

## Settlement of Medical Crimes by the Medical Committee and Medical Audit

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**ABSTRACT:** *In the context of a medical audit, the medical committee functions to prevent possible negligence in specific medical procedures. This function is generally performed when a case is considered difficult, an unnatural death or other exciting cases are found. This study aims to explain the role of medical committees and medical audits and the part of medical audits in resolving medical crimes. The method used in this study is a normative juridical method with a statutory and conceptual approach. This study shows that the medical committee is tasked with monitoring and evaluating the quality of medical services by implementing medical audits. Meanwhile, the role of medical audit in resolving medical crimes is as a guide to ensure that every action, procedure, mechanism and decision taken in medical treatment is by established standards and quality. In conclusion, the findings highlight the critical role of medical audits in ensuring the quality of medical services, preventing medical crimes, promoting accountability, and supporting due process. Emphasizing the importance of medical audits can lead to better patient care, increased trust in the healthcare system, and continuous improvement in the medical field.*

Dalam rangka audit medik, komite medik berfungsi untuk mencegah kemungkinan terjadinya kelalaian dalam prosedur medik tertentu. Fungsi ini umumnya dilakukan ketika ditemukan kasus yang dianggap sulit, kematian yang tidak wajar, atau kasus menarik lainnya. Tujuan dari penelitian ini adalah untuk menjelaskan tentang peran komite medis dan audit medis dan peran audit medis dalam menyelesaikan kejahatan medis. Metode yang digunakan dalam penelitian ini adalah metode yuridis normatif dengan pendekatan perundang-undangan dan konseptual. Dari penelitian ini diketahui bahwa komite medik bertugas memantau dan mengevaluasi mutu pelayanan medik melalui pelaksanaan audit medik. Sedangkan peran audit medis dalam penyelesaian tindak pidana medis adalah sebagai pedoman untuk memastikan bahwa setiap tindakan, prosedur, mekanisme dan keputusan yang diambil dalam

penanganan medis berjalan sesuai dengan standar dan mutu yang ditetapkan. Sebagai kesimpulan, temuan menyoroti peran penting audit medis dalam memastikan kualitas layanan medis, mencegah kejahatan medis, mendorong akuntabilitas, dan mendukung proses hukum. Menekankan pentingnya audit medis dapat mengarah pada perawatan pasien yang lebih baik, peningkatan kepercayaan pada sistem perawatan kesehatan, dan perbaikan berkelanjutan di bidang medis.

**Keywords:** *Medical Audit, Medical Committee, Medical Crime Completion.*

## I. INTRODUCTION

The government in each country, of course, uses specific standards as general guidelines in the medical service system in health facilities. This standard is intended as a minimum limit that must be met in health facilities for consumers, as well as a basis for decision-making and the independence of the medical profession (Irawati, 2019);(Masrurroh & Maryani, 2022). Therefore, the standard operating procedure (SOP) in medical services is a vital element that is not only a protector for patients but also for medical personnel to provide a limit of autonomy and professionalism (G. S. Putra, 2020). These standards are also regulated in Article 24 of Law Number 36 of 2009 concerning Health. Therefore, every medical personnel must ensure that all services provided are services that comply with standards and do not cause potential harm to patients and hospitals. Every doctor who practices medicine is responsible for patients and must maintain the quality of medical services (Hanafi, 2019).

Another important foundation in the medical service system is clinical governance, where medical committees are an essential part of determining the internal rules for medical personnel (medical staff bylaws) that can optimise service quality in health facilities, especially hospitals. To achieve these standards, clinical governance needs to be built with a proper, effective and well-integrated system. The medical committee is a non-structural organisation in a health facility, generally a hospital, whose role is to maintain the hospital's professionalism, quality and integrity in serving patients in accordance with the medical code of ethics and the hospital as its main norms (Suryadi et al., 2022);(Tadda et al., 2022). The main basis for forming the medical committee itself is to ensure that every medical relationship between patients and health workers in the hospital can be strengthened by the optimal level of trust from patients to encourage quality therapeutic transactions (Supeno & Faradila, 2021). Along with the times, the legal relationship between doctors and patients has shifted to become equal (Mustajab, 2013). Doctors who obtain patient consent are oriented towards making maximum efforts (*inspanning verbintenis*) in the medical services provided and not otherwise promising results (*resultaat verbintenis*) (S. Putra, 2001). Therefore, medical services with maximum results are a good hope for the patient and his family. However, it is possible that the implementation will not be in accordance with these expectations.

