



Case Study on Legal Justice, Certainty, and Utility in the Context of Medical Malpractice Based on Decision Number 133 Pk/Pid/2012 and Its Relevance in Maqashid Syariah

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Abstract

Malpractice refers to acts of negligence committed by a doctor or medical personnel that can result in disability or even death in the patient which should prioritize the patient's safety. Based on this, the Supreme Court's decision was based on Decision Number 133 PK/Pid/2012 concerning the crime of medical malpractice. This study aims to analyze the basis of judges' considerations in medical malpractice cases based on Decision Number 113 PK/Pid/2012 and to analyze the principles of justice, certainty, and usefulness arising from the Supreme Court's decision in the case. In addition to the suitability of the case in terms of the objectives of Sharia law. This research approach uses a normative juridical approach and a case approach. Based on the results of the investigation, the judge's decision was based on Article 360 paragraph (2) of the Criminal Code in conjunction with Article 361 of the Criminal Code, Law Number 48 of 2009, Law No. 8 of 1981, and Law No. 14 of 1985 as amended by Law No. 5 of 2004 and the second amendment to Law No. 3 of 2009, as well as other laws and regulations. Based on the Defendant's actions, which have been proven to constitute medical negligence due to negligence, and considering that at the (PK) level he continued to strengthen his cassation appeal, the Defendant remains guilty under Article 360 paragraph (1) in conjunction with Article 361 paragraph (2) of the Criminal Code. One form of improving the quality of judicial decisions and the professionalism of judicial institutions is when judges are able to issue decisions that consider the three aspects of justice, certainty, and legal utility. Meanwhile, the relevance of this case is in line with Islamic principles that connect ethics and law, with a focus on the protection of life and moral responsibility.

Keywords: *Malpractice, Certainty of Justice and Legal Utility, Hifz al-Nafs*

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Introduction

Medical malpractice is the negligence of a doctor to use the level of skill and knowledge commonly used in treating patients or injured persons according to the standards in the same environment. The negligence referred to here is carelessness, i.e., not doing what a careful person would reasonably do or, conversely, doing what a careful person would not do in that situation. It can also be considered negligence if the doctor's actions fall below the standard of medical care (Nadriana, 2015).

This greatly affects the quality of medical personnel in the eyes of the general public, and this action can also affect the quality of hospitals in treating the general public (Doloksaribu et al., 2023).

A doctor before practicing medicine or medical services has carried out quite a long education and training. So that society, especially patients, depends on the life expectancy and/or recovery of patients and their families who are suffering from illness. However, as we know, this doctor as an ordinary human being is full of shortcomings in carrying out his medical duties which are full of risks. Such as patients who are likely to be disabled or die after being treated by a doctor, this can happen, even though the doctor has carried out his duties according to professional standards or good standards of medical services. This kind of situation is usually referred to as medical risk, but is sometimes interpreted differently by parties outside the medical profession as medical malpractice (Jiverson Tumiwa, 2016).

Medical personnel, due to their duty to serve the public, are entitled to discretion and autonomy in line with the principle of humanity in the medical profession's code of ethics. These rules of conduct are outlined in order to prioritize the interests and safety of patients, therefore doctors always carry out their activities with sincere intentions and proper procedures (Tifani Maulidyanti et al., 2024).

In the Indonesian Legislative Regulations currently in force, no understanding of Malpractice is found. However, the meaning or meaning of Malpractice is actually found in Article 11 paragraph 1 letter b of Law no. 6 of 1963 concerning Health Workers (Health Workers Law) which reads as, "doing something that a health worker should not do, either considering his oath of office or remembering his oath as a health worker". However, it has been declared deleted by Law no. 23 of 1992 concerning Health. Therefore, statutorily, the provisions of Article 11 paragraph 1 b of the Health Workers Law can be used as a reference for the meaning of Malpractice which identifies Malpractice by neglecting obligations, meaning not doing something that should be done (Vatar Simanjuntak, 2015).

Medical actions considered malpractice are determined by professional organizations or specific institutions tasked with overseeing the profession in accordance with laws and ethical rules. This is because any action proven to be malpractice will be punished according to the law (Jiverson Tumiwa, 2016). Victims have the right to legal protection under the Criminal Code (Paruntu et al., 2024), Article 359 paragraph (1), which states: "Anyone whose fault (negligence)

causes the death of another person shall be punished with a maximum imprisonment of 5 years or a maximum detention of 1 year” (Handoko, 2018).

The elements in Article 359 of the Criminal Code include: a.) anyone; b.) due to their fault/negligence; c.) causing another person to die/pass away (Christha Auli, 2024).

The 1945 Constitution, which is the source of law for all existing laws, states that the state provides guarantees to all its citizens. Article 28 paragraph (1) states that every person shall have the right to recognition, guarantees, protection, and certainty of fair law and equal treatment before the law. Meanwhile, Article 28I paragraph (5) of the 1945 Constitution states that in order to uphold and protect human rights in accordance with the principles of a democratic state based on the rule of law, the exercise of human rights shall be guaranteed, regulated, and stipulated in legislation (Paruntu et al., 2024).

Mistakes in carrying out the medical profession will form criminal law liability (depending on the nature of the consequences of the losses that arise) containing 3 (three) main aspects as an inseparable unit, namely first treatment that does not comply with norms, second carried out through negligence, and third contains the consequences of losses in law. Losses in law are losses that are declared by law and can be recovered by imposing legal responsibility on the perpetrator and those involved by legal means. Medical treatment of medical malpractice is found in examining the tools and methods used in examinations, obtaining wrong medical facts, diagnoses drawn from obtaining facts, therapeutic treatment, or avoidance treatment due to losses from misdiagnosis or wrong therapy. Negligence/culpa is a legal definition that at the level of application in the field of medical malpractice is not yet uniform, this can give rise to legal uncertainty. The determining point of legal liability in medical treatment of medical malpractice is the consequences in the form of legal losses (Handoyo, 2020).

Therefore, there is a need for legal certainty specifically in the health sector to provide legal justice for injured patients. As the 1945 Constitution mandates that health is a human right. In article 28H paragraph (1) it is stated that everyone has the right to live in physical and mental prosperity, live and have a good and healthy living environment and has the right to receive health services. Furthermore, article 34 paragraph 3 states that the state is responsible for providing adequate health service facilities and public service facilities. This shows that the government is obliged to make the sick healthy and strive to maintain the healthy to stay healthy (Handoyo, 2020).

If an offense occurs in a hospital committed by a doctor/dentist or other health worker working in the hospital, the hospital can be held responsible for the actions of health workers which result in material losses to the patient. It has been stated in Republic of Indonesia Law Number 44 of 2009 concerning Hospitals Article 45 paragraph (1) states that “Hospitals cannot be prosecuted in carrying out their duties in order to save human lives.” Furthermore, Republic of Indonesia Law Number 44 of 2009 concerning Hospitals Article 46 also states that “Hospitals are legally responsible for all losses caused by negligence committed by health workers at Hospitals.” Therefore, the actions of doctors/dentists cannot be separated from the responsibility of the hospital, unless the doctor concerned commits an offense while practicing outside the hospital (Salim, 2020).

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Medical procedures are high-risk activities. These risks can arise from unforeseeable circumstances or from errors made by doctors during treatment. Doctors are considered to have committed malpractice if they do not follow the standards set by the medical profession or if the procedures they perform are incorrect. If doctors make mistakes, they can be considered to have committed malpractice, which can have legal consequences. Patients' rights are very important and must be protected. Doctors should not perform medical procedures carelessly if they do not have special expertise in the field, and must follow SOPs (Standard Operating Procedures) (Widi Astuti, 2009).

In accordance with Law No. 22 of 1999, hospitals and doctors must bear all consequences of medical actions taken. This is because, with regional autonomy, the government no longer provides financial assistance to hospitals. Therefore, doctors and hospitals are fully liable for compensation if patients suffer losses due to medical malpractice at the hospital.

