



Rethinking the Burden of Proof in Medical Malpractice Cases in Indonesia: A Case for Reversal

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Article Information

Received for publication: October 22, 2025
Accepted after corrections: August 30, 2026

Keywords: Burden of Proof; Medical Malpractice; Medical Negligence; Criminal Evidence

DOI:10.20961/yustisia.v15i2.110257

Abstract

Medical malpractice cases present distinctive evidentiary challenges because prosecutors may lack the specialized medical knowledge necessary to establish professional negligence, while crucial evidence, including medical records and information concerning clinical procedures, is largely controlled by healthcare providers. These circumstances create an evidentiary asymmetry that may impede effective access to justice for patients. This study examines whether and under what conditions the burden of proof may be shifted in criminal medical malpractice proceedings in Indonesia. It employs legal research using statutory and conceptual approaches, focusing on Indonesia's criminal procedure and health law frameworks. The study reveals that a complete reversal requiring physicians to prove their innocence would raise concerns regarding the presumption of innocence. Nevertheless, a limited shift of the evidential burden may be justified where the prosecution establishes *prima facie* circumstances indicating gross medical negligence and the relevant evidence lies predominantly within the physician's or healthcare provider's control. In such circumstances, physicians may be required to demonstrate that medical interventions complied with applicable professional standards and procedures, while the ultimate burden of establishing criminal guilt remains with the prosecution. The study therefore proposes a limited and proportionate evidentiary-shifting model for gross medical negligence rather than a general reversal of the burden of proof in all medical malpractice cases.

I. Introduction

The medical profession is regarded with great esteem by society. Nevertheless,

while fulfilling their responsibilities, physicians may also err, whether deliberately (*dolus*) or inadvertently (*culpa*), during the treatment of their patients. Medical practitioners should be responsible for their errors as their decisions have led to patient harm, disability, or fatalities. Nonetheless, establishing a physician's mistake regarding criminal liability proves to be difficult. Gunalan Palari Arumugam asserts that medical malpractice is a challenging error to substantiate due to its intricate and technical characteristics, complicating the process for patients or their families to seek accountability from physicians in legal settings (Arumugam et al., 2025).

In legal contexts, physicians who make mistakes may face criminal accountability under various statutes and regulations, including Law No. 17 of 2023 on Health, Law Number 36 of 2014 on Health Workers, and Law Number 11 of 2020 on Job Creation, as well as Law Number 8 of 1999 regarding Consumer Protection and Government Regulation Number 28 of 2024 pertaining to the Implementation Regulations of Law Number 17 of 2023 on Health. All of these regulations can be employed to ensure physicians are held responsible both legally and morally.

Worldwide, instances of medical misconduct are prevalent in numerous nations, including those that are industrialized such as Canada (Waldner, 2025), Australia (Puteri, 2023), Singapore (Lijing & Liew, 2025), and Japan (Mayeda & Takase, 2005). In fact, between 1970 and 1990, there was an explosion of medical malpractice cases in the United States and the United Kingdom, causing many insurance companies to go bankrupt because they had to pay damages or compensation to patients or their families if doctors or hospitals lost in court (Danzon, 1986). In Malaysia, cases of medical malpractice do occur due to negligence. While these incidents are less common than in Indonesia, there has been a noticeable increase in the number of medical malpractice lawsuits filed in court. (Siti Zubaidah Ismail, 2011). The Malaysian Attorney General's Office reported just 16 medical malpractice claims, with a total compensation of RM23,288. However, in 1999, the number of medical negligence claims in Malaysia grew to 31 cases, with patients receiving RM72,000 in compensation (Puteri, 2004). Then, in 2016, there were around 208,000 medical malpractice claims in litigation in China (H et al., 2020).

However, there is no clear statistics on how many doctors in Indonesia have committed medical malpractice. Each government agency publishes its own data, however there are variations. For example, according to the Minister of Health, Budi Gunadi Sadikin, there were only 51 occurrences of medical malpractice between 2023-2025 (Ulya & Akbar, 2025). Meanwhile, according to the Professional Disciplinary Council (MDP), there were 57 reports of alleged malpractice and violations of professional ethics by doctors in 2025 (Mardianti, 2025). However, according to the Indonesian Medical Association (IDI) Centre, there are approximately 210 cases of alleged medical malpractice in Indonesia each year (Putra, 2020) and according to the Indonesian Health Council (KKI), between 2020 and 2023 there were 200 cases of alleged medical malpractice.

