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Conceptual Article

The Application of the *Res Ipsa Loquitur* Doctrine as a Principle of Evidence in Medical Malpractice

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ABSTRACT

This paper aims to discuss the doctrine of res ipsa loquitur as an unlawful act in medical malpractice and its implications on the balance of protection for patients and medical personnel after the enactment of the Health Law. The urgency of this paper lies in examining the applicability of the res ipsa loquitur doctrine in relation to Articles 310 and 440 of the Health Law. The application of the res ipsa loquitur doctrine in proving medical malpractice cases is strategic in determining the existence or absence of unlawful acts due to negligence. The res ipsa loquitur doctrine makes it easier for patients as plaintiffs to prove negligence through a reverse burden of proof mechanism by medical personnel. Although not a formal piece of evidence, the res ipsa loquitur doctrine can be used as a relevant legal basis, especially when supported by medical records, to assess the conformity of medical actions with professional standards and operational procedures. The legal relationship in therapeutic transactions, which is asymmetrical in nature, requires proportional protection, both in relation to the provisions of Article 310 of the Health Law, which encourages non-litigation dispute resolution, and in relation to Article 440, which opens up criminal law channels for serious negligence in medical services. Therefore, the application of the res ipsa loquitur doctrine in criminal law must be strictly limited through a restorative justice approach as a fair alternative with balanced protection interests for patients and medical personnel.

Keywords: Res Ipsa Loquitur Doctrine; Medical Malpractice; Unlawful Acts.

A. INTRODUCTION

Health is part of human rights and is one of the elements of welfare that must be realised in accordance with the ideals of the Indonesian nation as mandated in Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia (Cakrawibawa & Roisah, 2019). Referring to the constitutional mandate, the state is obliged to guarantee the fulfilment of the right to health for every citizen through legal instruments in regulating the health care system, the rights and obligations of patients and health workers, and the supervision of fair and reliable service quality.

The enactment of Law No. 17 of 2023 on Health (hereinafter referred to as the Health Law) is a substantive legal reform in the health sector in Indonesia (Suyudi et al., 2025); (Alfirdaus & Hanani, 2025), in order to strengthen capacity and resilience, whereby the health system requires policy harmonisation through an integrative and holistic approach, as outlined in a comprehensive

legal regulation in the form of a law. According to Njoto, in the context of health law, the relationship between doctors and patients is governed by a contract or therapeutic transaction (Ohoiwutun et al., 2024); and as part of the reform in the field of health law, the resolution of medical disputes "more" prioritises a humanistic and efficient approach implied in the formulation of Article 310 of the Health Law.

The alternative approach through settlement outside the court mechanism as stipulated in the Health Law cannot be separated from the characteristics of therapeutic transactions. According to Komalawati, therapeutic transactions are agreements between doctors and patients that give rise to rights and obligations for both parties in relation to the implementation of medical actions that form a legal relationship (Kasiman, Azhari & Rizka, 2023). Patients allow doctors to perform medical procedures in accordance with their competence and expertise as a form of agreement in therapeutic transactions (Kusumaningrum, 2016). Therapeutic transactions based on paternalism have led to injustice due to the imbalance of rights and obligations between doctors and patients (Trihastuti, Putri & Widjanarko, 2020).

The imbalance in paternalistic therapeutic transactions has the potential to violate patients' rights and opens up opportunities for ethical and legal violations, including medical malpractice. Medical actions performed by doctors in providing health services are not always in line with the expectations or hopes of patients and/or their families.

Services are considered to be of high quality and satisfactory if what is received or experienced by service users is in line with their expectations; conversely, if they do not meet expectations, the services are considered to be substandard (Haq, Lukmantoro, & Sunarto, 2023). In certain circumstances, this discrepancy in expectations has the potential to create a perception of negligence, even though the medical actions have been carried out professionally according to medical standards. Negligence as a result of carelessness, actions that contain elements of intent even though the consequences are unintended, and a lack of knowledge and experience are causes of criminal medical malpractice, even though medical personnel have competence, knowledge, and skills in the field of health (Lajar, Dewi & Widyantara, 2020). It can be said that medical malpractice is a form of negligence that occurs when doctors do not carry out their profession carefully and diligently (Komalawati & Kurniawan, 2018).