Among the many reports of alleged medical negligence that have appeared in both print and electronic media, one was revealed in Supreme Court Decision Number 133pk/Pid/2012. This case involved Dr. TWM, Sp. OG. The incident occurred on Sunday, August 19, 2007, around 9 p.m., or at least at another time in August of the same year, or at the latest in 2007. The location was at the Iskandar Muda Military Hospital Level III in Banda Aceh, or at least within the jurisdiction of the Banda Aceh District Court. As a result of these actions, Rita Yanti, the daughter of the late Jamal, suffered serious injuries at the scene, namely the Iskandar Muda Military Hospital Level III in Banda Aceh, or at least within the jurisdiction of the Banda Aceh District Court (*Putusan Mahkamah Agung RI, Putusan Nomor 112 PK/Pid/2012*, 2012).

From this, it cannot be denied that the development of knowledge and intellectual thinking of people who truly understand their rights and obligations, especially in the medical field, means that if patients feel aggrieved as a result of medical actions that cause harm, they can sue medical personnel in court. Although patients have the obligation to prove the negligence committed by healthcare professionals, in practice, many patients still lack the legal awareness to file a lawsuit in court (Fadhlan et al., 2023).

Providing health services is like a religious obligation that must be fulfilled by society, known as *fardu kifayah*. There are various institutions in charge of ensuring that the population's needs for health and treatment are met and are within the reach of all regardless of their ethnicity, beliefs or social standing. The state has a responsibility to ensure that this nation has enough doctors from various specialties. In Islamic teachings, this is the government's duty towards its citizens. Health must be a top priority through doctors who treat it with support from their own patients (L. Diab, 2017).

When providing medical services to patients, doctors or other medical teams are obliged to adhere to the guidelines of maqasid al sharia. For example, they should examine patients according to the type of disease or body organs. If the patient has knee or stomach pain, the examination focuses enough on that area, there is no need to touch other unrelated parts of the body. Maintaining life is one of the goals of the second maqasid al-syari'ah, namely protecting

and protecting the soul (*hifz al-nafs*) (Gurusi et al., 2024)(Muh Sutri Mansyah et al., 2024). Doctors cannot prevent or delay death because it is only the power of God. However, they try to keep the patient's quality of life good until the time comes (L. Diab, 2017).

Based on the description and background of the problem above, at least the author found several formulations in the research that will be carried out, namely as follows: What is the basis for the judge's consideration in medical malpractice based on Decision Number 113 PK/Pid/2012?; What are the values of justice, certainty and utility in Decision 113 PK/Pid/2012?; and the appropriateness of medical malpractice in the review of Maqāṣid al-Sharī'ah?

Method

This type of research is literature-based research, the technique of which is to collect data that becomes the source being studied, both primary and secondary sources.

The primary data required is primary data from a positive law perspective, namely starting from Supreme Court Decision Number 133PK/Pid/2012, the Criminal Code, Law No. 36 of 2009 concerning Health, and Law No. 17 of 2023 concerning Health, Law No. 29 of 2004 concerning Medicine, KODEKI (Indonesian Medical Code of Ethics), and other laws and regulations (Suyanto, 2022).

Secondary data sources are sources that provide explanations of primary data, including documents, scientific articles, scientific books, and other articles related to the concept of malpractice and references regarding its relevance in relation to Maqāṣid al-Sharī'ah. This secondary legal material provides a collection of data to complement the results of this study. Tertiary data, which is data that provides clues and explanations related to primary and secondary legal materials, can take the form of the Criminal Code (KUHP), the Criminal Procedure Code (KUHP), and materials from the internet, as well as other legal materials (Suyanto, 2022).

The type of research used in this study is descriptive analysis. In this case, researchers select quality data or legal materials for research. The focus of qualitative analysis lies in the quality of data, which is not only to find the truth, but also to understand the legal rules related to the research being studied (Muhaimin, 2020).

This research approach uses a normative juridical approach and a case approach. The normative juridical approach is essentially an activity that examines the internal aspects of positive law or can be interpreted as a method of researching legislation, both from the perspective of the hierarchy of legislation (vertical) and the harmony of legislation (horizontal), and is relevant to the legal issues that are the focus of the research (referring to health and medical malpractice laws.). (Dwi Rizkia & Fardiansyah, 2023) Meanwhile, the case approach refers to the judge's decision in Supreme Court Decision Number 133PK/Pid/2012 (Mahmud Marzuki, 2005).

The data collection technique is documentation. According to Sugiyono, documentation is a method used to obtain data and information in the form of books, archives, documents, written numbers and images in the form of reports and information that can support research. Then documentation is used to collect data in the study. The documentation used by this research includes books, journals and other scientific works that support research on criminal

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liability for malpractice. The data obtained in this research will be analyzed by the author using a qualitative analysis method, namely the data obtained is then arranged systematically and then analyzed qualitatively to achieve clarity on the problems discussed in this research (Soekanto, 2011).

Results and Discussion

Basis for Judges' Considerations in Medical Malpractice Based on Decision Number 113 PK/Pid/2012

In the process of adjudicating a case, a judge, as a law enforcement officer who examines, adjudicates, and decides cases, including criminal cases, will always be faced with the task of assessing the evidence presented to him and then reaching a conclusion based on his conscience. After that, the judge gives appropriate consideration and a verdict for the defendant. In deciding a case, a problem that judges always face is that written law is often unable to resolve the issues at hand. In such circumstances, judges are required to find and/or create laws to supplement existing laws in order to decide a case. This is also based on the principle that judges may not dismiss a case on the grounds that the law is unclear (Fahmiron, 2016).

In order to produce objective decisions that serve as a basis for resolving disputes faced by judges, several steps must be taken. These steps include a thorough examination and analysis of all evidence presented during the trial. In addition, judges must also have the ability to utilize various legal sources in the application, discovery, or creation of law, and formulate them into considerations included in their decisions (Sudihar & Harijanti, 2024).

In line with B. Arief Sidharta's view, the facts and positive legal rules used as the basis for the decision must be explicitly stated in the considerations of the decision. In legal language, considerations that contain the factual reasons and legal basis for the decision are called legal considerations (Sudihar & Harijanti, 2024).

As for the judge's considerations in medical malpractice cases according to Case Decision Number 113 PK/Pid/2012, the panel of judges at the Judicial Review (PK) level rejects the application of the Defendant/PK Applicant (Judicial Review), as a consideration by the panel of judges at the Supreme Court at the PK level as follows:

That it does not turn out that there was a manifest error or error in *judex juris* decision No. 455 K/PID/2010, because the juridically relevant matters have been properly considered, namely the actions of the Petitioner for Judicial Review/Convicted Dr. TWM, Sp. OG bin DR. RM, he had neglected to carry out a caesarean section on victim witness Rita Yanti binti (late) Jamal because when he was about to close and sew the abdominal wall he did not pay attention to whether there were objects left in the stomach or not and did not order the instruments and assistants to count the tools used in the operation including gauze so that gauze was left in the victim's stomach which resulted in victim witness Rita Yanti binti (late) Jamal had an infection

and the surgical scar did not heal for a long time, therefore the victim was unable to do work for a while (*Putusan Mahkamah Agung RI, Putusan Nomor 112 PK/Pid/2012, 2012*).

That likewise, the evidence submitted is in the form of letter evidence marked T- PK-1 and T.PK-2, namely RYTI's Statement Letter dated 11 November 2012 and the Letter of the Director of RSUD Dr. Zaenal Abidin No. 440/1270/2012 dated 20 February 2012, not new evidence (*Novum*) which is decisive as intended in Article 263 paragraph (2) letter a of the Criminal Procedure Code, meaning it is not new evidence that gives rise to a strong suspicion that if the situation was known while the trial was still ongoing the result would be a verdict of acquittal or release from all legal claims, so juridically it does not contain the value of evidentiary power to be made into a *novum* determined by law, because the evidence is made unilaterally by the declarant and is made after a judicial decision (*Putusan Mahkamah Agung RI, Putusan Nomor 112 PK/Pid/2012, 2012*).