Table 1. Differences in Medical Malpractice Case Data in Indonesia

Institution	Number of Cases	Description
Indonesian Health Council	200	2020-2023
Ministry of Health of the Republic of Indonesia	51	2023-2025
Professional Disciplinary Council	57	2025
Indonesian Medical Association	210	Medical malpractice cases per year

The numerous alleged occurrences of medical misconduct discussed previously can be attributed to a variety of circumstances. These include medical personnel competence, the quality of medical facilities and infrastructure, inefficient communication between patients and doctors, a failure to follow Standard Operating Procedures (SOPs), and greater public legal knowledge. This knowledge has resulted in more frequent reporting of doctors and other healthcare professionals to law enforcement when medical services are judged to have breached patients' rights (Chambers et al., 2025). Although patients or their families commonly denounce medical malpractice to law enforcement, there is sometimes a lack of sufficient proof, as the majority of cases are retained by hospitals or healthcare clinics.

The lengthy examination of the interested parties and the evidentiary processes is one element leading to the annual backlog of medical malpractice cases (Meighitine et al., 2025). Due to patients' and law enforcement officials' lack of medical training, it takes a significant amount of time to thoroughly review the patient's medical records, laboratory results, medical procedures performed, prescriptions, medical history, and medications and treatments administered (Purwanto et al., 2026).

According to the Woolf Report, demonstrating medical malpractice is far more difficult than other sorts of legal actions in the United Kingdom. This intricacy stems mostly from the significant challenges that patients and law enforcement face when attempting to establish causality (MR, 2022). Foong claimed that the difficulty involved in proving medical malpractice claims causes these cases to take two to three times longer to resolve in court than regular legal proceedings (Dato' James Foong, 2023).

Article 235, Paragraph (1) of Law Number 20 of 2025, which governs the Criminal Procedure Code (KUHAP), allows medical practitioners to serve as expert witnesses in judicial proceedings. This is dependent on their specialized expertise and the nature of the case, with the goal of proving charges against doctors suspected of medical malpractice. Furthermore, Articles 308 (Sections 8 and 9) and 48(1)(a) and (c) of Law Number 17 of 2023 on Health authorize healthcare practitioners to testify as expert witnesses and present medical information. These legislative protections also allow physicians to break patient confidentiality when a court order requires it for law enforcement, research, or serving the public interest.

In judicial circumstances, the testimony offered by physicians appearing as expert witnesses may be undermined by a lack of objectivity, bias, or a desire to protect other practitioners, a phenomenon known as a "code of silence." The Hippocratic Oath, which includes the promise to "treat my colleagues as I would my own siblings," emphasizes doctors' close professional ties. Likewise, the Indonesian Code of Medical Ethics, particularly Articles 14 and 18, mandates that "A doctor must treat colleagues as he himself wishes to be treated" and "show respect to seniors and medical mentors in the practice of his profession." This professional solidarity may lead to conflicts of interest, causing physicians to present subjective interpretations of facts when serving as expert witnesses (McGovern & Costello, 2026).

The limitations of the current evidentiary paradigm, which entrusts the public prosecutor with the obligation to prove the patient's interests, have been noted for a lengthy period. This system complicates the task of establishing a physician's carelessness in medical practice, resulting in lengthy legal processes and hefty court fees (Stauch, 2024). While this system does not intrinsically prejudice patients, there is a compelling argument for enacting adjustments. Implementing a reversed burden of proof in medical malpractice litigation could proficiently tackle these concerns.

The implementation of a reversed burden of proof framework in medical malpractice litigation is warranted by persuasive scientific and legal reasoning, especially in rectifying the disparity of power between patients and healthcare professionals during the evidential stage of trial. This research advocates for the implementation of a reversed burden of proof framework in medical malpractice litigation to ease the demonstration of a physician's negligence in patient care within Indonesia.

