

## DOCTOR'S LEGAL OBLIGATION TO ACT AS A GOOD SAMARITAN IN INDONESIA: IS IT ETHICALLY JUSTIFIABLE?

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### ***Abstract***

*The Good Samaritan Law, which principles are widely implemented globally, were not applied under Indonesia's legal framework. Instead of ensuring adequate legal protection for "the Good Samaritan," Indonesian law enforces their obligations under threat of legal repercussions. The law is even stricter when the Good Samaritan is a doctor. Current regulations create dilemmas for doctors especially when facing emergency situations, torn between saving lives and avoiding legal consequences. To address this, our paper employs normative (doctrinal) legal research which proposes three solutions: Firstly, Indonesian law should adopt the comprehensive Good Samaritan Law model. Second, shifting burdens of proof from doctors to the complainants. Lastly, it is crucial to synchronize the mechanism to submit a complaint against doctors to the authoritative institutions. These aim to overcome the legal and ethical issues surrounding the obligations and protections for doctors acting as Good Samaritans in Indonesia.*

**Keywords:** *Good Samaritan Law, Medical Ethics, Bioethics, Indonesian Law.*

## KEWAJIBAN HUKUM DOKTER UNTUK MENJADI “ORANG SAMARIA YANG BAIK “ DI INDONESIA: DIBENARKAN SECARA ETIS?

### **Intisari**

Hukum “Orang Samaria Yang Baik,” yang prinsipnya diimplementasikan secara global, belum diterapkan dalam kerangka hukum Indonesia. Alih-alih memberikan perlindungan hukum yang memadai bagi “Orang Samaria Yang Baik”, hukum Indonesia justru menegakkan kewajibannya dengan ancaman hukum. Ketentuan hukum menjadi lebih ketat lagi apabila “Orang Samaria Yang Baik” tersebut adalah seorang dokter. Regulasi yang berlaku saat ini menciptakan dilema bagi dokter, khususnya dalam situasi darurat, ketika mereka harus memilih antara menyelamatkan nyawa atau menghindari konsekuensi hukum. Untuk membahas permasalahan ini, tulisan ini menggunakan metode penelitian hukum normatif (doktrinal) yang menawarkan tiga solusi: Pertama, hukum Indonesia perlu mengadopsi model Hukum “Orang Samaria Yang Baik” secara komprehensif. Kedua, perlu dilakukan pergeseran beban pembuktian dari dokter kepada pihak pengadu. Terakhir, penting untuk menyinkronkan mekanisme pengaduan terhadap dokter ke institusi yang berwenang. Ketiga solusi ini bertujuan untuk mengatasi persoalan hukum dan etika yang menyangkut kewajiban dan perlindungan bagi dokter yang bertindak sebagai “Orang Samaria Yang Baik” di Indonesia.

**Kata Kunci:** *Hukum Orang Samaria yang Baik, Etika Medis, Bioetika, Hukum Indonesia.*

## A. Introduction

The Good Samaritan Law is a principle that has been widely accepted and implemented in many jurisdictions. The Good Samaritan Law exists to protect a person, including a doctor, who voluntarily provides emergency assistance to save someone's life without expecting any compensation in return, from any legal consequences that may arise as a result of the assistance given, as long as the assistance given under reasonable standard of care and skill.<sup>1</sup> Therefore, by default, the law is meant to protect the Good Samaritan unless it is proven that the Good Samaritan has intentionally harmed the person in the emergency or acted beyond the reasonable standard of care and skill. Unfortunately, Indonesia has not implemented the Good Samaritan Law principle.

Under the Indonesian Penal Code, anyone who finds a person who needs assistance in a life-threatening situation is obliged to assist as long as providing such assistance will not threaten his own life. However, not only does it oblige people to provide emergency assistance, but the Indonesian Penal Code also threatens people with criminal sanctions if their actions are negligent and result in the death of the one who needs assistance. Moreover, the burden lies on the person who assists in proving that the person's actions are not negligent.

The law aims to protect a person's life in an emergency by ensuring that people who find the person in an emergency must provide appropriate and safe assistance. However, in practice, people tend to become bystanders and run away from the person in the emergency because they believe that someone else will offer assistance (diffusion of responsibility).<sup>2</sup> Although the law obliges people to provide emergency assistance, it is difficult to enforce the sanction on people who do not assist. On the other hand, it is easier for the police to start a criminal investigation towards those whose assistance results in the person's death in the emergency. Therefore, people tend to leave their responsibilities and run away from the person in the emergency to

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1 Hyder Gulam and John Devereux, "A Brief Primer on Good Samaritan Law for Health Care Professionals," *Australian Health Review* 31, no. 3 (2007): 478–82.

2 "Tanjakan Emen: Mengapa 'Banyak' Orang Hanya Menonton, Tidak Menolong Korban Kecelakaan?," BBC News Indonesia, 2018, <https://www.bbc.com/indonesia/indonesia-43068202>.

protect themselves from the legal consequences that might follow as a result of assisting. Thus, not only can the law's initial goal not be achieved, but the person's life in the emergency is also left in danger.