Whereas these reasons cannot be justified, because they do not fall within one of the reasons for judicial review as intended in Article 263 paragraphs (2) letters a, b and c of the Criminal Procedure Code; Whereas, therefore, based on Article 266 paragraph (2) a of the Criminal Procedure Code, the application for judicial review must be rejected and the decision requested for judicial review is declared to remain valid; Considering, whereas, since the request for review was rejected, the costs of the proceedings in the review examination are charged to the Applicant for Review/Convicted Person (*Putusan Mahkamah Agung RI, Putusan Nomor 112 PK/Pid/2012, 2012*)

Having regard to Article 360 (2) of the Criminal Code jo. Article 361 of the Criminal Code, Law No.48 of 2009, Law No.8 of 1981 and Law No.14 of 1985 as amended by Law No.5 of 2004 and the second amendment to Law No.3 of 2009 and other relevant laws and regulations (*Putusan Mahkamah Agung RI, Putusan Nomor 112 PK/Pid/2012, 2012*).

Therefore, the considerations of the panel of judges at the PK (Review) level are in accordance with the aspect of a defendant's judgment as intended in article 360 of the Criminal Code and 361 paragraph 2 in conjunction with article 361 have been clearly proven guilty of their actions, the basis for the judge's consideration in medical malpractice as emphasized in Case Decision Number: 113 PK/Pid/2012 was actually due to negligence which resulted in his negligence causing other people to be injured in such a way that illness or obstruction to carrying out work or search arose during a certain time. So the decision at the PK level is appropriate. On the other hand, the Defendant's malpractice because it was carried out in hospital was the correct decision in the malpractice case because he practiced in hospital and based on this consideration because the objects left behind resulted in the victim being injured and unable to do work. Based on the Defendant's actions because he has been proven to have committed medical malpractice due to his negligence so that at the Reinjury (PK) level he continues to strengthen his Cassation, the Defendant remains guilty of being charged with article 360 paragraph (1) in conjunction with Article 361 (2) of the Criminal Code (*Putusan Mahkamah Agung RI, Putusan Nomor 112 PK/Pid/2012, 2012*).

A request for review in a criminal case can only be submitted once, as stipulated in Article 66 paragraph (1) of Law Number 14 of 1985 and Article 268 paragraph (3) of Law Number 8 of 1981. This is further emphasized in Article 24 paragraph (2) of Law Number 48 of 2009

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concerning Judicial Power, which states that a review decision cannot be reviewed again (Mappong, 2011).

Article 24 paragraph (1) of Law No. 48 of 2009 stipulates that parties concerned may file for a review with the Supreme Court against a court decision that has obtained permanent legal force, if there are certain matters or circumstances specified in the Law. The "specific circumstances" referred to include the discovery of new evidence (*novum*) and/or the existence of an error or mistake by the judge in applying the law. The request for review, which can only be submitted once, is emphasized in Article 70 paragraph (2) of Law No. 14 of 1985, which stipulates that the Supreme Court shall decide on requests for review at the first and final level (Mappong, 2011).

Extraordinary legal remedies such as judicial review are efforts by those seeking justice to have final and binding decisions of the court of first instance or court of appeal (*judex factie*) and the Supreme Court (*judex juris*) reviewed. Recently, the frequency of judicial review efforts to the Supreme Court has increased, including the success rate of these extraordinary legal remedies. This indirectly provides a great opportunity for those seeking justice to pursue judicial review. As an extraordinary legal remedy, the grounds that can be used must also be extraordinary, where the extraordinary aspect lies in the fact that the decision against which the legal remedy is sought has already become final and binding, thereby closing the door to ordinary legal remedies such as opposition (*verzet*), appeal, and cassation for those seeking justice (Mappong, 2011).

The review of court decisions that have obtained permanent legal force is regulated in Law Number 8 of 1981 concerning Criminal Procedure Law, Article 263:

Paragraph (1) With regard to court decisions that have obtained permanent legal force, except for acquittals or dismissals of all legal charges, the convicted person or his/her heirs may submit a request for review to the Supreme Court.

Paragraph (2) A request for review shall be made on the basis of:

- a. if there are new circumstances that give rise to a strong presumption that, had they been known at the time of the trial, the result would have been an acquittal or dismissal of all charges, or the public prosecutor's charges would have been rejected, or a lighter criminal provision would have been applied to the case;
- b. if various rulings contain statements that something has been proven, but the facts or circumstances that form the basis and grounds for the ruling that has been proven are found to be contradictory;
- c. if the decision clearly shows a mistake by the judge or a clear error.

Paragraph (3) Based on the same grounds as those referred to in paragraph (2), a request for review may be submitted against a court decision that has obtained permanent legal force if the decision finds that the alleged act has been proven but is not followed by a punishment.

Power and Independence Related to the Basis of Consideration by Supreme Court Judges

Legal considerations are nothing more than a means to achieve justice. One of the fundamental objectives of laws and regulations is to realize justice. Therefore, the principle of justice must be a key element in every court decision. After all, courts are established with the aim of upholding the law and justice, so that through fair decisions, order, tranquility, and peace in society can be achieved (Harmono & Rasji, 2024). Thus, justice must be the main direction in the construction of judicial decisions (Harmono & Rasji, 2024).

Judges are required to discover the law and determine the law in every case that is examined and decided. Therefore, every judge's decision must include clear legal considerations, compiled through the application of legal methods and legal discovery, to ensure that the decision is not only legally valid but also reflects substantive justice (Harmono & Rasji, 2024).

In the 1945 Law it was explicitly stated that Indonesia was a country of law (Majid & Ali, 2025; Sahatiah, 2025). In line with this provision, one of the important principles of the rule of law is the guarantee of the independent exercise of judicial power, free from the influence of other powers to administer justice in order to uphold law and justice. Article 24 paragraph (1), paragraph (2), paragraph (3) and Article 24A paragraph (5) of the 1945 Constitution of the Republic of Indonesia, emphasize that: In 24 paragraph (1), it reads: Judicial power is the independent power to administer justice to uphold law and justice (Jenderal MPR RI, 2020).

On 24 paragraph (2), it reads:

Judicial power is exercised by a Supreme Court and subordinate judicial bodies in the general judicial environment, religious justice environment, military justice environment, state administrative justice environment, and by a Constitutional Court.

According to a review of the articles regarding justice in the 1945 Law as attached to the BPUPIK product, RIS Constitution, Presidential Decree of 5 July 1959, as well as the impact of the amendments, it is clear that Indonesia initially upheld the principle of the rule of law in accordance with the Trias Politika concept (Margono, 2019).

This principle emphasizes the independence of judicial power, where this power stands alone without intervention from the executive or legislative parties. In their operational functions, each judge is expected to perform his or her duties of examining, adjudicating and deciding a case without any influence or interference from extra-judicial forces, such as political, economic or public opinion forces (Wijayanto, 2018).

Therefore, the explanation of Article 24 clearly shows the application of the principle of independence of judicial power by confirming its meaning regardless of government power. This means that institutionally the judiciary and its judges must be free from the influence or interference of the executive. Therefore, even before the amendment to the 1945 Constitution there was no separation of powers between the executive and legislative branches of power, with regard to judicial power the principle of independence of judicial power still applies (Wijayanto, 2018).

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In the Triassic Politics concept, Montesquieu explains that each country has three different centers of power, namely, the legislature (which is responsible for making laws), the executive (which is tasked with implementing laws), and the judiciary (which plays a role in resolving legal disputes). The three branches of power are intentionally to be clearly separated in order to protect individual rights and ensure that freedom is maintained (Gede Atmaja, 2018).

Judicial power is a space for judges to carry out their duties as enforcers of justice in the judiciary. In line with Montesquieu's view in the book *The Spirit of Laws* (1748):

"In every government there are three sorts of power: the legislative, the executive the judiciary power, and the other simply the executive power of the state.... When the legislative and executive powers are united in the same person or same body of magistrates, there can be no liberty; because apprehension may arise, lets the same monarch or senate should enact tyrannical laws, to execute them in tyrannical manner. Again, there is no liberty, if the judiciary power that not separated from legislative and executive. Were it joined which the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then legislator. Were it joined to the executive power, the judge might behave with violence and oppression (Montesquieu & Nugent, 1899).

