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# Reconstructing legal protection for the medical profession in the face of medical disputes during the COVID-19 pandemic from the dignified justice perspective

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## ABSTRACT

**BACKGROUND:** Healthcare involves various stakeholders, including hospitals, healthcare professionals, such as doctors, nurses, and others, as well as patients. The direct relationship typically occurs between doctors and patients. In carrying out their duties, doctors always adhere to standard operating procedures, medical records, and informed consent. The COVID-19 pandemic in Indonesia has led to a surge in the number of COVID-19 patients requiring treatment by doctors. On the one hand, doctors and other healthcare professionals face numerous challenges in providing healthcare services, potentially failing to ensure legal certainty for them.

**AIM:** This study aimed to reconstruct legal protection for the medical profession in medical disputes during the COVID-19 pandemic from a Dignified Justice perspective.

**MATERIALS AND METHODS:** This research is a legal study based on the Dignified Justice Theory to understand the concept of legal protection for healthcare professionals, particularly doctors, during the COVID-19 pandemic. The research methodology includes a legislative, conceptual, and case approach.

**RESULTS:** The research results are subsequently analyzed. Based on the research, it is evident that legal protection is derived from regulations related to recognition, protection of rights, and other relevant legal provisions. Legal protection for the medical profession during the COVID-19 pandemic is also framed within the framework of Pancasila, integrated with the Dignified Justice Theory.

**CONCLUSION:** Legal protection for doctors in the COVID-19 rapid response task force is evident because healthcare professionals have received legal protection through supervision and guidance provided by local governments and their employing institutions in handling COVID-19.

**Keywords:** COVID-19; doctor; legal protection; dignified justice; medical profession.

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# Реконструкция правовой защиты медицинской профессии в условиях медицинских споров во время пандемии COVID-19 с точки зрения достойного правосудия

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## АННОТАЦИЯ

**Актуальность.** В здравоохранении задействованы различные заинтересованные стороны, включая медицинские учреждения, медработников (врачи, медсёстры и др.), а также пациентов. Как правило, между врачами и пациентами возникают непосредственные отношения. При выполнении своих обязанностей врачи всегда придерживаются стандартных операционных процедур, правил оформления медицинской документации и получения информированного согласия от пациентов. Пандемия COVID-19 в Индонезии привела к резкому увеличению числа пациентов, нуждающихся в лечении. Врачи и другие медицинские работники часто сталкиваются с многочисленными проблемами при оказании медицинских услуг, что потенциально не обеспечивает им правовой определённости.

**Цель исследования** — усовершенствовать правовую защиту медицинских работников при возникновении медицинских споров во время пандемий, как в случае COVID-19, с точки зрения принципов достойного правосудия.

**Материалы и методы.** Данное исследование представляет собой юридическое исследование, основанное на теории достойного правосудия и направленное на понимание концепции правовой защиты медицинских работников, в частности врачей, во время пандемии COVID-19. Методология исследования включает в себя законодательный, концептуальный и кейсовый (метод конкретных ситуаций) подходы.

**Результаты.** Правовая защита основывается на нормах, связанных с признанием, защитой прав и другими соответствующими правовыми положениями. Правовая защита медицинской профессии во время пандемии COVID-19 также осуществлялась в рамках философской доктрины Панчасила, интегрированной в теорию достойного правосудия.

**Заключение.** Правовая защита врачей, включённых в оперативную группу по COVID-19, была обеспечена в полной мере благодаря надзору и контролю со стороны местных органов власти и учреждений-работодателей.

**Ключевые слова:** COVID-19; врач; правовая защита; достойное правосудие; медицинская профессия.

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# 从正义司法原则的角度来看，在 COVID-19 大流行期间医疗纠纷中对医疗机构人员法律保护的改善

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## 摘要

**论证。** 医疗保健涉及多个相关方，包括医疗机构、医疗机构人员（如医生、护士等）和患者。医生和患者之间通常存在直接关系。医生在履行职责时始终遵循标准操作程序、填写医疗记录的规则并获得患者的知情同意。印度尼西亚的 COVID-19 大流行导致需要治疗的病人数量急剧增加。医生和其他医疗机构人员在提供医疗服务时往往面临许多挑战，可能无法为他们提供法律确定性。

**该研究的目的是**从正义司法原则的角度来看，改善在 COVID-19 大流行期间医疗纠纷中对医疗机构人员的法律保护。

**材料与方**法。本研究是一项基于正义司法理论的法律研究，旨在了解在 COVID-19 大流行期间对医疗机构人员（尤其是医生）的法律保护概念。研究法包括立法、概念和案例研究方法。

**结果。** 法律保护基于与承认、权利保护和其他相关法律规定有关的规范。在 COVID-19 大流行期间，对医疗行业的法律保护也是在与正义司法理论相结合的潘查希哲学学说的框架内实施的。

**结论。** 通过地方当局和就职机构的监督和控制，COVID-19 特遣部队中医生的法律保护得到了充分保证。

**关键词：** COVID-19；医生；法律保护；正义司法；医疗行业。

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## BACKGROUND

The foundation of the doctor-patient relationship is fundamentally built on trust, which is crucial for providing medical treatment and care. Patients place this trust in healthcare professionals when seeking medical assistance. Within the dynamics of this relationship, a unique legal framework emerges, characterized by therapeutic transactions that delineate the rights and obligations of doctors and patients. At its core, the trust-based relationship between doctors and patients transcends mere transactions; it embodies a mutual understanding and reliance upon the expertise and commitment to care. Patients, vulnerable in their pursuit of health and well-being, place their trust in healthcare professionals' competence, knowledge, and ethical conduct. In turn, doctors commit to upholding the highest standards of medical practice, ensuring the well-being of their patients, and fostering an environment conducive to open communication and collaboration.

Therapeutic transactions within the doctor-patient relationship create a distinctive legal dynamic that defines the rights and responsibilities of both parties. Patients possess the right to receive competent and ethical medical care, be informed about their health status, treatment options, and potential risks, and make autonomous decisions about their care. Simultaneously, doctors hold the obligation to provide accurate information, deliver competent care, respect patient autonomy, and maintain confidentiality.

This legal relationship serves as a framework for the delivery of medical services. It acts as a safeguard, ensuring that the rights and interests of both doctors and patients are duly recognized and protected. The nuances of this relationship become particularly evident in situations where medical decisions, treatments, or outcomes may impact patients' well-being and autonomy. Ethical considerations, communication, and shared decision-making are integral components that further solidify the trust-based legal relationship between doctors and patients.