The regulations also impact doctors when they find a person in an emergency who needs assistance. The dilemma is even more complicated because doctors have special moral obligations under their Hippocratic oath to protect human life. Besides being regulated under the Indonesian Penal Code, doctors' actions in providing emergency assistance are also subject to the Law Number 29 of 2004 on Medical Practices (Medical Practices Law). The Medical Practices Law stipulates some more obligations for doctors and provisions that are meant to protect doctors from possible legal consequences. However, the obligations and the protections given under the law have been criticised for being disproportional, because the obligation to act as a good Samaritan is followed by the absence of legal protection guarantee when a doctor act as a good Samaritan. As a result, many doctors are afraid of providing emergency assistance, especially after the case of dr. Ayu in 2012-2013.

Dr. Ayu, an Obstetrics and Gynecology resident in Manado, and her colleagues conducted an emergency caesarean section to save the life of a pregnant woman and her baby. Regrettably, the patient died from pulmonary embolism, a known and sometimes **unpreventable complication** after surgery, especially caesarean sections. Dr. Ayu was sentenced by the District Court of Manado,<sup>3</sup> which was restated by the Supreme Court.<sup>4</sup> In essence, the Supreme Court judges agreed that there was violation to medical standard, unprofessionalism, negligence in administrative documentation, lack of good coordination, and the death of the patient was deemed as direct causality of the negligence. However, all those considerations were questionable, particularly in an emergency situation. As much as it is important to compile proper documentation prior to a medical treatment, if failure to do so may be a major reason for criminalization against doctor who act as a good Samaritan

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3 Putusan Pengadilan Negeri Manado Nomor 90/PID.B/2011/PN.MDO perihal perkara Dugaan Pidana Kelalaian Medis Terhadap dr. Dewa Ayu Sasiari Prawani dkk. (PN Manado 90/PID.B/2011/PN.MDO).

4 Putusan Mahkamah Agung Nomor 365 K/Pid/2012 perihal Kasasi Pidana Penghinaan perkara dr. Dewa Ayu Sasiary Prawani Dkk, 18 September 2012 (MA 365 K/Pid/2012).

in case of emergency which unintentionally result into the death of the patient, this shows one of many aspects within the disproportionality between the obligation and the legal protection.

The controversiality of such considerations was proven when the Supreme Court judges eventually annulled the previous decision through a Judicial Review procedure (79 PK/Pid/2013). In short, the decision argued that there were no violation to the medical standard, no negligence that violate the criminal law considering the medical situation that was complex and full of risks, the lack of coordination was irrelevant to the criminal responsibility, administrative issues cannot be reason for criminal sanction if the medical procedure has been fulfilled, and the death of patient did not eventually lead to criminal sanction. Although the Judicial Review decision may seems to be providing a hope for a more proportionality between the obligation and legal certainty protection for doctor who act as a good Samaritan, it is not enough to only have this decision enacted without appropriate legislation amendment, considering that Indonesia is a civil law country.

The case of dr. Ayu has raised massive reactions from doctors in Indonesia. Moreover, after the case of Doctor Ayu, the Indonesian Doctors Association (*Ikatan Dokter Indonesia*) submitted a judicial review request to the Constitutional Court to review the Medical Practices Law. However, the Constitutional Court has rejected the substance of the request as they believe that there is no constitutional violation on the Medical Practices Law, and the issue raised by the applicant were seen as problems of implementation rather than constitutional violation in the substance of the law itself. Therefore, the Medical Practices Law still firmly stands. Not to mention the ethical issues of the law that have burdened doctors with many obligations with inadequate legal protection. Such a situation has put many doctors in a dilemma, especially when they are dealing with a person in an emergency who needs assistance. If doctors are afraid of assisting a person in an emergency due to inadequate legal protection, in the end, society will also suffer from the consequences. Therefore, there should be an immediate law reform to overcome the challenges and dilemmas due to such disproportionality under the law.

This paper aims to evaluate whether the current Indonesian law that obliges doctors to be Good Samaritans, alongside the details of the obligations

compared to the legal protections given, can be morally justified. To achieve this goal, this paper is divided into three sections. The first section of this paper analyses whether assisting a person in an emergency who needs assistance is the morally right thing to do by a doctor. The second part of this paper focuses on analysing the legal and ethical issues of the related regulations under Indonesian law that impact doctors in assisting people in an emergency. The last section of this paper proposes the law reform that should be done to overcome the legal issues and transform the law to be morally justified. Lastly, a conclusion is given at the end of this paper to summarise the main idea of this paper.

## **B. What is the Morally Right Thing to Do?**

To determine whether an obligation to provide emergency assistance under the law can be morally justified, it is crucial firstly analyse whether providing emergency assistance is the morally right thing that doctors should do. The first section of this essay is divided into three parts to address this question. The first part will answer the question from the deontology, utilitarian, and virtue ethics approaches. The second part will provide a discussion based on the four medical ethics principles. Lastly, this section will be closed with an elaboration on the moral obligations of doctors based on the prevailing Indonesian laws and regulations.

