

The Discursive Construction of Medical Malpractice: Appraisal Theory and the Elasticity of Culpa in Indonesian Jurisprudence

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Abstract: Medical malpractice adjudication sits at the intersection of scientific uncertainty and criminal culpability. This study examines how Indonesian judges construct evaluative positions that mediate between protecting professional integrity and recognizing patient harm. It applies Appraisal Theory's Graduation subsystem – hedging (Force-down) and intensification (Force-up) – to two contested case lines decided between 2009 and 2021: an acquittal and its reversal on cassation, and a cassation majority with the dissenting opinion of its presiding judge. Each pairs an exculpating against a convicting judicial voice on identical facts. Two findings emerge. First, Graduation follows evaluative function rather than institutional position: hedging clusters around whichever voice mitigates the physician's causal

agency, intensification around whichever foregrounds the patient's harm, whether majority or dissent. Both convicting courts hedge their description of the injury while intensifying their evaluation of the conduct, and categorical constructions serve exculpation as readily as they serve a finding of fault. Second, the exculpating voice does not soften the description of the act; it relocates the event into the professional domain, deferring to the medical disciplinary council or recategorizing the event as medical negligence rather than criminal negligence. The study thus extends Appraisal Theory into legal discourse by showing Graduation to be an ideologically embedded resource for constructing culpability. It further argues that Law No. 17/2023 converts into a statutory precondition the deferral to professional authority that the Supreme Court declined to accept in both cassation rulings. Given the size of the corpus, the findings are indicative rather than generalizable.

Key words: Appraisal theory; discursive construction; jurisprudence; medical malpractice; negligence.

1. Introduction

Medical malpractice adjudication within the judiciary of Indonesia illustrates a significant connection of scientific uncertainty with the ethics of the profession, as well as the element of criminal culpability (Esham, 2019). In Indonesia, traditional academic research has emphasized a focus on the substantive components that comprise medical negligence and the degree of fault required for the establishment of culpa (Dwike et al., 2025). This body of work has paid comparatively little attention to the linguistic resources through which legal truth is formulated. When adjudicating a malpractice case, judges of the Supreme Court (*Mahkamah Agung*) do not simply apply legal rules to established facts (Baharudin, 2020); they perform an evaluative act. They must position the boundary between medical risk and criminal conduct, two categories that are defined largely in relation to one another and that ultimately rest on the discretionary judgement of the bench. This study therefore asks how judges construe medical necessity and criminal fault, and how evaluative stance mediates between the

protection of professional integrity and the recognition of patient harm.

The contribution of the study lies in moving from normative legal critique towards a discursive examination of competing judicial positions and of the linguistic means by which judges assert interpretive control. Dissenting and separate opinions, and appellate rulings that reverse a lower court, offer a vantage point on how judges contest a dominant narrative in the construal of culpability (Arifin et al., 2023). Where judicial voices diverge on whether medical fault has been established, they are not merely disputing the legal definition of culpa; they are deploying distinct linguistic strategies – hedging and intensification – that articulate different understandings of the physician–patient relationship and of the harm sustained by the patient.

Analyzing judicial opinions through the Appraisal framework makes it possible to trace the extent to which evaluative language serves to insulate clinical practice from criminal scrutiny or, conversely, to render the contractual dimension of medical service and the patient’s suffering discursively salient.

Against this background, this study is guided by the following research question: how do Indonesian judges employ evaluative language strategies – specifically hedging and intensification – to construct competing positions on medical culpability (culpa) in majority opinions and in the countervailing positions available in the ruling text, and what discursive paradigms underlie these linguistic choices? Addressing this question contributes both to the linguistic analysis of legal discourse and to a socio-legal understanding of how culpability is constructed and contested within the Indonesian judiciary. The study is exploratory in design, and its claims are calibrated accordingly: it aims to identify and theorize a discursive mechanism, not to establish its frequency across Indonesian malpractice jurisprudence.

2. Research Method

This study employs a qualitative discursive-linguistic methodology to examine how legal truth is constructed within the Indonesian judiciary

in medical malpractice cases. It focuses on interpreting the evaluative language strategies through which judges frame culpability (negligence), rather than measuring legal outcomes statistically.

Data Corpus and Selection Criteria

The primary corpus consists of four court decisions drawn from publicly accessible rulings of Indonesian district courts and the Supreme Court (*Mahkamah Agung*). From this corpus, four landmark decisions were selected for in-depth case study analysis on the basis of the following inclusion criteria: (1) the case involved a criminal prosecution of a medical professional under Articles 359 or 360 of the KUHP; (2) the case record contained opposed judicial evaluative positions on the same facts – a formal dissenting opinion, or an appellate or cassation ruling reversing the decision below – allowing competing stances to be compared without recourse to non-judicial material; (3) the case was adjudicated between 2009 and 2021; and (4) the full text of the ruling – including the complete judicial reasoning (*pertimbangan hukum*) – was accessible in the official court database (SIPP *Mahkamah Agung* or *Direktori Putusan*). Cases were excluded if they pertained solely to administrative or civil liability without a criminal component under the KUHP, or if only the operative part of the ruling (*amar putusan*) rather than the full reasoning was available.

Criterion (2) is stated deliberately more broadly than the presence of a formal dissent. Formal dissenting opinions are neither systematically recorded nor systematically published in Indonesian criminal adjudication outside the Constitutional Court (Butt, 2018), and a criterion requiring them would have made a comparative design impossible at this scale. The corpus is consequently heterogeneous in the institutional status of the countervailing voice, and Section 2.2 sets out that heterogeneity explicitly.

Textual Status and Provenance of the Analyzed Material

Because the analysis makes claims about specific lexical and grammatical choices, the textual status of every passage examined must be transparent. Three categories are distinguished throughout: (a) verbatim primary text, reproduced as it appears in the ruling as published in the decisions directory; (b) translation, an English

rendering of verbatim primary text, given alongside the Indonesian original; and (c) paraphrase, the propositional content of a passage restated by the researcher and marked as such.

All marker-level claims in this study rest on category (a). Where a passage is paraphrased, no claim is made about the specific wording of the ruling, and the paraphrase is excluded from the marker counts. Passages composed by the researcher in the register of judicial reasoning are not used: such a passage cannot evidence the claim that a court used a given marker, because the marker would originate with the researcher rather than with the court.

Table 1 sets out the composition of the corpus and the textual status of the material analyzed. The corpus comprises two case lines and four judicial texts, all obtained in full from the decisions directory and coded in the Indonesian original.

In the first, the Makassar District Court acquitted the defendant on 1 July 2020; the Supreme Court granted the prosecutor’s cassation appeal on 18 February 2021, quashed the acquittal, convicted on the professional-standards count under Law No. 29/2004 and imposed two months’ detention. In the second, the Banda Aceh District Court convicted on 10 August 2009, the Banda Aceh High Court acquitted on 7 December 2009, and the Supreme Court granted cassation on 7 April 2011, convicting under Article 360(2) of the KUHP and imposing six months’ imprisonment. The cassation ruling in the second case carries a formal dissenting opinion, written by the presiding judge against the two members of the panel.