As medical landscapes evolve, fostering and maintaining trust in the doctor-patient relationship becomes increasingly pivotal. Establishing effective communication channels, respecting patient autonomy, and consistently delivering competent and compassionate care contribute to the strength of this unique legal bond. In navigating the healthcare complexities, the trust-based relationship serves not only as a legal framework but also as a fundamental aspect, highlighting the ethical and moral responsibilities inherent in the medical practice. The first case of coronavirus was identified in China. Subsequently, within a few weeks, the virus spread throughout China and, within a month, to other countries, including Italy, the United States, and Germany. The coronavirus is a large family of viruses that can cause mild to severe illnesses, such as the common cold, or more serious conditions like Middle East respiratory syndrome and severe acute respiratory syndrome. These symptoms

are exacerbated in elderly individuals with underlying medical conditions, such as chronic obstructive pulmonary disease or heart disease. Older individuals with underlying health issues like cardiovascular diseases, diabetes, chronic respiratory conditions, and cancer are at higher risk of severe illness. Healthcare professionals, including doctors, nurses, midwives, and young doctors, play a crucial role in aiding patients in hospitals, clinics, and other medical settings. All medical personnel dedicate their time, knowledge, and energy to combat the spread of COVID-19 [1–6].

Data on confirmed COVID-19 cases among healthcare professionals show that 647 medical workers have been affected, including 289 doctors, 27 dentists, 221 nurses, 84 midwives, 11 pharmacists, and 15 laboratory technicians. Healthcare professionals serve as the frontline warriors in combating the COVID-19 pandemic, exposing themselves to the direct risks of COVID-19. The apathy of a considerable portion of the population toward adhering to COVID-19 prevention protocols has placed an overwhelming burden on healthcare workers [7]. The COVID-19 pandemic is far from over, and the deadly threat of the coronavirus remains deeply concerning. It spares no one, regardless of social status, occupation, gender, or age. Everyone is at risk of contracting the virus, and healthcare professionals are no exception. Healthcare workers are pivotal in confronting the COVID-19 pandemic by directly handling infected patients. Moreover, there have been numerous allegations, especially against doctors, that they infect hospital patients [8–11].

One such hospital facing this situation is Hospital N in Pematangsiantar. Several allegations against healthcare professionals have emerged, including two cases that garnered media attention online. The first case, reported on June 14, 2021, involved a family forcibly taking their father's body from the hospital due to their refusal to accept the COVID-19 diagnosis. The second case, reported on July 23, 2021, involved the hospital diagnosing a COVID-19 case in a victim of a non-virus-related accident based on a reactive result in the COVID-19 antibody test. These cases have caused turmoil, commotion, and disputes between the hospital and the patients despite the COVID-19 diagnosis established by doctors following the applicable standard operating procedures (SOPs) and the COVID-19 Management Guidelines.

There is also a case from a doctor in the Tangerang region at a hospital for COVID-19 treatment patients; some patients who come to the hospital are not always honest about their actual condition. These patients, suspected of COVID-19, suddenly arrive with symptoms of breathlessness and a decrease in oxygen saturation. When asked by the doctors, the patients claimed that they had never been diagnosed with COVID-19 or even lied about their history of traveling in high-level areas (red zone), so later, we found they were diagnosed with COVID-19. This case showed the violation of the patients' obligation regulation in Health Regulation Law 17 of 2023, Article 277, Paragraph A stated,

"Patients are obliged to provide complete and honest information about their health condition." This violation went public, but nothing was done to the patient even though the patient was already proven guilty.

Based on the COVID-19 cases that have become medical disputes at Hospital N, it can be assessed through philosophical, normative, and empirical (sociological) approaches that the patients and their families did not accept the established diagnosis of COVID-19. From a philosophical standpoint, the moral values that have been violated include the principles of Pancasila, particularly the second point of Pancasila, the principle of humanity. Moral values, such as respecting the opinions of others, not imposing one's will, respecting the right to the health of others and a healthy environment, and not endangering the lives of others, have all been breached due to the rejection of the COVID-19 diagnosis by the patients and their families, which the doctor established. COVID-19 is highly contagious through the air, which can endanger public health. This situation can lead to losses for others infected and even pose a risk of death. Therefore, the refusal of the COVID-19 diagnosis by the patients and their families, even when dealing with the deceased, is lamentable.

In 2023, the Indonesian Republic House of Representatives confirmed Omnibus Law, which also contained Indonesian Health Regulation, Law No. 17 of 2023; this law repeals all previous health and medical laws in Indonesia. This is the main reason why all laws regarding health in Indonesia only talk about Law 17 of 2023. This new law is not perfect for medical practitioners' side, especially in the COVID-19 condition that does not explain clearly the law protection for medical practitioners, which can imagine that during pandemic that burned out all the doctors and nurses, they still have to think about the possibility that patients disagreed with their decision because many external factors such as conspiracy theory of COVID-19 and stigma of COVID-19 [10, 12, 13].

In Law 17 of 2023, Article 277 about patients' obligations, Paragraphs B and C stated, "Patients are obliged to comply with the advice and instructions of Medical Personnel and Health Personnel and to comply with the applicable provisions in the health service facilities." Also, because COVID-19 is a pandemic, the Indonesian Health Regulation Law 17 of 2023 in the Second Part, Article 394 is applicable that states, "Every person is obliged to comply with all outbreak and epidemic prevention activities carried out by the Central Government and Regional Government." Also, all the second paragraphs (Articles 394, 395, 396, 397, 398, 399, and 400) are applicable, but in our analysis of the Hospital N case, the patient already violates Articles 394, 396, 397, 399, and 400. These violations during COVID-19 could lead the patients to be criminals and could be punished with imprisonment and/or a fine.

The legal relationship between doctors and patients has continuously evolved. In the past, patients were considered

unequal to doctors because of it. Doctors were viewed as the individuals with the most knowledge about their patients' conditions, while patients heavily relied on doctors [3, 14, 15]. Over time, the legal relationship between doctors and patients has shifted toward equality. Both medical treatment and procedures doctors intend to perform on patients now require the patient's consent. This is commonly referred to as informed consent. In addition, doctors always base their actions on the patient's medical records, which serve as the foundation for medical interventions and as legal evidence that protects doctors against potential claims [3, 15–17].

Several factors can mitigate legal penalties for doctors, including treatment risks, medical accidents, contributory negligence, respectable minority rules and error (in judgment, *volenti non fit injuria*, and the assumption of risk [7]. Doctors who have obtained a patient's consent are oriented toward making maximum efforts (*in spanning verbintenis*) in their medical care rather than promising specific outcomes (*resultaatsverbintenis*). As a result, medical services with maximum effort are the expectations of both patients and their families. However, it is not unlikely that these expectations may not always align with the results achieved in the execution of medical care.

