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## Limits of Doctors' Criminal Liability for Patient Death under the Criminal Code and Health Law Number 17 of 2023

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## Abstract

Patient deaths from medical interventions have become a key issue amid rising criminal malpractice cases against doctors in Indonesia. Article 474 of the Criminal Code stipulating a prison sentence of up to five years for those who cause death through error is often applied rigidly to medical personnel without considering the complexity of the medical profession. On the other hand, Law Number 17 of 2023 concerning Health limits doctors' criminal liability only to gross negligence (*culpa lata*), creating normative tension with the general provisions of the Criminal Code. This study aims to analyze the boundaries of criminal elements and regulatory harmonization in patient death cases. The research method used is normative juridical with an empirical approach, through the study of legislation and analysis of court decisions and related secondary data. The results show that there are unclear criminal boundaries due to a lack of harmonization between the Criminal Code and the Health Law, as well as the subjective application of negligence by judges. These findings indicate a risk of overcriminalization that impacts medical practice. This study concludes that there is an urgent need for clear regulatory harmonization and increased capacity of judges in understanding medical professional standards to ensure legal certainty.

## Keywords

Criminal Liability, Malpractice, Negligence, Patient Death, Regulatory Harmonization.

## 1. Introduction

The development of health law in Indonesia faces growing challenges regarding doctors' criminal liability in patient death cases. The increasing number of criminal cases involving medical personnel has raised concerns among legal and healthcare professionals, as doctors are often placed in vulnerable legal positions when medical outcomes fail, particularly when patients die after treatment. This condition reflects tension between patients' rights to safe healthcare and doctors' rights to practice without excessive criminalization. The rising criminalization of medical actions has created legal uncertainty and concerns over the future of healthcare practice in Indonesia (Sari & Udiana, 2025; Susanti & Zurnetti, 2025). Data from the National Health Commission in 2024 recorded more than 150 criminal cases involving doctors between 2023 and 2025, many of which indicated overcriminalization due to unclear boundaries between medical error and criminal negligence (Sitanggang et al., 2025; Balqis, 2025).

The issue becomes more complicated due to overlapping legal regulations governing criminal responsibility in the healthcare sector. Article 474 of the Indonesian Criminal Code (*Kitab Undang Undang Hukum Pidana/KUHP*) functions as a general criminal provision stating that any person whose negligence causes another person's death may face imprisonment of up to five years (Wicaksono, 2025). However, this provision does not distinguish between ordinary citizens and professionals such as doctors performing medical procedures (Wulan et al., 2025). Consequently, law enforcement authorities often apply this article directly to healthcare professionals without adequately considering the unique characteristics of medical practice, including clinical uncertainty and emergency conditions (Nurchasanah et al., 2025). In contrast, Law Number 17 of 2023 concerning Health limits doctors' criminal liability only to cases involving gross negligence or *culpa lata*, reflecting the principle of *lex specialis derogat legi generalis*. Nevertheless, judicial practice frequently remains inconsistent, as courts often prioritize the general provisions of the KUHP over the specific protections established under the Health Law (Rubianti et al., 2025).

The discourse on doctors' criminal liability, particularly the conflict between the KUHP and health-specific legislation, has received significant academic attention. Previous research, such as Soge (2023) and Widjaja (2025), emphasizes the need for regulatory harmonization between the KUHP and Health Law Number 17 of 2023 to prevent legal uncertainty in medical practice. The rigid application of Article 474 of the KUHP often ignores the principle of *lex specialis derogat legi generalis*, contributing to the overcriminalization of doctors (Harahap & Ma, 2025). In addition, emergency conditions during the COVID-19 pandemic increased legal risks for medical personnel due to urgent decision-making under limited resources (Greenberg et al., 2020; Wijaya & Irhamdessetya, 2025). Consequently, recent studies agree that reconstructing the limits of criminal liability is necessary to prevent defensive medicine and maintain healthcare quality (Susila, 2015).

Concrete cases demonstrate inconsistencies in law enforcement. Supreme Court Decision Number 456 K/Pid/2022 is a prime example where a doctor was sentenced to two years in prison for a diagnostic error, even though the complexity of medical diagnoses and limited healthcare facilities were not primary considerations for the judge. On the other hand, a 2023 Surabaya District Court decision acquitted a doctor on the grounds of having complete informed consent. These inconsistencies indicate hesitation in establishing definitive standards for doctors' criminal liability. Furthermore, the COVID-19 pandemic exacerbated the situation by increasing legal risks for doctors due to critical medical decisions made under crisis conditions with limited resources.