The resolution of medical disputes through a more humane and efficient approach as mandated by Article 310 of the Health Law is, in the author's opinion, interesting to examine when confronted with the doctrine of res ipsa loquitur, particularly in relation to medical malpractice lawsuits from a civil law perspective or criminal charges. Res ipsa loquitur can be interpreted as

the facts speak for themselves (Guwandi, 2004). The doctrine of res ipsa loquitur makes it easier for victims to prove negligence in medical malpractice cases in court (Murdi, Novianto & Purwadi, 2018), because the facts would not have occurred if there had been no negligence on the part of the doctor. The doctrine of res ipsa loquitur is the opinion of legal experts based on the legal principle of communis opinio doctorum, and in the field of health, this doctrine favours the victim (Masinambow, 2016).

Meanwhile, Article 310 of the Health Law essentially states that if medical or health personnel are suspected of committing negligence in their professional practice that results in harm to patients, then dispute resolution should prioritise alternative mechanisms outside of court. The doctrine of res ipsa loquitur is one of the crucial principles of evidence in the context of medical disputes.

This doctrine makes it easier for patients to prove medical negligence, especially when victims face difficulties in obtaining direct evidence. Article 1365 of the Civil Code states that: “Every unlawful act that causes harm must be accounted for”. Applying the doctrine of res ipsa loquitur provides a strong legal basis for patients who are in a weak position in therapeutic transactions.

The proof of medical disputes by patients as plaintiffs in medical negligence cases in Indonesia faces its own problems, including the absence of clear standards, the difficulty of distinguishing between natural complications and medical negligence, and the culture of protecting fellow medical personnel, which affects the objectivity of expert testimony (Sudarmanto & Arsanti, 2025). whereas the doctrine of res ipsa loquitur implies that it is easy for victims to prove negligence based on “the facts that speak for themselves”, which indicate negligence in medical treatment. This paper attempts to elaborate on the application of the res ipsa loquitur doctrine in relation to Article 310 of the Health Law, in order to conceptualise the provision of fair legal protection, both for patients as the aggrieved party and for doctors who carry out their profession in good faith and in accordance with medical service standards; in addition, Article 440 of the Health Law, which uses criminal law in cases of negligence in medical or health services, is a separate issue that needs to be considered in relation to health law in Indonesia.

An article on the res ipsa loquitur doctrine was written by Masinambow in an article entitled “The Position of the Res Ipsa Loquitur Doctrine in Civil Evidence Law in Malpractice Cases”. In his study, Masinambow explains the application of the res ipsa loquitur doctrine in medical malpractice cases and links it to presumptive evidence based on Article 1866 of the Civil Code in civil case evidence (Masinambow, 2016). The focus of the study on the application of the res ipsa loquitur doctrine in medical malpractice is similar to Masinambow's study. However, the previous study was written before the Health Law was passed, while this study attempts to examine the

existence of the res ipsa loquitur doctrine in medical malpractice cases and the prospects for its application with reference to Article 310 of the Health Law.

Iswandari & Hogue wrote an article entitled "Reconceptualising Legal Arrangements on the Doctor-Patient Relationship in Indonesia", which discusses the inequality between doctors and patients in therapeutic transactions in Indonesia. In its development, there has been a change in the pattern of legal relationships, which initially placed patients in a weaker position than doctors, but later developed into an equal position. The article describes the increase in the number of civil lawsuits and criminal charges that have contributed to shifting the position of the relationship between doctors and patients in the legal mechanism for resolving medical malpractice (Iswandari & Hoque, 2022). The object of study regarding the relationship between doctors and patients in Indonesia is similar to that of Iswandari & Hoque. The difference is that this article focuses on examining the applicability of the res ipsa loquitur doctrine in medical malpractice by examining the existence of Article 340 of the Health Law.

The article entitled "Policy Formulation of Criminal Liability for Malpractice Committed by Doctors" discusses the absence of specific regulations governing criminal liability for medical malpractice in the Criminal Code and the Medical Practice Act, which results in obstacles in the settlement of cases. and as a conclusion to the study, it is recommended that it is important to update and reformulate regulations that prioritise a penal mediation approach as part of the ius constituendum policy in the reform of Indonesian criminal law (Wirautami & Siabudhi, 2022). The study by Wirautami & Siabudhi focuses on criminal liability under Law No. 36 of 2009 on Health and Law No. 29 of 2004 on Medical Practice, which has been repealed by the Health Law; whereas this article focuses on the Health Law as the positive law currently in force.

The article entitled "Penal Mediation as a Medical Dispute Settlement for Hospital Malpractice Cases in Indonesia" describes penal mediation as an alternative to resolving medical malpractice disputes in hospitals that is oriented towards victim protection and the realisation of restorative justice. The solution provided at the end of the study outlines the urgency of avoiding the negative impacts of applying criminal law through a mediation or non-litigation approach as an effort to resolve malpractice cases in the future (Dahwal, Fernando, & Utami, 2022). This article does not specifically discuss the penal mediation approach as studied by Dahwal, Fernando & Utami, as it focuses on the application of the res ipsa loquitur doctrine in medical malpractice.