The conceptual framework of this research, explained in Fig. 1, used the Dignified Justice Theory as the grand theory and continued with the legal system as the middle theory for bridging into the applied theory, which is the proposed product of this study: legal protection.

From an empirical (sociological) approach, patients and their families who refuse to accept the COVID-19 diagnosis have violated the legal sociology theories presented by Emile Durkheim regarding the theory of societal solidarity. This is because they disregard the values of healthcare, health maintenance, and public health. Additionally, John Rex's theory is also breached on normative disagreements, where patients and families who reject the COVID-19 diagnosis violate the applicable legal regulations outlined in the normative approach.

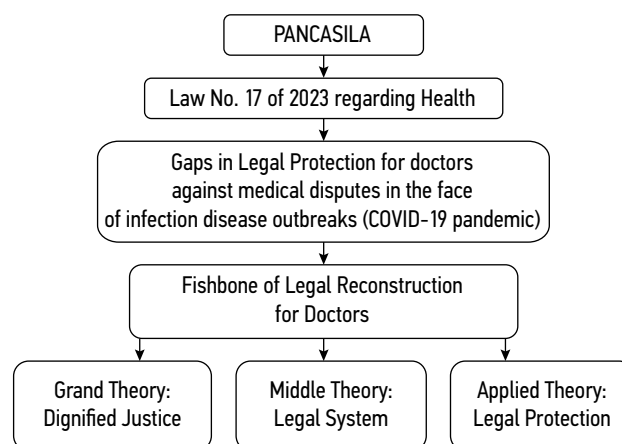


Fig. 1. Conceptual framework.

## AIMS

Based on the description above, the legal issues presented are as follows:

- The need for legal protection for the medical profession during medical disputes in the COVID-19 pandemic.
- Weaknesses in the legal protection of the medical profession in the face of medical disputes during the COVID-19 pandemic.
- Reconstructing legal protection for the medical profession in medical disputes during the COVID-19 pandemic from a Dignified Justice perspective.

## MATERIALS AND METHODS

One fundamental distinction between the discipline of law and the social sciences lies in classifying law as not falling under the umbrella of behavioral sciences. Unlike many branches of social sciences that focus on the descriptive analysis of human behavior, law is inherently prescriptive. The primary concern of legal studies is to explore the coherence and interplay between legal norms, principles, rules, and individual actions (acts) rather than delving into the realm of behavioral science [7].

The predominant approach employed is normative legal research within the scope of legal research, particularly in examining legal protection for the medical profession amid medical disputes during the COVID-19 pandemic. This approach is directed toward scrutinizing the provisions of positive law, emphasizing the normative aspects of legal principles and rules.

In this normative legal research context, various problem-solving methodologies are employed to unravel the intricacies of legal issues, with a specific focus on the legal protection afforded to the medical profession. One such approach is the legislative approach, often called the statute approach. This methodology comprehensively examines all relevant laws and regulations about the specific legal issue under investigation. By scrutinizing the legislative landscape, researchers aim to understand the legal framework surrounding medical disputes during the pandemic and the protections in place for healthcare professionals.

Additionally, the conceptual approach, or conceptual analysis, plays a crucial role in this legal research. This method involves utilizing the perspectives and concepts proposed by legal scholars, exploring the legal doctrines that have evolved within the field of law, and delving into established legal principles. By employing the conceptual approach, researchers can contextualize legal issues within the broader theoretical framework, illuminating the underlying principles that guide legal reasoning in medical disputes.

Furthermore, the case approach is integrated into the research methodology. Examining relevant legal precedents and case law provides valuable insights into applying legal

principles in specific situations. By analyzing past legal decisions, researchers can understand how the legal system has addressed similar issues in the context of medical disputes, thereby contributing to the development of legal solutions grounded in precedent.

In essence, the normative legal research conducted in this study navigates the intricacies of legal provisions, principles, and protections concerning the medical profession during the COVID-19 pandemic. Through a multifaceted approach — encompassing legislative scrutiny, conceptual analysis, and case examination — the research aims to provide a comprehensive understanding of the legal landscape governing medical disputes and the normative framework designed to safeguard the interests of healthcare professionals.

## RESULTS

After collecting data during the research process, we collected eight cases of medical disputes during COVID-19 in Indonesia. The details of each study are elaborated in this result section, which is already categorized based on our fishbone of legal reconstruction for doctors during COVID-19.

### Case 1

This case is located in Hospital N in Pematangsiantar City; the short chronology is a family of a deceased COVID-19 patient who refuses to have the body buried according to COVID-19 protocols. The mortuary becomes crowded due to the presence of the deceased's family and their community organizations providing support. The resolution of this case ended with the deceased being forcibly taken by the patient's family. This study identified two weakness aspects in this case: the legal culture and the legal substance.

First, the legal culture subcategory is the humanity. The development of Indonesian society in responding to the pandemic has weakened the handling of COVID-19 and made it more difficult for doctors to carry out their duties. Based on the COVID-19 cases that have become medical disputes at Hospital N, Pematangsiantar, it can be assessed through philosophical, normative, and empirical (sociological) approaches that patients and their families do not accept the COVID-19 diagnosis. From a philosophical approach, the moral values violated include the principles of Pancasila, specifically being inhumane. Moral values, such as respecting others' opinions, not imposing one's will, respecting others' health rights and a healthy environment, and not endangering others' lives, have been violated because patients and their families do not accept the COVID-19 diagnosis established by doctors. This condition can cause harm to others who may become infected and even risk causing death. Therefore, it is very regrettable that there is a rejection reaction from patients' families toward the COVID-19 diagnosis for living patients and even for COVID-19 deceased who are to be buried. The noble humanitarian values, as stated in the second

principle of Pancasila, emphasize the principle of just and civilized humanity with the concept of humanizing humans. Thus, relevant considerations are needed for Indonesian society to understand humanitarian values and accept and cooperate with health workers to break the chain of COVID-19 transmission.

