

## Legality of General Practitioners in Practicing Acupuncture

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KEYWORDS	ABSTRACT
Doctor; general practitioner; acupuncture; authority	Regulations for acupuncture practice in Indonesia are based on Law No. 17 of 2023 concerning health and Permenkes No. 34 of 2018 concerning license and practice regulation of acupuncture therapists. In Indonesia, acupuncture treatment consists of traditional acupuncture done by acupuncture therapists and medical acupuncture done by doctors, both acupuncture specialists and general practitioners. This research titled "Legality of General Practitioners in Carrying Out Acupuncture Treatment" aims to analyze the authority of general practitioners in carrying out acupuncture treatment and the liability between general practitioners and patients when carrying out acupuncture treatment. This research uses a normative juridical method with two approaches, namely the statutory approach and the conceptual approach. The results of this research are that currently, in Indonesia, there is a void of norms that regulate the authority of general practitioners in doing acupuncture treatment. Therefore, besides liability in the form of default and acts against the law in the field of civil penal law between doctors and patients, general practitioners can also be held responsible in the field of penal law and administrative penal law.

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### Introduction

Health is one of the human needs because by having a healthy body and mind, humans can carry out their daily activities productively. According to the 1945 Constitution of the Republic of Indonesia Article 28H, "Every person has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment, and to receive health services", according to Article 1 of Law Number 17 of 2023. Health is a human right that must be realized in various forms of providing health efforts to the community.

There are various types of health efforts that patients can make in an effort to obtain a cure for the disease. These health efforts can be classified as health efforts using modern medical methods and health efforts using traditional methods. In today's modern era, traditional health efforts are still in demand by the community. Various factors cause people to choose to use

traditional methods, such as wanting to reduce drug consumption, easier costs, less satisfaction with the results of modern medicine, and various other reasons.

Acupuncture is a type of traditional health care that uses skills. Acupuncture is a traditional Chinese medicine technique that has been applied for more than 5000 years. Today acupuncture is gaining ground in many countries both as a primary and adjuvant therapy in several disease conditions. Acupuncture is especially popular for managing pain that is difficult to treat with conventional medicine and treating several inflammatory-related diseases (Julianto, 2020).

Acupuncture is a traditional health service that is recognized and regulated by the government through various regulations, such as Minister of Health Regulation No. 1186/MENKES/PER/XI/1996, Minister of Health Decree No. 1277/MENKES/SK/VIII/2003, and Permenkes No. 34/2018. The Health Law mandates central and local governments to provide traditional health services, and Government Regulation No. 28 of 2024 regulates the standard of such services.

In Indonesia, acupuncture is practiced by doctors and traditional acupuncturists. Based on Permenkes 34/2018, Acupuncture Therapists must pass acupuncture higher education and have a Registration Certificate (STRAT) and Acupuncture Therapist Practice License (SIPAT). General practitioners practicing acupuncture must choose between traditional medicine or modern medicine. Currently, medical acupuncture is developing with a scientific, evidence-based approach that integrates anatomy, physiology, pathology, and evidence-based medicine<sup>2</sup>.

Currently, acupuncture training for general practitioners is organized by various institutions. The Indonesian Acupuncture Doctors Association (PDAI) organizes Basic Medical Acupuncture education for general practitioners based on the Guidelines from the *World Health Organization* (WHO) related to *Basic training and safety in acupuncture*. The curriculum in the acupuncture education and training module for general practitioners has been accredited by the Health Human Resources Development and Empowerment Agency-Kemenkes (PPSDM Agency). The Ministry of Health already has a regular training program organized with this module aimed at doctors from various districts and cities throughout Indonesia with the aim of filling the needs at the First Level Health Facilities (Husniah, 2024).

The Indonesian Medical Council Regulation No. 56/2018 regulates the education of medical acupuncture specialists, but there are no regulations governing the competence of general practitioners in acupuncture practice. This leads to a vacuum of norms regarding the authority of general practitioners who perform acupuncture. Additional competencies allow general practitioners to perform medical acupuncture without having to choose between being a doctor or a traditional acupuncturist.

The doctor-patient relationship is a relationship of trust that is often tested when patient expectations are not met, as in cases of medical malpractice that increase every year. PB IDI data shows an increase in complaints and lawsuits against doctors (Lubis, 2020). Although there are no reported complaints against doctors who perform acupuncture, they need to have a clear legal basis to protect themselves from potential lawsuits.