Each case line therefore contains an exculpating and a convicting judicial voice on the same facts, which is the comparison the study requires. Scholarly critique of the Makassar acquittal (Ruye & Hatta, 2025) is retained as contextual evidence of the ruling’s reception and is expressly excluded from the marker analysis, academic writing and judicial reasoning being distinct genres produced under different institutional constraints.

Case Line	Judicial Texts Analyzed	Countervailing Voice	Textual Status
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Makassar cosmetic filler	Makassar District Court No. 1441/Pid.Sus/2019/PN Mks (1 July 2020); Supreme Court No. 233 K/Pid.Sus/2021 (18 February 2021)	Cassation ruling reversing the acquittal	Verbatim primary text, both rulings, with translation
Banda Aceh retained gauze	Supreme Court No. 455 K/Pid/2010 (7 April 2011), majority and dissent	Formal dissenting opinion of the presiding judge; High Court acquittal as recited in the cassation ruling	Verbatim primary text, with translation

Table 1. Corpus composition, countervailing voice, and textual provenance

Analytical Framework

The primary analytical lens is Appraisal Theory as developed by Martin and White (2005) in *The Language of Evaluation: Appraisal in English*, specifically the Graduation subsystem, which encompasses hedging (Force-down) and boosting/intensification (Force-up). Hedging markers were operationalized as lexical items and grammatical constructions that attenuate the epistemic certainty or causal directness of a claim (e.g., possibly, appears to indicate, within the bounds of reasonable medical judgment, cannot be ruled out). Intensifiers or boosters were operationalized as items that amplify force and assert certainty or moral condemnation (e.g., clearly, grossly, blatantly, utterly, without question). The Attitude and Engagement subsystems were also consulted to contextualize the evaluative stance of each opinion (see Section 4 for theoretical elaboration).

Coding Procedure

Evaluative markers were identified and coded in the full *pertimbangan hukum* of each selected decision. Coding was conducted in two passes: an inductive first pass, in which all evaluative language was flagged and annotated; and a deductive second pass, in which identified markers

were categorized against the Appraisal Theory taxonomy. The coding produced two primary discourse categories – hedging language (associated with the Sacred/Paternalistic paradigm) and intensification language (associated with the Horizontal/Contractual paradigm). The two further paradigms discussed in Section 5, the Administrative/Regulatory and the Commercial/Consumerist, are drawn from the wider literature on Indonesian medical law rather than from the coding; the extent to which each is attested in the present corpus is stated there.

Coding was conducted by the primary researcher across both passes. Two reflexivity measures were applied to mitigate single-coder bias. An analytical audit trail documented each coding decision and its justification with reference to Martin and White’s (2005) Graduation criteria. Ambiguous markers – items classifiable as either hedging or intensification depending on contextual reading – were re-analyzed against the full *pertimbangan hukum* rather than the isolated sentence, so that clause-level and discourse-level function were both considered. The coding reported here has not been independently reviewed, and no inter-rater reliability measurement is claimed; this is acknowledged as a limitation (see Section 7.1). To allow the coding to be checked, every marker on which the analysis relies is quoted in the Indonesian original in Sections 4 and 6 and cited to page.

Data Triangulation

To mitigate single-source bias, the discursive analysis of judicial language was triangulated with three additional data sources: (1) the relevant statutory framework (KUHP Articles 359–360; Law No. 17/2023 on Health), examined to contextualize the legal constraints within which judicial language operates; (2) secondary legal scholarship on the interpretation of culpa in Indonesian courts (including Darma, 2024; Dwiki et al., 2025; and Purwanto et al., 2025); and (3) epidemiological data on malpractice case distributions in Indonesian hospitals (Dhamanti et al., 2024), used to situate the discursive patterns within their institutional context.

Three rhetorical moves emerged inductively from the coding as the means by which an exculpating judicial voice contests a narrative

of criminal fault. The first is jurisdictional deferral: treating the profession's own disciplinary body as the competent forum, so that the criminal question cannot be reached until that body has ruled. The second is recategorization: naming the event a medical act, or medical rather than criminal negligence, so that it falls outside the criminal frame by definition. The third is dispersal of agency: attributing the act to a clinical team rather than to the individual practitioner. These are stated here as findings of the analysis rather than as categories imposed on it; Section 6 sets out the evidence, Section 6.3 the convergence between the two case lines, and Section 7 the implications for Law No. 17/2023.

3. The Jurisprudential Elasticity of Culpa in Indonesian Medical Law

In Indonesian criminal law, culpa is located in the penal code (*Kitab Undang-Undang Hukum Pidana*, KUHP). Articles 359 and 360 address causing death and serious bodily harm through negligence, and a medical professional whose practice results in either outcome may in principle be prosecuted under them. The KUHP does not, however, define the threshold of gross negligence (*culpa lata*) in the clinical context. Judges consequently exercise considerable discursive latitude in evaluating whether a practitioner's conduct constitutes a criminal act or an adverse outcome arising from clinical risk or from departure from a Standard Operating Procedure (SOP).

The distinction between culpability in terms of gross negligence (*culpa lata*) and ordinary negligence (*culpa levis*) is critical to whether a medical act is determined to be criminal in nature (Robson et al., 2020). The prevailing legal consensus has been that only gross negligence – involving a substantial disregard for patient safety – warrants prosecution (Swift, 2020). Scholarly work nonetheless documents inconsistent application of the standard across Indonesian courts (Darma, 2024). The inconsistency is simultaneously legal and linguistic, in that courts reach these determinations through different evaluative resources, and it is visible within the present corpus: the two

case lines analyzed in Section 6 divide on whether the criminal-negligence provisions reach medical acts at all.

A further pattern, visible in the verified material analyzed in Section 6.1, complicates the assumption that Articles 359 and 360 are the principal site of contested medical culpa. In the Makassar case both the district court and the Supreme Court held Article 360(1) inapplicable to medical acts, on the ground that Law No. 29/2004 governs medical practice *lex specialis*. The criminal-negligence provision was displaced by the professional-standards regime at both levels, and the entire disagreement between the two courts concerned the professional offence rather than the KUHP count. The contrast with Decision No. 455 K/Pid/2010, where the Supreme Court convicted an obstetrician under Article 360(2) on facts of comparable gravity, is instructive: the same statutory landscape supports both the application and the displacement of the criminal-negligence provision. Where the displacing reasoning is followed, the elasticity of culpa consists less in a varying threshold under Articles 359 and 360 than in the migration of the question out of the KUHP altogether and into a regime administered, at least in the first instance, by the profession.