Second, the COVID-19 Task Force, including security elements, such as the police and Indonesian National Armed Forces (TNI), plays a crucial role in preventing incidents like the one experienced by doctors in this case. It is evident that the deceased's family, who were in conflict, had unrestricted access to areas that should have been sterile during COVID-19 management. This situation worsened the spread of COVID-19, leading to further conflicts and medical disputes. As per the applicable laws, the family of the deceased could face criminal sanctions under Article 14 of Law 4/1984 concerning Infectious Disease Outbreaks for obstructing the epidemic control process and Article 351 of the Criminal Code regarding assault. Fortunately, in this case, the Dignified Justice approach was applied through mediation between the victims (health workers) and the perpetrators (the deceased's family) at the police station, thus avoiding further investigation. Dignified Justice should be present when conflicts arise, employing persuasive and communicative approaches regarding the prevailing regulations alongside the cooperation of the surrounding security forces.

### Case 2

This case is located in Medan City. The short chronology is according to the judge's verdict. A, MD, was found guilty of violating Law 4/1984 concerning Infectious Disease Outbreaks during students' vaccination. The resolution of this case ended with an appeal effort, resulting in a verdict of three months in prison and a fine of Rp500,000.00 (five hundred thousand) Indonesian rupiah. This study identified a weakness in legal culture with the subcategory stigma of COVID-19.

Legal culture plays an important role, particularly regarding the stigma society holds toward COVID-19. The negative social stigma toward COVID-19 leads to those associated with it, such as healthcare workers, experiencing intimidation and bullying, which can even result in legal cases. A., MD, was sentenced to three months in prison with a six-month probation period in the case of administering an empty COVID-19 vaccine at Y School in Medan. This has caused excessive fear among healthcare workers. This paradigm spreads negative assumptions about healthcare workers' medical practices during COVID-19, highlighted by the case of the empty vaccine. In this context, protecting healthcare workers, especially doctors, during the COVID-19 pandemic is crucial, following the approach of the Dignified Justice Theory. Healthcare workers have rights as stipulated in Article 273 of Law 17/2023 and must fulfill their obligations outlined in Article 274. Therefore, conflicts like the empty vaccine case involving A., MD, should not recur and affect other healthcare workers.

### Case 3

This case is located in West Sumbawa; the short chronology is that on Sunday, September 5, 2021, a patient was declared a COVID-19 suspect patient because symptoms were very similar to it. However, when this was communicated, eight family members of the patient did not accept it. The patient's family reacted violently, choking and threatening the victim (B., MD). The resolution of this case ended with mediation between B., MD, and the patient's family after the incident was reported to the police. This study identified two weakness aspects: the legal culture and legal substance.

First, the legal culture subcategory is the stigma of COVID-19. Legal culture plays an important role, particularly regarding the societal stigma toward COVID-19. The negative social stigma associated with COVID-19 causes individuals connected with it — such as patients, survivors, and healthcare workers — to face intimidation, bullying, and even abuse. This stigma creates excessive fear within the community. Additionally, it fosters negative assumptions about medical practices during COVID-19, marked by a significant number of fatalities. In cases like this, the role of protecting healthcare workers should be resolved if society understands the COVID-19 pandemic through the approach of the Dignified Justice Theory. Healthcare workers, in this case, doctors, have rights as stipulated in Article 273 of Law 17/2023 and must fulfill their obligations outlined in Article 274. Therefore, conflicts arising, such as the incident involving B., MD, could be avoided if both the community and healthcare workers (doctors) understood their respective roles and positions.

Second, the legal substance subcategory is the COVID-19 Task Force, which is an official institution established by the government in accordance with Presidential Decree Number 7 of 2020 concerning the Acceleration of the COVID-19 Handling Task Force, as amended by Presidential Decree Number 9 of 2020. This Task Force aims to accelerate the handling of COVID-19 among state institutions in Indonesia. One of the components of this Task Force is the TNI and the Indonesian National Police in terms of security and the restriction of community activities to control the spread of the virus. The Dignified Justice Theory approach can be implemented when the police, enforcers of public order, protect doctors and healthcare workers on duty.

Negative public knowledge about COVID-19 often blames healthcare workers as the cause of the disease. However, healthcare workers operate under uncertain conditions regarding the outcomes of medical actions. Therefore, the Task Force's security aspect needs to be enhanced in areas where COVID-19 is handled, ensuring the safety of doctors working there to mitigate unnecessary conflicts.

### Case 4

This case is located in Ambarawa City; the short chronology is that the sibling of the deceased patient was not allowed to attend the body preparation according to protocol.

The family got into an altercation with the personnel and grabbed scissors, directing them toward the security personnel. A nurse intervened to disarm the individual, and they got injured in the process. The resolution of this case ended with a peaceful agreement between the family and the victim after mediation was conducted to resolve the conflict. This study identified two weakness aspects: the legal culture and legal substance.

First, the legal culture aspect subcategory is the conspiracy theory of COVID-19. Hoaxes have emerged as a significant enemy in combating the COVID-19 pandemic. Numerous conspiracy theories have emerged, causing fear and misinformation in society, which leads to a negative perspective on COVID-19. In this case, one family believed a hoax about the removal of organs from the deceased during body preparation. The legal substance contained in Law 17/2023 has not yet addressed the community's rights and obligations in such situations. Trust between healthcare workers following SOPs and supportive communities in pandemic management should be paramount in the approach of Dignified Justice Theory amid the uncertainty of the COVID-19 pandemic situation. The Dignified Justice Theory approach is about enforcing citizens' rights and obligations and reflects principles governing the protection of human dignity. The government needs to intensify public awareness campaigns and, if necessary, enact regulations to combat negative misinformation about COVID-19.

Second, the legal substance subcategory is COVID-19 Task Force. The effective functioning of the COVID-19 Task Force is paramount in averting incidents akin to the challenges healthcare professionals face in this scenario. This case is very similar to **Case 1**, and it is evident that the family of the deceased, embroiled in the dispute, breached restricted zones crucial for maintaining sterility during COVID-19 protocols. This breach exacerbated viral transmission, triggering additional conflicts and medical disagreements. Legal ramifications, under pertinent statutes, could ensue for obstructing epidemic control procedures and committing assault. Fortunately, a Dignified Justice approach was instrumental in resolving the conflict, as mediation at the police station averted further escalation. Upholding Dignified Justice entails employing persuasive communication regarding regulations and fostering collaboration with security personnel during conflict resolution processes.

### Case 5

The case is located in X community, Tuban regency; the short chronology is the doctor C who was conducting COVID-19 contact tracing was shouted at and expelled by residents while carrying out their duties. However, to ensure smooth operations, the doctor requires the presence of security personnel from the TNI, police, and community police (Bhabinkamtibmas) in the local area. The resolution of this case ended with preventive measures by collaborating with security personnel. This study identified two weakness

aspects in this case: the legal culture and legal substance.