Currently, the need for medical acupuncture is quite high because many people need acupuncture as a complement or substitute for the consumption of medicines. The medical acupuncture specialist education program is currently only available at the Faculty of Medicine, University of Indonesia, so the number of graduates is not enough to accommodate the needs of the community for medical acupuncture. Therefore, the Acupuncture Department of the Faculty of Medicine, University of Indonesia, together with various other institutions, also organizes acupuncture courses for general practitioners.

General practitioners, although they have the ability or capability after attending the course as evidenced by a certificate of competence, do not yet have the authority to perform acupuncture. This creates a vacuum of legal norms for doctors who practice acupuncture because the existing rules only regulate non-physician acupuncturists and medical acupuncture specialists. In the absence of rules governing legality, there is a potential danger in terms of liability with patients because the authority is still unclear. In line with the objectives of the law, namely usefulness and legal certainty, general practitioners need regulation of authority in acupuncture actions so that in addition to having the ability after taking the course, they can also have the authority.

Based on what has been described, the research objectives are as follows: To analyze the legal regulation of the authority of general practitioners in acupuncture practice and the urgency of its regulation. To analyze the liability of general practitioners who have acupuncture expertise with patients.

Research on the legality of general practitioners in practicing acupuncture has theoretical and practical benefits. Theoretically, this research aims to develop the science of health law, contribute knowledge, and provide legal certainty and protection related to acupuncture actions by doctors. Practically, this research is expected to support health law enforcement by formulating clear rules regarding the authority of doctors in acupuncture practice, as well as overcoming disharmonization of existing regulations, providing better legal protection for doctors.

## **Research Methods**

This research uses a legal research approach with a normative juridical type or doctrinal research. This research examines legal norms related to legislation that is relevant to the problem under study. The approaches used are the Statute Approach and Conceptual Approach. The Statute Approach examines laws related to doctor's license to practice, acupuncture authority, and consistency between regulations. Conceptual Approach studies legal doctrines to find relevant concepts and principles, which are used to build legal arguments in solving existing issues.

The legal materials in this research consist of three categories:

Primary Legal Materials, namely relevant laws and regulations, include:

1. 1945 CONSTITUTION
2. CRIMINAL CODE
3. Civil Code
4. Law No. 17 of 2023 on Health
5. Government Regulation No. 28 Year 2024 on Health

6. Minister of Health Regulation No. 34/2018 on the Practice of Acupuncture Therapists

7. Medical Council Regulation No. 10 of 2012 concerning Medical Professional Education Standards

8. Medical Council Regulation No. 11 of 2012 concerning Physician Competency Standards.

Secondary Legal Materials, namely literature that explains primary legal materials, such as law books, theses, dissertations, and legal journals.

Tertiary Legal Materials, namely materials that support primary and secondary legal materials, such as legal dictionaries, language dictionaries, and encyclopedias.

The collection and processing of legal materials aims to obtain legal materials used in this research. The collection and processing of legal materials is carried out in a way:

a. Literature study is data collection by collecting data sourced from legal materials in the form of legislation or studies of scientific papers, both from books or literature, journals, mass media, electronic media, and newspapers, as well as other materials related to the discussion in this study.

b. Identification of legislation, is the collection of data by collecting legal materials by comparing legislation related to the discussion in this study.

Analysis of legal materials in this research uses a qualitative juridical approach, by studying and compiling legal materials systematically to conclude. Legal materials are classified based on relevance to the issue of general practitioners' authority in acupuncture practice and their legal liability. Interpretation is needed to overcome ambiguity in the regulations, using a systematic interpretation approach and seeing legal material as a unit. Legal construction is carried out to fill regulatory gaps with three forms: analogy, legal refinement, and argumentation, a contrario.

## **Results and Discussion**

### **Legal Regulation of the Authority of General Practitioners in Acupuncture Practice**

A right is defined as the freedom to do or not to do something or to ask others to do something specific, and an obligation is defined as the duty to do or not to do an action. According to Bagir Manan, authority has a different meaning from power, where power describes the right to do or not do something only. However, authority has the definition of rights and obligations simultaneously. Therefore, the authority of a doctor is also called the discretion of a doctor to determine whether certain actions are carried out or not by using an analysis that is carried out professionally and contains specific obligations (Komalawati, 2018). This authority applies according to the STR that is owned according to the competence possessed.