### **1. Deontology, Utilitarian, and Virtue Ethics**

Based on the deontology approach, an ethical action can only be achieved if the intention behind the action is to do the morally right thing based on the prevailing rules or moral standards <sup>5</sup>. Since the intention is the primary key, the consequences of the action are not crucial to determine the ethic of an action.<sup>6</sup> Moreover, in a medical context, the deontological approach is a patient-centric approach, which means that an ethical action should have good intentions for the patient.<sup>7</sup> Therefore, the person in an emergency that needs

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5 Richard Hain, "Principles and Ethics in Medicine," *Medicine* 48, no. 10 (October 2020): 631–33, <https://doi.org/10.1016/j.mpmed.2020.07.009>.

6 Hain, "Principles and Ethics in Medicine."

7 Po-En Tseng and Ya-Huei Wang, "Deontological or Utilitarian? An Eternal Ethical Dilemma in Outbreak," *International Journal of Environmental Research and Public Health* 18, no. 16 (August 13, 2021): 8565, <https://doi.org/10.3390/ijerph18168565>.

assistance should be the focus of the doctor's intention in the deontology approach rather than the doctor himself or society in general.

When a doctor encounters a person in an emergency requiring assistance, the morally right action according to the deontological approach is to intervene and help save the person's life. As mentioned earlier, actions aligned with good intentions toward the patient are deemed ethically correct within the deontological framework. Therefore, when faced with the decision to help or neglect patient in emergency, the morally right action is to provide assistance. While some may argue that assisting in certain situations could lead to adverse outcomes such as death, the ethical justification lies in the doctor's intent to rescue the person's life regardless of potential negative consequences.

A doctor who neglects a patient to protect himself from any legal consequences that might arise cannot be morally justified based on the deontology approach. The reason is that the intention of such action focuses on the doctor rather than the patient. This contradicts with the deontology approach in medical situations that put good intentions for the patient as the highest norm. Neglecting and not aiding with a person who needs assistance is harmful. Such an action leaves the person in need with the threat of an emergency. Moreover, it is an irresponsible behaviour as it is not in line with the responsibility of doctor to put good intentions of other person who needs medical assistance as the highest norm. Therefore, based on the deontology approach, the right thing to do is for the doctor to assist the person in the emergency.

The utilitarianism approach considers a morally right to be one that maximizes benefits for others, without emphasizing intention or rules.<sup>8</sup> Since utilitarianism prioritizes maximizing benefits for society, it aims to provide the greatest benefit for the largest number of individuals.<sup>9</sup> Under the utilitarianism, the utility or usefulness aspect of such action matters more than the reason or intention behind such action. In the case of medical emergency, should a person be left with no medical assistance, there is no other alternative then worsening condition or even death, as the logical consequence of an untreated medical emergency. Whereas, if there is an act of medical assistance, at the very

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<sup>8</sup> Hain, "Principles and Ethics in Medicine."

<sup>9</sup> Tseng and Wang, "Deontological or Utilitarian."

least, such assistance adds one more alternative to the equation, i.e., surviving probability. Therefore, the act of providing medical assistance provides more utility/usefulness than the act of neglecting without any medical assistance, because the utility that want to be achieved from such medical assistance is the additional alternative to the equation, not necessarily the recovery itself which can never be guaranteed by anyone.

Moreover, regarding the benefits for society, the normalisation of a doctor's action of neglecting a person in an emergency would not benefit the society. As a consequence of such normalisation, many doctors may abandon a person in an emergency who needs assistance, resulting in many negative consequences, such as death or severe disability. Therefore, allowing a doctor to neglect a person who needs assistance will not maximise the benefits for the society.

Another ethical approach that should be considered is virtue ethics. It is explained that a virtuous person will perform a morally right action.<sup>10</sup> A virtuous or wise person in virtue ethics is defined as a person with good intentions based on sufficient understanding of the possible outcomes of his action, that will act in a certain way based on his good intention to achieve the maximum benefits of the action in the particular circumstances.<sup>11</sup>

The scenario is well described in a very famous analogy in the Bible. In the gospel of Luke, the good Samaritan is described as the one who assists the person in need.<sup>12</sup> Even when the Good Samaritan cannot provide full assistance toward the person, the Good Samaritan finds another person capable of assisting the person in an emergency while covering the expenses needed to treat the person in the emergency.<sup>13</sup>

Based on the virtue ethics concept, a virtuous person in an emergency should understand the circumstances and the consequences of his actions while having good intentions for the person in the emergency. Therefore, a virtuous individual, possessing good intentions and awareness of the repercussions of neglecting someone in need, would not forsake or ignore them without aid.

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<sup>10</sup> Hain, "Principles and Ethics in Medicine."

<sup>11</sup> Hain, "Principles and Ethics in Medicine."