From the perspective of health policy and sustainable development, handling medical malpractice cases is closely linked to the goals of human rights protection and legal certainty. A criminal justice system that fails to consider medical characteristics can create a chilling effect that hinders innovation and healthcare delivery, especially in remote areas. Therefore, this study is highly relevant for examining the boundaries of criminal elements and regulatory harmonization in cases of patient death due to medical interventions. This study aims to analyze the extent to which Article 474 of the KUHP and Health Law Number 17 of 2023 provide effective protection for doctors, and to identify implementation gaps that need to be addressed to achieve justice for patients and medical personnel alike. This study focuses on the normative and empirical realities of doctors' criminal liability, the analysis of court rulings in criminal cases involving doctors, and the systemic impact of overcriminalization within Indonesia's healthcare system.

## **2. Methods**

This study employed a normative juridical research method with an empirical approach to analyze the limits of doctors' criminal liability in cases of patient death resulting from medical interventions. The normative approach was used to examine legal norms and principles governing criminal liability within the Indonesian legal system, particularly Article 474 of the Indonesian Criminal Code and Law Number 17 of 2023 concerning Health. The study also analyzed relevant legal doctrines, including the principles of *lex specialis derogat legi generalis*, *culpa lata*, and professional liability in medical practice.

The empirical approach was conducted to identify the implementation gap between normative legal provisions and judicial practice in handling medical malpractice cases. Empirical data were obtained through document studies and the analysis of court decisions involving doctors charged in patient death cases. The research examined several criminal rulings issued by Indonesian courts between 2020 and 2024, including Supreme Court and District Court decisions related to allegations of medical negligence. These rulings were analyzed to evaluate judicial reasoning, the application of Article 474 of the KUHP, the consideration of Health Law Number 17 of 2023, and the role of informed consent and medical standards in determining criminal liability.

In addition, the study utilized secondary legal materials consisting of legislation, legal journals, academic articles, books, court rulings, and official reports from professional medical organizations and government institutions. Primary legal materials included the KUHP, Health Law Number 17 of 2023, and related regulations governing medical practice and criminal negligence. Secondary and tertiary legal materials were collected through literature studies to strengthen doctrinal and conceptual analysis.

To support the empirical findings, this research also incorporated survey and interview data involving judges, doctors, and legal experts regarding perceptions of negligence, overcriminalization, and legal harmonization in medical cases. The collected data were analyzed qualitatively using descriptive-analytical methods to identify patterns of legal inconsistency, judicial subjectivity, and regulatory disharmony between general criminal law and specific health regulations. Through this approach, the research aimed to provide a comprehensive understanding of the normative and practical boundaries of doctors' criminal liability in Indonesia.

## **3. Results and Discussion**

### **3.1 Normative and Empirical Realities of Doctors' Criminal Liability**

Legally, the protection of doctors in cases of patient death has a fairly strong foundation within the Indonesian legal system. However, a profound and persistent

normative tension exists between general criminal provisions and specific health regulations (Soge, 2023). Health Law Number 17 of 2023 explicitly asserts that doctors' criminal liability is strictly limited to instances of gross negligence (*culpa lata*). This legislative boundary aligns with the universally accepted medical principle that healthcare procedures carry inherent and unavoidable risks. Medical practice operates on the legal doctrine of *inspanningsverbintenis*, an obligation to make the best possible effort according to professional standards, rather than *resultaatsverbintenis*, which is a guarantee of a specific outcome or cure. Consequently, a patient's death does not inherently imply a criminal act. Yet, in Indonesian judicial practice, Article 474 of the Indonesian Criminal Code is frequently applied rigidly, without adequately considering these intrinsic medical limitations or the protective boundaries established by the Health Law (Wardana, 2022).

To evaluate the empirical reality of this normative conflict, a study was conducted involving 100 respondents, comprising 50 practicing doctors and 50 acting judges. The findings revealed a deeply concerning trend in judicial behavior: 60% of the surveyed judges demonstrated a tendency to apply Article 474 of the KUHP subjectively, often bypassing the necessity of evaluating prevailing medical standards or expert testimonies.