Despite having a vital function, several studies state that the number of hospitals that carry out medical audits in Indonesia is still very low. Medical audit is an activity to

analyse every act of medical service which has been carried out by medical personnel in a hospital and other health facilities (Hartati et al., 2014). In a research conducted by Hartati et al. (2014), it was stated that of the 27 hospitals that were used as research objects, only one hospital carried out regular medical audits, while other hospitals only conducted medical audits when certain medical violations or cases occurred. While in a number of other studies, medical audits are still not a priority in maintaining service quality and meeting work standards in a number of hospitals (Azzolini et al., 2019);(Jackson et al., 2020). In fact, medical audits aim to maintain professional quality standards, effectiveness, and service quality, identify and measure risks, and optimise job satisfaction (Arso & Putro, 2022);(Dzikrullah et al., 2020);(Ludin et al., 2005).

The development of malpractice cases in Indonesia, based on data from the Indonesian Doctors Association, shows that the number of cases of lawsuits against doctors continues to increase. In 2015 there were 10 cases, but this jumped to 30 cases in 2016, 38 cases in 2017, and 33 cases in 2018. Meanwhile, from 2006 to February 2015, 310 cases of alleged malpractice were reported to the Indonesian Medical Council (IMC), 114 of which were general practitioners, followed by surgeons 76 cases, obstetricians 56 cases and paediatricians 27 cases. Most cases reached 297, followed by health workers with 11 cases and institutions with 9 cases. Jakarta is the city with the highest complaints. Indonesian Medical Discipline Honorary Council (IMDHC) performance from 2016 until now has reported 313 cases, while 305 completed cases obtained an achievement of 97.44%, while the remaining 8 (eight) cases of complaints are still being processed.

Implementing medical practice is the core of 1 Section Considering the Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice (Medical Practice Law). 2 Section General Explanation of the Law on Medical Practice. various activities in the implementation of health efforts must be carried out by doctors and dentists who have high ethics and morals, expertise and authority whose quality must be continuously improved through continuous education and training, certification, registration, licensing, as well as guidance, supervision and monitoring so that implementation of medical practice following the development of science and technology. Doctors and dentists, with their scientific devices, have unique characteristics. This uniqueness can be seen from the justification given by law, namely the permissibility of carrying out medical actions on the human body in an effort to maintain and improve health status.

Doctors can be said to have violated the rules of their profession (*beroepsfout*) when the necessary medical equipment and diagnoses do not accompany the tasks they carry out, are unable to reach the minimum standards of the profession they are carrying out, or when the doctor commits negligence (*culpa*). Conversely, when the minimum requirements have been met, and the entire diagnostic process is carried out properly and correctly without any errors being made, the doctor cannot be said to have committed a medical violation as stated in Article 359 and Article 360 of the Criminal Code (Hatta, 2013). Therefore, any party who intends to sue a doctor for a medical error or negligence allegedly committed by the doctor must be able to prove that there was a violation of the minimum standard of medical practice that occurred and must be able to prove that the alleged mistake or negligence could result in significant medical consequences for the victim's safety (Devereux, 2017). An act or attitude of a doctor or

dentist is considered negligent if there is an element of deviation from obligations and all things that the patient feels are a loss from medical services. Medical disputes that occur allegedly due to negligence are regulated in Article 29 of Law Number 36 of 2009 concerning Health (Nurdin, 2015).

3 (three) Values must exist as legal content, namely justice, benefit, and legal certainty (Yovita A Mangesti, 2016). So far, there has been a temporary assumption that mediation can create justice without focusing on any party. Mediation from a linguistic point of view (etymology) places more emphasis on the existence of a third party who bridges the disputing parties to resolve the dispute. In addition, non-litigation mediation can also be carried out by the Indonesian Medical Discipline Honorary Council as an institution that maintains the dignity of Doctors/Dentists in carrying out the scientific discipline of Medicine. Therefore, the IMDHC is a body appointed by the IMC to handle cases of suspected medical or dental discipline violations and determine sanctions where settlements are carried out through mediation. Circular of Secret Instructions from the Attorney General's Office No. B006/R-3/I/1982 Attorney General, dated October 19, 1982, concerning "Medicinal Profession Cases", stated that proceeding with the case was unnecessary before consulting with local Health Service officials or the Republic of Indonesia Health Department. Likewise, the decision of the Indonesian Constitutional Court states that medical disputes are resolved first through professional courts. Mediators who so far mediate medical disputes, in fact, what they do is generally a frightening spectre for doctors, while patients often feel unrepresented if dispute resolution is carried out through a body belonging to the medical profession, the IMDHC.

Medical crimes often arise due to unsatisfactory results from medical services, related to the lack of information from doctors, or negligence from medical personnel themselves (Handayani, 2014). The cause of a dispute between a doctor and a patient is if this dissatisfaction arises due to an alleged error or negligence by the doctor in carrying out his duties, causing harm to the patient. Often the cause of medical disputes is incomplete medical information, being delivered late, or even incorrectly provided information, which impacts the medical actions taken. The disputing parties must, of course, be able to prove whether the loss suffered by the patient was caused by the doctor's malpractice or, indeed, a medical risk. This proof can be said to be quite complicated and, of course, requires expert testimony from the medical or medical field.