<sup>12</sup> Various Author, *The Holy Bible*, English St (Wheaton: IL: Crossway, n.d.); Various Author, *The Holy Bible; Cambridge Bible for Schools and Colleges* (Cambridge: Cambridge University Press, n.d.).

<sup>13</sup> Author, *The Holy Bible; Cambridge Bible for Schools and Colleges*.



This is because a person of virtue will understand that neglecting an individual in an emergency could lead to harm, potentially leading to death or severe disability. Consequently, it is hard to imagine a virtuous person abandoning someone in need of assistance. Therefore, based on the virtue ethics approach, it is morally justified for a doctor to provide aid to a person in an emergency.

Despite differing approaches and emphasis, deontology, utilitarianism, and virtue ethics collectively assert that the morally justified action for a doctor encountering an individual in need of emergency assistance is to offer help rather than neglect. As elaborated, all three approaches agree that neglecting a person who needs assistance is hard to be justified within their respective philosophies. In conclusion, the three classic ethical theories support the notion that a doctor should assist a person in an emergency.

## 2. Four Medical Ethics Principles

There are four principles of medical ethics in the framework developed by Beauchamp and Childress: beneficence, non-maleficence, autonomy, and justice.<sup>14</sup> The first principle, beneficence, imposes the obligation on medical practitioners, including doctors, to provide medical assistance that will benefit the patient and actively prevent harm, including removing any conditions that may harm the patient.<sup>15</sup> In his elaboration, Varkey further explained that one of the actions doctors can do to comply with the beneficence principle is to save people in an emergency or dangerous situation.<sup>16</sup>

When the doctor decides to provide emergency assistance, the benefits for the person in the emergency are clear. The person in the emergency will have a higher survival chance than if he is left in an emergency without assistance. Although we should also acknowledge that emergency assistance might go wrong, that is incomparable to the benefits for the person in the emergency to have a higher survival chance from emergency. Furthermore,

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14 Tom Beauchamp and James Childress, "Principles of Biomedical Ethics : Marking Its Fortieth Anniversary," *The American Journal of Bioethics* 19, no. 11 (November 2, 2019): 9–12, <https://doi.org/10.1080/15265161.2019.1665402>; T L Beauchamp, "Methods and Principles in Biomedical Ethics," *Journal of Medical Ethics* 29, no. 5 (October 2003): 269–74, <https://doi.org/10.1136/jme.29.5.269>.

15 Basil Varkey, "Principles of Clinical Ethics and Their Application to Practice," *Medical Principles and Practice* 30, no. 1 (2021): 17–28, <https://doi.org/10.1159/000509119>.

16 Varkey, "Principles of Clinical."

the action of not providing emergency assistance does not give any benefits to the person in the emergency. Even worse, it only leaves the person in the emergency with harm resulting from the emergency. Therefore, to comply with the beneficence principle, doctors should assist a person in an emergency.

The next principle, non-maleficence, obliged doctors not to conduct any activity that may harm the patient.<sup>17</sup> To implement this principle, doctors must not *'kill, cause pain or suffering, incapacitate, cause offence, and deprive others of the goods of life'*.<sup>18</sup> In other words, doctors should not intentionally harm the patient. For example, if a doctor leaves a person in an emergency who needs assistance, the doctor leaves him with nothing but harm. Even more, leaving the person in a dangerous emergency may cause pain for the person by letting him suffer, if not kill him. Therefore, to do non-maleficence, doctors should not leave a person without emergency assistance.

The principle of autonomy suggests that individuals should have the right to self-determination and authority over their decisions.<sup>19</sup> However, in an emergency, it is difficult to argue that a person requiring assistance can exercise their full autonomy. Moreover, in many emergencies, a person who needs assistance might be unconscious or trapped in an emergency, making it impossible for them to freely and cautiously give an informed consent for medical treatment. Consequently, obtaining informed consent from individuals in emergency situations before aiding can be challenging for doctors. However, considering the potential harm and danger that might come to the person in the emergency, including life-threatening harm, the ethical course of action is to provide emergency assistance even without prior informed consent.

Even in Indonesia, the law permits doctors to provide emergency assistance without prior informed consent to save the patient's life or prevent any disabilities, particularly when immediate consent from the patient, family, or guardian is unattainable.<sup>20</sup> Therefore, providing emergency assistance to

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17 Varkey, "Principles of Clinical."

18 Varkey, "Principles of Clinical."

19 Varkey, "Principles of Clinical."

20 Elucidation of Article 45 (1) of Undang-Undang Nomor 29 Tahun 2004 tentang Praktik Kedokteran; Article 4(1) of Peraturan Menteri Kesehatan Republik Indonesia Nomor 290/Menkes/Per/III/2008 tentang Persetujuan Tindakan Kedokteran; Peraturan Menteri Kesehatan Republik Indonesia Nomor 19 Tahun 2016 tentang Sistem Penanggulangan Gawat Darurat Terpadu; and Peraturan Menteri Kesehatan Republik Indonesia Nomor 47 Tahun 2018 tentang Pelayanan Kegawatdaruratan.

save the life of a person, even in the absence of immediate informed consent, does not against the autonomy principle or pose ethical issues for doctors.