Legal Instrument	Scope of Negligence	Interpretive Ambiguity
KUHP Article 359	Negligence leading to death	Lacks a specific definition of carelessness in medical settings
KUHP Article 360	Negligence leading to injury	Open to subjective interpretation of serious injury
Law No. 29/2004 on Medical Practice	Professional standards violation	Distinguishes administrative from material error
Law No. 17/2023 on Health	Protection and disciplinary filters	Introduces prior disciplinary recommendation as a

		linguistic buffer
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Table 2. Legal Instruments and Interpretive Ambiguity of Negligence

The regulatory landscape has shifted substantially. Law No. 17/2023 on Health consolidates and replaces earlier health legislation, including Law No. 36/2009, and reconfigures the accountability of health professionals. Article 308 assigns to the MDP the role of a professional disciplinary body that assesses alleged malpractice before a case may proceed to the criminal courts. The law thereby positions the MDP as a disciplinary filter, in which the initial assessment of a practitioner’s conduct is framed in terms of conformity with professional standards rather than criminal fault.

4. Appraisal Theory and the Linguistic Construction of Stance

A study of appraisal theory provides insight into how judges express views about a case and form representation of the views of the parties involved. Appraisal Theory, as systematized by Martin and White (2005) in *The Language of Evaluation: Appraisal in English*, provides a framework for analyzing the evaluative resources of language within a systemic functional linguistic perspective. The theory identifies three primary interrelated subsystems through which speakers and writers negotiate stance and position their interlocutors within a dialogic space.

The first subsystem, Attitude, encompasses the resources for expressing feelings, moral judgments, and aesthetic evaluations. It is subdivided into affect (the expression of emotional responses, such as sympathy for a victim’s suffering or distress at a medical outcome), judgment (the evaluation of human behavior against social or institutional norms, such as characterizing a physician’s conduct as reckless or conscientious), and appreciation (the evaluation of the quality or value of objects, processes, or phenomena, such as the soundness of a medical procedure or the appropriateness of clinical risk

management). In judicial discourse, Attitude resources are pervasive in both the framing of a physician's professional conduct and the characterization of a patient's harm.

The second subsystem, Engagement, concerns the dialogic positioning of the writer relative to other voices in the discourse. Engagement resources can be either monoglossic (presenting a proposition as uncontested fact, as in the physician failed to comply with SOP) or heteroglossic (acknowledging the existence of alternative positions, as in it has been argued that the physician acted within reasonable limits). In judicial reasoning, Engagement is visible in how competing interpretations of evidence are acknowledged or dismissed; countervailing opinions characteristically draw on heteroglossic resources to open what Martin and White (2005) term a dialogically expansive space.

The third subsystem, Graduation, is the primary focus of the present analysis, as it governs the scaling of evaluative intensity. Graduation operates through two parameters: Force (the raising or lowering of the intensity of an attitude or proposition) and Focus (the sharpening or softening of category boundaries). Within the Force parameter, hedging operates as a Force-down strategy – attenuating the strength of an evaluative claim by signaling tentativeness, contingency, or deference to other epistemic authorities (e.g., possibly, appears to suggest, cannot be definitively established). Boosting or intensification operates as a Force-up strategy – amplifying certainty and moral commitment (e.g., clearly, grossly negligent, beyond any reasonable doubt). In the material examined here, these resources operate not merely as epistemic markers but as ideologically embedded instruments for constructing and contesting culpability. Evaluative stance, in this sense, is the position a judge adopts towards the evidence, the parties, and the totality of the circumstances (Mazzi, 2010).

Judges establish evaluative stance principally through hedges and intensifiers. Hedges mitigate the force of a statement by signaling uncertainty, tentativeness, or deference to expertise. A court that describes a physician as having been affected by clinical variables outside direct control dissociates the practitioner's agency from the adverse outcome; by construing the event as clinical risk rather than as failure, the reasoning implies that the standard of care was met

notwithstanding the harm (Dahlawi et al., 2021).

Intensifiers, conversely, raise the force of an assertion, producing certainty together with an implied condemnation (Oeberst & Goeckenjan, 2016). A judge who characterizes conduct as clearly reckless or as a flagrant departure from standard construes it within the frame of criminality. Attending to these choices makes visible the underlying conception of the physician–patient relationship that each position presupposes.

Linguistic Category	Function in Malpractice Cases	Typical Evaluative Markers
Hedging (Force-down)	Attenuates causal agency; frames outcome as risk	<i>nampaknya, pada dasarnya, tidak serta merta, dalam batas kewajaran</i>
Intensification (Force-up)	Foregrounds harm; frames conduct as fault	<i>jelas, secara mutlak, terang-terangan, sama sekali tidak</i>
Engagement (Dialogic)	Acknowledges vs. Dismisses dissent	<i>dipertimbangkan bahwa, majelis berpendapat, berbeda dengan</i>
Attitude (Affect/Judgment)	Moral or professional evaluation	<i>profesi mulia, kelalaian, penderitaan</i>

Table 3. Linguistic Categories and Evaluative Markers in Malpractice Rulings

The following sections present the findings of the discursive analysis, organized around the two primary and two secondary paradigms identified in the corpus, and the case study evidence that substantiates the patterns of hedging and intensification described above.

Dissenting and separate opinions, where available, make extensive use of these resources. Judges writing separately are less constrained than a majority obliged to articulate a shared institutional position, which tends towards a more formalistic register (Butt, 2018). This difference in constraint does not, however, determine the direction of graduation. The pattern that emerges from the corpus is functional rather than positional: hedging does not attach to the majority opinion as such, nor intensification to the countervailing voice as such. Hedging clusters around whichever voice mitigates the physician's causal agency, and intensification around whichever voice foregrounds the materiality of the patient's harm. In the Makassar case the mitigating voice is the acquitting first-instance court, and the intensifying voice is the cassation panel that reversed it; in Decision No. 455 K/Pid/2010 the mitigating function is performed by the dissenting presiding judge against an intensifying majority, and earlier in the same case line by the High Court whose acquittal the Supreme Court quashed. Graduation resources are therefore best understood as markers of an evaluative stance towards culpability that any judicial voice may adopt, and not as a stylistic property of majority or minority writing.

Table 4 reports the distribution of markers across the four judicial texts. Counts derive from evaluative markers coded in the Indonesian original and are restricted to each court's own reasoning, excluding the recitation of charges, testimony and procedural history that precedes it. All four texts were obtained in full from the *Direktori Putusan* (decision directory).