This study employs normative (doctrinal) legal research using statutory and conceptual approaches to examine the legal framework governing the reverse burden of proof in medical malpractice cases in Indonesia. Normative legal research systematically examines legal principles, concepts, theories, regulations, and institutions to identify legal issues and propose solutions (Disemadi, 2022; Negara, 2023). The statutory approach analyzes relevant provisions, particularly Articles 142 and 235(1) of Law Number 20 of 2025 on the Criminal Procedure Code, concerning the burden of proof in criminal proceedings, and Articles 308(8)–(9) and 48(1)(a) and (c) of Law Number 17 of 2023 on Health, concerning the role of medical professionals as expert witnesses.

The conceptual approach draws upon legal doctrines, theories, and principles to develop a comprehensive framework for assessing the applicability of the reverse burden of proof in criminal medical malpractice cases (Noor, 2023). This approach facilitates the interpretation of relevant legal concepts, identifies regulatory ambiguities and gaps, and provides a theoretical foundation for evaluating the legal feasibility of implementing a reverse burden of proof system within Indonesia's criminal justice framework.

II. Theoretical Basis of Medical Malpractice in Indonesia

In the aspect of health law, errors made by doctors or other health workers are referred to as medical malpractice, medical negligence, medical risk and medical accidents (Sohn, 2012). Nevertheless, all of these phrases carry varying definitions, legal justifications, and legal outcomes. Medical malpractice is regarded as a more encompassing phrase since it includes both deliberate (*dolus*) and inadvertent (*culpa*) medical mistakes, where a doctor's negligence, carelessness, or recklessness causes injury to a patient's well-being (Costante, P & Puro, 2023). In contrast, medical risk is an unexpected event or unfavorable effect of a medical action that occurs without any element of error or negligence on the side of the clinician (Ngah, 1999). Medical risk is considered an inherent "accident" that cannot be blamed, as long as the doctor has acted in accordance with standard procedures and with the patient's consent (Pandit, M. S & Pandit, 2009).

However, some authors argue that it is difficult to distinguish between medical negligence and medical malpractice (Creighton, 2022). Some contend that malpractice should be considered synonymous with professional carelessness. Indeed, in the literature, the two phrases are frequently used interchangeably as if they had the same meaning (McCall, 2023). According to J. Guandi, medical malpractice is not synonymous with negligence. Malpractice includes negligence, although it does not always involve it. Malpractice encompasses behaviours that are both negligent (*culpa*) and purposeful. Meanwhile, negligence refers to inadvertent or thoughtless activities, a lack of caution, indifference to the interests of others, and the repercussions of such actions not yielding the anticipated conclusion (Guwandi, 2020). These consequences are caused by negligence that actually occurs beyond the control of the perpetrator.

Law Number 17 of 2023 does not define "medical malpractice" as a separate phrase. Instead, it defines alleged malpractice as a careless act that hurts patients and may result in criminal prosecution if it causes serious injury or death. Article 440 of Law Number 17 of 2023 states that (1) any Medical or Health Personnel whose negligence

causes severe harm to a patient faces a prison sentence of up to three years or a fine of up to IDR 250 million. (2) If the negligence specified in paragraph (1) results in a patient's death, the Medical Professional or Healthcare Worker responsible may face a maximum of five years in prison or a fine of up to IDR 500 million.

Article 440 of Law Number 17 of 2023, which addresses medical malpractice by placing criminal sanctions on healthcare workers for negligence, is not consistent with the progressive health law paradigm. This is because medical research is exceedingly complex, and a variety of factors can influence a patient's condition, resulting in variances in treatment approaches and outcomes. Furthermore, all doctors share the laudable goal of curing their patients. No doctor plans to murder their patient on purpose; it would be unjust to put the doctor in prison if they were negligent or irresponsible in performing medical treatments on their patient. However, the doctor's error cannot be forgiven; the doctor may face other consequences, such as fines and compensation.