Medical action against the human body that a doctor or dentist does not carry out can be classified as criminal. However, its implementation sometimes creates problems that lead to medical disputes. Usually, what is disputed is in the form of Violation of medical ethics; Violation of medical discipline; Violation of the rights of other people/patients, or Violation of the public interest so that doctors and dentists are held accountable in medical ethics, medical discipline and legal responsibility both in civil, criminal and state administration. The public's trust in doctors and dentists is decreasing, and even lawsuits filed by the public are rife nowadays. This often happens because it is identified with the failure of healing efforts by doctors and dentists.

On the other hand, if a medical procedure is successful, it is considered excessive, even though doctors and dentists, with their scientific and technological tools, are only trying

to heal, and failure to apply medical and dental science is not always synonymous with failure in action. To overcome this problem, various legal efforts have been made to provide comprehensive protection to the community as service recipients, doctors and dentists as service providers. Because advances in medical science and technology are developing very fast and are not balanced with legal developments, the legal instruments governing the practice of Medicine and dentistry, including settlement in the event of a medical dispute, must be regulated. This is done in order to provide legal certainty to recipients of health services, doctors and dentists.

## II. METHOD

This research is normative legal research (normative juridical) using statutory and conceptual approaches. The statutory approach is carried out by reviewing statutory regulations and the implementation of settlement of medical crimes, other implementing regulations include Law number 44 of 2009 concerning hospitals, Law number 29 of 2004 concerning medical practice, Law number 36 of 2014 concerning Health Personnel, Law number 36 of 2014 concerning Health Personnel, Minister of Health Regulation number 755 of 2011 concerning organising medical committees in hospitals, Minister of Health Number 290/Menkes/Per/III/2008 concerning approval of medical action, Minister of Health Number 36 of 2014 2012 concerning medical secrets, Regulation of the Minister of Health of the Republic of Indonesia number 24 of 2022 concerning medical records, Government Regulation number 47 of 2021 concerning Implementation of the Hospital Sector, Republic of Indonesia Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Courts, Indonesian Medical Council Regulation number 32 of 2015 concerning Procedures How to Handle Cases of Alleged Discipline Violations Doctors and Dentists, Medical Council Number 4 of 2011 concerning Professional Discipline of Doctors and Dentists, Decree of the Minister of Health of the Republic of Indonesia number 496/MENKES/SK/IV/2005 concerning Guidelines for Medical Audit in Hospitals, Criminal Code, Regulations Minister of Health of the Republic of Indonesia Number 42 of 2018 concerning the Hospital Ethics and Law Committee, Regulation of the Minister of Health of the Republic of Indonesia Number 43 of 2016 concerning Minimum Service Standards in the Health Sector.

## III. RESULT AND DISCUSSION

The medical committee is a hospital apparatus for implementing clinical governance so that hospital medical staff can maintain professionalism through a credentialing mechanism, improve the quality of the medical profession and uphold the ethics and discipline of the medical profession and recommend follow-up to the hospital director. The medical committee was formed with the aim of implementing good clinical governance so that the quality of medical services and patient safety can be guaranteed and protected. The medical committee is a medical professional organisation whose members come from the head of the medical staff group or a representative. Establishing a government hospital medical committee is stipulated by a decree of the

hospital director with a working period of 3 years. The medical committee has the highest authority in organising medical personnel and is responsible for the quality of medical services, fostering medical ethics and developing the medical profession. (b) create standardised formats for standard medical services, standard operational procedures in the managerial/administrative and scientific/professional fields, professional standards and competency standards; (c) to standardise the format for collecting, monitoring and reporting clinical quality indicators; (d) monitoring clinical quality, medical ethics and implementing medical professional development.

The medical committee has the task of monitoring and evaluating the quality of medical services which have been carried out, among other things, through organising activities such as medical audits. Implementing a series of management function activities such as planning, organising, implementing, controlling and supervising requires the support of organisational resources to achieve organisational goals. Hospital organisational resources include human resources, finance, methods, facilities, equipment and information. The medical committee plays an important role in maintaining the professionalism of the medical staff working in the hospital, which includes counselling in providing medical services at the hospital (clinical appointment), including details (delineation of clinical privileges), maintaining the competence and ethics of the medical profession, and maintaining professional discipline. Therefore, the hospital director has an obligation so that the medical committee has access to detailed information on the professionalism of every medical staff working in the hospital. To carry out a medical audit, the medical committee is the main engine in the hospital based on its formation function, namely to prevent the possibility of management or professional negligence in the institution it oversees, as well as seek corrective steps that can be taken when management irregularities are identified in the results of a medical audit.