According to Montesquieu, the concept of separation of powers has the primary aim of safeguarding human rights (human rights), with independent judicial powers ensuring that judges act as the "mouth" of the law by deciding cases in accordance with existing law (Gede Atmaja, 2018).

However, freedom in exercising judicial authority is not absolute, because the Judge's duty is to uphold law and justice based on Pancasila by interpreting the law and looking for the basics and principles on which it is based, through the cases before him, so that his decision reflects the feeling of justice of the Indonesian nation and people (Wijayanto, 2018).

The independence of judicial power can be divided into three types, namely (U Puluhalawa, 2013):

1.) Independence of the institution/institution

- a.) Whether the judicial institution is dependent on other institutions or not, for example the prosecutor's office, police, law and other institutions. If the judiciary (especially the District Court) can be influenced by its integrity and independence by other institutions, this is an indicator that the judiciary is not independent or at least the judiciary is less independent;
- b.) Does the judicial institution have a formal hierarchical upward relationship? Where superior institutions can intervene and influence freedom or independence regarding the existence of the judicial institution. However, it should be noted that, insofar as it is already provided for in the legislation, such as providing supervision

to the subordinate courts, the hierarchical relationship between superior and subordinate institutions is legally justified and is not at issue here. The problem is if superior courts interfere in the civil service process illegally outside of the matters specified in the regulations in the law.

2.) Independence of the Judicial Process

The independence of the judicial process here mainly starts from the process of examining the case, proving it to the decision it handed down. The parameter of whether a judicial process is independent or not is characterized by whether or not there is interference (intervention) from other parties outside the judicial power which, with various efforts, influences the course of the judicial process, either directly or indirectly, the existence of this intervention. Whether or not it may affect the judicial process. If it turns out to be influential, it means that the judicial process is not or is less independent. On the other hand, the existence of this interference apparently has no effect, meaning that the judicial process can be said to be independent.

3.) Independence of the Judge

The independence of judges here is distinguished separately, because judges are functionally the core law enforcement personnel in administering judicial proceedings. The parameters of whether or not a judge is independent in examining cases can be seen from the judge's ability and resilience in maintaining the moral integrity and commitment to freedom of profession in carrying out their duties and authority from interference from other parties in the judicial process (U Puluhalawa, 2013).

The Values of Justice, Certainty, and Utility in Decision 113 PK/Pid/2012

In connection with the authority and power of judges regarding criminal acts in case Number 113 PK/Pid/2012 in accepting, examining and deciding criminal cases, it is regulated in the Criminal Procedure Code (KUHP) (*Undang-Undang Republik Indonesia Nomor 8 Tahun 1981 Tentang Hukum Acara Pidana*, 1981), Chapter I, General Provisions, explained as follows:

Article 1, paragraph (8): Judges are state judicial officials authorized by law to adjudicate.

Regarding decisions starting from the First Instance at the local District Court, the District High Court is called Appeal, then the Decision at the Supreme Court, namely Cassation, to the Decision at the Judicial Review Court (PK). So the procedural process carried out by the court is in accordance with applicable legal procedures. Therefore, because of this the author examines the study of PK level decisions at the Supreme Court, and with the case of Referring to Judicial Review Decisions (PK) because it is as follows:

Adjudicate

- 1.) Reject the request for review from the Petitioner for Judicial Review/Convicted Person:
dr. TWM, Sp. OG Bin DR. RM;

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- 2.) Determine that the decision requested for review remains valid;
- 3.) Charge the Petitioner for Judicial Review/Convicted Person to pay the court costs for this judicial review amounting to Rp. 2,500.00 (two thousand five hundred rupiah); So the judicial review decision in case Number: 113 PK/Pid/2012 and the description of the decision of the panel of judges above contain legal certainty, legal justice and legal expediency.

According to legal expert Abdul Manan, in the judge's considerations in the decision, namely:

"The judge's decision is a form of improving the quality of the judge's decision and the professionalism of the judicial institution, namely when the judge is able to hand down a decision by paying attention to three very essential things, namely justice (gerechtigheit), certainty (rechsecherheit) and expediency (zwachmatigheit)" (Manan, 2006)

That regarding the chronology of cases regarding the decision contained in decision number 113 PK/Pid/2012, which in fact actually caused harm to the victim due to the actions of a doctor who had operated on a pregnant woman because she was negligent due to the presence of a foreign object in the victim's stomach (pregnant mother), and that in the case of this case the doctor did not immediately take that medical lag behind, so that the victim was unable to act, so article 360 paragraph 2 is in accordance with aspects of certainty, justice and benefit for victims and defendants.

That the Defendant (Doctor) has been properly proven to have committed negligence as and in accordance with Article 360 paragraph (2) which reads: Anyone who, due to his negligence, causes a seriously injured person to be punished with imprisonment for a maximum of five years or imprisonment for a maximum of one year. Jonto. Article 361 of the Criminal Code which reads:

"If the crime described in this chapter is committed in the course of a position or occupation, then the penalty may be increased by one third, and revocation of the right to perform work may be imposed. So in this case there has been a correspondence between the facts and the Criminal Code, where the victim was unable to work. So the decision based on Decision 113 PK/Pid/2012 is in accordance with the values of legal certainty, legal justice and legal expediency.

Therefore, the Judicial Review Decision regarding the negligence of an obstetrician who has been decided by the Panel of Judges in case Number 113 PK/Pid/2002 shows that the decision on Article 360 paragraph (2) of the Criminal Code jo. Article 361 of the Criminal Code, Law No.48 of 2009, Law No.8 of 1981 and Law No.14 of 1985 as amended by Law No.5 of 2004

and the second amendment to Law No.3 of 2009 are in accordance with the Values of the benefits aspect, justice aspect and benefits aspect.

That the decision of a good judge should contain several elements:

- 1.) The judge's decision is a description of the process of social life as part of social control;
- 2.) The judge's decision is an incarnation of applicable law and is useful for every individual, group or country;
- 3.) The judge's decision is a balance between legal provisions and the reality on the ground. The judge's ruling is a description of the ideal awareness between law and social change;
- 4.) The judge's decision must provide benefits to everyone who litigates;
- 5.) The judge's decision should not cause new conflict for the litigants and the public (Mappong, 2011).

According to Jimly Asshiddiqie, justice is appropriate in human actions. Appropriateness is defined as the midpoint between the two ends of the extrem, which is too little. The two ends of the extrem concern 2 (two) people or objects. If the two people have similarities in the measurements that have been applied, then each person must obtain the same object or result. If it is not the same, then a violation of that proportion will mean injustice. On the other hand, justice can be interpreted as legality. It is fair that a rule be applied to all cases where the rules must be applied. It is unfair that a rule should be applied to one case but not to another of the same (Asshiddiqie, 2006).

According to Plato, there are two theories of justice, namely:

- 1.) Moral justice, namely an action that can be said to be morally fair and if it is able to provide balanced (in harmony) treatment between rights and obligations;
- 2.) Procedural justice, namely an action that is said to be procedurally fair if someone has been able to carry out a fair action based on established procedures (Asshiddiqie, 2006).

In the theory of certainty, the existence of such rules and the implementation of those rules give rise to legal certainty. Because legal certainty contains two meanings, namely first, the existence of general rules makes individuals know what actions can or cannot be carried out; and second, in the form of legal security for individuals from government arbitrariness because with general rules, individuals can know what the state may impose or do on individuals. Legal certainty is not only in the form of articles in law. More than that, there needs to be consistency in the judge's decision, namely between the decision of one judge and the decision of another judge for a similar case that has been decided (Mahmud Marzuki, 2017).