Lastly, the principle of justice urges doctors to promote fair and just medical treatment for every individual.<sup>21</sup> Justice in medical ethics is strongly related to distributive justice by John Rawls, which focuses on the fair distribution of health resources.<sup>22</sup> In emergency medical care, upholding justice involves striving to allocate medical resources fairly. For a medical practitioner such as a doctor, the principle of justice can be applied by providing timely medical assistance in any emergency, thereby promoting justice in healthcare delivery.

The concept of distributive justice in medical treatment can only be realized if all doctors are willing to offer emergency assistance to anyone in need. Because if some doctors refuse to provide emergency assistance while others provide one, it will not achieve a fair distribution of health resources within the society. Therefore, providing emergency assistance is an ethical thing to do to promote the justice principle in medical ethics.

After analysing the principles of beneficence, non-maleficence, autonomy, and justice, it can be concluded that the morally correct action for a doctor when encountering an individual in need of emergency assistance is to provide help.

### **3. Moral and Ethical Obligations of Doctor under the Indonesian Law**

Under the Indonesian law, a doctor has the moral obligation to protect human life based on two regulations. First, Government Regulation Number 26 of 1960 on Doctor's Hippocratic Oath (Hippocratic Oath Law) stipulates that in the Hippocratic oath stated by doctors, they must promise to "[...] *respect every human life from the moment of conception.*" Furthermore, Art. 11 of the Indonesian Code of Medical Ethics (obliges every doctor to "[...] *always remember his obligation to protect human life.*" In its elucidation, it is stated that:

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<sup>21</sup> Varkey, "Principles of Clinical."

<sup>22</sup> Norman Daniels, "Justice, Health, and Healthcare," *American Journal of Bioethics* 1, no. 2 (February 1, 2001): 2–16, <https://doi.org/10.1162/152651601300168834>.

*“[...] When treating a client/patient, no matter how severe or disabled his conditions are, every doctor must be aware of the sacred call of his conscience to protect the patient’s life. A doctor must do everything in his power to preserve his patient’s natural life and not to end it.”*

Based on the two regulations mentioned above, it can be concluded that a doctor bears the moral obligation to protect and fight for human life, regardless of the severity of the person’s condition. Therefore, when a doctor finds a person in an emergency requiring assistance, the morally justified action based on their regulated moral obligations is to aid rather than neglect the person in the emergency.

Moreover, neglecting a person in an emergency could heighten the risk of death or severe disability for that person. Such actions are against the elucidation of Art. 11 of the Indonesian Code of Medical Ethics, which obliges doctors to do every possible thing within their power to protect the patient’s natural life and refrain from ending the human’s life. Thus, based on the set of moral obligations under Indonesian law, a doctor should assist anyone in an emergency rather than neglect them.

#### **4. The Morally Right Thing to Do**

From the analysis above, we can conclude that providing emergency assistance rather than leaving a person in an emergency is the morally right thing to do by a doctor. However, despite being morally justified, there are potential drawbacks to this action that need to be addressed. Firstly, assisting the person in the emergency may pose consequences for the doctor, including legal implications. Secondly, assistance given by a doctor in emergencies must be carefully regulated to ensure patient safety.

It is crucial to acknowledge that one practical reason behind doctors’ hesitancy to offer emergency assistance is the concern of being prosecuted or involved in a complicated legal process, potentially leading to severe legal consequences. To encourage doctors to act accordingly to their moral duty, adequate legal protection should be given through the prevailing laws and regulations. Simply because providing emergency assistance aligns

with ethical norms, doesn't mean that the law should enforce this obligation without providing adequate legal protection for doctors. Therefore, it is crucial to analyse the legal and ethical issues of current laws related to emergency assistance provision before proposing any recommendation for the law reform.

### C. The Legal and Ethical Issues of the Current Laws and Regulations

The Indonesian law provides obligation for doctor to be a good Samaritan. However, unlike other country, e.g., Australia, who promotes fair and balanced legal protection for good Samaritan in their "Good Samaritan Law",<sup>23</sup> it is arguable whether the Indonesian law has provided proportionate legal protection for the good Samaritan. After concluding that to act as a good Samaritan is the ethically correct thing to do, this section explores the legal and ethical concerns surrounding the obligations compared to the legal protection for doctors to act as a good Samaritan under the Indonesian law.

#### 1. The Legal Issues

On the 18<sup>th</sup> of September 2012, the Indonesian Supreme Court, the highest judicial authority in Indonesia, made a controversial decision on the case of Doctor Ayu, which has become a landmark case for Indonesian malpractice cases.<sup>24</sup> In this decision, the court decided that Doctor Ayu and her colleagues had operated negligently during an emergency procedure on a pregnant patient, resulting in the patient's death. Because of this negligence, Doctor Ayu and her colleagues were sentenced to ten months imprisonment. However, in 2013, Doctor Ayu and her colleagues successfully submitted a request for a judicial review to the Supreme Court, contending that the patient's death was a result of medical risks rather than medical misconduct. This led to the court overturning its previous decision in 2014, clearing Doctor Ayu and her colleagues of all charges.<sup>25</sup>

While recognizing the fundamental differences between Doctor Ayu's case and the discussion in this paper, which focuses on emergency assistance

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23 Jayr Teng, "A Positive Duty to Rescue and Medical Practitioners: A Review of the Current Position in Australia and a Comparison with International Models," *Journal of Law and Medicine* 24, no. 3 (2017): 695–706.