The study entitled 'Alleged Malpractice in Orthopaedic Surgery in The Netherlands: Lessons Learned from Medical Disciplinary Jurisprudence' analyses orthopaedic surgery as a high-risk specialisation for medical malpractice claims, aiming to assess the number of alleged

malpractice cases related to orthopaedic surgery in the Netherlands over the past 15 years (Harlianto & Harlianto, 2023). The study quantitatively analyses data by identifying 158 court rulings, concluding that the number of medical malpractice cases involving orthopaedic surgeons in the Netherlands is relatively low. This paper is similar to Harlianto & Harlianto in its focus on medical malpractice, but it does not examine the cases of specific specialists. In addition, this paper analyses the data qualitatively with a view to applying the doctrine of res ipsa loquitur in the enforcement of medical malpractice law in Indonesia.

Referring to the title of the article and the research that has been reviewed previously, the main focus discussed in this paper offers a new perspective on the application of the res ipsa loquitur doctrine based on the Health Law as positive law. The two main issues examined are: can the doctrine of res ipsa loquitur as an unlawful act be applied in the settlement of medical malpractice? And what are the legal implications of applying the doctrine of Res Ipsa Loquitur in providing a balance of protection for patients and the medical profession in Indonesia?.

B. DISCUSSION

1. The Application of the Res Ipsa Loquitur Doctrine as an Unlawful Act in the Settlement of Medical Malpractice

The doctrine of res ipsa loquitur, which literally means “the thing speaks for itself”, is a legal principle that contains a presumption of negligence and allows for a reversal of the burden of proof from the plaintiff to the defendant (Putri & Muhammad, 2023). In the realm of civil liability, the doctrine of res ipsa loquitur relates to unlawful acts which, under certain conditions and based on the available facts, have demonstrated negligence. In other words, the facts that occurred could not have occurred without negligence on the part of the party responsible and in full control of the tools, objects, or situations that caused the loss. The doctrine of res ipsa loquitur shifts the burden of proof to the defendant, meaning that while the plaintiff would normally have to prove the defendant's fault, under this doctrine, it is the defendant who must prove that they were not negligent.

Not every case of medical malpractice can apply the doctrine of res ipsa loquitur, but only in certain cases where the defendant's fault can be clearly identified without the need for in-depth evidence. The doctrine of res ipsa loquitur is not a tool for proving a case, but serves to shift the burden of proof from the plaintiff to the defendant. The doctrine of res ipsa loquitur is commonly applied in cases where direct evidence of negligence is difficult to obtain, but the facts logically indicate that the loss or injury could not have occurred without negligence on the part of the defendant. However, according to Solis, the doctrine of res ipsa loquitur only applies to a surgery where the incision has been closed and a

medical device has been accidentally left inside the patient's body (Guwandi, 2004).

In its application, the doctrine of res ipsa loquitur provides benefits, including: helping to simplify the process of proving cases that are factually difficult for victims to access, as well as presenting direct and clear evidence of negligence on the part of the defendant, which the defendant is unlikely to deny (Murdi, Novianto, & Purwadi, 2018). In the context of civil law, particularly in cases of medical malpractice, the res ipsa loquitur doctrine serves to protect the interests of victims as the aggrieved party by providing an opportunity for judges to assess the existence of negligence based on the facts of the case, without the need for further evidence. In civil law, the doctrine of res ipsa loquitur is a principle of evidence that only applies to cases of unlawful acts due to negligence, which aims to make it easier for the plaintiff to prove the defendant's fault, because proving negligence is often an obstacle for victims in arguing that an unlawful act has caused them harm (Apriani, 2020).

Referring to Apriani's opinion, the doctrine of res ipsa loquitur in civil law can only be applied in cases of unlawful acts caused by negligence and cannot be used in cases involving elements of intent or strict liability. Negligence is one form of unlawful act. Fuady mentions three categories of unlawful acts, including first, intent; second, without fault (without elements of intent or negligence); and third, due to negligence (Sari, 2020). In relation to the doctrine of res ipsa loquitur in medical malpractice, negligence is an unlawful act. In the author's opinion, the doctrine of res ipsa loquitur is not a means of proof, but can be used as a basis to support the victim as the plaintiff in presenting evidence of the defendant's negligence. In the process of proving a civil case, the plaintiff has the obligation to show that the defendant has committed a mistake, whether due to negligence or intent; however, proving the element of negligence is often a separate obstacle for victims in showing that the losses they have suffered are the result of unlawful acts by the defendant.