First, the legal culture aspect subcategory is the stigma of COVID-19. The community in X, Tuban Regency, holds a negative stigma toward COVID-19, as evidenced by their harsh rejection of the doctors from the X community Health Center tasked with tracing individuals who have been in contact with COVID-19 patients. This rejection is driven by various reasons, including feeling unnecessary because they are still healthy, fearing being quarantined and isolated if tested positive, being afraid of undergoing the process, and even not believing in the coronavirus. This situation illustrates that the state's efforts, primarily through legal means, may not necessarily resonate well with the community. The community's suspicions regarding COVID-19 indicate a lack of understanding of the medical actions required during a pandemic according to the applicable operational standards and ethics, leading to medical disputes between the community and doctors. The emerging social issue of the negative stigma surrounding COVID-19 creates a mismatch between doctors and the community.

Second, the legal substance subcategory is COVID-19 Task Force. The police, TNI, and supportive community members demonstrate that COVID-19 mitigation efforts can be swiftly implemented without conflict, with the assistance of other state institutions in ensuring security and orderliness at the scene. The handling of this case supports the notion of Dignified Justice Theory, where a system involving the community, doctors, TNI, and the police is established to resolve conflicts internally. This approach helps prevent the expulsion of doctors on duty, thereby avoiding potential future medical disputes.

### Case 6

The case is located in Hospital Z Makassar City; the short chronology is that the hospital staff clashed with the family as they insisted on taking the deceased home for a normal burial. However, the doctor held back due to pending swab test results. Tension escalated, and the police were forced to fire warning shots. The resolution of this case ended with a peaceful agreement. The weakness aspect in this case is the legal substance with the subcategory COVID-19 Task Force and police.

The conflict at Hospital Z in Makassar arose between the hospital staff and the deceased's family, who refused to follow the burial procedures. The hospital staff adhered to the obligations outlined in the Minister of Health's Decree Number HK.01.07/MENKES/413/2020 concerning Guidelines for the Prevention and COVID-19, while the family argued that the swab test results were not yet available. This situation inevitably led to a dispute within the hospital. According to the prevailing Ministerial Decree at the time, the deceased, suspected of having COVID-19, had to undergo COVID-19 management protocols. However, the family only knew that the deceased had not been confirmed positive because the test results were not available yet. The Dignified Justice



Theory plays a crucial role in this scenario because the doctors follow the regulations and need protection from the disturbances caused by the family. Despite the use of warning shots by the police, ultimately, mediation, which serves as a middle ground between the parties, provided a platform for Dignified Justice among the parties to reconcile, which is a characteristic of Dignified Justice.

### Case 7

The case is located in Wamena; the short chronology is about retrieving a deceased COVID-19 patient without proper procedures. The family arrived in large numbers. The doctor had already warned that protocols must be followed, and the consequences of crowding included disturbance to hospital staff, patient fear, and disruption of logistical supplies. The hospital hopes for the community to be educated and for security measures to be implemented within the hospital. The resolution of this case ended with the deceased being forcibly taken by the patient's family. This study identified two weakness aspects in this case: the legal culture and the legal substance.

First, the legal culture subcategory is the humanity. The decrease in healthcare workers' protection rights, as stipulated in Article 273 in this case, does indeed diminish the dignity of the healthcare profession. The patient's family, as part of society, should, in the concept of Dignified Justice, treat healthcare workers as human beings who have been instrumental in addressing COVID-19. In this case, the doctor followed SOPs, and there is no evidence that the patient's rights were violated or that there were errors, negligence, or direct negative consequences from the doctors and medical staff's actions. In the Theory of Dignified Justice, doctors and healthcare workers have fulfilled their obligations, so the rights of doctors who are working should be upheld without diminishing the dignity of the medical profession itself.

Second, the legal substance subcategory involves the police. In the case of Wamena, the legal protection that healthcare workers are entitled to under Article 273 of Law 17/2023 to receive legal protection becomes null and void because the government, as the regulator, does not provide legal certainty in the form of protection while healthcare workers are on duty. Medical disputes and conflicts in hospitals should be resolved with security measures to manage crowds and mitigate conflicts with the patient's family. The role of the police and military is crucial in protecting healthcare workers to ensure their work is not disrupted, and this effort is a way of humanizing medical workers who are working during a pandemic.

### Case 8

The case is located in Village Q, West Manggarai, East Nusa Tenggara; the short chronology is that the residents in Village Q refuse to be vaccinated by healthcare workers due to the influence of misinformation about the COVID-19 vaccine. The residents claim to be unwell to avoid being

injected, even though there are personnel from the military, local public order officers (Satpol PP), and community police (Bhabinkamtibmas) present. The resolution of this case ended with the residents unwilling to be vaccinated. This study identified the weakness aspect in this case: the legal culture with the subcategory conspiracy theory and stigma of COVID-19.

The negative perception of COVID-19 vaccination among the residents poses a challenge to accelerating COVID-19 management. The ease of access to online information significantly influences individuals' decisions to get vaccinated. Unfortunately, in Kampung QF, the residents refuse vaccination due to prevalent misinformation. Healthcare workers, as the implementers of vaccination, carry out their duties under Presidential Regulation No. 99 of 2020 concerning the Procurement of Vaccines and Implementation of Vaccination in the Context of COVID-19 Pandemic Mitigation. In this case, the government is responsible for implementing vaccination programs and ensuring the quality of the vaccines. On the other hand, the residents should support this effort because the state guarantees vaccination implementation in the event of adverse reactions. This approach reflects Dignified Justice, protecting the rights and obligations of all parties holistically.

All of these cases were collected through in-depth internet searches, clarification, and consultation with the Indonesian Medical Association in each branch where the cases occurred, to obtain a more objective point of view.

## DISCUSSION

According to Hippocrates, the medical profession is a fusion of knowledge and art (science and art). For example, making a diagnosis is an art in itself for a doctor. After listening to a patient's complaints, a doctor uses imagination and carefully observes the patient. The knowledge and medical theories learned over time, combined with their accumulated experience, serve as the foundation for diagnosing a patient's condition, aiming for a diagnosis that closely approximates the truth [14,18]. According to Article 280 of Law No. 17 of 2023 on Organizing Practice, medical practitioners have to give their best efforts for patients' care. Medical practice is conducted based on Pancasila and is guided by the following values [19–23]:

- Scientific, that medical practice must be based on the knowledge and technology acquired through education, including continuous education and professional ethics.
- Beneficial, that the provision of medical practice must bring maximum benefit to humanity to preserve and improve public health.
- Justice, that medical practice must provide fair and equal services to every individual at an affordable cost to the community while maintaining high-quality services.
- Humanity, that medical practice should treat all individuals equally and without discrimination based on race, nationality, religion, social status, or ethnicity.

