doi.org/10.37276/sjh.v5i2.290>.

¹⁶ Fitri Handayani Hasibuan, Tamaulina Br Sembiring, and Fitri Rafianti, "The Relationship between Ethics Institutions in the Health Sector in the Enforcement of Professional Ethics from a Utilitarian Perspective," *AJOMRA* 2, no. 1 (July 30, 2024): 130–39, <https://journal.berpusi.co.id/index.php/Ajomra/article/view/913>.

¹⁷ Mahrus Ali, "Mahkamah Konstitusi Dan Penafsiran Hukum Yang Progresif," *Jurnal Konstitusi* 7, no. 1 (2010), <https://doi.org/https://doi.org/10.31078/jk%25x>.

cases developed in the post-reform era must prioritize efficiency and effectiveness, considering that there is too much accumulation of cases in each judicial institution in Indonesia, from the stages of the District Court, High Court, or case in the Supreme Court of Indonesia.

Therefore, it is necessary to renew the concept of justice in the future to put more emphasis on the role of victims and the protection of victims as a result of a criminal offense. This research tries to offer a "Victim Pardon Model" which has been introduced in Islamic Law. The basic purpose of forgiveness given by the victim and/or the victim's family to the perpetrator of the crime can provide justice for the victim and/or the victim's family. Because the victim and/or the victim's family are directly involved to "punish the perpetrator of the crime" or "abolish punishment by forgiving". Forgiveness is a form of legal justice given by the victim and/or the victim's family against the perpetrator of the crime itself.¹⁸ Through forgiveness, victims and/or their families tend to change the direction of the bond from negative to neutral or positive. Victims and/or their families will reduce the urge to maintain hatred towards the offender, including not having a desire for revenge. Forgiveness will also increase the urge to conciliate the relationship with the offender. As a result, the relationship between the victim and the offender can be restored to its pre-conflict state. The disturbed balance of values in society is achieved. The forgiveness of victims and/or their families can be structured and formulated with the basic idea of balance in mind. Academic Paper of the Law on the Criminal Code (KUHP) 2022,¹⁹ which stated that the basic idea of balance in the reform of the Criminal Code includes:

1. Mono-dualistic balance between "public/society interest" and " individual interest";
2. balance between the protection or interests of the perpetrators of crime (the idea of individualization of punishment) and the victims of crime;
3. balance between "objective" (act/outward) and "subjective" (person/inner/inner attitude) elements/factors; the idea of "Daad-dader Strafrecht";
4. balance between "formal" and "material" criteria;
5. the balance between "legal certainty", "elasticity, or flexibility", and "justice"; and
6. the balance of national values and global, international, and universal values.

Protection of the balance or harmony of various interests and values that are disturbed as a result of crime.²⁰ The forgiveness is contained in Article 56 paragraph (1) letter j of the Indonesian Criminal Code which emphasizes that in the punishment, the forgiveness of the victim and/or his/her family must be considered. Forgiveness is in line

¹⁸ Roby Anugrah, "Pemaafan Korban Ditinjau Dari Tujuan Pemidanaan Dalam Pembaharuan Hukum Pidana Di Indonesia," *Jurnal Ilmu Hukum* 8, no. 1 (2019): 473–84.

¹⁹ Andy Pradana Fendiarmo, "The Role of Police in the Handling of Criminal Cases through Restorative Justice," July 30, 2024, <https://jurnal.unissula.ac.id/index.php/rlj/article/download/30374/8669>.

²⁰ Ibnu Artadi, "Dekonstruksi Pemahaman Penyelesaian Perkara Pidana Melalui Prosedur Perdamaian (Menuju Proses Peradilan Pidana Rekonsiliatif)," *Jurna Hukum Pro Justitia*, 2007.

with the purpose of punishment in the form of "resolving conflicts caused by criminal offenses, restoring balance, and bringing a sense of peace in society.

Meanwhile, in the context of Islamic Law, forgiveness by the victim to the perpetrator of the crime can be interpreted as an effort of "ishlah" and can stop the trial or punishment process. The victims' forgiveness to make peace and not hold a grudge against each other is a goal in the direction of peace and spaciousness to accept each other. However, criminal justice can actually be developed to provide space for criminal leniency or the termination of criminal justice investigations when the victim provides "forgiveness". Whereas, forgiveness from victims and/or their families as one of the Judge's considerations in sentencing is a form of renewal in the criminal justice system in Indonesia. Forgiveness is in line with the purpose of punishment in the form of "resolving conflicts caused by criminal acts, restoring balance, and bringing a sense of peace in society".