Decision	Opinion Type	Total Evaluative Markers Coded	Hedging Markers (Force-down)	Intensification Markers (Force-up)	Dominant Strategy
1441/Pid.Sus/2019/PN Mks	First instance (acquittal)	13	9	4	Hedging

233 K/Pid.Su s/2021	Cassatio n (convicti on)	16	5	11	Intensificat ion
455 K/Pid/20 10	Cassatio n majority (convicti on)	16	4	12	Intensificat ion
455 K/Pid/20 10	Dissentin g opinion	12	7	5	Hedging

Table 4. Distribution of Hedging and Intensification Markers Across Analyzed Decisions

Hedging markers attested in the verified material include *patut diduga* (is reasonably suspected), *belum ada keputusan* (there is as yet no decision), *belum berkekuatan etik tetap* (not yet ethically final), *belum ditemukan kesamaan persepsi* (no common view has yet been found), *belum bisa melihat dengan sempurna* (cannot yet see perfectly), the recategorising *adalah merupakan tindakan medis* (constitutes a medical act), and the concessive frames *meskipun ... namun* and *meskipun sangat kecil* (although very small). Attested intensification markers include *dapat dibenarkan* (is justified), *salah menerapkan hukum* (misapplied the law), *memberi keyakinan* (gives conviction), *dengan sengaja* (intentionally), *terlebih-lebih* (all the more so), *secara sah dan meyakinkan* (lawfully and convincingly), *tidak dapat diterapkan* (cannot be applied) and *tidak dapat dijadikan dasar* (cannot serve as a basis). The last two illustrate the point developed in Section 6.1: a categorical construction may operate in the service of exculpation as readily as in the service of a finding of fault.

5. The Sacred vs. The Contractual: Metaphorical Framings of the Medical Bond

Two competing metaphorical construal of the physician–patient relationship are in tension within Indonesian legal culture: a sacred or paternalistic model and a horizontal or contractual one (Heriani et al., 2019).

In the sacred paradigm of the doctor-patient relationship, the relationship is vertical; it is based on trust. Doctors are viewed as moral authorities who practice in *nobile officium* (noble professions). Because doctors' goals are inherently altruistic (to improve health and save lives), when something goes wrong for them, it is often described in terms like tragic accident or unforeseeable complication (Nicoud, 2023). In the text with this model, the obligations of doctors are described with an *inspanningverbintenis* (obligation of effort) lens. As such, when doctors are judged, their obligation is only based upon their exertion of effort, not the ultimate result; therefore, when a patient suffers from a medical error, the patient's judgement of the physician tends to use hedges to downplay the doctor's responsibility such as, the complexities of the human body or inherent risks of surgery.

In contrast, the contractual paradigm views doctor-patient relationships as horizontal relationships; the doctor and patient have equal legal status (Kowalski et al., 2024). The contractual paradigm has emerged due to influence from Consumer Protection Law (Law No. 8/1999) and recent Civil Law Theory. Within this paradigm, the patient has rights as a consumer, and the physician provides services in a manner which carries with it contractual obligations. Dissenting judges, who favor this contractual model, will often use intensifiers when discussing breaches of contract or violations of informed consent. In this vein, a medical mistake is viewed not as a tragedy but rather as a failed delivery of service; therefore, the physician is liable for compensating the patient for the harm suffered as a result of the failure to deliver the contracted service.

Beyond these two, the corpus displays two further metaphorical frameworks. The Administrative/Regulatory paradigm construes conduct primarily in terms of compliance with formal SOP and

licensing requirements. Within this frame a physician may be exonerated or condemned on the basis of procedural fulfilment rather than the materiality of harm. The Makassar acquittal exemplifies the paradigm, in that the first-instance reasoning turned on whether the statutory elements of the offence were formally satisfied rather than on the material outcome for the patient. The MDP mechanism under Law No. 17/2023 extends this frame institutionally by making administrative review a precondition of prosecution.

The Commercial/Consumerist paradigm, while closely related to the Contractual/Horizontal paradigm, is analytically distinct in its emphasis on the market dimensions of the healthcare relationship. Where the Contractual paradigm centers on the bilateral obligations arising from the therapeutic agreement (*perjanjian terapeutik*) between two parties of equal legal status, the Consumerist paradigm draws explicitly on Law No. 8/1999 on Consumer Protection to position the patient as a paying consumer entitled to a service of defined quality and the physician as a commercial service provider whose failure to deliver constitutes a market breach. The intensification strategies associated with this paradigm tend to foreground the economic dimension of harm – loss of income, cost of corrective treatment, diminished quality of life – alongside the physical dimension of suffering. This distinction is particularly salient in cases involving private hospitals and elective cosmetic procedures, where the commercial framing of the patient-physician relationship is most explicit.

Institutional data lend context to the salience of the consumerist frame. Between 2011 and 2021, 75% of malpractice claims in Indonesia arose in private hospitals and 79.2% in Type B facilities (Dhamanti et al., 2024). Where a patient has purchased an elective procedure, as in the Makassar case, the commercial character of the encounter is available to be taken up in the reasoning, and the consumerist frame becomes correspondingly easier to sustain. This observation is contextual rather than evidential. It should be recorded that the Commercial/Consumerist paradigm is not attested in the verified material: neither the Makassar rulings nor the Banda Aceh rulings frame the patient as a consumer or the harm in economic terms, and the second case line arose in a military hospital rather than a commercial setting. The paradigm is retained here as an analytical possibility

identified in the wider literature, not as a finding of this study, and the relationship between facility type and evaluative register is offered as a hypothesis for corpus-based testing.

6. Case Study Analysis: Discursive Strategies in Practice

The two case lines are analyzed below and their convergence set out in Section 6.3. Consistent with Section 2.2, every passage quoted is verbatim primary text, given in the Indonesian original with translation and cited to page.

The Makassar Cosmetic Filler Case: Acquittal at First Instance and Reversal on Cassation

On 15 September 2017 the defendant, a general practitioner running an aesthetic clinic in Makassar, injected hyaluronic acid filler into a patient's nose; when blanching appeared across the patient's brow the defendant withdrew the needle and injected hyaluronidase as an antidote. The patient lost vision in her left eye, and a police forensic examination recorded a visual acuity of zero in that eye with no direct light reflex. The defendant was charged cumulatively under Article 79(c) *juncto* Article 51(a) of Law No. 29/2004 on Medical Practice – intentional failure, in the conduct of medical practice, to provide medical services in accordance with professional standards, standard operating procedures and the patient's medical needs – and under Article 360(1) of the KUHP. The Makassar District Court acquitted on both counts on 1 July 2020 (panel: Heneng Pujadi presiding, with Suratno and Zulkifli). The Supreme Court granted the prosecutor's cassation appeal on 18 February 2021 (panel: Sri Murwahyuni presiding, with H. Eddy Army and Gazalba Saleh), quashed the acquittal, convicted on the first count and imposed two months' detention (*kurungan*). The two rulings therefore form a matched pair of judicial texts addressing identical facts from opposed evaluative positions.

The doctrinal shape of the disagreement conditions the discursive analysis and must be stated precisely. Both courts held

Article 360(1) of the KUHP inapplicable, on the ground that medical practice is governed *lex specialis* by Law No. 29/2004. The criminal-negligence provision on which the literature on medical culpa concentrates was therefore never the site of the disagreement. What separated the two courts was the professional-standards offence, and specifically whether a determination by the profession's own disciplinary body was a precondition of finding that offence proved.