An interesting case example related to the “failure” to apply the res ipsa loquitur doctrine in a lawsuit for medical malpractice is related to the Tangerang District Court Decision Number 751/Pdt.G/2015/ PN.Tng dated 16 August 2016, which was then appealed and upheld by Banten High Court Decision Number 162/PDT/2016/PT.BTN dated 31 January 2017 and finally decided in Supreme Court Decision Number 737 K/Pdt/2018 dated 24 April 2018. In essence, the case concerned a tonsil operation performed on the plaintiff's 11-year-old child on 22 December 2014 at a private hospital in the South Tangerang area. Since the surgery, the plaintiff's child complained of difficulty breathing, and then on 31 December 2014 at approximately 7:00 PM, the plaintiff's child experienced severe difficulty breathing to the point of vomiting. While vomiting, the plaintiff's child became aware of a foreign object moving in his neck, and because he felt

that there was a foreign object moving, the plaintiff's child tried hard to remove the foreign object until it came out, then reported the incident to the plaintiff.

The lawsuit for unlawful acts based on Article 1365 of the Civil Code in Decision Number 751/Pdt.G/2015/PN.Tng did not clearly describe the shape or type of foreign object in the throat or neck of the plaintiff's child; however, the defendant acknowledged that this was the result of medical negligence that had been settled amicably before the lawsuit was filed. The settlement was set out in an agreement stipulating that the defendant would provide post-operative care and treatment free of charge and bear all costs, including examination, surgery, care, treatment and other costs incurred as a result of the negligence.

Decision Number 751/Pdt.G/2015/PN.Tng, which rejected all of the plaintiff's claims and was upheld at the appeal and cassation levels, indicates that medical negligence occurred in the tonsil surgery performed on a child. In the author's opinion, although the doctrine of res ipsa loquitur, or “the fact speaks for itself”, can be applied and the negligence is acknowledged by the doctor who performed the surgery, the absence of medical records as evidence in the case poses a particular obstacle to proving the case. The existence of “facts that speak for themselves” in the context of the res ipsa loquitur doctrine as described in the medical records is an important piece of evidence in medical malpractice lawsuits. The legal responsibility of health care facilities is not limited to the provision of services, but also includes the protection of sensitive patient information (Lestari et al., 2024), including medical records which are a record of the patient's health condition. Medical records containing patient health records are an important piece of evidence that can be used in law enforcement, particularly in cases of medical malpractice. In Decision Number 751/Pdt.G/2015/PN.Tng, the ratio decidendi of the judge indicated that even though negligence was acknowledged, the absence of adequate medical record evidence made the application of the res ipsa loquitur doctrine suboptimal.

Medical records are chronological records of a patient's health condition that serve as evidence in law enforcement (Samandari, Chandrawila, & Rahim, 2016). Medical records have a comprehensive meaning, not limited to the recording of patient data alone, but covering all forms of documentation that serve to collect information about the health services received by patients at a health service facility (Manela, Sawitri & Prawestiningtyas, 2024). Referring to the existence of medical records in medical services, which are chronological records of a patient's health condition, they are not merely administrative and clinical data records, but also comprehensive records of the medical service process. Medical records are strategic documents for assessing whether or not there has been

negligence in proving cases of medical malpractice.

In medical malpractice cases, the application of the res ipsa loquitur doctrine cannot be separated from the existence of medical records as evidence, which play an important role in the evidentiary process. The doctrine of res ipsa loquitur cannot be applied if the existence or absence of negligence “still” depends on a relative circumstance, in the sense that the case must be clear, certain and without doubt (Guwandi, 2004). Even if the case is clear, definite and beyond doubt, in the examination of evidence, medical records can function as documentary evidence based on facts to demonstrate and assess the appropriateness of the medical actions taken in accordance with professional standards and standard operating procedures.