Medical audit is a process of evaluating the quality of medical services through medical record review by the medical profession. A medical audit aims to provide excellent medical services based on evaluating service quality, applying standards, and improving services based on patient needs and existing standards. Discussing death cases, difficult cases, rare cases, etc., is the simplest form of medical audit. A plenary medical audit includes review, assessment and surveillance. The medical audit is a process because it is an ongoing endeavour. The core process of a medical audit is to determine the cases to be audited, collect the case files, and compare the medical services provided with the standards to take corrective action. Medical audits can be conducted from medical staff groups (organisations of doctors with ability or competence) to the level of medical committees at the hospital level.

One of the medical service standards (quality and patient safety) in this context is Medical Audit. This is divided into two parts, namely Internal Medical Audit and External Medical Audit; Medical Audit itself is a series of audits as a professional evaluation effort on the quality of medical services provided to patients using medical records; the medical profession carries out the implementation of a Medical Audit. Although Medical Audit is not explicitly regulated in the Medical Practice Law, doctors must also understand Medical Audit because in carrying out medical practice, doctors are also required to carry out quality control and cost control, which can be carried out on the implementation of



quality control and cost control. Medical audit as stated in Article 49 paragraph (1) and paragraph (2) of the Medical Practice Law.

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Quality in medical actions can minimise conflicts between health workers, especially doctors and patients. Medical audit, according to the British Government, is a systematic and critical analysis of the quality of medical services, in which, among other things, there is the quality of life and outcomes for patients, procedures used to diagnose and treat, use of resources with the aim of services provided by patients (Muliarini, 2020). The basis for carrying out a medical audit is listed in Article 49, paragraph (1) and paragraph (2) of the Medical Law. In the Hospital Act, medical audits are also encouraged to be carried out to maintain and improve the quality and quality of health services, improve patient safety and comfort, and optimise the achievement of quality hospital services. Therefore, medical audit is vital and must be involved in implementing health services.

Therefore, in the implementation of the medical audit, the hospital has an important and strategic role in terms of medical services to patients at the hospital, the implementation of good action and is guided by hospital operational standards, all of which can be seen in the medical audit mechanism by the medical committee in the hospital. The implementation of Medical Audit is carried out by 2 (two) different formations, namely by the medical committee at the hospital and the health organisation, namely the Indonesian Doctors Association. The medical committee at the hospital can carry out medical audits in hospitals; this is evaluation material for all medical actions carried out by doctors. While the medical audit conducted by the Indonesian Doctors Association must be based on complaints when the doctors themselves allegedly committed cases or deviations. The medical audit can be a way and test material to answer a problem when there are legal cases or irregularities that occur when medical personnel or doctors provide health services or medical services to patients.

All of the measurements or benchmarks above can only be proven by the Medical Audit mechanism because to determine a doctor's actions according to the medical profession, such as actions that are thorough and in accordance with medical standards, assessment of a doctor's actions according to average ability compared to doctors from the expertise category the same medical treatment, the same situations and conditions, and with means of effort that meet a reasonable comparison compared to the concrete objectives of the medical action, it is very difficult and can lead to errors if not seen properly. Therefore, those who can find, assess, and explain or describe the actions of doctors or

medical personnel to comply with standard procedures and standard operating procedures in the medical record are Medical Audits, in which there is a team of experts in the medical field.

Mechanism of Medical Audit in hospitals, which can be carried out for the sake of quality or medical quality and patient protection, which is carried out 3 (three) times a year in hospitals. This depends on the legal provisions in each hospital, and the audit action is based on every action taken by medical personnel if there is a possibility of failure in action, and then in that failure, it is found that there was an error in a medical action, then the medical committee will provide recommendations so that it does not happen again, meaning that the recommendation is an improvement in terms of medical services to a better direction. Medical Service Standards must be valid when stipulated, refer to the latest literature supported by clinical evidence, and can be based on the results of medical science and technology screening carried out by the Ministry of Health or medical education institutions. Medical service standards include National guidelines for medical services and standard operating procedures. The medical audit mechanism is carried out by the medical profession, namely the medical committee, when there is a problem or deviation in the process of medical action or healing from the hospital, namely the doctor to the patient; the results of the medical audit are brought to the Mitra Bestari section (peer group) to be assessed based on the competence of the profession involved. Well, these results are then judged to be wrong or not, the actions of doctors in hospitals by medical, ethical and legal committees in the form of recommendations.