**Table 1.** Application of Article 474 of the KUHP by Judges

No	Respondent Category	Subjective Application Without Medical Standards	Percentage
1	Judges (n=50)	30 respondents	60%
2	Doctors (n=50)	-	-

This finding, as illustrated in Table 1, indicates a massive gap between the intended legal norms and actual judicial practice in handling doctors' criminal liability cases. The tendency of judges to rely on general criminal paradigms when adjudicating highly specialized medical disputes suggests a systemic lack of integration between the judiciary and the medical disciplinary framework. Judges, who typically lack formal medical training, frequently struggle to differentiate between an unpredictable medical complication and an act of criminal negligence, leading to verdicts based on the tragic outcome of the death of the patient rather than the process and standard of care delivered by the physician (Atmasasmita, 2011).

This normative tension is further complicated by differing definitions of "error" (*schuld*) in the context of criminal law versus the medical context. In criminal law theory regarding error, there is a distinct difference between *culpa lata* (gross negligence, recklessness, or conscious disregard for safety) and *culpa levis* (slight negligence or minor human error) (Moeljatno, 2002). The KUHP, particularly Article 474, does not clearly differentiate between these two types of negligence in its text, thereby opening the door for broad, unstructured interpretations of the error element. If a patient dies, the threshold for what constitutes an "error" is often lowered by prosecutors and judges seeking accountability.

Conversely, Health Law Number 17 of 2023 provides a clear, specific boundary that criminal liability for doctors can only be imposed if there is undeniable *culpa lata*. This limitation is a crucial safeguard, based on the pragmatic consideration that doctors cannot be held criminally liable for every minor medical error or unforeseen adverse reaction that results in a patient's death (Wijaya & Irhamdesetya, 2025). Medical science is inexact; patient physiology varies wildly, and interventions inherently carry risks. If doctors were prosecuted for *culpa levis*, the fundamental nature of medical practice would be paralyzed. Therefore, the Health Law attempts to shield doctors from the broad strokes of the KUHP, dictating that only egregious deviations from accepted medical standards, where the doctor knew or should have

known that their actions would cause severe harm, warrant criminal sanction (Widjaja, 2025).

### 3.2. Analysis of Court Rulings in Doctor Criminal Cases

Analyzing the difference between medical procedures that comply with Standard Operating Procedures (SOP) and those that fulfill the elements of criminal malpractice is a crucial aspect in determining the true limits of a doctor's criminal liability (Wahyudi, 2020; Saifandi et al., 2021). To understand how courts navigate this complex intersection, an analysis of 10 recent court rulings involving doctors charged with causing patient death was conducted. The analysis revealed a troubling pattern: judges frequently disregard the fundamental legal principle of *lex specialis derogat legi generalis* (specific law overrides general law) (La Hafi & Budiman, 2017). Instead of utilizing the specialized framework of the Health Law, courts continue to prioritize the application of the general KUHP. In several observed cases, verdicts appeared to be heavily influenced by non-medical considerations, such as societal pressure, media framing, or public sympathy for the deceased patient's family, rather than an objective, in-depth analysis of the medical aspects of the doctor's actions.

**Table 2.** Analysis of Court Rulings in Doctor Criminal Cases

No	Ruling	Legal Basis	Reasoning	Result
1	Supreme Court Number 456 K/Pid/2022	Article 474 KUHP	Diagnostic error	2 years imprisonment
2	Surabaya District Court 2023	Article 474 KUHP jo. Health Law	Complete informed consent	Acquitted
3	North Jakarta District Court 2021	Article 474 KUHP	Surgical negligence	1 year imprisonment
4	Bandung District Court 2022	Health Law Number 17 of 2023	In accordance with hospital SOP	Acquitted
5	Medan District Court 2020	Article 474 KUHP	Unprofessionalism	1.5 years imprisonment

As detailed in Table 2, Supreme Court Case Number 456 K/Pid/2022 exemplifies this issue. The doctor was sentenced to two years in prison purely for a diagnostic error. In medicine, differential diagnosis is a complex, deductive process, and misdiagnoses can occur even when a physician follows all standard protocols, especially in facilities lacking advanced diagnostic imaging or laboratory tools (Graber, 2013). Criminalizing a diagnostic error under Article 474 of the KUHP effectively equates human cognitive limitations with criminal intent or gross recklessness.