The first-instance reasoning on that question is reproduced below (verbatim primary text, Decision No. 1441/Pid.Sus/2019/PN Mks, pp. 40–41):

“Menimbang, bahwa berdasarkan pertimbangan di atas, Majelis Hakim berkesimpulan bahwa tindakan yang dilakukan oleh Terdakwa terhadap Saksi Agita Diora Fitri adalah merupakan tindakan medis, sehingga berdasarkan Pasal 67 Undang-undang Nomor 29 Tahun 2004 pelanggaran terhadap tindakan disiplin medis tersebut harus diperiksa dan diputus oleh Majelis Kehormatan Disiplin Kedokteran Indonesia yang dalam hal ini adalah MKEK IDI dan meskipun MKEK IDI cabang Makassar telah memutuskan bahwa tindakan medis yang dilakukan oleh Terdakwa patut diduga sebagai suatu kelalaian terhadap Saksi Agita Diora Fitri, namun ... Terdakwa melakukan banding dan hingga pemeriksaan perkara ini telah selesai, belum ada keputusan dari MKEK Pusat IDI yang menyatakan Terdakwa telah melanggar standar profesi dan standar prosedur operasional serta kebutuhan medis pasien.” (“Considering that, on the basis of the foregoing, the panel concludes that the act performed by the Defendant in relation to the witness Agita Diora Fitri constitutes a medical act, such that under Article 67 of Law No. 29/2004 a breach of medical discipline must be examined and determined by the Indonesian Medical Discipline Honorary Council, in this instance the MKEK of the IDI; and that although the Makassar branch MKEK has determined that the Defendant's medical act is reasonably suspected to constitute negligence in relation to the witness, the Defendant has appealed, and up to the conclusion of these proceedings there is as yet no decision of the central MKEK declaring that the Defendant has breached professional standards, standard operating procedures or the patient's medical needs.”)

Three Force-down operations are at work. The first is a Focus resource: *adalah merupakan tindakan medis* recategorizes the conduct as a medical act, softening the boundary between criminal conduct and clinical practice and relocating the question into the professional domain. The second imports the most adverse professional finding on the record in already-attenuated form: the MKEK conclusion enters the judgment as *patut diduga* – reasonably suspected – rather than as an

established breach. The third, *belum ada keputusan*, is a temporal hedge on which the outcome turns: the absence of a final professional determination is treated not as a gap the court may fill but as a bar to finding the element proved. The concessive frame *meskipun ... namun* is a heteroglossic Engagement move in Martin and White's (2005) terms, acknowledging the adverse finding before setting it aside.

This is jurisdictional deferral, the first of the moves set out in Section 2.5, in its most complete form. The court does not merely cite expert opinion against the prosecution's construction of the facts; it makes the profession's own tribunal the gatekeeper of criminal liability. The finding refines the account of hedging given in Section 4 in a way the earlier version of this study did not capture: Force-down in judicial reasoning may operate on the court's own epistemic standing rather than on the description of the physician's act. Exculpation here is achieved through jurisdictional deferral rather than through lexical softening of the conduct itself.

The same ruling disposes of the KUHP count in categorical terms (verbatim primary text, p. 42): the court holds that because the conduct constitutes a medical act governed *lex specialis* by Law No. 29/2004, the negligence contemplated by Article 360(1) *tidak dapat diterapkan* – cannot be applied – to medical acts in the practice of medicine. The construction is a Force-up resource placed in the service of exculpation. This is analytically important. Intensification is not intrinsically incriminating: what a categorical assertion does depends on what is being asserted categorically, and here the categorical claim is the inapplicability of the criminal law. Any account that reads boosting as the linguistic signature of a finding of fault is too coarse for this material.

The cassation panel reached the opposite conclusion on the professional-standards count. Its central passage reads (verbatim primary text, Decision No. 233 K/Pid.Sus/2021, p. 8):

“Bahwa hal ini menjadi suatu petunjuk dan memberi keyakinan bahwa Terdakwa dengan sengaja dalam melaksanakan praktik kedokteran tidak memenuhi kewajiban memberikan pelayanan medis sesuai dengan standar profesi dan standar prosedur operasional serta kebutuhan medis pasien dan karena kesalahannya (kealpaannya) menyebabkan orang lain mendapat luka-luka berat, terlebih-lebih berdasarkan surat dari Ikatan Dokter Indonesia (IDI) Cabang Makassar ...” (“That this constitutes an indication and gives conviction

that the Defendant intentionally, in the conduct of medical practice, failed to fulfil the obligation to provide medical services in accordance with professional standards, standard operating procedures and the patient's medical needs, and that through her fault (negligence) caused another person to sustain serious injury — all the more so on the basis of the letter of the Makassar branch of the Indonesian Medical Association ...")

The graduation profile is inverted. The panel opens by holding the prosecutor's ground *dapat dibenarkan* and the acquittal *salah menerapkan hukum* – a categorical characterisation of the court below as having misapplied the law. *Memberi keyakinan* moves from the evidentiary to the epistemic register, converting an indication into conviction. *Dengan sengaja* upgrades the mental element from negligence to intention. Most telling is *terlebih-lebih*: the IDI letter that the district court had hedged into irrelevance, on the ground that the appeal against it was unresolved, is here an amplifier of an already-established conclusion. The same document is attenuated at first instance and boosted on cassation. No feature of the document changed between the two judgments; what changed was the evaluative position it was recruited to support, which is the clearest demonstration in this corpus that Graduation performs evaluative rather than descriptive work.

Two further observations bear on the central claim of this study. The first concerns the risk statistic. The cassation panel records that the defendant knew filler injection carried a risk of blindness *meskipun sangat kecil* – although very small – at 1.9 per 100,000. In the defendant's own testimony that figure functioned as a hedge, minimizing the foreseeability of the outcome; in the panel's reasoning the same figure, with its concessive intact, is evidence of knowledge and therefore of culpability. A Force-down marker in the source is thus re-framed as Force-up in the judgment that quotes it.

The second concerns the description of the harm. Even while boosting culpability, the cassation panel records that the patient's left eye *belum bisa melihat dengan sempurna* – cannot yet see perfectly – a formulation that hedges both the permanence and the completeness of an injury which the forensic report had recorded as total loss of vision in that eye. The convicting court, in other words, intensifies its evaluation of the physician's conduct while attenuating its description

of the patient's damage. This is precisely what the functional account advanced in Section 4 predicts: graduation is distributed according to evaluative target rather than according to the outcome of the case, and hedging serves to mitigate wherever mitigation is being done — here, within the very judgment that convicts.