- Balance, that in medical practice provision, there should be harmony and balance between individual and societal interests.
- Patient protection and safety, that medical practice is not only about providing healthcare but must also improve public health, considering the protection and safety of patients [19].

In practicing medicine, doctors are guided by the healthcare laws in effect in Indonesia, which are regulated by Law No. 17 of 2023 in the Parts 11 and 13. Meanwhile, the protection of doctors in carrying out their duties is governed in the ninth part. Since doctors are considered part of the hospital, they are regulated in part three regarding the protection of the law during healthcare service [18].

The doctor-patient relationship in healthcare, or in other words, the health provider-health receiver relationship, constitutes a therapeutic relationship. The development of this relationship can be categorized into the following stages [18]:

- Active-passive relationship: The doctor is viewed by the patient as the person who best understands their health condition. In this stage, the patient's communication interactions do not involve choices related to healthcare actions because they may be unable to provide them. This inability may stem from a genuine lack of medical knowledge, or their condition prevents them from expressing their opinions. For example, a patient is in an unconscious state.
- Collaborative relationship: This stage occurs when the patient is conscious and capable of seeking a doctor's assistance and willing to collaborate with the doctor. In this stage, there is already visible participation from the patient. However, in the healthcare process, the doctor's role remains dominant in determining actions. Therefore, the doctor's position as the patient's trusted individual remains significant.
- Shared participation relationship: At this stage, the patient realizes they are equal to the doctor. As a result, when they interact with the doctor, the relationship is built on mutually agreed-upon agreements. These agreements are reached after intensive communication stages between the doctor and patient, making a decision together.

Doctors must differentiate between actions that are unrelated, directly or indirectly, to their profession and actions that are related to medical matters during their professional practice. From this statement, a distinction can be made between «medical morals» and «medical ethics.» Similarly, a doctor's responsibilities can be separated into legal responsibilities unrelated to their profession's practice and legal responsibilities related to professional regulations based on the Decree of Indonesian Medical Association Executive Board No. 111/PB/A.4/02/2013 concerning Implementation of the Indonesian Medical Code of Ethics such as the Indonesian Medical Code of Ethics (KODEKI) and the legal regulations in Indonesia related to doctors in carrying out their profession

both in the civil, criminal, and administrative spheres [19–21].

The discourse on medical ethics intricately weaves together with the broader fabric of morality, shaping the ethical framework within which healthcare professionals operate. As articulated by the British Medical Association, medical ethics is elucidated as «the application of ethical reasoning to medical decision-making,» encapsulating the complex interplay of values, principles, and judgments in the realm of healthcare. Medical ethics, as a discipline, is both rich and diverse, spanning a spectrum of considerations that extend beyond the realm of clinical decisions. At its core, it involves the imperative to apply ethical reasoning not only to routine medical decision-making but also to navigate the intricacies of exceptional, dramatic, and contentious situations that healthcare professionals encounter in their practice. The multifaceted nature of medical ethics calls for a nuanced understanding of different perspectives and principles. It serves as a moral compass, guiding healthcare professionals through the complexities inherent in-patient care, treatment choices, and broader healthcare policies. The discipline is dynamic, continually evolving in response to societal changes, technological advancements, and the ethical challenges posed by medical innovations.

In practical terms, medical ethics is not confined to theoretical discussions but is a living, breathing aspect of everyday medical practice. It permeates routine clinical encounters, influencing the way decisions are made and reinforcing the ethical obligations healthcare professionals bear toward their patients. Moreover, medical ethics comes to the forefront in exceptional circumstances, such as ethical dilemmas surrounding end-of-life care, organ transplantation, and emerging technologies in healthcare. Furthermore, it is instrumental in addressing contentious issues within the medical profession. It also provides a framework for evaluating and resolving ethical conflicts, ensuring that the principles of beneficence, autonomy, justice, and non-maleficence are considered and balanced appropriately.

The term «medical ethics» also encompasses the broader subject matter of traditional views that pertain to «the standards of professional competence and conduct which the medical profession expects of its members.» This extends beyond the theoretical realm of ethical reasoning and addresses the practical expectations and standards that define the conduct and professionalism expected from healthcare practitioners.

In essence, the discourse on medical ethics transcends theoretical musings, finding its application in the lived experiences of healthcare professionals. It is a dynamic and evolving discipline, guiding in routine and extraordinary medical scenarios alike. As healthcare landscapes continue to evolve, the principles embedded in medical ethics remain a cornerstone, ensuring that ethical reasoning remains central to medical decision-making and professional conduct [3, 21, 24].

The legal relationship between doctors and patients

in a hospital can be interpreted as a contractual relationship, similar to general contractual relationships based on agreements between parties. In addition, with an understanding of the theories that bind contracts, as previously mentioned, the application of the Reliance Theory of Contract and the Relational Theory of Contract in the analysis of the contractual relationship between doctors and patients is as follows [25]:

- The Reliance Theory of Contract proposes the interdependence of parties involved in forming a contract, justifying the conception of contractual obligations while also considering the teleological nature of contracts, which involves providing benefits, especially for parties in a vulnerable and dependent position on others.
- The Relational Theory of Contract suggests the legally binding nature of contracts, based on the relationships between the parties entering into the contract, where often the exchange relationship between the parties is broader and deeper than what appears in the parties' interactions.

The contractual relationship between a doctor and a patient must be conducted with proportionality, as emphasized by Agus Yudha Hernoko. He advocates integrating contracts with the principle of proportionality to regulate the exchange of rights and obligations among the parties in a contract to align with their proportion and share. Only with proportional balance can the exchange of rights and obligations in a contract achieve fairness [26]. In interpreting and achieving justice, the natural law theory, from Socrates to Francois Geny, upholds justice as the crown of law [27]. Additionally, as mentioned by Teguh Prasetyo, the Theory of Dignified Justice emerges from the interaction between *Lex Eterna* and *Volkgeist* in understanding the law as an attempt to approach the divine mind according to a legal system based on Pancasila. The Theory of Dignified Justice employs a systematic dialectical approach to explain the nature of law. The purpose of law in the Theory of Dignified Justice emphasizes justice as the creation of a law that dignifies humanity [28]. Regarding the legal protection for doctors in medical disputes that arise between doctors and patients, this perspective is informed by the theory of legal protection presented by Fitzgerald, as quoted by Satjipto Rahardjo. This theory, rooted in natural law (naturalism), posits that law originates universal and eternal origins from God, and it underscores that law and morality should not be separated [29].