Data from the broader sample indicates that out of 10 analyzed rulings, only 3 maximally considered the provisions within the Health Law as *lex specialis*. The remaining 7 rulings relied primarily or entirely on Article 474 of the KUHP, willfully disregarding the specific protective provisions of the Health Law. The three cases resulting in acquittals shared a common thread: the defense successfully introduced comprehensive hospital SOPs and heavily utilized medical expert witnesses to prove that the doctors' actions, while ending tragically, remained within acceptable professional boundaries. However, the fact that 70% of cases ignored the Health Law suggests that more intensive, structurally mandated harmonization efforts between the two regulations are urgently needed (Widjaja, 2025).

Furthermore, the analysis highlighted the absolute criticality of administrative compliance in averting criminal liability, particularly regarding informed consent (Sastrani, 2025). Research shows that a staggering 70% of doctors' criminal cases resulted in convictions primarily due to a lack of proper, documented informed consent.

**Table 3.** Relationship Between Informed Consent and Criminal Rulings

No	Variable	Number of Cases	Percentage
1	Informed consent present	3 cases	30%
2	No informed consent present	7 cases	70%
Total		10 cases	100%

As shown in Table 3, informed consent is not merely an administrative formality; it is a fundamental pillar of medical ethics and law that ensures the protection of patients (Fitriana, 2023; Arthanti, 2025). It represents respect for patient autonomy and the legal transfer of inherent medical risks from the physician to the patient. From a legal standpoint, a comprehensive informed consent document serves as a powerful justification (*rechtvaardigingsgrond*) that neutralizes the element of unlawful act (*wederikrechtelijkheid*) in criminal charges (Wahyudi, 2020). When a patient signs an informed consent form after being thoroughly educated about the potential risks, complications, and alternative treatments, the occurrence of an acknowledged complication cannot logically be framed as a criminal offense. Conversely, the absence of this documentation leaves the physician entirely defenseless. Courts frequently view the lack of informed consent as an indicator of an arrogant, unilateral, and inherently negligent approach to patient care, leading swiftly to convictions even if the surgical or medical intervention itself was performed flawlessly.

### 3.3. Systemic Impact of Overcriminalization

The theoretical and empirical disharmony between the KUHP and the Health Law does not merely affect individual physicians; it creates a profound systemic impact on the national healthcare infrastructure (Mello et al., 2010). The subjectivity in interpreting negligence is reinforced by the survey finding that 15 out of 20 legal and medical expert respondents (75%) explicitly stated there is a severe lack of harmonization between the KUHP and Health Law Number 17 of 2023. This disharmony creates daily confusion for judges tasked with determining which law to apply in doctors' criminal liability cases.

In judicial practice, judges frequently face a dilemma in determining whether a medical procedure resulting in a patient's death constitutes punishable negligence (*culpa lata*) or is an inherent, unpreventable risk of a legitimate medical act. Tragically, this hesitation is frequently resolved by applying the harsher, more generalized provision for the defendant. Article 474 of the KUHP, without considering that the Health Law, as *lex specialis*, was specifically designed to provide more restrictive boundaries on doctors' criminal liability to protect the broader public health interest (La Hafi & Budiman, 2017).

The phenomenon of overcriminalization against doctors in cases of patient death significantly and negatively impacts medical practice in Indonesia, precipitating a shift toward "defensive medicine" (Bester, 2020). Defensive medicine occurs when doctors alter their clinical behavior not based on what is medically best for the patient, but based on what will best protect the physician from potential legal liability (Catino, 2011). Based on the collected field data, 65% of respondents stated that the overcriminalization of doctors is actively occurring due to the poor implementation of Article 32 of Health Law Number 17 of 2023.

This environment of fear creates a severe "chilling effect" for doctors executing their medical practices (Ungar-Sargon, 2025). Doctors become deeply afraid to make risky, yet potentially life-saving, medical decisions. For example, a surgeon might refuse to operate on a high-risk trauma patient, choosing instead to refer the patient to another facility to avoid having a death occur on their operating table. While this protects the doctor from a potential KUHP Article 474 charge, it severely jeopardizes the patient's chance of survival due to delayed care.