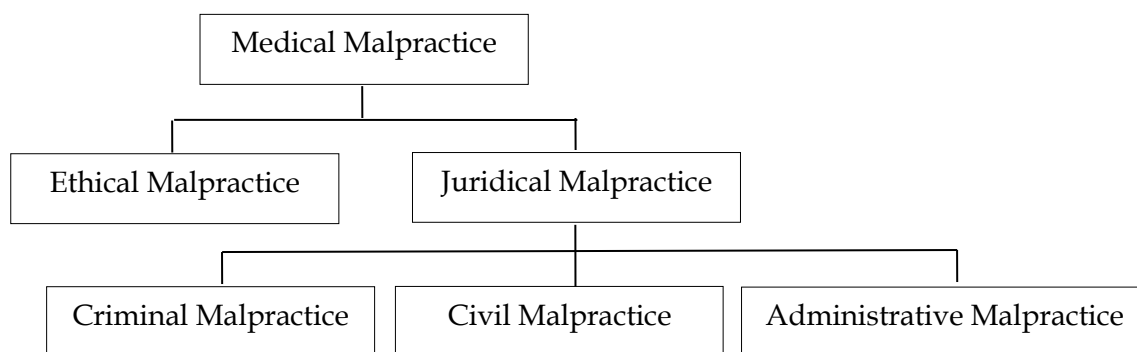


Figure 2. Types of Medical Malpractice

Several countries, such as the United Kingdom (UK), Malaysia, and Singapore, have removed criminal elements from their health legislation (Pahlevi, 2024). These countries typically penalize medical professionals by compelling them to pay compensation to patients and applying ethical and disciplinary punishments if doctors are found to have committed medical negligence (Giesen, 2023b). According to Annisa Che Ngah, doctors performing medical procedures, whether surgery or treatment, cannot guarantee the patient's recovery (Anisah Che Ngah, 1990). However, doctors can only do their best with the knowledge they have to cure patients, so if a doctor makes a mistake, they should only be punished with a fine or compensation to the patient or the patient's family (Stigall, 2022).

The transition from medical malpractice in Law Number 36 of 2009 concerning Health to medical negligence in Law Number 17 of 2023 concerning Health is a progressive reform to protect clinicians and patients in therapeutic interactions (Poppy Putri Hidayani, 2023). However, criminal punishment in the form of imprisonment for doctors must be a last resort (*ultimum remedium*) in order to prevent negative defensive medicine, in which doctors and health workers choose to protect themselves from mistakes rather than diagnosing or treating patients as a form of noble service to their profession (Susanti & Zurnetti, 2025).

III. Legal Enforcement Procedures for Medical Malpractice Crimes in Indonesia

Doctors, as medical staff, might be punished under criminal, civil, or administrative law if they are suspected of making errors while doing their duties. If a doctor is proven guilty, the judge can impose sanctions on the doctor, such as jail, fines,

giving compensation to the patient, and removing the doctor's license to practice (Nobel et al., 2025). Patients or their families may file a civil lawsuit in court to seek compensation for losses incurred as a result of the doctor's actions (Nobel et al., 2025). If a doctor engages in medical malpractice that results in harm, disability, or even the death of a patient, the patient has the right to file a criminal lawsuit against the doctor under Law Number 1 of 1946 regarding the Criminal Code and Law Number 17 of 2023 (Dwike et al., 2025).

The previous legislation, Law Number 36 of 2009 on Health, required the Indonesian Medical Disciplinary Council (MKDKI) to first investigate any allegations of medical malpractice made by doctors. After examining and reviewing the case, the MKDKI will determine if the malpractice case fits under criminal law, civil law, state administrative law, or the category of ethical and disciplinary offenses (Dwike et al., 2025). If the MKDKI determines that the matter involves criminal law violations, it will be sent to the police. However, if the doctor's activities violate civil and administrative law, the case will be taken to court. If the doctor is accused of breaking Indonesian medical ethics while practicing, the case will be referred to the Medical Ethics Council (MKEK), and the doctor suspected of disciplinary action will be dealt with by the MKDKI itself (Pujianti, 2025).

This law enforcement methodology is regarded as very bureaucratic and time-consuming because patients are unable to report their cases directly to law enforcement agencies without first going through the MKDKI. Furthermore, this law enforcement model undermines patients' chances of winning their cases because patients and their families are unfamiliar with medical science, do not know what the doctor has done to them, and are unaware of the standard operating procedures for medical actions in each field of medicine. Furthermore, the MKDKI, which decides patient cases, is dominated by medical experts having emotional ties to the reported doctors. This problem is aggravated by the fact that not all patients or their families can afford to employ a barrister to defend their case in the MKDKI hearing.