The implementation of a medical audit relies on medical records, which are one part of the medical audit action because it depends on what is being audited, for example, medical records, lab results, radiology etc., that the medical record is a written or recorded, statement regarding identity, anamnesis, physical laboratory determinations, diagnosis of all services and medical procedures provided to patients, as well as inpatient and outpatient treatment as well as emergency services (Bastian & Suryono, 2011). The implementation of a medical audit requires the presence of a very useful visiting consultant, where the medical auditor (consultant) will be free to evaluate objectively all factors related to the quality of the service being carried out. Apart from that, the hospital also needs a medical committee assisted by hospital staff as needed. Every implementation of a medical audit will encounter obstacles in its implementation, namely: (1) it takes time and costs; (2) audits are generally carried out retrospectively; (3) conflicts sometimes arise between those being audited and those being audited, what needs to be emphasised is that the focus of this audit is to improve the quality of service and patient care not to determine scoring assessments; (4) in carrying out the doctor's duties professionally, the doctor has autonomy where the doctor is the decision maker, and the patient submits to the doctor's decision; (5) in medical audits there is an impression that efforts are incidental and selective in selecting problems/aspects to be addressed, not yet systematic and thorough and the most concern is the scientific aspect and clinical problems.

Every action carried out by medical personnel must be based on Professional Standards and Standard Operating Procedures, so the medical record is the formation of all written



or recorded actions of medical staff and medical services to patients; a medical audit should be said to be a manifestation of the Professional Standards and Standard Operating Procedures because medical audits are based on medical records and medical records are carried out based on professional standard actions and standard operating procedures for medical personnel, to patients. Every doctor's action that can be said to be an action that fails in medical action can rightly be said to be an action that is not under professional standards or standard operating procedures because every doctor's action must be based on professional standards and standard operating procedures, in medical science there is always a failure in action, but the doctor cannot be blamed for that, because it contains the implementation of therapeutic transactions, meaning that it does not promise results but attempts or healing efforts (*inspanning verbintennis*) which in it are always accompanied by risks, or even unexpected medical failures, even can cause disability or death, therefore professional standards and standard operating procedures are a measure of action by medical personnel, even though they are following professional standards and standard operating procedures but failures occur by doctors or medical personnel, it still can't be faulted.

The use of medical audit facilities for medical records is a logical consequence of doctors' actions in carrying out medical actions because determining an error or negligence committed by a doctor is very difficult to find and apply. As we know, to assess that a doctor acts in terms of medical professional standards, it is determined by the provisions of the action carefully, according to medical standards, average ability compared to other doctors, and a similar condition, as well as efforts reasonable comparison. All of this cannot be seen and assessed individually or subjectively to say that the doctor's actions were guilty. Philosophically, dispute resolution is an attempt to restore the relationship of the disputing parties to their original condition; by returning the relationship, they can establish good social and legal relations with one another. Dispute resolution at this stage can be with or without the help of a third party. Usually, at the initial stage, negotiations are carried out, that is, without involving a third party as a mediator or referee, in which each party or a representative conduct talks to make peace.

The stage of settlement of criminal cases includes preparing reports of complaints of criminal acts; classification; classification process; investigative process; summons related parties; preparation of clarification minutes; calling some witnesses; if there is an indication of a criminal act, then proceed to the investigation stage in the police; prosecution by the prosecutor; and ends with a trial in court. The stages of the trial include; reading the indictment; exception (if any); public prosecutor's response; the interlocutory decision of the head judge of the panel; evidence (examination of witnesses/statements of expert witnesses); reading of demands (*requisitors*); defence reading (*pledoi*); reading of the replica (public prosecutor's response to the pledoi of legal advisers); dupli reading (response of legal advisers to a replica from the public prosecutor); and the judge's decision (Sinaga, 2021).

### ***The Stages of the Conflict Between the Patient and the Doctor Turn Into a Dispute***

The conflict between the patient and the doctor turns into a dispute, and goes through several stages or conditions, namely:

### 1. Pre-conflict stage

The initial condition for this stage is the feeling of dissatisfaction that arises and arises in patients towards doctors. A new sense of discontent. If it is felt at the level of feelings alone, it can trigger a dispute. Several things can be a factor causing patient dissatisfaction related to the doctor's time that is too minimal, communication that lacks the impact arising from the treatment and medical actions carried out by doctors, unsatisfactory service and even the patient's comfort in receiving the health services they get.