In Islamic criminal law (Fiqh Jinayah) recognizes 3 (three) models in resolving criminal offenses (jarimah) qishas-diyat, namely criminal offenses (jarimah) ordinary murder or manslaughter, namely: 1) qishas settlement model; 2) qishas-diyat settlement model; 3) qishas model without diyat. These three models are drawn from the interpretation of the Quran letter Al-Baqarah verse 178, which is substantially close to the conception of restorative justice. Indeed, in the concept of the model of resolving jarimah qishas-diyat, there is a value of moral nobility and compassion, whereas in the practice of justice the Prophet always prioritizes compassion with morals in resolving jarimah qishas-diyat. The Prophet encouraged not to use retaliation but to prioritize forgiveness "to my knowledge every time a qishas case is reported to the Prophet Muhammad, he always ordered that it be forgiven" (HR Annas bin Malik). In connection with the forgiveness of the scholars agreed on the forgiveness of qishas, even better than demanding it. This is based on the words of Allah: "so whoever gets forgiveness from his brother, let him follow him kindly, and pay the diyat (ransom) kindly as well. Such is a relief and mercy from your Lord. Whoever exceeds the limit after that, then he will have a painful punishment" (QS. 2:178). "Whoever waives his (right to qishas), then it (becomes) an atonement for his sin..." (QS. 5:45). From the two words of Allah above, it is clear that Islamic criminal law prioritizes settlement by prioritizing forgiveness rather than retaliation. This is one of the solution models.²¹ In this case, the researcher believes that "forgiveness" will determine the course of criminal justice procedures in the future. If the future criminal justice is to develop into an efficient and solutive justice for victims,

²¹ Hambali Yusuf and Saifullah Basri, "Model Penyelesaian Alternatif Perkara Pidana Pembunuhan Biasa Menurut Hukum Islam Dan Relevansinya Dengan Pembaharuan Hukum Pidana Indonesia," *Jurnal Hukum IUS QUIA IUSTUM* 24, no. 1 (2017): 73–93, <https://doi.org/10.20885/iustum.vol24.iss1.art4>.

then it is appropriate to position the "victim forgiveness model" at each stage of criminal justice. These include:

1. The investigation process can be stopped due to peace and forgiveness by the victim;
2. The investigation process can be stopped due to peace and forgiveness by the victim;
3. The criminal prosecution process may be discontinued due to the victim's apology; or
4. Criminal punishment for the perpetrator of the crime can be abolished if the victim apologizes.

3.4. Compensation in Settlement of Medical Service Negligence (Case Analysis of Several Hospitals)

Malpractice events in medical services in hospitals can have legal consequences in the criminal and civil realms. Efforts to resolve problems between patients and health workers or doctors in hospitals will always leave endless problems. One of them is whether all the losses suffered by a patient (victim) can be truly recovered. How is the responsibility of the hospital in the event of malpractice, and can compensation be used as the right way? So in this study, the researcher analyzes several Agreements between the Hospital and patients who are parties who have been harmed due to negligent medical services (Table 1), among others:

Table 1. Case Comparison

No.	Date of Deed of Agreement	Parties	Malpractice/Medical Negligence	Settlement
1	19-04-2022	RS MK Depok vs Ms. DY	Negligence in the Doctor's Medical Service to the Patient causing injury to the right hand.	Amicable settlement, with an agreement, waiver of medical expenses until recovery, and the surgical scars disappear.
2	26-09-2022	RS MK Kenjeran vs Mr. CL	Negligence in the Doctor's Medical Service to the Patient caused a fracture of the left pelvis.	Amicable settlement, with an agreement, refunding the IDR 14,075,962 fee paid by the patient, and further waiving the costs of medical treatment, medicine, doctor's fees, and other costs until the patient recovers.
3	13-04-2022	RS BH vs Mr. T	Negligence in Doctor's Medical Services to Patient causing injury.	Amicable settlement, with an agreement, performing wound closure surgery and providing recovery costs of IDR 80,000,000 to the patient.