The ownership of a doctor's competence is used as a basis for the authority given to doctors in carrying out medical service practices. The form of the legality of a doctor's authority is seen in the existence of a Registration Certificate (STR) owned by the doctor. According to Article 1 of the Health Law, "registration is the official recording of medical personnel and health personnel who have a certificate of competence and/or professional certificate". "Registration Certificate, hereinafter abbreviated as STR, is a written proof given to medical personnel and health personnel

who have been registered." Provisions regarding the doctor's Registration Certificate as stipulated in Article 594 of Government Regulation Number 28 of 2024:

After having an STR, doctors can apply for a Practice License (SIP) in accordance with the Minister of Health Regulation No. 14 of 2021. The SIP is issued by the One-Stop Investment and Integrated Service Office based on the recommendation of the Health Office. Article 265 of the Health Law states that doctors can practice without SIP under certain conditions as long as they have competence. The authority of doctors is based on competence, and SIP is legality. General practitioners with an acupuncture certificate of competence can practice but do not yet have official authority because the acupuncture certificate of competence does not change the general practitioner STR to a KT STR (additional competence). Indonesian Medical Council Regulation No. 56/2018 regulates acupuncture specialists. However, there is no regulation for general practitioners in the practice of medical acupuncture, so the additional authority of general practitioners is not yet regulated.

Based on the hierarchy of applicable legislation and has been traced from the 1945 Constitution, Assembly Decree, Law, Government Regulation in Lieu of Law, Government Regulation, Presidential Decree, and Regional Regulation, there is currently no regulation that has regulated the authority of general practitioners in practicing acupuncture.

General practitioners who practice acupuncture in a health care facility have another option to obtain authority, which is the Clinical Assignment Letter with Details of Clinical Authority (SPKRKK) issued by the head of the health care facility to general practitioners who practice acupuncture. This letter is an important document for doctors practicing in health facilities such as hospitals. The SPK is an official letter issued by the hospital director and authorizes the doctor to carry out clinical practice in the facility. Meanwhile, the RKK details the types of medical actions that doctors are authorized to perform according to their competence. In this case, the RKK of general practitioners with acupuncture competence may include medical acupuncture. This SPKRKK is one way of obtaining authority from attribution.

For traditional acupuncturist health workers, their authority has been clearly regulated in legislation. Based on a study entitled Implementation of the Regulation of Acupuncture Health Service Practices in Hospitals in Kudus Regency, the results of this study are that acupuncture health workers are regulated by several laws and regulations, namely Law Number 36 of 2014 concerning Health Workers and Minister of Health Regulation Number 34 of 2018 concerning Licenses and Implementation of Acupuncture Therapist Practices. Based on these two laws and regulations, it is stated that acupuncture therapists may practice acupuncture in hospitals, but in reality, hospitals in Kudus Regency, both regionally owned and privately owned hospitals, still do not provide acupuncture health services. The implementation of the regulation on the practice of acupuncture health services in hospitals in Kudus Regency has experienced various obstacles, both juridical and technical obstacles (Wahyudi, 2023).

Based on Article 199 of the Health Law, acupuncture therapists are included in the group of physical health workers so that they are different groups from traditional health workers who are included in other groups. Acupuncture health services are based on the Minister of Health

Regulation on Licensing and Implementation of Acupuncture Therapist Practices. In contrast, the implementation of traditional health services is based on the Minister of Health Regulation on the Implementation of Complementary Health Services (Jonathan & Dharmawan, 2019).

Based on Article 1 of the Health Law, a Registration Certificate, hereinafter abbreviated as STR, is written proof given to Medical and Health Workers who have been registered. A practice License, hereinafter abbreviated as SIP, is a written proof given to Medical and Health Personnel as a grant of authority to practice. Traditional health workers currently follow the rules in the Health Law. Based on PP Number 28 of 2024, Article 6 states that health efforts are carried out by medical personnel, health personnel, supporting or supporting health personnel, and other personnel in accordance with competence and authority.

Based on the provisions in the PMK on the Licensing and Implementation of Acupuncture Therapist Practices, the authority to organize acupuncture health services is given to Acupuncture Therapists who already have an Acupuncture Therapist Registration Certificate (STRAT) and Acupuncture Therapist Practice License (SIPAT). In the PMK on the Implementation of Licenses and Implementation of Acupuncture Therapist Practices, it has been clearly stated regarding the authority of acupuncture therapists based on what is stated in Article 16. Acupuncture Therapist Health Workers in carrying out health services are based on their competence and authority, namely evaluating patients to perform acupuncture actions. Whereas in the PMK on the Implementation of Complementary Health Services, the authority of traditional health workers is not explained in detail. Article 9 Paragraph (1) states that "Traditional Health Workers may not perform invasive actions and use medical devices except in accordance with their competence and authority". The competence and authority referred to are not explained in more detail in subsequent articles. The unclear competence and authority of traditional health workers cause difficulties in the application of the article it can lead to legal uncertainty (Jonathan & Dharmawan, 2019, p. 17).