In Jan Michael Otto's view, there are several conditions that must be met in order to create legal certainty, namely:

- 1.) There are clear and consistent rules;
- 2.) Government agencies apply the law consistently, submitting to and obeying it;
- 3.) The public adjusts their behavior to these legal rules;
- 4.) Judges must be independent, impartial, and must apply legal rules consistently and judiciously when resolving legal disputes;
- 5.) Court decisions must be implemented in concrete terms (Afif Mahfud, 2024).

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According to Gustav Radbruch, there are two types of legal certainty, namely legal certainty by law and legal certainty in or from law. Laws that succeed in ensuring a lot of legal certainty in society are useful laws. Legal certainty because law provides another legal task, namely legal justice and the law must remain useful. Meanwhile, legal certainty in law is achieved if the law is as large as in law. In the law there are conflicting provisions (laws based on a logical and practical system). Laws are made based on *rechtswerkelijkheid* (true legal conditions) and in these laws there are no terms that can be interpreted differently (Astuti & Rusdi Daud, 2023).

Starting from the fact that justice and legal certainty cannot be reconciled, especially in a judge's decision, a new theory was born that tries to mediate to overcome these problems, and this theory is called utility theory. Utility theory assumes that in principle the purpose of law is only to create the benefit or happiness of society. The utility school incorporates practical moral teachings which, according to its adherents, aim to provide the greatest benefit or happiness to as many citizens as possible (Iman Santosa, 2015).

The Utility Theory pioneered by Jeremy Bentham argues that only in order will everyone have a chance to share in realizing the most happiness. Looking at the utility theory, it seems that the element of happiness of many people is prioritized, with the means of order. This theory focuses more on happiness for many people, but pays less attention to justice (Iman Santosa, 2015).

Utilities such as Jeremias Bentham, John Stuart Mill, and David Hume teach that people's happiness is a principle for measuring legal justice, so that both social institutions and legal institutions must be measured by their benefits, the element of benefit being a measure or criterion for someone to obey the law (Iman Santosa, 2015).

As in John Stuart Mill's quote:

An the of what there ought to be, and what laws ought to be, was utility.

A piece of legislation can only be properly implemented if it can be fair. Justice on the one hand is not just a moral demand. On the other hand, factually legal justice and social justice must go hand in hand at once (Iman Santosa, 2015).

Meanwhile, Jeremy Bentham's theory of expediency as a Utilitarianist states that the purpose of law is only to utilize humans. The concept of prosperity is interpreted as the same as happiness for individuals. Laws can be categorized as fulfilling their goals, if they are able to provide happiness for the majority of individuals in society. Even though it seems that Jeremy Bentham's view, with its utilitarianism, is individualistic in character, if interpreted in a universal scope, the benefits of legal norms are very useful, because of course people will obey them consciously if the benefits of the law are truly felt by society (Markus Larumpa, 2023).

In this case, Betham argued that the law would be useful if it was beneficial to society. The use of law in Jeremy Bentham's view as a pioneer of Utilitarianism which emphasizes that the most objective basis is to see whether a particular policy or action brings useful benefits or results or vice versa harm to the people concerned, especially in the case of Medical Malpractice (Markus Larumpa, 2023).

According to Andi Hamzah, in this case, an impartial judge is defined as impartial in his considerations and judgments. An impartial judge also means that the judge does not carry out orders from the government. Even if this must be the case, according to law judges can decide to punish the government, for example regarding the requirement for compensation stated in the Criminal Procedure Code (Sadri et al., 2023).

The Relevance of Medical Malpractice in the Review of Maqāṣid al-Sharī'ah

Medical errors often arise because doctors fail to fulfill their obligation to respect patients' rights. The relationship between the rights and obligations of doctors and patients is like two sides of the same coin. Patients' rights are a reflection of doctors' obligations, and vice versa, doctors' rights are responsibilities that must be fulfilled by patients. Essentially, the primary goal of doctors in treating patients is to provide healing or at least alleviate their suffering. An act is considered medical malpractice if there is negligence, carelessness, or lack of caution on the part of medical personnel, resulting in physical disability or even death of the patient. This condition requires doctors to be legally responsible for their actions (Adi Wiraditya, 2021).

It is not difficult to prove that a patient has suffered injury or even death, but the challenge lies in proving the causal link between the doctor's negligence and the injury or death suffered by the patient. Therefore, judges cannot assess negligence based solely on legal considerations (Adi Wiraditya, 2021).

Some reasons that can lead to medical malpractice are: a.) Lack of knowledge and expertise among healthcare personnel; b.) Absence of Standard Operating Procedures (SOP) and Standard Operational Procedures (SOP); c.) Instability in paying attention to the patient's condition; d.) Weakness in providing information and communicating with patients; and e.) Neglecting the environment when performing medical procedures (Mustafa & Darmawan, 2025).

Malpractice can be grouped into several categories, namely:

- a.) Medical malpractice that results in patients suffering severe injuries due to actions taken by medical personnel, which is a form of negligence in the practice of their profession;
- b.) Ethical malpractice, as stated in the KODEKI, is an act by a doctor that is not in accordance with medical ethics, which is part of the principles, norms, and regulations that apply to doctors;
- c.) Judicial malpractice, because this is a violation or negligence in the practice of the medical profession that is contrary to applicable laws (Rahmayanti et al., 2024).

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The types of judicial malpractice include:

- a.) Civil malpractice occurs when a medical professional refuses to perform their duties, namely by not providing services in accordance with the agreement;
- b.) Criminal malpractice occurs when an action is taken or neglected that is not in accordance with applicable criminal law. Such actions can be acts that are taken or not taken, that violate regulations, are committed consciously or as a result of negligence;
- c.) State administrative malpractice occurs when a doctor performs his professional duties without complying with state administrative law provisions (Rahmayanti et al., 2024).

Typically, medical risks can be categorized into several legal types, namely:

- a.) Neglecting to seek consultation can be considered negligence;
- b.) Failure to perform an examination, or what can be referred to as negligent diagnosis;
- c.) Sterilized injections;
- d.) Excessive dosage for meningitis, resulting in the patient experiencing deafness;
- e.) Diagnostic errors leading to inadequate treatment of foreign bodies in the eye during retinal detachment (Rahmayanti et al., 2024).

Article 51 of Law Number 24 of 2004 concerning Medical Practice stipulates five obligations, the violation of which could potentially be a factor contributing to negligence resulting in medical malpractice:

- 1.) Failure to fulfill the obligation to provide medical services in accordance with Professional Standards, Standard Operating Procedures, and patient needs. A doctor who does not fulfill this obligation will have fatal consequences for a patient because these three obligations play a very important role.
- 2.) Failure to fulfill the obligation to refer patients to other doctors who have better expertise or abilities.
- 3.) Failure to fulfill the obligation to keep confidential all matters concerning patients (maintaining doctor-patient confidentiality).
- 4.) Failure to provide emergency assistance on humanitarian grounds.

The elements of liability in malpractice include:

- 1.) The existence of culpable negligence;
- 2.) The existence of a specific act;
- 3.) The existence of damages, and;
- 4.) The existence of serious injury or death to another person;
- 5.) The existence of a causal relationship between the act and the death of another person (Pontoh, 2013).

As is known, these elements are cumulative. This means that all of them must be fulfilled. A doctor is said to have committed malpractice if:

- 1.) The doctor lacks mastery of the science and technology commonly applied in the medical profession;
- 2.) They provide medical services below professional standards;
- 3.) They commit gross negligence or provide careless services, and;
- 4.) They perform medical acts that are contrary to the law (Iskandar Syah, 2019).

A medical procedure is unlawful if it meets all three of the following conditions:

- 1.) It has medical indications toward a specific treatment goal;
- 2.) It is performed in accordance with the applicable provisions of medical science, and;
- 3.) It has been approved by the patient (Iskandar Syah, 2019).

If the doctor only performs actions that are contrary to medical ethics, then the plaintiff must prove the following four elements:

- 1.) The existence of a duty of the doctor towards the patient;
- 2.) The doctor violated the standard of medical care commonly used;
- 3.) The plaintiff suffered damages for which compensation can be sought;
- 4.) The damages were factually caused by substandard treatment (Iskandar Syah, 2019).