That from several negligence dispute settlement agreements on medical services above, it can be seen that, the interests of patients to get complete medical services are the main thing. If it is connected with the sphere of civil law, then the provision of medical services by a doctor is the provision of services that are bound by rights and obligations. Which, the subject in question will lead to liability for losses or recoveries that should be received by an injured patient. Everyone has the right to claim compensation against a person, health worker, and/or health provider who caused losses due to errors or omissions in the medical services he received. And in this case, it is also stipulated by the rules in Article 1365 of the Civil Code which describes every act that violates the law and brings harm to others, requiring the person who caused the loss through his fault to replace the loss. Although the Health Law mentioned above has provided opportunities for compensation as a form of fulfillment of rights in the form of justice for the victim or family.²² However, in the law, there are shortcomings, especially regarding the arrangement of compensation to injured patients. Some of these shortcomings include, first, the law does not clearly regulate the amount of compensation that can be filed by patients and the types of compensation that can be filed considering the losses suffered by patients can be in the form of immaterial and material losses. Second, what is the basis for a judge in determining the amount of compensation filed and the things that affect the judge in giving the verdict of compensation filed by the patient?

The resolution of malpractice cases can involve a variety of steps, depending on the laws and regulations in a country. Therefore, in terms of solving such problems, it must be based on several important things, namely:

1. Reports and investigations: parties who feel they have been victims of malpractice can usually report the incident to their local health regulatory agency. Regulatory bodies may conduct investigations to assess whether malpractice actually occurred and whether there is sufficient evidence to follow up.
2. Mediation: mediation is a process in which parties to a dispute sit together with a mediator to seek an amicable solution without involving the courts. In some cases, mediation can be a way to resolve a malpractice claim by negotiating an agreement between the doctor and the patient or the party who feels harmed.
3. Lawsuit: if a settlement through mediation is impossible or unsatisfactory, the aggrieved party may file a lawsuit through the courts. The party who feels harmed will need to present evidence and provide legal arguments to prove that malpractice has occurred.
4. Out-of-court settlement: some malpractice cases may be settled out of court through negotiations between the disputing parties or through legal intermediaries. Out-of-

²² Bambang Tri Bawono, "Restitution Rights as a Construction of Justice Referring to the Law on Protection of Witnesses and Victims," *Int. J. Law Reconstr.* 5, no. 1 (July 30, 2021): 25, <https://doi.org/10.26532/ijlr.v5i1.15321>.

court settlements often involve the payment of damages or other agreements without involving a trial.

5. Professional ethics board: in some countries, the medical ethics board may review malpractice cases and provide ethical sanctions against doctors involved. Ethical sanctions may include a ban on the practice, a license freeze, or other sanctions.

However, the most crucial thing is to obtain forgiveness from the patient and his family, so that the problem can be accepted and resolved peacefully. This is similar to compensation in civil law can arise due to default as a result of an agreement or can arise due to unlawful acts. Indemnity arising from default is if there are parties to the agreement who do not carry out their commitments as outlined in the agreement, then according to the law he can be held liable if the other party to the agreement suffers losses because of it. The civil code details the losses (which must be reimbursed) in 3 (three) components, among others: costs, losses, and interest (vide articles 1239 and 1243 of the Civil Code). Cost is any money (including fees) that must be incurred in real terms by the injured party, in this case as a result of an act of default. Meanwhile, what is meant by “loss” is a state of decline (reduction) in the value of creditors' property as a result of default on the part of the debtor. Meanwhile, what is meant by “interest” is the profit that should be obtained but not so obtained by the creditor due to an act of default on the part of the debtor. Indemnity in cases of malpractice can be considered as a way to recover losses suffered by a party who feels harmed as a result of erroneous or inadequate medical measures. The amount of compensation is often related to the level of loss suffered by the party who feels aggrieved. This could include additional medical treatment costs, loss of income, rehabilitation costs, or emotional harm. It is important to remember that each case of malpractice is unique, and the assessment of damages will be based on the specific facts of the case.

4. CONCLUSION

Settlement of disputes over negligence in hospital medical services to patients, in the example of cases that have been analyzed, it can be stated that the solution is by mediation/peace of the parties. Which of course in this case is also based on the full responsibility of the hospital to provide recovery efforts for patients in a complete and perfect, or provide some money for the patient or his family as a form of kindness and maintain good relations between the parties.

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