Based on the results of research by Wahyudi (2016), it was concluded that acupuncture specialists were not ready for this integration, in contrast to acupuncture health workers who expected integration according to existing policies. The lack of firmness of the government's attitude results in differences in authority between acupuncture specialists and traditional acupuncture health workers being a problem that affects the readiness of acupuncture health workers in the implementation of traditional health services in health care facilities.

Based on the results of the research, currently, there are no laws and regulations governing the authority of general practitioners in performing acupuncture, so that currently it is still an empty norm that has no regulation.

### **The Urgency of Regulating Acupuncture Practice by General Practitioners**

Civil law views the therapeutic relationship as contractual between the doctor and the patient, with the engagement based on agreement. Doctors and patients are considered legal subjects capable of acting, except under certain conditions, according to Article 1330 BW. Medical treatments have unpredictable outcomes, depending on many factors, so acupuncture doctors use



the inspanning verbintenenis engagement, which requires the patient's cooperation in following the treatment schedule.

Gustav Radbruch, in his theory of the purpose of law, states that the law aims to provide benefits, certainty, and justice. In medical practice, including acupuncture, legal protection is essential to protect doctors when performing their duties within their authority. Currently, the demand for medical acupuncture is increasing, but only medical acupuncture specialists have full authority, while general practitioners who take acupuncture courses still do not have clear legal authority.

Regulations related to acupuncture already govern traditional acupuncturists and specialist doctors, but there are no clear rules for general practitioners. The obligations of doctors are regulated in the Health Law, which requires services according to professional standards. Without clear legal authority for general practitioners who perform acupuncture, the potential for legal violations, including criminal acts, increases. The principles of legality, non-abuse of authority, legal certainty, and expediency emphasize the need for clear regulations (Salim & Nurbani, 2023).

Legal protection, both preventive and repressive, is needed to prevent disputes and provide justice. The regulation of acupuncture authority for general practitioners will provide preventive legal protection and prevent legal problems, in line with the needs of people who need acupuncture therapy to accelerate healing. Clarity of competence and division of authority between general practitioners and specialists is essential to avoid professional friction and provide legal certainty in the practice of acupuncture.

### **Liability Due to Legal Relationship between General Practitioner and Patient**

*Liability* is a specific form of responsibility. Liability is when a person or legal entity is in a position that is deemed to have to compensate, indemnify, or perform a promised performance after the occurrence of a legal event or legal action. For example, an individual is obliged to provide compensation aimed at other legal subjects, either individuals or legal entities, due to the commission of unlawful acts (*onrechtmatige daad*) or failure to fulfill contractual obligations (*wanprestatie*) that cause harm to the other party. The term liability is included in the realm of civil law because it concerns the relationship between two legal subjects.

The relationship between a doctor and a patient stemming from a therapeutic agreement is within the scope of private law. When the patient feels that the doctor has committed an unlawful act or has not fulfilled his/her obligations as a doctor, then the patient can claim liability from the doctor and demand compensation as a form of compensation. This usually happens when the patient feels there are side effects that arise after the doctor's actions, or when the disease does not go away, the patient begins to think the doctor's fault causes it.

*Medical liability relates to cases in which an undesirable medical result is due to a violation of fundamentally recognized rules of medical science in combination with actions (acts or omissions) contrary to the objectively imposed duty of care. Thus, medical liability arises when "the doctor did not pay the objectively obliged care and diligence, which any moderately prudent and conscientious person could and should have paid under the same real circumstances, based*

*on legal rules, conditions prevailing in transactions and in the ordinary course of business experience and logic and at the same time there is a causal link between the medical act or omission and the criminal unintended result." In the past, attempts to conceptualize medical liability have led to the formulation of theories of "fully irresponsible," "sui generis reduced liability," and "full liability of the physician" (Mandilara et al., 2023).*

Liability in the medical field relates to cases where there is an undesirable outcome of a medical action due to a deviation from the rules of medical science and an act or omission contrary to the objectively imposed duty of care. Liability arises when a doctor fails to perform his or her duty of care and is not scrupulous in the measure that a prudent and conscientious person would take in the same situation under the rules of law. There is a causal link between the result and the act of medical negligence.