24 MA 365 K/Pid/2012.

25 Putusan Mahkamah Agung Nomor 79 PK/PID/2013 perihal Peninjauan Kembali perkara dr. Dewa Ayu Sasiary Prawani Dkk, 07 Februari 2014 (MA 79 PK/PID/2013)

outside of the hospital settings, it is worth noting that Doctor Ayu's case sheds light on the challenges associated with interpreting medical negligence in general courts and the insufficient and ambiguous legal protections for doctors in Indonesia, especially those providing emergency aid outside formal healthcare facilities.

Despite the favourable outcome for Doctor Ayu and her colleagues, the case has left a significant impact and trauma for doctors in Indonesia. When the decision of the Supreme Court that punished Doctor Ayu was issued in 2013, it triggered a massive reaction from doctors all over Indonesia. The reaction varied from blog articles, demonstrations, and strikes.<sup>26</sup> The main concern voiced during these protests was the ethical dilemma faced by doctors when responding to emergencies.

The obligation to assist people in an emergency is derived from Article 531 of the Indonesian Penal Code, which states:

*“Any person who, witnessing the immediate danger of life that befalls another, fails to extend or provide the assistance which he is capable of extending or providing to him without reasonable danger for himself or another, shall, if the death of the person in the emergency follows, be punished by a maximum light imprisonment of three months or a maximum fine of three hundred rupiahs.”*

The stipulation of the article indicates that the obligation to provide emergency assistance is applied to everyone, including doctors. However, this responsibility weighs more heavily on doctors, especially in a medical emergency, as doctors are believed to have sufficient capabilities to assist a person in need without causing further harm, unlike non-medical professionals.

Moreover, based on the above-mentioned Hippocratic Oath Law and the

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26 “Minta Dr Ayu Dibebaskan, Ratusan Dokter Demo Di Kantor IDI Jakarta,” DetikNews, 2013; Sabrina Asril, “Protes Pemidanaan, Ribuan Dokter Mogok Kerja Hari Ini,” Kompas, 2013, <https://nasional.kompas.com/read/2013/11/27/0846060/Protes.Pemidanaan.Ribuan.Dokter.Mogok.Kerja.Hari.Ini>; Burhan Sholihin, “Ratusan Dokter Sudah Padati Bundaran HI,” Tempo.co, 2013, <https://nasional.tempo.co/read/532788/ratusan-dokter-sudah-padati-bundaran-hi>; Herry Setya Yudha Utama, “Dokter Bukan Penjahat (Apa Sebab Defensive/ Passive Medicine?),” Kompasiana, 2013, <https://www.kompasiana.com/www.herryyudha.com/552966dcf17e610a6a8b45b8/dokter-bukan-penjahat-apa-sebab-defensive-passive-medicine>.

Indonesian Code of Medical Ethics, doctors have a moral obligation to do their best to protect a person's life. In addition to the doctors' moral obligations, Article 51 of Medical Practices Law also stipulates that:

*“Doctors or dentists in carrying out medical practice must perform emergency aid on a humanitarian basis, except when he is sure that there are other people on duty capable of doing it.”*

Despite the obligations enforced on doctors, on the other hand, doctors are threatened by Article 359 of the Indonesian Penal Code, which states:

*“Any person by whose negligence the death of another person is caused shall be punished by a maximum imprisonment of five years or a maximum light imprisonment of one year.”*

This clause was used by the Supreme Court to send Doctor Ayu and her colleagues to prison in 2013. The clause is a general clause that is not intended to be used only for medical negligence. Consequently, using this clause to judge medical assistance could be problematic because the medical negligence requirement might differ from the other forms of negligence. Such confusion can be seen in the Supreme Court's decisions. The Supreme Court issued different decisions in less than two years regarding the same case while dealing with whether Doctor Ayu and her colleagues had operated negligently and caused the patient's death.

To protect doctors from Art. 359 of the Indonesian Penal Code, Article 50 of the Medical Practices Law stipulates that:

*“Doctors or dentists in medical practice have the right to obtain legal protection while carrying out their duties following professional standards and standard operating procedure [...].”*

However, from the case of Doctor Ayu, two lessons can be taken regarding the effectiveness of Article 50. Firstly, it is evident that this clause is



powerless. Neither of the parties nor the judges in the case of Doctor Ayu was referring to Article 50 of the Medical Practices Law. One explanation is that adhering to the protection prerequisites, which are the Professional Standards and Standard Operating Procedure, might lead to another complicated and complex analysis on medical data and evidence. Consequently, judges and lawyers lacking medical background might find it challenging to deal with such discussions.