The Supreme Court addressed the deficiencies of Law Number 36 of 2009 concerning Health by releasing ruling Number 3004 K/Pdt/2014, which stipulates that the existence of an MKDKI ruling is not an essential prerequisite for determining whether medical negligence has occurred (Sari & Barthos, 2022). In the pursuit of protecting patients' rights, a doctor may face legal sanctions if it is proven that they were negligent or violated professional norms, causing injury to the patient. Furthermore, legal duty for medical services lies not only with individual doctors, but also with healthcare facilities, such as hospitals, clinics, and other healthcare institutions.

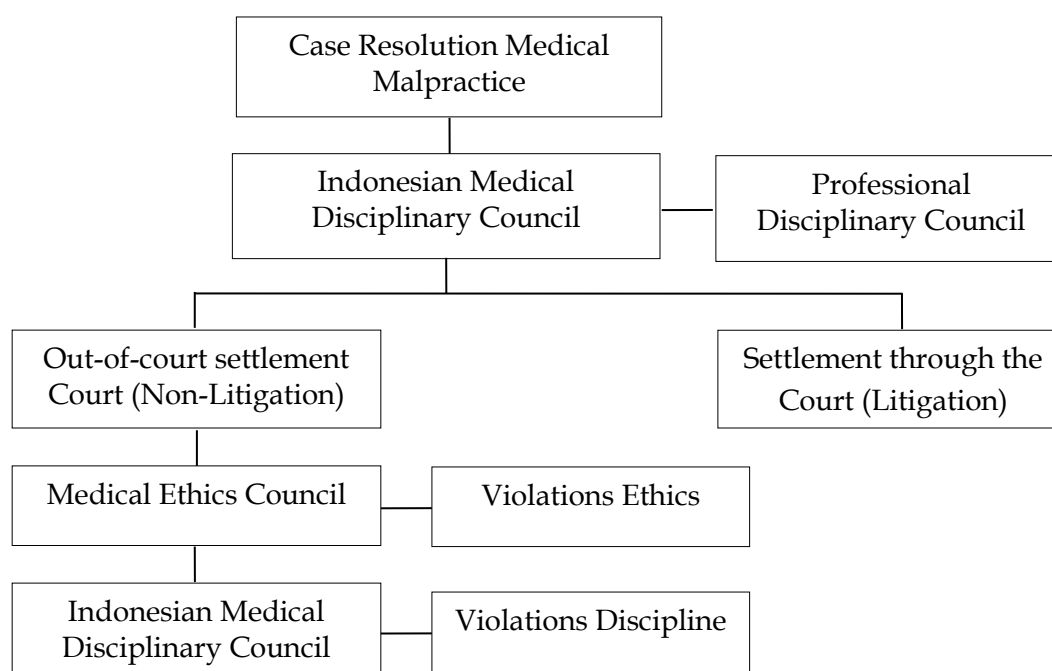


Figure 3. Mechanism for Resolving Medical Malpractice Cases in Indonesia

The amendment of Law Number 36 of 2009 to Law Number 17 of 2023 resulted in no significant changes in Indonesia's procedures of dealing with medical malpractice claims. Articles 306 and 308 of Government Regulation Number 28 of 2024 on the Implementation Regulations of Law Number 17 of 2023 concerning Health state that the post of MKDKI is replaced by the Professional Disciplinary Council (MDP) (Ramadhani, 2024), whose authority is to receive and examine reports of medical malpractice cases from the public and provide recommendations regarding criminal or civil sanctions against doctors and other health workers who commit medical malpractice.

IV. Adopting a Reverse Burden of Proof Approach in Indonesian Medical Malpractice Litigation

Indonesian criminal procedure law adheres to the theory of negative legal proof (*negatief wettelijke bewijstheorie*), as set out in Article 244(1) of Law Number 20 of 2025 on the Code of Criminal Procedure (KUHP). This evidentiary framework integrates the judge's conviction with the stipulation of at least two valid pieces of evidence to ascertain and establish the material truth for the parties involved in the case (Wibowo & A, 2024).