A doctor can be found to have made a mistake and must pay compensation if there is a close relationship between the mistake made by the doctor and the loss suffered by the patient. In determining whether the doctor commits an element of fault, we need to refer to the doctor's professional standards. In the implementation of medical practice, unlawful acts can be interpreted as actions of doctors that are contrary to or not in accordance with professional standards that apply to professional actors in the field of medicine. Patients must have evidence of losses due to non-fulfillment of the doctor's obligations in accordance with applicable medical professional standards in a therapeutic contract (Simarmata et al., 2022).

Fault liability is a classic form of liability in the realm of civil law. Based on the three principles set out in Articles 1365, 1366, and 1367 of the Civil Code, a patient can file a lawsuit against a doctor because the doctor has committed an unlawful act, as stated in Article 1365 of the Civil Code: "Every unlawful act, which causes damage to another person, obliges the person who through his fault incurs the fault, to compensate for the loss". The law does not yet provide a limitation on unlawful acts, which judges must interpret in court. Since 1919, jurisprudence has continued to define it as any act or omission that is either: (Simarmata et al., 2022).

- a. Violating the rights of others
- b. Contrary to one's own legal obligations
- c. Violates commonly held ethical views (good customs)
- d. Not in accordance with the observance of due care as a requirement concerning the person and property of a person in the course of living.

The doctor's obligations, as stipulated in Article 274 of the Health Law, states that Medical and Health Workers, in carrying out their practices, are obliged to provide health services in accordance with professional standards and professional service standards in addition to the medical needs of patients and provide patient referrals to Medical or other Health Workers who have the appropriate competence and authority. This shows that when the authority of general practitioners to perform acupuncture actions has not been regulated and included in the professional standards of doctors, then doctors will be considered to perform actions that are not in accordance with the professional standards of doctors. Patients can consider doctors to act against the law because they do not carry out their obligations as doctors in providing health services.



Claims on the basis of this tort can be filed if the patient can prove that the losses suffered were caused by the doctor's actions in breach of duty because the responsibility of the doctor or hospital cannot be based solely on the fact of an accident that occurred or a result that did not meet expectations.

It is not enough to punish someone only on the grounds that there is an act that is contrary to the law or violates the law. This means that even though the act fulfills the formulation of the offense in the law and the action cannot be justified, it still does not meet the requirements for imposing punishment. The criminalization process still requires additional requirements in the form of the wrongdoing of the perpetrator. Malpractice can occur if the doctor fulfills the formulation of the article as regulated in criminal law. The definition of malpractice includes any medical error that arises because the doctor performs substandard work. Malpractice indicates that the negligence occurred because the doctor did not properly utilize his skills and knowledge to treat the patient according to applicable standards. Ninik Mariyanti, as cited by Aria Chandra Gunawan et al. (2023), said that malpractice has a definition in a general context, which means a bad practice and does not meet the standards according to professional provisions. In a specific sense, it can be defined as an event that can arise in determining a diagnosis, performing surgery during treatment and afterward.

When there is a vacuum of norms on the authority of general practitioners in performing acupuncture, then general practitioners can be considered to practice that is not in accordance with professional standards and meets the definition of malpractice. Medical malpractice cannot be considered a tort because the legal relationship between doctors and patients arises from agreements that have been agreed upon by each other and are binding for both parties, not from agreements arising from the law. In contrast, a tort is a form of obligation born from the law as a result of human actions that violate the law, which is regulated in the Civil Code Article 1365. Based on Article 1365 of the Criminal Code, it is stated that: "Every act that violates the law and brings harm to others obliges the person who causes the harm through his fault to replace the loss." This article establishes an obligation to perform voluntary actions or return payments that have been made (not owed) or called *rechtmatige daad* and pay compensation to the injured party or called *onrechtmatige daad*.

Default is a condition when a legal subject does not fulfill the obligations specified in the contract. The form of not fulfilling this obligation can be in the form of not carrying out at all what was promised, or late in carrying out what was promised or carrying out but not as promised. Doctors in therapeutic agreements with patients make agreements with the legal object is the best effort. If the doctor does not make the best effort in treating the patient, then if there is a loss the patient can sue for default.