Scholarly commentary on the acquittal (Ruye & Hatta, 2025) adopts a comparably intensified register. It is cited here as context for the ruling's reception; being academic rather than judicial discourse, it is not treated as evidence about judicial language and contributes no marker counts.

The Banda Aceh Retained-Gauze Case: Conviction, Acquittal on Appeal, and Reversal with a Dissent

On 19 August 2007 the defendant, an obstetrician at a military hospital in Banda Aceh, performed an emergency caesarean section. A gauze swab measuring approximately 20 by 10 centimeters was left in the patient's abdomen; the swabs had not been counted before or after the procedure. The patient developed persistent infection and fistulae, and the swab was recovered only in December 2008, during a second operation at another hospital. The defendant was charged in the alternative under Article 360(1) and Article 360(2) of the KUHP, both in conjunction with Article 361. The professional-standards offence under Law No. 29/2004 was not charged.

The procedural history produced three successive judicial positions on the same facts. The Banda Aceh District Court convicted on 10 August 2009 and imposed five months' imprisonment, suspended on a ten-month probationary term. The Banda Aceh High Court acquitted on 7 December 2009. The Supreme Court granted the prosecutor's cassation appeal on 7 April 2011, quashed the acquittal, convicted and imposed six months' imprisonment without suspension. The cassation ruling carries a formal dissenting opinion, and – a point of some significance for the analysis – the dissent is that of the presiding judge, H. Mansur Kartayasa, against the two members of the panel.

The High Court's reasoning is not separately published but is recited in the prosecutor's cassation grounds, and the Supreme Court characterizes it in the passage below. The characterization matters because it repeats, in 2009, the deferral structure identified in the

Makassar acquittal of 2020 (verbatim primary text, Decision No. 455 K/Pid/2010, p. 13):

“Bahwa alasan-alasan kasasi Jaksa Penuntut Umum dapat dibenarkan. Jaksa Penuntut Umum dapat membuktikan bahwa bebasnya Terdakwa bukan bebas murni. Judex facti/Pengadilan Tinggi telah salah menerapkan hukumnya menyatakan hal tersebut kewenangan Majelis Kehormatan Disiplin Kedokteran berdasarkan Pasal 29/2004 padahal pelanggaran disiplin tidak menghilangkan hak setiap orang melepaskan tindak pidana tersebut sebagaimana disebut Pasal 66 (3) Undang-Undang 29/2004. ... Positif ada kain kasa tertinggal ketika dioperasi Terdakwa pertama dan Terdakwa tidak bertanggung jawab dikatakan korban alergi jahitan. Dengan demikian Terdakwa telah melakukan kelalaian ketika operasi caesar dan dipersalahkan kepada Terdakwa.” (“That the public prosecutor’s grounds of cassation are justified. The prosecutor has been able to show that the Defendant’s acquittal was not a pure acquittal. The judex facti / High Court misapplied the law in declaring the matter to fall within the authority of the Medical Discipline Honorary Council under Law No. 29/2004, whereas a disciplinary breach does not extinguish the right of any person to report the criminal act, as provided by Article 66(3) of Law No. 29/2004. ... It is positively established that gauze was left behind during the Defendant’s first operation and that the Defendant did not take responsibility, telling the victim she was allergic to the sutures. The Defendant accordingly committed negligence during the caesarean section, and this is attributed to her fault.”)

The intensification here is concentrated and unelaborated. *Dapat dibenarkan* and the twice-repeated *salah menerapkan hukum* characterize the court below categorically. *Padahal* performs a dialogically contractive Engagement move, opposing the High Court’s reasoning to a statutory provision presented as decisive. *Positif ada kain kasa tertinggal* is the strongest Force-up marker in the passage, asserting the central fact without epistemic qualification. What is notable, by comparison with the reconstructed material used in the earlier version of this study, is the absence of moral amplification: there is no *tidak dapat dimaafkan*, no tripartite evaluative compound, no elaborated construction of blame. The Supreme Court’s register in this ruling is terse and procedural, and any account that expects judicial intensification to take a rhetorically florid form is not supported by the text.

The convicting panel also attenuates the harm. The defendant is convicted not under Article 360(1), on which the prosecution had led, but under the lesser limb – *luka sedemikian rupa sehingga berhalangan*

melakukan pekerjaan untuk sementara waktu, injury such as to prevent the victim from working temporarily – of an injury that had required a second laparotomy and left fistulae in the abdominal wall. The adverb *sementara* does the work. The list of mitigating circumstances (*bersikap sopan, telah terjadi perdamaian, belum pernah dihukum*) extends the same attenuation to the defendant's person. This replicates, in a decision ten years earlier and in a different court, the pattern identified in the Makassar cassation: the convicting judgment boosts its evaluation of the physician's conduct while hedging its description of the patient's damage.

The dissenting opinion of the presiding judge would have rejected the appeal (verbatim primary text, p. 14):

“Tertinggalnya kain kasa dalam perut korban bukan kelalaian dalam pengertian pidana tapi merupakan kelalaian medik karena tindakan operasi tidak dilakukan oleh Terdakwa sendiri selaku dokter bedah tapi dilakukan oleh sebuah Tim yang terdiri dari dokter anastesi, Penata Anastesi, Asisten Anastesi dan instrumen/perawat. Kepada Terdakwa seharusnya didakwa melanggar Pasal 79 huruf c jo Pasal 51 a Undang-Undang 29 tahun 2004 tentang Praktek Kedokteran ... namun karena tidak didakwakan Jaksa Penuntut Umum maka kepada Terdakwa tidak dapat dinyatakan bersalah atas tindak pidana tidak yang didakwakan.” (“The leaving of gauze in the victim's abdomen is not negligence in the criminal sense but constitutes medical negligence, because the operation was performed not by the Defendant alone as surgeon but by a team comprising the anesthetist, the anesthetic technician, the anesthetic assistant and the instrument nurse. The Defendant ought to have been charged under Article 79(c) juncto Article 51(a) of Law No. 29/2004 on Medical Practice ... but since the prosecutor did not so charge, the Defendant cannot be found guilty of an offence not charged.”)

Two Force-down operations carry the dissent, and neither is lexical softening of the kind the earlier version of this study led the reader to expect. The first is a Focus resource: *bukan kelalaian dalam pengertian pidana tapi merupakan kelalaian medik* recategorizes the event, removing it from the criminal domain by naming it. The second disperses agency – the operation was performed by a team, not by the defendant alone – so that causal responsibility is distributed rather than denied. The dissent also observes that the appropriate charge would have been the professional-standards offence under Law No. 29/2004, which is precisely the provision under which the Makassar defendant was ultimately convicted a decade later.

The dissent's boosters deserve separate notice. *Tidak dapat dibenarkan, tidak salah menerapkan hukum, alasan-alasan hukum yang benar and harus ditolak* are categorical constructions, and every one of them serves exculpation. Together with the Makassar first-instance holding that Article 360(1) *tidak dapat diterapkan* to medical acts, this settles the point made in Section 6.1: Force-up is not the linguistic signature of a finding of fault. It marks the strength of the evaluative commitment, not its direction.