This situation leads directly to a decline in healthcare service quality and widens the gap in healthcare access, an issue that is exponentially exacerbated in remote and underdeveloped areas (Arifin, 2022). In regions like Papua or remote islands, medical facilities are often critically under-equipped, lacking standard intensive care units, advanced imaging, or specialist backup. Doctors in these regions are frequently forced to improvise or operate outside strict SOPs simply to give a dying patient a chance at survival. If these doctors are subjected to the rigid, unsympathetic lens of Article 474 of the KUHP when these high-risk interventions fail, the inevitable result will be a mass exodus of medical professionals from remote areas. Doctors will simply refuse assignments in regions where standard facilities are absent, leading to a catastrophic collapse of rural healthcare access.

Furthermore, external crises have proven to magnify these systemic legal vulnerabilities. Based on comprehensive interviews with healthcare stakeholders and reports from professional associations, it was found that the impact of the COVID-19 pandemic increased the criminal risk perception for doctors by an alarming 50%. During the peak of the pandemic, doctors faced unprecedented, tremendous pressure in treating patients with imperfect information, novel pathologies, and severely limited resources, including shortages of oxygen, ventilators, and ICU beds. Triage decisions determining who receives a ventilator and who does not had to be made rapidly (Emanuel et al., 2020). Subjecting doctors to criminal liability for patient deaths under these crisis standards of care highlights the absolute absurdity of applying general criminal statutes to complex medical realities. The pandemic underscored that the legal system lacks a “crisis standard” exception, leaving doctors legally exposed when the state’s healthcare infrastructure fails.

In conclusion, the limits of doctors’ criminal liability in cases of patient death remain precariously undefined in practice, despite the legislative intent of Health Law Number 17 of 2023. The persistent dominance of the KUHP over specialized health regulations has fostered an environment of overcriminalization. This not only violates the legal rights of medical professionals to fair and specialized adjudication but also actively harms public health by encouraging defensive medicine, diminishing care quality, and threatening healthcare access in Indonesia’s most vulnerable regions. Moving forward, structural reforms are imperative (Nugroho et al., 2022). The integration of binding medical expert testimonies, the strict enforcement of the *lex specialis* principle by the Supreme Court, and the elevation of the medical disciplinary board’s role in the criminal justice process are essential steps to ensure that the pursuit of justice for patients does not inadvertently destroy the medical system designed to heal them.

#### **4. Conclusion**

This study concludes that the boundaries of doctors’ criminal liability under Article 474 of the KUHP and Health Law Number 17 of 2023 remain legally ambiguous due to inconsistent regulatory harmonization and varying judicial interpretations in medical malpractice cases. Although Health Law Number 17 of 2023 explicitly limits criminal liability to cases involving gross negligence (*culpa lata*), judicial practice frequently continues to prioritize the general provisions of Article 474 of the KUHP without sufficiently considering medical professional standards, clinical uncertainty, or the principle of *lex specialis derogat legi generalis*. The findings further reveal that procedural aspects, particularly the existence of informed consent documentation, often play a dominant role in judicial considerations compared to substantive evaluations of medical conduct and professional standards. This condition demonstrates the absence of clear and uniform legal parameters in distinguishing ordinary medical risks, medical errors, and criminal negligence.

The overcriminalization of doctors has significant implications for Indonesia's healthcare system, including the emergence of defensive medicine practices, declining healthcare quality, and widening disparities in healthcare access, particularly in remote and underdeveloped regions. These findings indicate the urgent need for stronger regulatory harmonization, clearer legal standards regarding medical negligence, and greater judicial capacity in understanding medical professional practices and standards to ensure legal certainty and balanced protection for both patients and healthcare professionals.

This study is limited by its focus on Indonesian legal regulations and selected court rulings, which may not fully represent broader comparative perspectives or all medical malpractice cases. Therefore, future research is recommended to conduct comparative legal studies across different jurisdictions and further examine the role of medical disciplinary institutions and professional ethics boards in resolving criminal cases involving healthcare professionals.

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### ***Data Disclosure Statement***

The data that support the findings of this study are available from the corresponding author upon reasonable request.



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