Health workers can be said to have committed an administrative offense when the health worker has violated administrative law. In exercising *police power*, the government has the authority to regulate various provisions in the health sector, for example, regarding administrative requirements for health workers to carry out their professional practices (Work Permit, Practice Permit), the limits of authority of health workers, and the obligations of health workers. If there are

rules that are violated, then the health worker concerned can be said to have violated administrative law (Widhiantoro, 2021).

From a criminal law perspective, the issue of malpractice is more emphasized and has a foundation based on consent. Every invasive medical undertaking must have the consent of the patient. Any *invasive medical undertaking* performed by a doctor without the consent of the patient can be sued as a criminal act of persecution, especially if there is the use of anesthesia or anesthesia (Ikhsan & Christianto, 2022).

Medical negligence is a condition in which a person acts with a lack of reasonable care. Negligence includes two things: First, for doing something that should not be done, or second, for not doing something that should be done. *Negligence* or *negligence* according to Keeton *Medical Negligence – the Standard of Care* 1980 as cited by Wiriadinata (2014), is an attitude and action that is considered by society to cause harm, and the perpetrator can imagine that the action can make others bear a heavy risk and should be able to act more carefully.

Negligence occurs when a person commits an act due to negligence or negligence of their obligations. It can be said that a person does not perform an obligation as it should be done to the detriment of society. Willfulness is an act that is realized, known, and understood and is done with the element of intent (*dolus*). This element of guilt must have a close relationship between the inner state of the perpetrator and his actions. Based on legal science, two conditions must be met in negligence, namely, not making presumptions as required by law and not taking care as required (Wiriadinata, 2014).

There is a debate regarding legal interpretation in determining the elements of error or negligence in medical malpractice, which is often encountered in the process of problem-solving related to a medical action performed by a doctor with allegations of error or negligence or negligence and deviations from health service procedures or professional errors. This is also due to the understanding and interpretation of malpractice issues that are still vague and have not been defined firmly and clearly so there is often confusion of understanding and views that confuse professional ethics with legal norms. There are still differences in understanding related to malpractice issues by equating the term *medical malpractice* with *medical negligence* so that a wrong medical action is referred to as malpractice as well as a violation of professional ethics. On the other hand, some argue that the existence of an inherent *risk* in an act of *treatment* (*risk of treatment*) and *errors of judgment* cannot be referred to as *medical malpractice* or medical negligence. According to John Healy, as cited by Novianto (2015), the definition of the term *medical negligence* is; "*medical malpractice involves the physician's failure to conform to the standard of care for the treatment of the patient's condition, or lack of skill, or negligence in providing care to the patient, which is the direct cause of an injury to the patient*". The World Medical Association makes the statement "*an injury occurring in the course of medical treatment which could not be foreseen and was not the result of the lack or knowledge on the part of the treating physician is an untoward result, for which the physician should not bear any liability*". This shows that not all medical failures are the result of medical malpractice because there can be

unforeseeable adverse events even though the medical actions taken are in accordance with standards but result in injury to the patient (Novianto, 2015).

*The most common adverse events for acupuncture that respondents experienced since 2000 were side-effects such as subcutaneous hemorrhage, micro-hemorrhage, needle pain during insertion, and pain after removing needles. Moderately common adverse events included cerebral anemia or fainting, difficulty in removing needles, and other adverse events such as development of fever caused by excessive stimulation. On the other hand, serious adverse events such as needle breakage and pneumothorax were only moderately common. Of the causes of needle breakage, needle failure and muscle contraction accounted for more than half. Of the 28 respondents who had experienced needle breakage, 32.1% (9 respondents) were using disposal needles, 17.9% (5) non-disposal needles or reusable needles, 35.7% (10) both, and 14.3% (4) did not answer (no figure). Of the respondents, 62.5% (807) were using disposal needles, 6.5% (84) non-disposal needles or reusable needles, 24.1% (311) both, and 7% (90) did not answer. This implies that the use of reusable needles could increase the possibility of needle breakage. Needle breakage was regarded as the major cause of pneumothorax as well as the cause of damage to the peripheral or central nervous systems and other organs (no figure). It is strongly recommended to implement education and training programs for students before graduation and for clinical practitioners after graduation, thus allowing them to acquire and maintain appropriate hand skills (Shinbara et al., 2012).*

Acupuncture is a medical procedure that has side effects that can be felt by patients after treatment. Some common side effects include pain on needle insertion and pain on needle removal, as well as subcutaneous bleeding and micro bleeding. Various other side effects are less common. Acupuncture performed with reusable needles is more prone to needle breakage during puncture than with single-use needles. Many of these serious side effects can be avoided if practitioners are provided with education and training to improve their skills.