The application of the res ipsa loquitur doctrine, supported by complete and accurate medical records in the evidence of the case, will assist the judge in assessing the facts regarding the truth of the medical actions, in the sense of whether the facts that occurred were the result of negligence or an unavoidable medical risk even though the medical actions were carried out in accordance with professional standards and standard procedures. Referring to the provisions regarding evidence in civil cases, as formulated in Article 1866 of the Civil Code, Article 164 of the HIR, and Article 284 of the RBg, evidence recognised in civil procedure law includes: written evidence (letters), testimony, presumption, confession, and oath. Medical records are recognised as documentary evidence that has value in proving a case as stipulated in the provisions of Article 1866 of the Civil Code, Article 164 of the HIR and Article 284 of the Rbg. Medical records are not only administrative documents, but also important evidence as documentary evidence (letters) in assessing negligence or medical malpractice. As documentary evidence, medical records have an authentic nature that assists judges in assessing the truth of the plaintiff's arguments, which have the potential to give rise to circumstantial evidence in the process of proving a case.

In principle, the doctrine of res ipsa loquitur is a form of circumstantial evidence, which is a type of evidence based on a series of specific facts used to conclude that medical malpractice has occurred. and in its application, the doctrine of res ipsa loquitur can be used as long as the facts revealed at trial fulfil the elements of negligence that can be used as a basis for the judge to draw conclusions through circumstantial evidence (Masinambow, 2016). The conditions for applying the res ipsa loquitur doctrine in favour of the victim in cases of unlawful acts due to negligence include: first, the event that occurred was unusual or abnormal under normal conditions; second, the loss incurred was not caused by the actions of a third party; third, the equipment used was entirely under the control of the perpetrator; and fourthly, the damage caused is not due to the fault or negligence of the victim; where the victim is not

burdened with the obligation to prove negligence, but only needs to show facts that logically point to negligence, and this approach is oriented towards the protection of rights and justice for patients as victims (Heryanto, 2010). Referring to Masinambow and Heryanto, in relation to medical records and the applicability of the res ipsa loquitor doctrine, it can be concluded that medical records play an important role as supporting evidence in assessing whether or not the elements of negligence as a form of unlawful act in a case of alleged medical malpractice are fulfilled, because through medical records, every medical action performed by a doctor is systematically recorded.

Complete, accurate, and systematically organised medical records contain the patient's identity, medical history, physical and supporting examination results, diagnosis, therapy, treatment, medical procedures, and results of actions; they can provide a basis for judges to assess the elements of negligence in a comprehensive and objective manner. As mentioned in the previous section, the doctrine of res ipsa loquitur is not a tool for proof, but nevertheless, the existence of negligence, including the causal relationship between negligence and the facts of the case, can be revealed through medical records. The existence of medical records can assist judges in assessing the element of negligence in relation to the facts of the case. Through medical records, circumstantial evidence related to the res ipsa loquitur doctrine is based on the facts of the case as the basis for drawing logical conclusions in deciding the case. As a principle of evidence, the res ipsa loquitur doctrine is not a stand-alone piece of evidence, but a means of strengthening the plaintiff's argument. The res ipsa loquitur doctrine, which is subject to the provisions of Article 163 of the HIR, Article 283 of the Rbg and Article 1865 of the Civil Code, places the burden of proof on the party making the argument, so that in its application, the res ipsa loquitur doctrine must be accompanied by supporting facts, such as medical records.

The legal responsibility of healthcare facilities is not limited to the provision of services alone, but also includes the obligation to protect sensitive patient information. According to Minister of Health Regulation No. 24 of 2022 concerning Medical Records, medical records are categorised as a crucial subsystem in the overall health information system (Lestari et al., 2024). however, access to medical records for patients or their families is a separate issue in law enforcement practice. In fact, Minister of Health Regulation No. 269 of 2008 concerning Medical Records, which was later revoked based on Minister of Health Regulation No. 24 of 2022 concerning Medical Records, explicitly states that medical records belong to health care facilities, while their contents belong to patients.

Decision No. 751/Pdt.G/2015/PN.Tng shows that patients and their families do not easily obtain the contents or copies of medical records

for the purpose of claiming their rights as parties who have been harmed in medical services, even though the patients, their families and legal advisors have tried to request them. This phenomenon reflects the limited access for patients and/or their families to their right to obtain information in medical services, which requires separate study. However, it can be said that, in its philosophy, the res ipsa loquitur doctrine is imbued with values of protection for victims in medical services who are in a weak position in therapeutic transactions. The doctrine of res ipsa loquitur is a manifestation of the principle of justice and the proportional distribution of the burden of proof, in order to ensure that patients, as the weaker party, are not disadvantaged in legal proceedings, thereby creating a balance of legal protection between patients and medical personnel that reflects substantive justice in the process of proving medical malpractice from a civil law perspective.