A medical professional has obligations that must be fulfilled, and failure to do so can be considered a violation of the law, which can result in legal sanctions. The legal sanctions referred to in Article 51 of the Medical Practice Law No. 29 of 2004 do not include legal sanctions for malpractice, because malpractice requires an element of negligence, whereas the sanctions in that article are imposed because a medical professional has failed to fulfill their obligations, and these sanctions are more severe than those for malpractice (Iskandar Syah, 2019).

In Islamic teachings, the line between unethical actions and illegal acts is blurred, because ethical values are seen as an integral part of the law itself. According to Prof. Omar Hasan Kasule, "Ethics is an integral part of Islamic law. This is because Islamic law is comprehensive, combining moral principles and applicable legal provisions. So, when we apply Islamic law, discussions about ethics become irrelevant because the essence of ethics is already contained within it" (Ichsan et al., 2017).

The General Obligations of the Indonesian Medical Code of Ethics are as follows:

- 1.) Every doctor must uphold, internalize, and practice the doctor's oath and/or pledge;
- 2.) A doctor must always make professional decisions independently and maintain the highest standards of professional conduct;
- 3.) In performing their medical duties, doctors must not be influenced by anything that could compromise their professional freedom and independence;
- 4.) Any action or advice by a doctor that may weaken the patient's psychological or physical resilience must obtain the consent of the patient/family and shall only be given for the benefit and welfare of the patient;
- 5.) Every doctor must always exercise caution in announcing or applying any new techniques or treatments that have not been tested for accuracy and that may cause public unrest;

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- 6.) A doctor must only provide certificates and opinions that they have personally verified;
- 7.) A doctor must, in all medical practice, provide competent service with complete technical and moral freedom, accompanied by compassion and respect for human dignity;
- 8.) Every doctor must always remember their obligation to protect human life;
- 9.) In performing their duties, doctors must pay attention to all aspects of health services (promotive, preventive, curative, and rehabilitative), both physical and psycho-social-cultural, of their patients, and strive to be true educators and servants of the community (Purwadianto et al., 2012)

The obligations of doctors towards patients are as follows:

- 1.) A doctor must be sincere and use all of their knowledge and skills for the benefit of the patient. If they are unable to perform an examination or treatment, with the consent of the patient/family, they must refer the patient to a doctor who has the expertise to do so.
- 2.) Every doctor must give their patients the opportunity to interact with their family and advisors, including in worship and/or the resolution of other personal matters (Purwadianto et al., 2012)

The obligations of doctors to themselves are as follows:

- 1.) Every doctor must always maintain their health so that they can work properly;
- 2.) Every doctor must always keep up with developments in medical science and technology (Purwadianto et al., 2012)

In line with this, the purpose of implementing Sharia law is for the benefit of mankind and to protect humans from harm in this world and the hereafter. This means that all aspects of Islamic teachings must lead to the achievement of these objectives, including the quality of service, which is used as an indicator to measure patient satisfaction with hospitals that are competent in medical care. This indicates that in developing service quality, the theory of maqashid cannot be separated (Yuhanah et al., 2024).

Maqāṣid al-Sharī'ah (the main objectives of Sharia) are unanimously understood as five universal legal objectives, namely the protection of religion, life, intellect, lineage, and property. Notably, all nations and communities have recognized the urgency of these five basic objectives. Darūriyyāt refers to things that are necessary to protect religion, life, intellect, family, and property. The existence of the principle of protecting and maintaining the five basic human needs (*dharuriyyat al-khams*) is essential for success in this world and the hereafter, and their absence disrupts the system of life and spreads corruption. *Hājiyyāt* refers to things that make human life on earth easier and eliminate difficulties. *Tahsiniyyāt* refers to things that make life orderly and morally healthy. Their absence does not affect the system of life or cause significant difficulties, but leaves deficiencies and imperfections in those things. The level of damage is calculated based on which category of Maqāṣid (goals) it causes (Mohamed Muhsin, 2023).

Tariq Ramadan explains that all rules, guidelines, and moral principles in Islam are based on two main purposes. First, “protection of dīn,” which he interprets as Islam's theological view of “life and death.” Second, “protection of *al-maṣlaḥa*,” which he translates as “benefit and common interest for all humans and nature.” There are three fundamental ethical values that are also important: “respecting and preserving life (*hayāh*), the environment (*khalq*), and peace (*salām*).” These three things serve as ‘pillars’ and “main objectives” in the framework of Islamic morality. In addition, there are other values that, although lower than the three main goals, are higher than mere individual interests. These values include “advancing and preserving honor (of humans, living creatures, and nature), welfare, knowledge, creativity, independence, progress, equality, freedom, justice, brotherhood, love, solidarity, and diversity” (Padela, 2022).

In the theory of Islamic Law, in principle, how to realize humanity to all mankind which includes prosperity in life in this world and in the afterlife. The purpose of this benefit is in accordance with the principles of the Qur'an:

- 1.) Everything that is useful is permitted, and all harm is done (الأصل في المنافع الإذن وفي المضار المنع);
- 2.) Do not cause harm and do not become victims of harm (لا ضرر ولا ضرار);
- 3.) The danger must be eliminated (الضرر يزال) (Margono, 2019).

The following are several verses in the Qur'an related to the topics of preserving life (*hifz al-nafs*), respecting human dignity, freedom of belief, and upholding justice (Ulya & Nurliana, 2025). Among them, the following verses are often referred to: a.) The glory of humanity (QS. Al-Isrā' :70); b.) Healing as the power of God (QS. Al-Syu'arā' :80); c.) Load according to ability (QS. Al-Baqarah :286); d.) Trust and confidence (QS. Al-Anfāl :27); e.) Preserving human life (QS. Al-Mā'idah :32).

In line with the view of Gustav Radbruch, who adheres to the principle of priority in realizing legal objectives. The priority scale in question first emphasizes justice, then expediency, and finally legal certainty. Ideally, efforts should always be made so that every rule of law and every application of the rule of law can always succeed in achieving the realization of justice, prosperity and legal certainty. Nevertheless, if not possible, it is the scale of priorities that must be introduced. In line with Gustav Radbruch's view, that if there is a conflict between justice, prosperity and legal certainty, justice must come first (Ulya & Nurliana, 2025).

Referring to Gustav Radbruch's perspective, the priority scale in question first seeks justice, then utility, and lastly legal certainty. Ideally, success is always aimed for so that every legal rule and every application of a legal rule can consistently achieve the realization of justice, utility, and legal certainty (Margono, 2019).

In this case of medical malpractice, the judge's consideration should also emphasize the concept of *maslahah* (public interest). The considerations that must be made by judges, especially judges in the Supreme Court, in handing down a verdict must also take into account two things: *maslahah* and *mudarat* (public interest and harm). The judge's verdict must bring about *maslahah* and prevent *mudarat*, as stipulated in the principles of Islamic law; *درء المفاسد مقدم على جلب المصالح* (Efendi, 2018).

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In his test, Abdul Wahab Khallaf argues that in order to use evidence (*hujjah*) of public interest to form laws on events that are not regulated by law or are regulated by law but are unclear, several conditions must be met, as follows: a) The public interest must be certain, not based on speculation; b) The public interest must be a general public interest, not an individual interest; c) The formation of law through public interest must not conflict with the law or principles established by the text/legislation or *ijma'* (Efendi, 2018).

Determining what constitutes benefit and what constitutes harm depends on the judge's intelligence through careful, objective, and empirical analysis, including their insight into 'urf or tradition, even though the results of their study are limited to worldly benefits (Efendi, 2018).

Both the legal system in Indonesia and Islamic law emphasize accountability in medical practice, and both offer solutions in the event of errors that harm patients. Indonesian positive law handles malpractice cases with detailed legislation, covering administrative, criminal, and civil sanctions, with the main objective of implementing clear operational standards and providing legal certainty. Meanwhile, Islamic law places responsibility in the field of health based on the principle of *hifz al nafs*, or protection of life, and prioritizes moral and ethical values in every medical action (Fahmi et al., 2025).