Furthermore, based on Law No. 17 of 2023, doctors are equipped with their rights and obligations as medical professionals. Article 273 states that medical practitioners, in carrying out medical practice, have the following rights:

- To receive legal protection while performing their duties following professional standards and operational procedures.;
- To provide medical services according to professional standards and SOP;

- To receive complete and honest information from the patient or their family and;
- To receive service fees.

Meanwhile, the obligations of medical practitioners are regulated in Article 274 as follows:

- Provide medical services by professional standards and SOP and meet the patient's medical needs.
- Refer patients to other doctors or dentists with better expertise or capabilities if they are unable to perform a particular examination or treatment.
- Maintain the confidentiality of everything they know about the patient, even after their death.
- Provide emergency assistance on humanitarian grounds unless they are confident that someone else on duty can do so.
- Expand their knowledge and keep up with developments in medicine or dentistry.

Every doctor performing their duties in providing medical treatment to cure patients is indirectly monitored to regulate medical ethics and the relevant legal regulations associated with medical practice. However, since the outbreak of the COVID-19 pandemic, there have been cases where patients and their families perceive that doctors have erred in performing their duties, both in terms of diagnosis and the treatment actions taken by the doctor. Consequently, disputes arise between doctors and patients, referred to as medical disputes.

In the realm of medical practice, discerning between harm caused by unlawful conduct and harm stemming from medical malpractice poses a notable challenge. In medical malpractice cases, determining whether harm results from a doctor's breach of contract or a wrongful act hinges significantly on the nature and substance of the patient's claims. This complexity arises because the repercussions converge on a singular point: a deviation from the expected standard of medical services provided by the doctor, constituting a breach of contract. It is crucial to recognize that instances of breach of contract in the medical field can manifest in various forms. One prominent scenario occurs when doctors fail to execute their medical treatment duties to the best of their abilities and at their maximum capacity. This failure to meet professional standards may lead to adverse outcomes for the patient, contributing to the grounds for a medical malpractice claim. For instance, if a patient lacks sufficient funds for their prescribed treatment, doctors might find themselves in a situation where they are unable to adequately fulfill their duties.

In such cases, healthcare professionals might be compelled to make decisions that deviate from established SOPs due to financial constraints faced by the patient. This deviation from the norm may not only compromise the quality of care but also introduce an element of risk and potential harm to the patient. As a result, the contract breach becomes intertwined with financial limitations, ethical considerations, and deviations from established protocols. Furthermore,

the nexus between breach of contract and harm becomes pronounced when doctors, in attempting to navigate financial constraints, engage in activities beyond the recognized professional standards. This might involve recommending alternative treatments, procedures, or medications that, while driven by the intention to alleviate the financial burden, deviate from established medical norms. The departure from accepted practices raises questions about the doctor's adherence to their contractual obligations, as the patient may argue that they did not receive the standard of care expected in their medical agreement. The intricate interplay between financial considerations, professional standards, and contractual obligations in medical malpractice cases highlights the nuanced nature of determining the cause of harm. Unraveling whether harm results from a doctor's breach of contract or wrongful act requires a comprehensive examination of the circumstances surrounding the patient's claims, shedding light on the complexities inherent in the interface between medicine and contractual obligations [2, 30, 31].

Determining negligence committed by a doctor in medical practice involves assessing whether a doctor's actions fall below accepted standards of care. It is crucial to distinguish that negligence alone does not constitute a legal violation or a crime unless it results in harm or injury to others and they accept it. Negligence becomes a legal issue when it leads to material loss, injuries, or even the loss of another person's life. In such cases, it can be classified as gross negligence (.). It may even be categorized as a criminal offense. Negligence, as a form of malpractice, is one of the most frequent types of malpractice. In essence, negligence occurs when someone unintentionally performs actions they should not have done or fails to do something they should have done under similar qualifications in a given circumstance and situation. Negligence can occur in three forms [32]:

- **Malfeasance:** The act of performing actions that violate the law or making policies, decisions, or plans that are unlawful or improper.
- **Misfeasance:** Engaging in proper medical decisions or actions but executing them improperly (improper performance), carrying out medical procedures in violation of procedures.
- **Non-feasance:** The failure to perform medical actions that are one's duty.

Regarding medical risks in the law field, the adage "non fit injuria" or presumption of risk.

Despite the provisions set forth in Law No. 17 of 2023, specifically outlined in Part 11, Article 310, the protection accorded to doctors in resolving medical disputes remains subject to certain limitations. While the law aims to establish a framework for addressing conflicts between doctors and patients, its efficacy in fully safeguarding the interests of medical practitioners remains a point of contention. The complexities of medical disputes necessitate a multifaceted approach that combines legal and ethical

channels to navigate the complexities inherent in these contentious situations. Within the legal domain, resolving medical disputes involves a diverse set of pathways, each governed by specific regulations. Notably, Law No. 17 of 2023 delineates the legal route through Criminal Law, Civil Law, or Consumer Protection Law, offering a statutory basis for addressing alleged malpractice or disputes between doctors and patients. However, in practice, handling cases involving suspected malpractice by doctors often follow the established procedures and guidelines articulated in Law No. 8 of 1981 concerning Criminal Procedure Law (KUHP). This reliance on existing criminal procedural laws by Indonesian National Police investigators reflects the current framework in the absence of specific regulations within Law No. 17 of 2023 for resolving medical disputes tied to violations of medical regulations.

Notably, while Law No. 17 of 2023 may not comprehensively regulate the process for addressing medical disputes, the framework emphasizes the importance of doctors adhering to established protocols. When doctors execute their duties in accordance with SOPs and the Medical Professional Code of Ethics, these cumulative standards serve as a shield against unwarranted accusations. The role of the Medical Ethics Council (MKEK) is pivotal in this regard, as it is mandated to evaluate and declare whether a doctor is guilty of legal violations, including malpractice, based on their adherence to prescribed standards. The cumulative nature of SOP and the Medical Professional Code of Ethics not only forms a cornerstone for legal defense but also underscores the significance of ethical conduct in the medical profession. The commitment to ethical principles and adherence to established procedures becomes a critical component in navigating the legal landscape surrounding medical disputes.

In essence, while Law No. 17 of 2023 provides a framework for addressing medical disputes, the amalgamation of legal and ethical channels becomes imperative in pursuing a fair and just resolution. The ongoing reliance on criminal procedural laws and the role of ethical standards highlight the evolving nature of the legal landscape surrounding medical practice. The continuous refinement and adaptation of regulations are crucial to ensure that doctors are adequately protected and that the resolution of medical disputes aligns with the principles of justice, fairness, and adherence to professional standards.