2. Legal Implications of Applying the Res Ipsa Loquitur Doctrine Based on the Protection of Patients and the Medical Profession in Indonesia

In the legal sphere, medical actions that cause harm to patients are considered medical malpractice if they meet certain parameters, both according to civil and criminal law (Marpaung et al., 2024). In relation to the doctrine of res ipsa loquitor in casu regarding the “facts that speak for themselves” in cases of malpractice, its application should not infringe upon patients' rights to justice, while also protecting medical professionals from unfounded claims.

There is an urgent need to maintain a balance between the rights and obligations of doctors and patients in therapeutic transactions, where the principles of prudence, transparency, and accountability must at least go hand in hand with providing proportional legal protection for both medical personnel and patients. In therapeutic transactions, the rights of patients become obligations for doctors, while the rights of doctors become obligations for patients (Trihastuti, Putri, & Widjanarko, 2020); (Pramesuari & Agus, 2023). Regarding asymmetrical rights that are reciprocal in nature between the obligations of the parties in therapeutic transactions, in this case, the function of law is not only positioned as a repressive tool against negligence or violations, but also as a preventive instrument that encourages the creation of responsible health services oriented towards patient safety.

Referring to Article 310 of the Health Law, it essentially prioritises alternative dispute resolution mechanisms outside of court in the event of alleged errors in medical practice that result in harm to patients. Referring to Article 310 of the Health Law, in the author's opinion, the use of non-litigation means is preferred in resolving disputes in therapeutic transactions. However, in relation to the res ipsa loquitur doctrine and in connection with the provisions of Article 310 of the Health Law, if non-litigation resolution is not

possible, the parties still have the right to resolve the dispute through litigation by using civil lawsuit mechanisms filed through the district court, as exemplified by the Decision of the Tangerang District Court No. 751/Pdt.G/2015/PN.Tng.

The existence of Article 310 of the Health Law prioritises the urgency of resolving disputes non-judicially through alternative mechanisms outside of court, if there is alleged negligence in medical practice that results in harm to patients; however, on the other hand, Article 440 of the Health Law threatens criminal sanctions for medical personnel or health workers whose negligence causes serious injury or death to patients. When Health Law Article 310 is compared with Article 440, an important question arises: is the resolution of disputes through non-litigation according to the formulation of Article 310 in line with the formulation of Article 440 in the context of applying the res ipsa loquitur doctrine? This question is certainly relevant considering that Article 310 prioritises amicable settlement outside of court, while Article 440 provides a basis for criminal liability for negligence in medical services.

The doctrine of res ipsa loquitur cannot be applied if the existence or absence of negligence depends on something that is relative (Guwandi, 2004); meanwhile, the enforcement of medical malpractice law in Indonesia still uses general criminal law provisions, namely the Criminal Code and the Criminal Procedure Code, which apply to general criminal acts, such as theft or murder; whereas the medical world is a specialised field that is complex and difficult for the general public to understand, including law enforcement officials who do not have a medical education background (Faisal, Hasima & Rizky, 2020). When examined in depth, do the provisions of Article 310 and Article 440 of the Health Law complement each other in terms of providing legal protection for patients and health workers, or do they have the potential to conflict in their application, particularly in relation to the res ipsa loquitur doctrine as the basis for proving a case?.

Referring to the provisions of the Health Law as special provisions that are not included in the regime of special provisions of criminal law, in the author's opinion, the formulation of Article 440 includes the use of criminal law as a last resort (ultimum remedium) to overcome legal problems in medical or health services. The use of criminal law should be considered as a last resort (ultimum remedium) if other methods are ineffective, because this principle prioritises punishment as the final step in restoring conditions to a better state (Zahra & Sularto, 2017). and the use of criminal law should be applied proportionally and selectively so as not to have a negative impact on building trust and mutual protection between doctors and patients in therapeutic transactions.

In the context of the purpose of evidence, civil law as part of private law has different characteristics from criminal law, which is in the realm of public law. Finding formal truth is the main objective in civil law, namely truth that is

limited to matters submitted and proven by the parties in court; conversely, finding material truth is the objective in criminal law, namely the absolute truth about an event that is actively sought by law enforcement officials in the public interest. Civil and criminal law in Indonesia are regulated in the Civil Code and the Criminal Code, where Article 1365 of the Civil Code forms the basis for claims for both material and immaterial damages in medical malpractice cases, allowing the injured party to sue and opening up the possibility of criminal liability for medical personnel (Suwito et al., 2023). The elements of a violation of the law in civil law include an unlawful act, fault on the part of the perpetrator, damage to the victim, and a causal relationship between the act and the damage (Sari, 2020). From a civil law perspective, the doctrine of res ipsa loquitor in medical malpractice is related to unlawful acts (onrechtmatige daad) as defined in Article 1365 of the Civil Code. However, the concept of unlawful acts is differentiated in Indonesian law, namely in the context of criminal law, it is translated from the Dutch wederrechtelijk, while in civil law, it is translated from onrechtmatige daad. Although their usage is different, both refer to legal actions carried out by legal subjects that give rise to legal consequences in accordance with the realm of criminal or civil law (Yuflikhati et al., 2025). The doctrine of res ipsa loquitor facilitates the proof of negligence and can be an effective means of obtaining proportional compensation. Balanced legal protection must guarantee the rights of patients, while not creating a chilling effect on medical personnel acting in good faith.