The second lesson is that even if the argument of Standard Operating Procedure is finally used to protect doctors, it might need to go through a challenging and lengthy process. For example, without explicitly quoting Article 50, the judges in the judicial review trial decided that Doctor Ayu and her colleagues were not conducting any negligence that caused the death of the patient because Doctor Ayu and her colleagues were not in any violation of the Standard Operating Procedure.<sup>27</sup> Although, in the end, the Standard Operating Procedure argument successfully protected Doctor Ayu and her colleagues, it required three trials and almost three years to succeed. The complicated and lengthy process indicates the ineffectiveness of Article 50 to be used as a legal protection measure for doctors.

The law creates another legal problem for the doctor. Besides forcing a doctor to assist a person in an emergency, the laws put the burden of proof onto the doctors. This implies that a doctor could be held liable in a lawsuit following emergency assistance unless they can demonstrate that their medical intervention adhered to the Standard Operating Procedure and Professional Standards. Moreover, as the burden to prove lies on the doctors' side, failure to prove will allow legal conviction given by the judges against the doctor, even if there is still doubt regarding the doctor's negligence. Even worse, doctors need to justify and prove their actions in front of a panel of judges with no medical training background, potentially leading to difficulties in interpreting and evaluating the medical evidence presented.

The legal framework in Indonesia differs significantly from that of other countries like Australia in applying the Good Samaritan Law. In Australia, the Good Samaritan Law can be summarised as no one is obligated to assist a person in an emergency who needs assistance. However, if someone decided

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27 MA 79 PK/PID/2013.



to provide emergency assistance and act as a good Samaritan, they are shielded from legal responsibility as long as the assistance meets a reasonable standard of care and skill.<sup>28</sup> Therefore, it can be argued that the Good Samaritan Law in Australia has sufficiently provide proportionate legal protection for the doctors who act as a good Samaritan.<sup>29</sup> Under this concept, by default, a Good Samaritan will be immune from legal consequences unless it can be proven that their assistance did not comply accordingly to the required standard. In the other words, the default is protection towards the good Samaritan, and the burden of proof lies on the other party to prove the fault.

In conclusion, how the law is structured under Indonesian law creates several legal issues. Those issues range from the obligation to assist a person in an emergency that is followed by a threat if the assistance causes the person's death, inadequate protection given towards the doctor, and the problem of the burden of proof that lies on the doctor's side. Moreover, besides legal issues, the law also creates several moral issues that will be analysed in the next part.

## **2. The Ethical Issues**

Besides the legal issues, the regulations on doctors providing emergency assistance raised ethical dilemmas. The goal of the laws might be good, which is to construct a society where doctors are encouraged to assist a person in an emergency. As a result, the chance of saving more people in an emergency can be increased. Moreover, the laws' threats might aim to ensure that doctors are responsible while exercising emergency assistance. However, as has been elaborated, doctors are put in a dilemma.

Although the law and moral obligations force doctors to provide emergency assistance, the case of Doctor Ayu shows the ambiguity and inadequate legal protection for doctors. This condition puts the doctor in a position to choose whether to save the person's life in an emergency or save the doctor's life and professional career. The scale of the dilemma can be seen from how massive the demonstration and the strike conducted by

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28 Gulam and Devereux, "A Brief Primer."

29 Teng, "A Positive Duty to Rescue and Medical Practitioners: A Review of the Current Position in Australia and a Comparison with International Models."

doctors as a response towards the case of Doctor Ayu in 2012-2013,<sup>30</sup> as well as the judicial review application towards the Medical Practices Law to the Constitutional Court in 2015.<sup>31</sup> As a result of this massive dilemma among doctors in Indonesia, the goal to save more lives of a person in an emergency are at risk because of the bystander effect and diffusion of responsibility that might happen among doctors.

The laws that regulate doctors' obligations and rights of doctors during emergency assistance cannot be morally justified under the deontological approach. This approach believes that if an action involves any intended and disproportionate harm compared to expected benefits, it is unethical regardless of any positive outcomes.<sup>32</sup> Based on the above analysis on the laws and the landmark case of Doctor Ayu, it becomes evident that the current set of regulations are disadvantageous for doctors. Furthermore, inconsistencies in law interpretation, as shown by the judiciary authorities in Doctor Ayu's case, alongside the vague understanding of many terms within the law, such as Standard Operational Procedure and Professional Standards, have created unfair and harmful legal threats for doctors when helping patient in emergencies.

Not to mention the absence of a Good Samaritan Law in Indonesia, the way Indonesian laws place the burden on doctors to prove their lack of negligence, along with panel of judges lacking medical backgrounds making decisions whether a medical treatment has been conducted in accordance with the medical standard of operational procedure. Those aspects give more reasons and examples of how the current regulations adversely impact doctors. Therefore, given the harm inflicted upon doctors by existing laws and their application process, these regulations cannot be morally justified under the deontological approach.