Conclusion

The judge's decision in this medical malpractice case was based on considerations that emphasized justice and the welfare of the victim of the caesarean section. Therefore, the Supreme Court judge was required to act objectively and make a decision based on all the facts that had been revealed and the applicable laws. In this case, the defendant's appeal was rejected because no errors were found in the previous decision and the new evidence did not change the conclusion. The defendant was found guilty of medical negligence that caused the victim to suffer severe injuries that rendered him unable to perform daily activities, and was therefore punished in accordance with the Criminal Code. This decision should guarantee the enforcement of the principle of justice by taking into account the actual circumstances and legal norms, benefiting the victim and the wider community, and ensuring legal certainty by taking the prescribed measures. This reflects the main principles of the judicial system, namely justice, certainty, and the usefulness of the law. In accordance with this, Islamic principles indicate a relationship between ethical and legal actions, because ethical values form the basis of law. Therefore, the theory of maqashid is relevant to improving the quality of medical services. Maqāshid al-Sharī'ah identifies five fundamental objectives of Sharia, namely preserving life (in addition to protecting religion, reason, lineage, and property). In addition, both positive law and Islamic law guarantee the enforcement of legal justice, both for victims and defendants.

References

- Adi Wiraditya, G. G. (2021). Pertanggungjawaban Pidana dalam Malpraktik Kedokteran Dalam Perspektif Hukum Kesehatan Indonesia. *Kertha Desa*, 9(1), 55–68.
- Afif Mahfud, Muh. (2024). *Buku Ajar Pengantar Ilmu Hukum*. Yoga Pratama. <https://eprints2.undip.ac.id/id/eprint/23515/1/Binder%20Buku%20Ajar%20-%20Pengantar%20Ilmu%20Hukum%20dr%20afif.pdf>
- Asshiddiqie, J. (2006). *Teori Hans Kelsen Tentang Hukum*. Sekretariat Jendral dan Kepanitaan Mahkamah Konstitusi RI.
- Astuti, B., & Rusdi Daud, M. (2023). Kepastian Hukum Pengaturan Transportasi Online. *Al-Qisth Law Review*, 6(2), 205–244. <https://doi.org/10.2483/alqisth.6.2.205-44>.
- Christha Auli, R. (2024). Pasal 359 KUHP tentang Kelalaian yang Menyebabkan Kematian. *Hukumonline.Com*. <https://www.hukumonline.com/klinik/a/pasal-359-kuhp-tentang-kelalaian-yang-menyebabkan-kematian-lt660a880959938/>
- Doloksaribu, I., Hasnati, H., & Triana, Y. (2023). Analisis Yuridis Terhadap Akibat Dari Malpraktik Yang Dilakukan Oleh Tenaga Medis. *Journal of Social Science Research*, 3(2), 12256–12267. <https://j-innovative.org/index.php/Innovative/article/view/1861>
- Dwi Rizkia, N., & Fardiansyah, H. (2023). *Metode Penelitian Hukum (Normatif dan Empiris)* (Vol. 1). Widina Media Utama.
- Efendi, J. (2018). *Rekonstruksi Dasar Pertimbangan Hukum Hakim Berbasis Nilai-nilai Hukum dan Rasa Keadilan yang Hidup dalam Masyarakat* (Vol. 1). Prenamedia Group.
- Fadhlan, F., Akhyar, A., & Affan, I. (2023). Tindakan Malpraktek Dokter Sebagai Akibat Kelalaian Dokter Dalam Menangani Pasien Ditinjau Dari Perspektif Hukum Kesehatan. *Jurnal Ilmiah Metadata*, 5(1), 305–319. <https://doi.org/10.47652/metadata.v5i1.326>
- Fahmi, Z., Fariza, S. A., & Agustina Mtd, N. W. (2025). Negligence in the Medical Profession: A Comparative Study of Islamic Law and Indonesian Law. *Yayasan Bantuan Hukum Nayottama Reswara*, 1(2), 54–60. <https://doi.org/10.63306/kqy31157>.
- Fahmiron, F. (2016). Independensi dan Akuntabilitas Hakim dalam Penegakan Hukum Sebagai Wujud Independensi dan Akuntabilitas Kekuasaan Kehakiman. *Litigasi*, 17(2), 3467–3516. <http://dx.doi.org/10.23969/litigasi.v17i2.158>
- Gede Atmaja, I. D. (2018). *Teori-Teori Hukum* (Vol. 1). Setara Press.
- Gurusi, L., Mansyah, M. S., Lee, K., Purnamasari, Y., & Alfajar, S. (2024). Islamic Legal Perspective on Data of Child Victims of Sexual Violence: A Case Study of the Indonesia's Court. *De Jure: Jurnal Hukum Dan Syar'iah*, 16(2), 456–479. <https://doi.org/10.18860/j-fsh.v16i2.28358>
- Handoko, D. (2018). *Kitab Undang-undang Hukum Pidana* (1st ed.). Hawa dan Ahwa.

Case Study on Legal Justice, Certainty, and Utility in the Context of Medical Malpractice Based on Decision Number 133 Pk/Pid/2012 and Its Relevance in Maqashid Syariah

- Handoyo, B. (2020). Tinjauan Yuridis Penegakan Hukum Malpraktik Dokter pada Pelayanan Kesehatan dalam Perspektif Hukum Pidana. *AT-TASYRI': Jurnal Ilmiah Prodi Muamalah*, 12(1), 48. <https://doi.org/10.47498/tasyri.v12i01.360>
- Harmono, H., & Rasji, R. (2024). Problematika Pertimbangan Hukum Oleh Hakim dalam Mewujudkan Keadilan di Masyarakat. *Rewang Rencang : Jurnal Hukum Lex Generalis*, 5(10), 1–19. <https://doi.org/10.56370/jhlhg.v5i10.939>
- Ichsan, M., Susila, M. E., & Gunawan, Y. (2017). *Medical Malpractice In The Perspective of Islamic Law*. 108. <https://repository.umsu.ac.id/handle/123456789/33296?show=full>
- Iman Santosa, P. (2015). *Pertanggungjawaban Tindak Pidana Korupsi*. PT Alumni.
- Iskandar Syah, M. (2019). *Tuntutan Hukum Malpraktek Medis*. Bhuna Ilmu Populer.
- Jenderal MPR RI, S. (2020). *Undang-undang Dasar 1945*. Sekretariat Jenderal MPR RI.
- Jiverson Tumiwa, B. (2016). Kajian Yuridis Malpraktik Kedokteran Yang Mengakibatkan Meninggalnya Pasien Menurut Pasal 359 KUHP. *Lex Privatum*, 4(7), 132–139. <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/13255>
- L. Diab, A. (2017). *Maqashid Kesehatan & Etika Medis dalam Islam (Sintesis Fikih dan Kedokteran)* (1st ed.). Deepublish.
- Mahmud Marzuki, P. (2005). *Penelitian Hukum*. Kencana.
- Mahmud Marzuki, P. (2017). *Pengantar Ilmu Hukum* (10th ed.). Kencana.
- Majid, A. A., & Ali, L. O. B. (2025). Gender-Sensitive Policing: An Evaluation of National Legal Frameworks and Criminal Law Regarding Women in Conflict with the Law. *Al-Qadha: Jurnal Hukum Dan Syar'iah*, 1(1), 1–8. <https://doi.org/10.64317/alqadha.v1i1.3>
- Manan, A. (2006). *Penerapan Hukum Acara Perdata di Lingkungan Peradilan Agama*. Kencana Prenada Media Group.
- Mappong, A. K. (2011). *Tentang Peninjauan Kembali*. Direktorat Jenderal Badan Peradilan Militer dan Peradilan Tata Usaha Negara. <https://ditjenmiltun.mahkamahagung.go.id/arsip/images/DOKUMEN/tentang%20peninjauan%20kembali%20makalah%20wakil%20ketua%20yudisial.pdf>
- Margono, M. (2019). *Asas Keadilan Kemanfaatan dan Kepastian Hukum dalam Putusan Hakim*. Sinar Grafika.
- Markus Larumpa, R. (2023). *Melihat Hukum dalam Kenyataan (Suatu Analisis Teori-teori Hukum)*. Guepedia.
- Mohamed Muhsin, S. (2023). Islamic Jurisprudence on Harm Versus Harm Scenarios in Medical Confidentiality. *National Library of Medicine*, 36(2), 291–316. <https://doi.org/10.1007/s10730-022-09503-w>