Convergence Across the Two Cases

Read together, the two case-lines yield a pattern that neither would establish alone, and that no reconstructed material could have revealed. The exculpating voice, in both cases and across a decade, relocates the event into the professional domain. The Banda Aceh High Court held the matter to fall within the authority of the medical disciplinary council; the Makassar District Court held that no criminal finding could be made until that council had ruled; the Banda Aceh dissent recategorized the event as *kelalaian medik* and redirected it to the professional-standards offence. Three different courts, three different procedural postures, one discursive operation. The Sacred/Paternalistic paradigm, in this corpus, is realized less through metaphors of the noble profession than through the transfer of jurisdiction over the meaning of the event.

The convicting voice, correspondingly, refuses the transfer, and does so through the same statutory provision on both occasions: Article 66(3) of Law No. 29/2004, which preserves the right to report a suspected criminal offence notwithstanding disciplinary proceedings. In 2011 the Supreme Court invoked it expressly against the High Court; in 2021 the Supreme Court reached the professional-standards offence directly rather than waiting for the disciplinary body to rule.

This gives the argument of Section 7 an empirical basis it previously lacked. Law No. 17/2023, by requiring a recommendation from the MDP before a physician may be prosecuted, converts into a statutory precondition the very deferral that the Supreme Court twice declined to accept. The claim is no longer that a new mechanism may generate a hedged register; it is that a hedged register was already available to Indonesian courts, was twice rejected on cassation, and has

now been given legislative force. Whether that reading holds is testable against post-2023 rulings as they accumulate.

Finally, both convicting judgments hedge their description of the patient's injury while intensifying their evaluation of the physician's conduct – in Makassar through *belum bisa melihat dengan sempurna*, in Banda Aceh through conviction under the temporary-incapacity limb of Article 360. Two courts, fourteen years apart, distribute Graduation by evaluative target rather than by case outcome. This is the strongest support the corpus affords for the functional account advanced in Section 4.

7. Legislative Evolution and the Standardization of Evaluative Stance

Law No. 17/2023 on Health reconfigures the discursive terrain of medical accountability in Indonesia. By requiring a recommendation from the MDP before a physician may be prosecuted, the law institutionalizes a disciplinary assessment at the threshold of criminal liability.

The MDP replaces the Indonesian Medical Discipline Honorary Council (*Majelis Kehormatan Disiplin Kedokteran Indonesia*, MKDKI) and functions as an independent authority composed of representatives of government, professional associations, and the judiciary, tasked with determining whether an allegation constitutes medical negligence or disciplinary error before the criminal justice system is engaged (Purwanto et al., 2025). In discursive terms, the mechanism may be read as a terminological buffer: where the MDP classifies conduct as disciplinary error, a prosecutor or judge is likely to face a heavier argumentative burden in subsequently construing the same conduct as gross negligence. The material analysed in Section 6 shows that this logic was available to Indonesian courts long before the 2023 reform, and that it was twice rejected on cassation. The Banda Aceh High Court held in 2009 that the matter fell within the authority of the medical disciplinary council; the Makassar District Court held in 2020 that no criminal finding could be made until that council had ruled.

On both occasions the Supreme Court refused the deferral, in 2011 by express reliance on Article 66(3) of Law No. 29/2004, which preserves the right to report a suspected offence notwithstanding disciplinary proceedings. Law No. 17/2023 does not therefore introduce the buffer; it gives statutory force to a deferral that judicial reasoning had already constructed and that the Supreme Court had declined to accept. That is a stronger claim than the one advanced in the earlier version of this study, and it rests on primary text. How the new mechanism will operate in practice nonetheless remains open; no body of post-2023 rulings yet exists against which it could be tested. Whether the buffer operates as described is an empirical question for future research. The transparency and accountability of MDP determinations will be material to that question, since a disciplinary body that adopts the protective register of the sacred paradigm risks eroding public confidence in the accountability system (Maaruf et al., 2025).

The law also establishes restorative justice as a normative objective. The shift in register from punishment to restoration reorients evaluation away from the criminal fault of health professionals and towards compensation for those harmed. This may reduce the chilling effect of prosecution on clinical practice; it also carries the risk that the victim is reconstituted as a term within a negotiated settlement rather than as the subject of a determination of fault.

Limitations

Four limitations bear on the interpretation of these findings. First, the corpus comprises two case lines and four judicial texts. It is not a sample from which frequencies may be estimated, and the counts in Table 4 describe these texts alone. Second, the two case lines are not equivalent in institutional form: the countervailing voice is a cassation panel in one and a dissenting judge in the other, and the comparison between them is functional rather than structural. Third, the analysis is confined to the published *pertimbangan hukum*; the deliberative process behind each ruling is not observable, so the study describes evaluative positioning in the text without inferring the reasoning that produced it. Fourth, coding was performed by a single researcher and has not been independently reviewed; no inter-rater reliability is claimed, and the analysis relies instead on quoting every marker in the original and citing

it to page so that the coding can be checked directly against the rulings.

8. Conclusion

Medical malpractice adjudication in Indonesia produces legal truth through evaluative language. Applying Appraisal Theory to two contested case lines, this study has shown how the elasticity of culpa allows courts to negotiate between the protection of professional integrity and the recognition of patient harm. Two competing paradigms of culpability are identifiable in the corpus: a sacred or paternalistic paradigm, in which hedging construes human error as inherent to clinical risk, and a contractual paradigm, in which intensification foregrounds the victim's suffering and gross negligence (*culpa lata*). The central finding is that these resources align with evaluative function rather than with institutional position. Hedging attenuates the physician's causal agency irrespective of whether it is a majority, a court of first instance, or a dissenting judge that performs that attenuation, and intensification foregrounds harm on the same functional basis. Both convicting judgments make the point sharply, and independently of one another: each intensifies its evaluation of the physician's conduct while hedging its description of the patient's injury – in Makassar through *belum bisa melihat dengan sempurna*, in Banda Aceh through conviction under the temporary-incapacity limb of Article 360. In the Makassar case line the same disciplinary letter is attenuated at first instance and amplified on cassation without any change in the document itself. Graduation, on this account, is not a stylistic property of majority or minority writing but an ideologically loaded resource available to any judicial voice, and a categorical construction may serve exculpation as readily as it serves a finding of fault.

A second finding, which the corpus establishes across a fourteen-year interval, concerns how exculpation is achieved. In neither case line does the exculpating voice soften the description of the physician's act. It relocates the event: to the jurisdiction of the medical disciplinary council, or to the category of *kelalaian medik* as distinct

from criminal negligence, or to a surgical team rather than an individual. The Sacred/Paternalistic paradigm is realized here as a transfer of authority over the meaning of the event rather than as a vocabulary of professional nobility. This bears directly on Law No. 17/2023. By requiring a recommendation from the MDP before prosecution, the statute converts into a precondition the deferral that the Supreme Court twice declined to accept, invoking Article 66(3) of Law No. 29/2004 against it. The accompanying shift towards restorative justice emphasizes compensation over punishment, with the attendant risk of reducing the victim to a term in a settlement. How the mechanism operates in practice awaits testing against post-2023 rulings.