In criminal law, unlawful acts are public in nature, as they concern violations of public and/or individual interests; whereas in civil law, unlawful acts are private in nature and only violate personal interests (Sari, 2020). Referring to the difference between civil law and criminal law in interpreting unlawful acts, from a civil law perspective in the context of medical malpractice, the application of the res ipsa loquitur doctrine is based on Article 1365 of the Civil Code, namely: any unlawful act (onrechtmatige daad) that causes harm to another person obliges the perpetrator to compensate for the harm. It can be said that in the context of civil law, unlawful acts include acts that: violate the law, violate the subjective rights of others, are contrary to the legal obligations of the perpetrator, and are contrary to morality or propriety in society (Waluyo, 2022). In the context of the res ipsa loquitur doctrine in relation to medical malpractice in civil law, unlawful acts based on Article 1365 of the Civil Code can be applied as long as the patient suffers losses caused by medical actions that do not meet the standards. The doctrine of res ipsa loquitur can be applied in evidence, as long as the following requirements are met: the injury or loss suffered would not have occurred if there had been no negligence, the instrument or action causing the injury was under the full control of the defendant, and there was no contribution

from other parties (including the plaintiff/patient) to the occurrence of the injury.

The concept of unlawful acts (wederrechtelijk) in the context of criminal law has a narrower meaning and is limited to criminal law violations, as determined in criminal law norms. Elements in criminal law include violations of the law, actions beyond authority, and violations of general principles of law (Sari, 2020); (Prananda et al., 2023). Patients have the right to pursue criminal law in the context of the res ipsa loquitur doctrine, with reference to Article 440 of the Health Law, which formulates material offences for negligence resulting in serious injury or death in medical services, meaning that if minor injuries occur, the provisions of Article 440 cannot be applied. Article 440 of the Health Law threatens a criminal penalty of 3 (three) years' imprisonment for negligence committed by medical or health personnel resulting in serious injury; and threatens a criminal penalty of 5 (five) years' imprisonment if it results in death. A material offence is a criminal act that is prohibited and punishable by criminal sanctions because the act causes certain consequences that are essential elements, namely consequences that are "constitutive" in nature (Sahetapy, 2011).

As a material offence that requires the occurrence of certain consequences in constitutive elements, the existence of consequences is very important in proving the case. Without certain consequences, the act is not complete, which means that the alleged perpetrator cannot be held accountable under criminal law. From a criminal law perspective, as emphasised in Article 440 of the Health Law, law enforcement officials are obliged to seek material truth based on a comprehensive analysis of the causa and concrete facts of the entire sequence of events in the process of proving a case (Suyudi et al., 2025). In relation to medical malpractice, proving the existence of a specific consequence is a challenge in itself, especially when the patient suffers injury, disability, or death as a result of medical treatment. This is relevant to the doctrine of res ipsa loquitur, which states that "the facts speak for themselves", assuming that the consequences that have occurred are clear and would not normally have occurred if there had been no negligence. From a criminal law perspective, the causa and concrete facts of the entire sequence of events play an important role in the process of proving a case.

In the context of material offences, documentary evidence in the form of medical records and/or circumstantial evidence may be used in the prosecution of cases. Normatively, medical records can be used as evidence, both in the form of documents and circumstantial evidence, as stipulated in Article 187 paragraph (1) letter b and Article 188 paragraphs (2) and (3) of the Criminal Procedure Code (KUHAP) (Marpaung, et al., 2024). However, the application of the res ipsa loquitur doctrine in criminal law must be carefully limited in line with the principle of geen straf zonder schuld, which requires

convincing evidence of guilt in a trial. Although the doctrine of res ipsa loquitur contains “facts that speak for themselves” with clear consequences, in determining criminal liability, it cannot be automatically imposed simply because of the consequences as the essence of the act. In proving the case, it must be proven that the consequences that occurred were causally derived from the alleged perpetrator's actions, who had malicious mens rea.