It should be noted that not every treatment result that is not in accordance with the patient's expectations is the result of medical malpractice or doctor error due to negligence in carrying out treatment or medical action because the incident can be the result of the risks that the patient must bear in undergoing medical action (medical risk). Diagnostic errors should also not automatically be used as a measure of malpractice or negligence because many factors affect the accuracy of diagnosis; sometimes, some of these factors are beyond the doctor's control.

*Tort law has several important goals, among the most important of which are deterring misconduct (and hence injury) and compensating injury victims. Other goals of tort include meting out justice and providing a safety valve for airing victims' grievances. These latter objectives are important to maintaining a civil society. While concerns arise more frequently during times of rising insurance premiums, there are standing concerns among scholars of tort law in general and of medical malpractice in particular (Sloan & Eldred, 2008).*

Civil law has several purposes, some of the most important of which are to avoid wrongful acts that may result in injury, to compensate victims for damages, and to provide victims with a

sense of justice and security. This is important in maintaining a society. Concerns about malpractice have increased due to the increase in the price of insurance premiums for doctors' employment.

One of the elements that must be met from negligence is the duty to use due care, or there is no negligence if there is no obligation to treat. According to J. Guwandi, as quoted by Siti Rokayah and Widjaja, (2022), the relationship between a doctor and a patient begins when a patient asks a doctor to treat him, and the doctor accepts it, then at that time, a legal relationship has begun in the form of a therapeutic contract between the doctor and the patient. Thus, the nature of the relationship has 2 (two) conditions, namely: 1) the existence of an agreement (*consensual agreement*), on the basis of mutual consent of the doctor and patient regarding the provision of medical action in the context of health efforts; 2) the existence of a trust (*fiduciary, trust relationship*), because the contractual relationship is based on mutual trust and the existence of trust in each other. Contracts or agreements between doctors and patients in medical law are commonly called therapeutic contracts, in general, the provisions regarding agreements are regulated in the Civil Code (KUHPerdata) Article 1320 determines that a contract or agreement must fulfill: 1) an agreement between those who bind themselves; 2) the parties have the "ability" to agree; 3) regarding a certain matter; and 4) a halal cause.

Claims based on the negligence are regulated in Article 1366 of the Civil Code, which reads as follows: "Every person is liable not only for losses caused by his actions but also for losses caused by negligence or lack of care." However, it needs to be emphasized that if a medical action is unsuccessful or fails, then there is always negligence or fault on the part of the doctor. This is because every medical action always *inherent* a risk that may not be known in advance. An incident of medical malpractice also cannot be attributed to a criminal offense if the negligent act does not fulfill the elements of a crime as stipulated in the Criminal Code.

*It is the submission of the authors that in the back pain case, the TCM practitioner may have had a closer relationship with the patient claimant upon initiation of regular treatments. The TCM practitioner should ask firstly whether the patient has been prescribed any medication. In the bronchitis case, the WM doctor may have a closer relationship and should enquire about any concurrent medication including supplements. The patient claimant then bears the burden of proof with respect to whether the medication is likely to cause damage (causation). The defendant practitioner could defend against the claimant's allegations with scientific evidence. Suppose the best available evidence has not revealed any significant adverse drug interaction. In that case, the court may not see it as "fair, just and reasonable" to impose a duty on the defendant practitioner (reasonable standard of care) (Lee et al., 2024).*

In many cases, patients who seek acupuncture treatment are also taking medications, supplements or vitamins. The consumption of these drugs or supplements may be the cause of unintended treatment effects. Doctors should be aware of drug interactions with evidence that can be scientifically justified. The consumption of these drugs and supplements can affect the outcome of acupuncture in addition to the common side effects of acupuncture itself.

Negligence, which is aligned with negligence in criminal law, is regulated in Chapter XXI of the Criminal Code, which regulates acts that result in death or injury due to negligence. D.