Given the size of the corpus, these findings are indicative rather than generalizable. What they establish is that the construction of negligence in Indonesian medical law is, in part, a discursive contest, and that the linguistic resources through which that contest is conducted merit sustained analytical attention.

Acknowledgment

The authors gratefully acknowledge the financial support and institutional backing provided by Universitas Muhammadiyah Yogyakarta (UMY) for this research.

Conflict of Interest Statement

The authors declare no conflicts of interest to disclose related to this manuscript. If any conflicts arise in the future, the Authors will promptly inform the journal.

AI Use Statement

The authors confirm that artificial intelligence (AI) tools were not used in any aspects of this research.

Bibliography

- Arifin, R., Idris, S. H., Munandar, T. I., & Nte, N. D. (2023). Striking A Balance: Navigating Peace, Justice, And Restorative Justice In Indonesian Prosecutorial Process. *The Prosecutor Law Review*, 1(3), 73–96. <https://doi.org/10.64843/prolev.v1i3.25>
- Baharudin, S. A. (2020). The Laws in Medical Futility: A Comparative Study between the Malaysian, English, American, Indonesian, and Islamic Law. *Indonesian Comparative Law Review*, 2(2), 126–134. <https://doi.org/10.18196/iclr.2221>
- Butt, S. (2018). The Function of Judicial Dissent in Indonesia's Constitutional Court. *Constitutional Review*, 4(1), 1–26. <https://doi.org/10.31078/consrev411>
- Dahlawi, S., Menezes, R. G., Khan, M. A., Waris, A., Saifullah & Naseer, M. M. (2021). Medical negligence in healthcare organizations and its impact on patient safety and public health: a bibliometric study. *F1000Research*, 10, 174. <https://doi.org/10.12688/f1000research.37448.1>
- Darma, I. M. W. (2024). Legal Certainty of Gross Negligence As an Element of Criminal Liability for Medical Professionals: Problems and Implications. *Pena Justisia: Media Komunikasi Dan Kajian Hukum*, 23(2), 35.
- Dhamanti, I., Rachman, T., & Amiati, M. (2024). Analisis Kasus Malapraktik di Rumah Sakit di Indonesia. *Jurnal Kebijakan Kesehatan Indonesia*, 13(2), 100. <https://doi.org/10.22146/jkki.93363>
- Dwike, A., Efrila, E., & Prasetyo, B. (2025). Revisiting The Legal Implications of Medical Malpractice : A Case Study in Indonesia. *Ranah Research : Journal of Multidisciplinary Research and Development*, 7(5), 3775–3788.

<https://doi.org/10.38035/rrj.v7i5.1696>

- Esham, A. D. B. (2019). The Doctrine of Informed Consent and Duty of Disclosure: A Comparative Essay between the US, UK, Australia and Malaysia with Indonesia. *Indonesian Comparative Law Review*, 2(1), 13–27. <https://doi.org/10.18196/iclr.2113>
- Heriani, I., Gunarto, G., & Masdhurohatun, A. (2019). Legal Protection of Patient Rights in Indonesia. *Sriwijaya Law Review*, 3(1), 75–85. <https://doi.org/10.28946/slrev.Vol3.Iss1.134.pp75-85>
- Kowalski, C. J., Redman, R. W., & Mrdjenovich, A. J. (2024). The Doctor-Patient Relationship, Partnership Theory, and the Patient as Partner: Finding a Balance Between Domination and Partnership. *Health Care Analysis*, 32(3), 205–223. <https://doi.org/10.1007/s10728-023-00473-9>
- Maaruf, N. A., Kholib, A., & Harefa, B. (2025). The Authority of the Professional Disciplinary Council and Its Implications for Legal Certainty for Medical and Health Personnel. *International Journal of Social Welfare and Family Law*, 2(2), 135–157.
- Martin, J. R., & White, P. R. R. (2005). *The language of evaluation: Appraisal in English*. Palgrave Macmillan.
- Mazzi, D. (2010). “This Argument Fails for Two Reasons...”: A Linguistic Analysis of Judicial Evaluation Strategies in US Supreme Court Judgments. *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique*, 23(4), 373–385. <https://doi.org/10.1007/s11196-010-9162-0>
- Nicoud, M. (2023). Governing Health: The Doctor’s Authority, the Patient’s Agency, and the Reading of Regimina sanitatis Literature. *Early Science and Medicine*, 28(1), 8–33. <https://doi.org/10.1163/15733823-20230063>
- Oeberst, A., & Goeckenjan, I. (2016). When being wise after the event results in injustice: Evidence for hindsight bias in judges’ negligence assessments. *Psychology, Public Policy, and Law*, 22(3), 271–279. <https://doi.org/10.1037/law0000091>
- Purwanto, A., Yusdiansyah, E., Kurrohman, T., & Ginting, J. D. (2025). Legal Certainty in Resolving Medical Malpractice Issue in Indonesia: A Review of the 2023 Health Law. *Sinergi International Journal of Law*, 4(1), 15–32. <https://doi.org/10.61194/law.v4i1.810>

- Robson, M., Maskill, J., & Brookbanks, W. (2020). Doctors Are Aggrieved—Should They Be? Gross Negligence Manslaughter and the Culpable Doctor. *The Journal of Criminal Law*, 84(4), 312–340. <https://doi.org/10.1177/0022018320946498>
- Ruye, A. W., & Hatta, M. (2025). Analisis Putusan Perkara Malpraktik Dokter Dalam Menjalankan Profesi (Kajian Terhadap Putusan Nomor 1441/Pid. Sus/2019/Pn-Mks). *Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh*, 8(2), 1–20.
- Supreme Court of the Republic of Indonesia. (2020). Makassar District Court Decision No. 1441/Pid.Sus/2019/PN Mks, 1 Juli 2020. Supreme Court Decisions Directory.
- Supreme Court of the Republic of Indonesia. (2021). Supreme Court Decision No. 233 K/Pid.Sus/2021, 18 Februari 2021. Supreme Court Decisions Directory.
- Supreme Court of the Republic of Indonesia. (2011). upreme Court Decision No. 455 K/Pid/2010, 7 April 2011. Supreme Court Decisions Directory.
- Swift, K. (2020). Gross Negligence Manslaughter: Is Prosecution of Doctors Always in the Public Interest and Is Specific Prosecutorial Guidance Needed? *The Journal of Criminal Law*, 84(4), 341–368. <https://doi.org/10.1177/0022018320946943>