Yahya Harahap shows that the negative statutory theory of evidence (*negatief wettelijke bewijstheorie*) is an important framework in Indonesian criminal procedure law. This view requires judges to base their decisions on their personal convictions, supported by at least two pieces of evidence supplied by the litigating parties (Cut Khairunnisa, 2023). A judge is entitled to impose a criminal sentence only if the evidence provided in court is convincing and leaves no doubt, therefore establishing the defendant's guilt and justifying punishment in accordance with law regulations (Abdullah & Hatta, 2022).

The fundamental obstacle in implementing medical malpractice laws is determining whether a doctor's carelessness occurred during medical operations or while caring for patients. According to Giesen, patients must prove a direct link between the cause and

effect of the doctor's actions treating them (Askitopoulou, 2024). However, it is not easy for patients to prove the doctor's negligence because they do not have medical knowledge and are unaware of the doctor's actions during surgery as they are unconscious.

In court, law enforcement officers defending patients as victims must present expert witnesses who understand medical science both theoretically and clinically (British Medical Association, 2007). The healthcare sector possesses specialized expertise in medicine, therapeutic interventions, surgical procedures, and recuperation. Nevertheless, locating physicians who are prepared to participate as expert witnesses and provide testimony in court regarding the medical misconduct of their colleagues is difficult. Medical professionals serving as expert witnesses encounter a quandary. They are obligated to assist law enforcement in prosecuting those guilty of medical misconduct, yet they must confront the challenge of testifying against their peers. The data they furnish may result in incarceration, revocation of a medical license, and possibly the termination of their peers' professions. It is challenging for physicians to serve as expert witnesses while upholding their integrity and autonomy in delivering testimony in court (Sari & Barthos, 2022).

A further challenge is that the medical field is marked by a profound dedication to its oath and ethical standards. From the beginning of their training, regardless of whether they aspire to be general practitioners, specialists, or consultants, physicians are instructed on the need to comprehend and adhere to these ethical standards. A core principle of medical ethics is the duty of physicians to maintain, protect, and treat their colleagues with respect in their professional behaviour. Additionally, the Indonesian medical oath stipulates that physicians are required to regard their peers as if they were their own siblings. This moral tenet stems from the Hippocratic Oath, intended to foster positive connections among physicians, educators, and the community (EI & LOC, 2025).

The Hippocratic Oath aims to foster an attitude of respect, brotherhood, and mutual assistance in the practice of medicine (Tandry et al., 2024). However, these ethical principles are often misunderstood by doctors in the practice of medicine (Ghozali et al., 2024). According to Brazier, the meaning contained in the Hippocratic Oath is to maintain good relations with colleagues in order to improve the quality of health services to the community, not to defend colleagues who make mistakes or errors, thereby justifying all wrong actions carried out by colleagues (Brazier, 2022).

Ninik Mariyanti contends that when physicians are compelled to provide testimony in court on ambiguous or insufficient data, it may result in the judge experiencing uncertainty in rendering a decision. In an ideal scenario, medical professionals serving as expert witnesses ought to prioritize the court's pursuit of truth over the defense of their peers. Testimony from expert witnesses ought to elucidate facts instead than obfuscating them. If expert witnesses disseminate inaccurate information in court, the judge's ruling could adversely affect the patient (Imran, 2013). According to Ghozali, in medical malpractice cases, even though many other pieces of evidence are brought to court, judges always base their decisions on the testimony of expert witnesses (Giesen, 2023a).

It is rare to find expert witnesses whose court testimonies contradict or question the medical practices executed by defendants. Generally, expert witnesses endorse the acts of their colleagues, as only medical practitioners have expertise in surgical techniques and various medical procedures. Brazier asserts that judges in English courts depend only on expert witness evidence when adjudicating medical malpractice cases. The problem lies in the fact that it is exceptionally uncommon for a physician acting as an expert witness to contradict or challenge the actions of the defendant physician. Numerous judges in English courts readily accept the assertions of expert witnesses without scrutinizing or contesting their opinions (Gharaibeh, 2022).