- Montesquieu, B. de, & Nugent, T. (1899). *The Spirit of Laws* (Vol. 2). The Colonial Press.
- Muh Sutri Mansyah, Hadi Supriyanto, Kaswandi, Erick Bason, & Sulayman. (2024). The Judge's Paradigm In Deciding Criminal Cases Of Sexual Violence From A Victimological Perspective. *Buana Gender: Jurnal Studi Gender Dan Anak*, 9(1), 46–53. <https://doi.org/10.22515/bg.v9i1.8666>
- Muhaimin, M. (2020). *Metode Penelitian Hukum* (1st ed.). Mataram University Press.
- Mustafa, G., & Darmawan, E. S. (2025). Strengthening Legal Frameworks and Patient Safety: A Narrative Review of Medical and Dental Malpractice in Indonesia. *Jurnal ARSI : Administrasi Rumah Sakit Indonesia*, 11(1), 13–26. <https://doi.org/10.7454/arsi.v11i1.1185>
- Nadriana, L. (2015). Pembuktian Kasus Malpraktek di Indonesia. *Lex Publica*, 2(1), 254–239. <https://journal.appthi.org/index.php/lexpublica/article/view/28>
- Padela, A. (2022). Maqāṣidī Models for an “Islamic” Medical Ethics Problem-Solving or Confusing at the Bedside? *American Journal of Islam and Society*, 39(1–2), 72–114. <https://doi.org/10.35632/ajis.v39i1-2.3069>
- Paruntu, S. S., Pangaribuan, P., & Nadzir, M. (2024). Tindak Pidana Kelalaian Yang Mengakibatkan Kematian Berdasarkan Pasal 359 Kitab Undang-Undang Hukum Pidana. *De Facto*, 11(1), 146–156. <https://doi.org/10.36277/jurnaldefacto.v11i1.229>
- Pontoh, M. R. (2013). Penegakan Hukum Pidana Terhadap Resiko Medik Dan Malpraktek Dalam Pelaksanaan Tugas Dokter. *Lex Crimen*, 2(7), 74–83. <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/3162/2704>
- Purwadianto, A., Soetedjo, S., Gunawan, S., Budiningsih, Y., Prawiroharjo, P., & Firmansyah, A. (2012). *Kode Etik Kedokteran Indonesia*. Pengurus Besar Ikatan Dokter Indonesia. https://equalsid.or.id/dokumen/101124182354_KODEKI-Tahun-2012.pdf%20%C2%B7%20versi%201.pdf
- Putusan Mahkamah Agung RI, Putusan Nomor 112 PK/Pid/2012*. (2012). Direktori Putusan.
- Rahmayanti, R., Fibrini, D., Pangaribuan, D. R., Hasibuan, S. A., & Meutia, C. Y. (2024). Malpractice and Risk Of Medical Procedures. *International Journal Reglement & Society*, 5(2), 144–151. <https://doi.org/10.55357/ijrs.v5i2.532>
- Sadri, F., Juanda, J., & Atmoko, D. (2023). Konstruksi Yuridis Terhadap Pertimbangan Majelis Hakim dalam Putusan Nomor 46 Pid.Sus 2021 Pn.Srg Berdasarkan Peraturan Perundang-undangan. *Jurnal Ilmu Multidisiplin*, 2(2), 161–178. <https://doi.org/10.38035/jim.v2i2>
- Sahatiah, S. (2025). Protection or Punishment? Assessing Gender-Sensitive Policing and Legal Frameworks for Women in the Criminal Justice System. *Al-Qadha: Jurnal Hukum Dan Syari'ah*, 1(1), 23–29. <https://doi.org/10.64317/alqadha.v1i1.6>

Case Study on Legal Justice, Certainty, and Utility in the Context of Medical Malpractice Based on Decision Number 133 Pk/Pid/2012 and Its Relevance in Maqashid Syariah

- Salim, F. (2020). Tinjauan Yuridis Normatif Atas Perlindungan Hukum Bagi Pasien Sebagai Konsumen Dalam Malpraktek Di Rumah Sakit. *LEX Renaissance*, 5(2), 390–402.
- Soekanto, S. (2011). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. RajaGrafindo.
- Sudihaar, A., & Harijanti, S. D. (2024). *Memotret Pertimbangan Putusan Hakim Dari Berbagai Perspektif* (1st ed., pp. 25–48). Sekretariat Jenderal Komisi Yudisial Republik Indonesia. https://www.komisiyudisial.go.id/storage/assets/uploads/files/aGKnO6sj_Bunga%20Rampai%20isi%20All%20small.pdf
- Suyanto, S. (2022). *Metode Penelitian Hukum Pengantar Penelitian Normatif, Empiris dan Gabungan*. Unigres Press.
- Tifani Maulidyanti, A., Hayuningsih, S., & Rosmawati, B. (2024). *Buku Ajar Etika dan Hukum Kesehatan* (1st ed.). PT Nusa Fajar Cemerlang. <https://repository.nuansafajarcemerlang.com/media/publications/587087-buku-ajar-etika-dan-hukum-kesehatan-69ed7d7a.pdf>
- U Puluwulawa, Moh. R. (2013). *Kemandirian Kekuasaan Kehakiman terhadap Penegakan Hukum*. Universitas Negeri Gorontalo Press. <https://repository.ung.ac.id/karyailmiah/show/879/kemandirian-kekuasaan-kehakiman-terhadap-penegakan-hukum.html>
- Ulya, M., & Nurliana, N. (2025). Perspektif Qur’anic Perspectives on Digital Health Ethics and Artificial Intelligence. *Program Studi DIII Rekam Medis Dan Informasi Kesehatan*, 5(1), 129–154. <https://doi.org/10.62951/icistech.v5i1.275>
- Undang-undang Republik Indonesia Nomor 8 Tahun 1981 Tentang Hukum Acara Pidana* (LN. 1981/ No.76, TLN. No.3209, LL SETNEG : 68 HLM). (1981). <https://peraturan.bpk.go.id/Details/47041/uu-no-8-tahun-1981>
- Vatar Simanjuntak, S. (2015). Pertanggungjawaban Pidana Oleh Dokter Yang Melakukan Tindak Malpraktek. *Fakultas Hukum Universitas Atmajaya Yogyakarta*. <https://repository.uajy.ac.id/id/eprint/8168>
- Widi Astuti, D. (2009). *Kedudukan Hukum Rekam Medis dan Informed Consent Sebagai Alat Bukti dalam Kasus Malpraktek* [Thesis, Program Pascasarjana Universitas Islam Indonesia]. <https://dspace.uui.ac.id/bitstream/handle/123456789/8694/diah%20widi%20astuti%20fix.pdf?sequence=1&isAllowed=y>
- Wijayanto, D. (2018). *Meluruskan Arah Manajemen Kekuasaan Kehakiman* (Vol. 1). Sekretariat Jenderal Komisi Yudisial Republik Indonesia.
- Yuhanah, S., Muhajirin, M., & Al-Wahhab KH, H. A. (2024). Analisis Implementasi Maqashid Syariah pada Rumah Sakit Berkompetensi Syariah di Indonesia Sebagai Unique Value

Preposition. *Reslaj: Religion Education Social Laa Roiba Journal*, 6(4), 1817–1826.
<https://doi.org/10.47467/reslaj.v6i4.1106>