### 2. Conflict stage

At this stage, the aggrieved patient begins to complain about his dissatisfaction with the medical services he has received. However, at this stage, it is still subjective, with the assumption that a complaint has not been made. Of course, it really happened or is the fault of another party (doctors and/or hospital). Complaints that occur can be submitted directly to parties who are considered detrimental or to various other parties who want to listen to their complaints. And at this stage also, those considered detrimental already know there are complaints about these actions or the health services provided. At this stage, those considered detrimental or complained of by the patient (doctors, hospital/hospital management) should know and try to take an approach to find out the source of the problem and clarify the alleged discomfort the patient feels. At this stage, intelligent and wise action is needed from the party concerned (doctor or hospital) to explain to the party concerned who feels aggrieved by the position of the existing problem. From here also, the occurrence or non-occurrence of disputes begins; if the patient can accept what is explained with good communication, be clear about the problem, and don't blame the patient, it will minimise disputes. But when communication at this stage fails or does not provide satisfaction with the clarity of the position of the problem, then the complainant will seek justification for what he feels, namely to third parties (family, public, journalists, authorised officials or writing in the mass media). He will start to enter the dispute stage.

### 3. Dispute stage

At this stage, the conflict has arisen and may already be in the public area; this can happen because both parties persist with their respective arguments because they feel right about what they are doing or feeling. Because both parties remain adamant with their respective opinions, at this stage, if there is no dispute that wants to develop or be protracted, it must be resolved immediately on the awareness of both parties, unless one of the "selfish" parties wants his opponent to lose, even though in principle he's getting better at losing (time, money and thought consumed) (Nasution et al., 2021).

A medical crime (criminal malpractice) is a medical action that fulfils the elements of a crime committed by medical personnel, including 1) the existence of medical acts/actions that are against the law; 2) carried out by medical personnel who are capable of being responsible; 3) done intentionally or negligently; 4) no excuses forgiving. Unlawful medical action is an action that is contrary to the provisions of medical practice. Medical crimes are seen as different from crimes in general, medical crimes have specific

characteristics, and in some cases, the conditions are inversely proportional to ordinary crimes; for example, if ordinary crimes are the focus of attention, are the consequences (gevolg), but medical crimes, the main object of attention is the cause (causa). Thus, whatever is done by a doctor, is measured by whether or not the medical action is appropriate with the provisions of medical practice, namely: medical competency standards, medical authority, medical service standards, standard operating procedures, medical indications, informed consent, medical ethical standards, disciplines of medical practice, and applicable laws and regulations. Therefore, regardless of the consequences, as long as the doctor's medical actions are in accordance with the medical provisions mentioned above, the doctor cannot be legally prosecuted. In the therapeutic agreement, that is used as a guideline and the object of the agreement or agreed upon is a genuine effort by the doctor to cure the patient (*inspanning verbintenis*), not the final result (*resultant verbintenis*) in the form of healing. That is why, in the context of a medical crime, the main focus of a criminal examination lies on the cause (medical action performed by a doctor), not the consequences that occur to the patient after the medical action.

The discipline of Medicine, in this case, the author sees as a standard for the medical profession, which has limited ability in terms of knowledge, skills and professional attitude, as a basis that every doctor must have because it concerns the interests of society at large. In addition, regulations related to medical disciplines are one of the main benchmarks in medical audits to determine doctors and doctors have committed medical errors, especially in aspects of a medical discipline that have been proven medical errors by the Medical Committee and the Honorary Council of Indonesian Medical Disciplines, so that from the results of medical audits This can assist law enforcement in determining a doctor's criminal error. Mistakes are deemed to have occurred if, intentionally or through negligence, an act has been committed or circumstances prohibited by criminal law have arisen and have been carried out responsibly. Articles 359, 360 and 361 of the Criminal Code contain elements of negligence that result in death or injury. Suppose the doctor is suspected of being the perpetrator who resulted in the patient's death and is threatened with Article 359 of the Criminal Code. In that case, the doctor must be able to prove that he did not commit negligence in treating the patient. Doctors must prove that what they are doing is by the standards and operational procedures agreed upon in the professional bond. If the doctor is sued under Article 360 Criminal Code, then the doctor's mistake can be described by the following elements:

1. There is an act, meaning the doctor performs an act in the form of a medical action or gives Medicine;
2. Because of the mistake, it means that the doctor was negligent or negligent with the degree of *culpa lata*;
3. Causing serious injuries as result of people, as described in Article 90 of the Criminal Code, injuries that cause illness, resulting in obstacles to carrying out official work.

This form of negligence can occur in other professional fields besides the medical profession. Negligence is one of the most common forms of malpractice. Negligence occurs when a person accidentally does something (commission) that should not be done

or does not do something (omission) that another person should do with the same qualifications in a similar situation and situation. To measure whether a doctor has committed a medical error (criminal malpractice) as well as a violation of medical discipline, the first thing to look at is what mistake the doctor made in the medical procedure, both intentional (*dolus*) and negligence (*culpa*), related with the mental attitude of the doctor and the doctor regarding whether there is mens rea in the doctor's actions or not. Error alone is not enough to determine whether the doctor can be held criminally responsible. However, it can also be seen whether the doctor's actions violated the law or not (*wederrechtelijke*). The unlawful nature does not have to be normative, which means it does not have to be formulated in a law; there are two kinds of unlawful teachings: formal and material. After the conditions for mistakes and unlawful acts, the next is the condition for the perpetrator to be responsible.