The subsequent challenge is that physicians are reluctant to serve as expert witnesses because they feel obligated to uphold and protect patient confidentiality issues. The prohibition on revealing patient confidentiality is regulated in the 1948 Geneva Convention (Nemie, 2023). Nonetheless, prior to the Geneva Convention, Lord Ridell asserted that physicians are obligated to uphold and preserve patient confidentiality. According to Indonesian legislation, Article 351(1) of Law Number 17 of 2023 mandates that health information system operators safeguard personal health data and information. They are required to adhere to stringent restrictions aimed at safeguarding against unauthorized access to patients' private information. This clause is additionally strengthened by Law Number 27 of 2022 regarding Personal Data Protection, which comprehensively governs the handling of personal data, encompassing health data, classified as sensitive personal information that requires safeguarding. Consequently, physicians are sometimes hesitant to serve as expert witnesses due to regulations that prevent them from revealing their patients' confidential information.

Establishing that a physician has erred is challenging due to the specialized medical expertise possessed by a professional cohort that is not universally understood, including by law enforcement personnel; thus, only fellow physicians can substantiate the malpractice of a doctor. This trait leads to the categorization of medical negligence by physicians as a form of white-collar criminality.

White-collar crimes, including medical malpractice, are infamously difficult to substantiate, rendering the evidentiary framework set forth by Law Number 20 of 2025 concerning the Criminal Procedure Code, which delineates the burden of proof, seemingly antiquated and ineffectual. If law enforcement authorities depend solely on the statements of physicians acting as expert witnesses to establish the culpability of physicians in court, these statements are intrinsically partial and devoid of impartiality. This occurs due to the fact that both expert witnesses and the implicated physicians possess identical professional qualifications, belong to the Indonesian Medical Association (IDI), and are peers.

The difficulty of proving a doctor's fault has been mentioned in a report by the US Department of Health, Education and Welfare (Shariff et al., 2025). According to Puteri Nemie, the difficulty of proving medical malpractice cases has become an obstacle for patients or their families to file lawsuits against doctors in court because patients do not have the ability to prove the elements of medical malpractice (Rajan, 2022). If the current proof method remains unchanged, it will lead to unfair treatment of patients. Consequently, modifications to the proof system in medical malpractice cases are necessary.

Internationally, the assumption that the burden of proof belongs with the one who makes a claim, or *actori incumbit onus probandi*, is gradually being abandoned, particularly in certain cases. According to Eddy O.S Hiariej, this principle of evidence places the burden of proof on the party who must prove the charges, which is the public prosecutor, and is then concluded by the defendant (Rajamanickam, 2016). The public prosecutor's authority to pursue charges against the defendant reflects the idea that the accuser has the burden of proof. This principle emphasizes that in a criminal trial, the public prosecutor is responsible for determining the defendant's guilt. If the prosecution is unable to back up the charges, the principle of *actore non probante, reus absolvitur*, comes into play. This means that if the prosecutor fails to demonstrate the components of the offense accused against the defendant (*actore non probante*), the defendant must be acquitted (*reus absolvitur*).

In modern society, this approach to evidence is considered antiquated and raises ethical issues for patients affected by medical malpractice. It is considered more suitable

and rational for the obligation of proof to be assumed or delegated to the physician through the establishment of a reverse-proof mechanism or the redistribution of the burden of proof. Within this evidence structure, the responsibility to demonstrate moves from the public prosecutor to the accused. The accused is required to prove their innocence in response to the allegations presented by the public prosecutor. As a professional cohort, physicians are seen as having superior knowledge and understanding of medical science, surgical methodologies, and various medical practices. The inversion of the burden of proof in medical malpractice litigation has begun to be embraced by various European countries, as it is deemed inequitable for the state to impose this responsibility on law enforcement personnel or patients who do not possess the medical expertise of physicians (*Dwyer v. Roderick* [1983] 127 SJ 805 (CA)).

Lord Justice May contended that shifting the burden of proof in medical malpractice cases from the patient to the physician would improve the legal framework, given that doctors have greater knowledge, ability, and experience in the field of medicine. Ramalingam indicated that this alteration would streamline the process of substantiating a case, since physicians would obtain the requisite documentation and exhibits. Ramalingam Rajamickam expressed the view that (Guandi, 2022):

"In principle, both litigants, plaintiff and defendant, have the same responsibility to prove their case in court. However, if the defendant has the competence and expertise of the facts in the case, the burden of proof could be transferred to the defendant to facilitate the process of proving in court. In addition, there are cases that make it difficult for the plaintiff to prove the defendant's guilt because all of the evidence needed is confidential. Had the liability of proving the case be transferred to the defendant, then proving would be easier."