In Fig. 2, we can see that the ideal approach to resolving disputes between doctors and patients involves a comprehensive consideration of three key perspectives: the patient's side, the doctor's side, and the procedural aspect. When examining the patient's viewpoint, it becomes apparent that resolving disputes through ethical channels may not always be a satisfactory option. The limitations of this approach lie in the professional ethics framework, which may not fully address common concerns and can be challenging for ordinary individuals to comprehend.

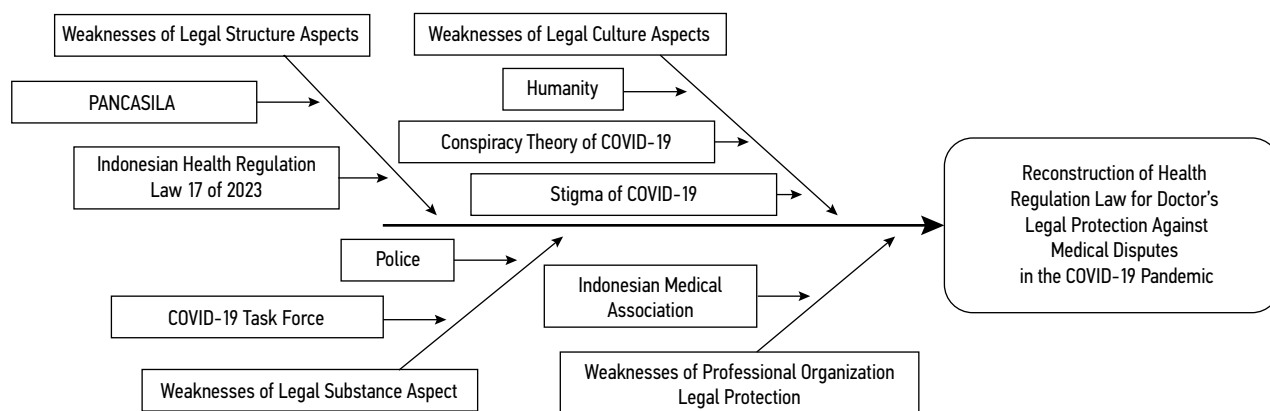


Fig. 2. Fishbone of Legal Reconstruction for Doctors during COVID-19.

Moreover, decisions made through this route may be administratively oriented and might not directly address the patient's specific grievances, potentially leading to dissatisfaction. On the flip side, this route may be more favorable from the doctor's perspective. The Disciplinary Examination Council at MKDKI, responsible for scrutinizing alleged violations, comprises individuals with medical and legal backgrounds. This composition can make the argumentation process more psychologically manageable for doctors. Although impactful, decisions such as suspensions and temporary suspension of practice permits still provide opportunities for doctors to continue their professional activities without tarnishing their reputation since the disciplinary examination is conducted behind closed doors.

When considering the General Court route, neither the patient nor the doctor finds it ideal. Factors such as the prolonged examination process, relatively high case costs, and the difficulty of proving allegations make this option less appealing. Additionally, the open nature of case examinations in a public setting poses the risk of damaging the reputations of both parties involved.

An alternative dispute resolution through the Badan Penyelesaian Sengketa Kesehatan (BPSK) or Health Dispute Settlement Body emerges as a worthy consideration. The direct involvement of both parties in the BPSK process opens avenues for achieving a win-win solution. The examination process is designed to be fast, simple, and cost-effective, and it is conducted in a closed manner. The confidentiality of the trial is particularly significant, as it benefits doctors by maintaining their credibility and patients by safeguarding the privacy of their health history.

Lastly, the final and binding nature of decisions made through BPSK ensures legal certainty for both parties, expediting the implementation of the resolution. This multifaceted approach to dispute resolution aims to balance the interests of patients and doctors, addressing ethical, procedural, and practical concerns to foster fair and effective solutions. According to the opinion of J. Guwandi, to determine whether or not there is negligence in the medical treatment provided by a doctor to a patient, the following criteria are considered [33]:

- Duty to use due care: There is no negligence if there is no obligation to treat, meaning there must be a doctor-patient relationship. Consequently, the doctor/hospital must provide medical services according to medical service standards.
- Dereliction (breach of duty): When there is an obligation, the doctor must not deviate from the applicable professional standards.
- Damage (injury): The effect should be injury, harm, or loss to the patient. The term «injury» includes physical injuries, severe mental distress, or violations of another person's/patient's privacy.
- Direct causation (proximate cause): There must be a reasonable cause-and-effect relationship between the actions of the doctor/hospital and the harm (damage) suffered by the patient.

Doctors are often the target of medical malpractice claims involving negligence. This perspective is expressed by Kerry J. Breen, stating that «doctors who fail to adequately inform their patients about their condition, treatment options, or material risks of treatment may be sued on the grounds of negligence» [34]. According to Michael G. Faure, patients who believe they have been harmed by a doctor's actions in a medical context can file claims for compensation in court. These claims can include Unlawful Act Claims (PMH) and Breach of Contract Claims arising from the contractual relationship between the doctor and the patient [35].

Meanwhile, alleged malpractice cases that may have criminal implications, as Ari Yunanto and Helmi stated, must meet three conditions: First, the doctor's mental state; second, medical treatment; and third, causation. The mental state condition is satisfied by the presence of intention or culpa, which is evidence of an act in medical procedures. The medical treatment condition deviates from established norms and standards [36]. Hospital N case did not meet the three conditions because the doctor was mentally stable, the treatment was based on the operational procedure, and the patients induced the causation. This case could be the leading proof based on the Dignified Justice Theory and Indonesian Health Regulation Law, especially during COVID-19, that patients could also cause legal harm to doctors, and doctors

should be protected.

## CONCLUSION

Legal protection for doctors in Indonesia is established through a combination of legal instruments, specifically the Indonesian Medical Code of Ethics and Law No. 17 of 2023. These regulations outline the standards and principles guiding the medical profession in the country. Legal protection for doctors in the COVID-19 rapid response task force is evident, as healthcare professionals have received legal protection through supervision and guidance provided by local governments and their employing institutions in handling COVID-19. As long as the doctor performs their duties following SOPs and the Medical Professional Code of Ethics, which is cumulative, the Medical Ethics Council (MKEK) is obligated to declare that the doctor is not guilty of any legal violations, including malpractice. If a patient believes a doctor's medical actions have harmed or violated medical ethics, they can file criminal and civil lawsuits.

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