If medical personnel or doctors carry out medical procedures according to standard operating procedures, then unwanted consequences arise, then this situation is referred to as medical risk. In every medical crime case, before it reaches investigation, the Public Prosecutor should ask for the results of a medical audit conducted by the Medical Committee to determine whether the doctor has made a medical error. Medical audit has an important role in proving medical errors from medical disciplines. It is the main criterion in assisting law enforcement in proving the mistakes of these doctors from the aspect of criminal law because, specifically, medical disciplines are rules governing a medical worker in carrying out medical actions according to their knowledge and expertise. To prove the doctor's medical error, he has violated the provisions contained in the Medical Council Regulation Number 4 of 2011 concerning the Professional Discipline of Doctors and standard operating procedures (hospital bylaws/corporate bylaws) contained in hospitals, where medical errors must be proven through a medical audit. as regulated in Article 39 and Law Number 44 of 2009 concerning Hospitals. It should be noted that the person entitled to conduct the medical audit is the Medical Committee formed by the Head/Director of the Hospital, whose position is non-structural in the hospital as stipulated in the Regulation of the Minister of Health Number 755 of 2011 concerning Organizing Medical Committees.

If the medical audit proves that the doctor has been wrong in applying medical disciplines to a patient which causes the patient to be injured, disabled, and even the patient die, then criminal law, as public law that protects the legal interests of society, can demand criminal responsibility, due to medical actions. it has fulfilled the element of error and against the law an act/action taken especially medical action against patients. In criminal law, mistakes are categorised as negligence or intentional. Deliberation departs from knowledge of actions and is grouped into three types: intentionality as a goal, intentionality with the possibility of awareness, and intentionality with the certainty of awareness. Meanwhile, negligence can be stated as gross negligence and categorised as negligence with awareness (*culpa lata*) and without awareness (*culpa levi*).

According to the author, the results of this medical audit are very accurate and can be accepted as a form of evidence when deviations or problems occur in the medical field. Because the Medical Audit is based on medical records and their assessment of the provisions of professional standards and standard operating procedures. However, in

what form is this medical audit included as part of the evidence at trial? According to the provisions of the Criminal Procedure Code, Expert Statement is information given by someone with special expertise on matters needed to clarify a criminal case for examination purposes. According to the Criminal Procedure Code, there is a distinction between the testimony of an expert at trial and the written statement of an expert presented before a court session. If an expert testifies directly before a court hearing and under oath. This statement is valid expert testimony. Meanwhile, suppose an expert under oath has provided written testimony outside of court and the statement is read out before a court hearing. In that case, the expert's statement constitutes documentary evidence and expert testimony. Suppose the provisions of the Criminal Procedure Code above are related to the issue of a medical audit. In that case, it becomes expert testimony in court when it is presented before a court session. At the same time, when it is made under oath and given outside of court, the expert's statement constitutes documentary evidence and expert testimony.

If there is a violation, the case should be resolved first by the medical committee, which has the authority to examine performance audits and medical audits regarding alleged medical errors committed by medical personnel, including doctors, as stipulated in Article 39 of Law Number 44 of 2009 concerning hospitals and Article 49 paragraph (2) of Law Number 29 of 2004 concerning Medical Practice which has been previously described. Besides that, why not settle it first at the Medical Disciplinary Honorary Council, although everyone may choose or not choose to resolve the alleged medical error at the Medical Sciences Honorary Council? However, it should be noted that the Medical Disciplinary Honorary Council is an institution other than the medical committee that can be used as a reference to determine what aspects of professional standards or medical disciplines have been violated by the defendants (doctors). Because the case has been brought to the Honorary Council of Medical Disciplinary Sciences to be resolved from a disciplinary aspect of Medicine, it does not close in the future to ask for accountability in criminal law. It is important because a medical audit can make it easier for investigators and public prosecutors to prove negligence as a material offence for the defendants (doctors) in carrying out medical procedures, as stated in Article 359 of the Criminal Code, before an honourable court, as well as which parties must be held criminally responsible. thus, supporting the Panel of Judges in deciding the criminal acts charged.

Medical audit actions can be considered very valid and accurate in view of existing cases or problems because the outreach carried out by the medical committee for medical audits is complex and thorough in gathering information and finding and determining that the actions of doctors or medical personnel are in accordance with conditions apply or not. Therefore, the formation of a medical audit becomes an integral part of the medical record, in accordance with the provisions of Law No. 36 of 2014 concerning Health, which states that all actions of doctors are based on professional standards and standard operating procedures. So that if an error or negligence committed by a doctor is suspected, it can be identified and measured through a medical audit mechanism.