Shifting the onus of proof onto physicians or medical facilities presents vast opportunities across various dimensions. All documentation and materials, including medical records, laboratory findings, and paperwork pertaining to the patient's surgical procedure, treatment, and convalescence, are readily available. Provided that all evidence and exhibits are accessible, the Public Prosecutor merely needs to juxtapose the Standard Operating Procedures (SOP) for medical services with the actions taken by the doctor regarding the patient.

Globally, the reverse burden of proof method has been implemented in several European countries such as Italy, the Republic of Ireland, the United States, France, the Netherlands, and Belgium (K, 2025). In the reverse burden of proof system, doctors are considered more competent because they have the expertise and capacity to prove that the medical negligence alleged against them is not true (MR, 2022). According to Guandi, doctors, as professionals, have a deeper understanding of medical science and are therefore able to prove that the surgery or medical treatment performed on the patient was in accordance with established procedures (Dato' James Foong, 2023).

Transferring the burden of proof to physicians indeed streamlines the demonstration of each phase of law enforcement leading to trial, as the intricacies of the medical field and the actions taken by doctors during surgery are typically known only to those in the profession or other healthcare practitioners involved in the procedure. It is unjust for the patient to be required to demonstrate the physician's negligence when they do not possess the requisite expertise. In order to tackle this problem, numerous court rulings have started to implement the method of transferring the burden of proof via the *res ipsa loquitur* principle. This approach has been employed in instances like *Scoot v London* and *St. Katherine Docks*, 44 *Dwyer v Roderick*, 45 and *Secretary, Department of*

Health and Community Services v J.W.B, 46 among other others.

The originality of this study resides in the suggestion that legal actions concerning medical malpractice should be adjudicated by a distinct and autonomous court endowed with particular authority, as stipulated by legislation. A dedicated tribunal for transgressions or unlawful actions by physicians, medical facilities, and other healthcare practitioners would instigate considerable transformation by implementing the reversed burden of proof, thus facilitating the efficient progression of legal actions concerning medical malpractice.

V. Conclusion

Medical malpractice cases present significant evidentiary challenges due to the complexity of medical science, specialized procedures, and technical expertise that are often beyond the understanding of patients and law enforcement authorities, resulting in difficulties establishing negligence and increased litigation costs. Under Article 235 of Law Number 20 of 2025, the burden of proving criminal guilt rests with the Public Prosecutor rather than the defendant. However, prosecutors often lack the medical expertise necessary to establish negligence in diagnosis, treatment, surgery, and postoperative care. Although Articles 146 and 214 of the Criminal Procedure Code permit expert testimony, medical experts may exhibit professional bias arising from collegial solidarity, conflicts of interest, and a prevailing “code of silence,” potentially reinforced by professional ethical obligations under Articles 14 and 18 of the Indonesian Code of Medical Ethics (KODEKI). These circumstances raise concerns regarding the impartiality of expert testimony and the effectiveness of conventional evidentiary mechanisms. Consequently, the study proposes considering a reverse burden-of-proof approach in medical malpractice cases, requiring defendant physicians to demonstrate compliance with established medical standards and Standard Operating Procedures (SOPs), while examining comparative practices in France, Switzerland, the Netherlands, Ireland, Belgium, and Malaysia.

The reversed burden of proof system, as established in cases like *Scott v London & St. Katherine Docks* [1865] 3 H & C 596 at 601 and *Cassidy v Ministry of Health* [1951] 1 All ER 574 CA, traditionally applies to medical malpractice with gross negligence. This encompasses conducting surgery on an incorrect body part and leaving surgical tools inside a patient, operating on the wrong patient, failing to intervene medically (nonfeasance), or neglecting informed consent for significant procedures. Therefore, Consequently, this study recommends the application of the reversed burden of proof by shifting the burden of proof to doctors or other healthcare professionals through amendments to the Code of Criminal Procedure, the Health Act and other relevant legislation, so that the enforcement of the law in cases of medical malpractice in Indonesia is more effective and efficient.

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