In cases of medical malpractice that are classified as material offences as formulated in Article 440 of the Health Law, the doctrine of res ipsa loquitur can be the initial trigger in proving the element of consequence, but it does not replace the public prosecutor's obligation to prove the elements of the offence, including the causal relationship between the fault and the consequences that occurred. The right of patients as victims to bring criminal charges does not conflict with Article 440 of the Health Law. However, in therapeutic transactions where the rights of patients become the obligations of doctors, and conversely, the obligations of patients become the rights of doctors, there is an indication of a balance of legal relations in medical services. However, given the unequal position between patients and doctors, the existence of the doctrine of res ipsa loquitur is a legal instrument that provides protection for patients, especially in cases of alleged negligence that are difficult for patients, as the injured party, to prove.

The formulation of Article 440 of the Health Law has the potential to cause conflict between the interests of protecting the medical profession and the interests of protecting patients in therapeutic transactions. The provision of protection for patients from urgent medical malpractice is balanced with legal protection for medical personnel. The use of means to prosecute medical personnel based on Health Law Article 440 related to the res ipsa loquitur doctrine must be carried out carefully with strict parameters in order to fulfil a sense of justice. Patient reports or claims through the use of criminal law should not be based solely on “bad results” that do not meet patient expectations, but must be based on proportionally valid evidence. The application of the res ipsa loquitor doctrine must take into account the rights of medical personnel to obtain legal protection based on the principle of presumption of innocence. The use of criminal law should not create a sense of fear for medical personnel and/or health workers in providing services that, in their application, may potentially harm patients.

As mentioned in the previous section, the function of law is not only repressive against violations, but also preventive in nature, capable of encouraging the creation of responsible health services that focus on patient safety. Referring to Article 440 of the Health Law, which carries a criminal penalty of 3 (three) years' imprisonment for negligence resulting in serious injury to a patient and 5 (five) years' imprisonment if it results

in the death of a patient, in the author's opinion, the application of restorative justice in law enforcement is more beneficial to all parties, both patients and medical personnel. As stipulated in National Police Chief Regulation No. 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice, Attorney General Regulation No. 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice and Supreme Court Regulation No. 1 of 2024 concerning Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, restorative justice can be applied if the maximum penalty is 5 (five) years imprisonment. The restorative justice approach, which aims to restore the patient's health, balances the protection of the rights of patients as victims and medical personnel as alleged perpetrators, focusing on reconciliation efforts that are not solely oriented towards punishment (criminal), is the best alternative in resolving medical malpractice cases. The restorative justice approach in resolving medical malpractice can at least prevent overclaiming by patients or their families. Through restorative justice, which prioritises dialogue, mediation and the restoration of relationships between patients and medical personnel, criminal punishment can essentially be avoided. Resolving cases using restorative justice mechanisms aims to provide fair and proportionate solutions for both medical personnel and patients, strengthening a sense of responsibility and encouraging transparency in healthcare services.

C. CONCLUSION

The doctrine of res ipsa loquitur is a strategic legal principle in proving medical malpractice cases, particularly in assessing and determining the existence or absence of unlawful acts as a result of negligence. This doctrine makes it easier for patients to use the mechanism of shifting the burden of proof to medical personnel, and although it is not included in the evidence, the res ipsa loquitur doctrine can be used as an important basis for legal argumentation when supported by medical records in assessing the suitability of medical actions with professional standards and standard operating procedures.

Article 310 of the Health Law prioritises the resolution of medical disputes through non-litigation mechanisms, while Article 440 opens up the possibility of criminal proceedings for negligence that has serious consequences. The doctrine of res ipsa loquitur can serve as an aid in civil cases, but its application in criminal law must be strictly limited in accordance with the principles of geen straf zonder schuld (no punishment without guilt) and the presumption of innocence. The restorative justice approach is a more fair and proportional alternative, as it balances legal protection for patients and medical personnel and prevents excessive criminalisation in medical services.

The application of Article 310 of the Health Law needs to be optimised by using non-litigation mechanisms, which are carried out

through the strengthening of mediation institutions or alternative dispute resolution in the health sector as a fair and quick resolution mechanism, with an emphasis on restoring the relationship between patients and medical personnel. In relation to the implementation of Article 440 of the Health Law, a restorative justice approach should be used as a means of criminal law policy in resolving medical malpractice cases, especially in cases involving negligence. Thus, in therapeutic transaction legal relationships, a balance can be created between legal protection for patients and guaranteed legal certainty for medical professionals.

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