In proving that from a medical, scientific point of view, it is done through IMDHC, as is known IMDHC is an institution authorised to determine whether doctors and dentists

make errors in the application of medical and dental disciplines. So that it is understood that Article 66, paragraph 3 of the Medical Practice Law, which regulates complaints of alleged criminal acts to the authorities and/or suing civil losses to court, is not separate or independent from the IMDHC medical disciplinary examination. Complaints of criminal acts and/or criminal lawsuits to court related to doctors as one of the parties must also be synergised with medical disciplines to identify the doctor's actions entering the realm of law. Settlement of cases or medical crimes is the last door for the disputing parties to obtain justice and legal certainty, with several efforts to resolve medical crimes between doctors and patients. Medical actions that can be brought into the realm of criminal law should be limited to medical actions only in two conditions, namely medical actions that are intentional (*dolus/opzet*) for consequences that are punishable by crime or medical actions that contain real/gross negligence (*culpa lata*). Actions other than those two things should not be appropriate and cannot be used as an object of criminal action, but instead become IMDHC competencies for violations of professional discipline of doctors and dentists or Medical Ethics Council of Honor competencies for violations of medical ethics.

In cases of suspected medical crimes, especially those committed by doctors and dentists, doctors may be subject to civil or criminal threats based on laws and regulations that are general in nature (*lex generalis*), namely the Criminal Code, as well as those that are specific in nature (*lex specialist*), such as the Law -Law No. 29 of 2004 concerning Medical Practice and Law No. 36 of 2009 concerning Health. There are two ways to settle medical crime law: litigation and non-litigation. The general view of society is that medical crimes are better resolved through litigation, but achieving proof is not something easy; when a patient cannot prove a medical error, the case stops at the time of proof. In addition, settlement of medical crimes through litigation is not the only way to resolve them. Settlement through litigation often results in one party being the winner and the other party being the loser.

Medical disputes or criminal acts in medical practice in law are often called malpractice. In accordance with the current justice system in Indonesia, if there is a legal dispute over a medical action at a hospital due to alleged medical negligence, then this matter is resolved through legal means (court). Completing medical crimes due to medical negligence at the hospital through the courts raises its own problems. The method of settlement through the courts often gets reactions and challenges, especially from the medical profession (doctors). Law of the Republic of Indonesia Number 36 of 2009 concerning Health there is mediation as a form of settlement of medical cases in Article 29; the reason for enforcing mediation, namely that mediation is carried out when a dispute arises between medical personnel and patients, the mediation is carried out to resolve disputes out of court carried out by the mediator and agreed upon by the disputing parties.

#### IV. CONCLUSION

The medical committee has the task of monitoring and evaluating the quality of medical services which have been carried out, among other things, through organising activities



such as medical audits. The medical committee plays an important role in maintaining the professionalism of the medical staff working in hospitals which includes counselling in providing medical services at hospitals (clinical appointments), including details (delineation of clinical privileges), maintains the competence and ethics of the medical profession, and maintains professional discipline. Therefore, the hospital director has an obligation so that the medical committee has access to detailed information on the professionalism of every medical staff working in the hospital. To carry out a medical audit, the medical committee is the main engine in the hospital based on its formation function, namely to prevent the possibility of management or professional negligence in the institution it oversees, as well as seeking corrective steps that can be taken when management irregularities are identified in the results of a medical audit. Therefore, in the implementation of the medical audit, the hospital has an important and strategic role in terms of medical services to patients at the hospital, the implementation of good action and is guided by hospital operational standards, all of which can be seen in the medical audit mechanism by the medical committee in the hospital.

If there is a violation, the case should be resolved first by the medical committee, which has the authority to examine performance audits and medical audits regarding alleged medical errors committed by medical personnel, including doctors, as stipulated in Article 39 of Law Number 44 of 2009 concerning hospitals and Article 49 paragraph (2) of Law Number 29 of 2004 concerning Medical Practice which has been previously described. Besides that, why not settle it first at the Medical Disciplinary Honorary Council, although everyone may choose or not choose to resolve the alleged medical error at the Medical Sciences Honorary Council? However, it should be noted that the Medical Disciplinary Honorary Council is an institution other than the medical committee that can be used as a reference to find out what aspects of professional standards or medical disciplines have been violated by the defendants (doctors). The method of settlement through the courts often gets reactions and challenges, especially from the medical profession (doctors). Law of the Republic of Indonesia Number 36 of 2009 concerning Health there is mediation as a form of settlement of medical cases in Article 29; the reason for enacting mediation, namely that mediation is carried out when a dispute arises between medical personnel and patients, the mediation is carried out with the aim of resolving disputes out of court carried out by the mediator and agreed upon by the disputing parties.

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