Simons as quoted by Pujiyono (2023) explained that negligence consists of two parts, namely not being careful in carrying out an act and being able to predict the consequences of the act. It can also happen that an act is done carefully, but there can still be negligence if the doer knows that from that act, there may be a result that is prohibited by law. Articles that regulate negligence and are often charged to health professionals when there are reports of alleged malpractice are Article 359 and Article 360 of the Criminal Code. Article 359 regulates negligence that results in death, and Article 360 regulates negligence that results in injury. These two articles of the Criminal Code are material offenses. The formulation of material offenses requires proof of the occurrence of consequences prohibited by law. The unlawful nature of the two articles also requires the occurrence of negligence, which is positioned as the cause or causa of the prohibited consequences, namely injury or death. The direct causal relationship between negligence as a cause and the prohibited consequences in the Criminal Code is important to construct the unlawful nature. In medical cases, the application of the offense requires caution in the interpretation of negligence. If negligence is positioned as the cause of the prohibited consequences, then negligence and negligence do not have the same meaning.

Negligence committed by medical personnel and health workers is regulated under Article 440 of the Health Law, which states that:

- (1) Any Medical Personnel or Health Personnel who commits negligence resulting in serious injury to a Patient shall be punished with imprisonment of not more than 3 (three) years or a maximum fine of Rp 250,000,000 (two hundred fifty million rupiah).
- (2) If the negligence as referred to in paragraph (1) results in death, every Medical Personnel or Health Personnel shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of Rp 500,000,000 (five hundred million rupiah).

In addition to being regulated by the Criminal Code, negligence is also regulated by the Health Law. Based on the principle of *lex specialis derogat legi generali*, in the event of negligence or negligence committed by doctors who are included in the category of medical personnel or health workers, the law applied is not the Criminal Code but the Health Law.

Doctor error arises from actions that are not appropriate or do not meet the operational standards of medical procedures that should be carried out. Errors can occur due to intentional or negligent factors from a doctor. Errors are shown as improper actions, namely doing something that should not be done and or not doing something that should be done. Mistakes made by doctors are caused by lack of knowledge, lack of experience, and or lack of caution. Malpractice can be divided into several groups, namely (Sulaiman et al., 2024):

1. Medical Malpractice. Medical malpractice that results in a patient being seriously injured as a result of a doctor's medical actions is a form of professional negligence.
2. Ethical Malpractice. This is a doctor's action that is contrary to medical ethics, which is part of the standard principles, ethics, rules, and norms that apply to doctors as stipulated in the Indonesian Code of Medical Ethics (KODEKI).



3. Juridical Malpractice. That is a violation or negligence when carrying out the medical profession that violates applicable positive legal rules. Juridical malpractice consists of several types, namely:
  - a. Civil Malpractice: arises when the doctor does not perform his obligations, i.e. does not deliver his performance as agreed.
  - b. Criminal Malpractice: arises when an act meets the statutory definition of criminal law. The act can be an act that constitutes a violation of the rules, done intentionally or negligently.
  - c. State Administrative Malpractice: arises when doctors, in the exercise of their profession, do not comply with the provisions of State administrative law.

It can be concluded that medical negligence is part of medical malpractice. The responsibility of doctors towards patients in cases of medical malpractice includes criminal, civil, and administrative liability. There are differences in cases when the authority of acupuncture has been regulated to be the authority of general practitioners and when there is a normal vacuum. When there are no legal norms governing acupuncture actions performed by general practitioners, it can be said that general practitioners in working have exceeded their authority and violated the obligations of doctors, one of which is to provide health services in accordance with professional standards and competency standards regulated in the Indonesian Doctors Competency Standards. This causes violations and responsibilities in administrative law and tort liability in civil law, as well as violations of criminal law if there is an element of negligence in carrying out health services. This is certainly different from the condition when the general practitioner's authority to perform acupuncture has been regulated. However, if the doctor commits negligence, then the responsibility that occurs is only based on criminal law.

## Conclusion

The authority of general practitioners in performing acupuncture is not yet regulated by legislation, resulting in a legal vacuum. Currently, acupuncture is an elective part of the Indonesian Doctors Competency Standards (SKDI). Although general practitioners can undergo accredited acupuncture training, they do not receive additional authority to perform acupuncture. As a result, the Indonesian Health Council cannot issue a Registration Certificate with Additional Competence (STR-KT) for those who have completed acupuncture education.

The legal relationship between general practitioners with acupuncture expertise and patients is based on therapeutic agreements, similar to other doctor-patient relationships. In the absence of clear norms, general practitioners may be held administratively, criminally, and civilly liable. Once regulations are in place, negligence by doctors will lead to civil liability unless the patient suffers severe harm, which could invoke further legal consequences under Article 440 of Law 17/2023 on health. Therefore, the responsibility differs based on whether there is an authority or a legal vacuum surrounding the practice



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