Furthermore, the laws also failed to satisfy the utilitarian approach to be morally justified. According to utilitarian beliefs, actions are morally

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30 "Minta Dr Ayu Dibebaskan, Ratusan Dokter Demo Di Kantor IDI Jakarta"; Asril, "Protes Pemidanaan, Ribuan Dokter Mogok Kerja Hari Ini"; Sholihin, "Ratusan Dokter Sudah Padati Bundaran HI."

31 Putusan Mahkamah Konstitusi Nomor 14/PUU-XII/2014 perihal Uji materiil terhadap ketentuan pidana dalam Pasal 66 ayat (3) UU Praktik Kedokteran, 20 April 2015 (MK 14/PUU-XII/2014).

32 Tseng and Wang, "Deontological or Utilitarian."

justified if it provides the most significant benefits for the greatest number of people.<sup>33</sup> In the present case, due to the unproportionate regulations, doctors are reluctant to be a good Samaritan. Consequently, it may harm the society should more doctors are becoming more reluctant to act as good Samaritan by providing medical assistance in emergency. Therefore, the unproportionate law has failed to optimize the utility or benefits for the society.

However, if we use the virtue ethics approach to analyse the issue, it can be argued that the current laws are ethical. For example, one may argue that despite the potential consequences, doctors, bound by their Hippocratic Oath and sense of duty are morally obliged to help in emergencies. In other words, a virtuous doctor will keep providing emergency assistance, fully aware of the possible legal implications. Therefore, a virtuous doctor should adhere to their calling and moral obligations.

However, as much as doctors want to perform their professional and moral responsibilities, calling, and obligations, they are human beings that should not be forced to perform certain obligations under threats. It will not be ethical to create a situation where doctors are forced to perform their duty only because they should be afraid of the threats of not doing so. Doctors are also part of civil society that the government must protect. Moreover, doctors are also members of their families that owe responsibilities to their families, not only to society.

By becoming a doctor, someone is committed into special responsibilities involving certain risks and obligations. However, it is only ethical if doctors' heavy obligations and responsibilities are balanced with adequate legal protection. Only by creating a law that can balance the obligations and the legal protection for doctors will they not be hesitant to assist anyone in an emergency. Consequently, the initial goal of the current laws can be achieved, which is to protect and promote a person's life in an emergency. Therefore, it is crucial to propose a law reform to the current set of laws and regulations to better protect doctors and the people in an emergency.

#### **D. Necessary Legal Reforms**

This paper proposes three solutions to overcome the legal and ethical

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33 Tseng and Wang, "Deontological or Utilitarian."

issues of the current laws regulating emergency assistance given by doctors to a person in an emergency. First, Indonesian law should adopt the comprehensive model of Good Samaritan Law. Following the first proposal, Indonesian law should amend its regulation to remove the burden of proof from the doctor when a doctor is sued for medical negligence. Lastly, it is crucial to synchronise the complaint mechanism against doctors to the authoritative institutions to ensure justice for both the doctor and the people.

### **1. Comprehensive Model of the Good Samaritan Law**

The goal of a Good Samaritan Law is to encourage people to assist during emergency situations by giving those people legal protection from potential legal consequences that might arise if a negative consequence happens because of the emergency assistance despite the best effort that has been given.<sup>34</sup> There are two models of Good Samaritan Law. The first model, as practised in the United States (also in Australia), focuses on providing legal protection towards people who voluntarily assist the person in an emergency in good faith.<sup>35</sup> While the second model, as practised in some European countries such as Germany, focuses on enforcing the obligation to assist people who find a person in an emergency who needs assistance if they are able and competent to provide such assistance.<sup>36</sup>

The regulations under Indonesian law are similar to the second model of the Good Samaritan Law. It can be seen from how Indonesian laws enforce obligations to people, especially doctors, to provide emergency assistance to a person in the emergency. However, this model of Good Samaritan Law should not stand alone. It should be equipped with the first model to provide more legal protection to the Good Samaritan. By implementing both models, it becomes ethically more justifiable to mandate doctors to act as Good Samaritans since they are protected with adequate legal protection.<sup>37</sup>

Furthermore, ethically speaking, a regulatory framework would be

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34 Aishath Iffa Ashraff, Najy Faiz, and Adlina Ariffin, "Imposition of Good Samaritan Laws to Improve Professionalism among Medical Practitioners," *Intellectual Discourse* 25, no. special (2017): 661–75.

35 Ashraff, Faiz, and Ariffin, "Imposition of Good."

36 Ashraff, Faiz, and Ariffin, "Imposition of Good."

37 Teng, "A Positive Duty to Rescue and Medical Practitioners: A Review of the Current Position in Australia and a Comparison with International Models."

more acceptable when the set of regulations provides rewards for those who perform good actions stipulated in the law. The legal protection given by the first model of Good Samaritan Law can be the reward given to those who provide emergency assistance in good faith. The ethical consideration will not change even if the people who conduct the good action are obliged to do so by the law. The people's motivation, whether voluntary or compelled by the law, should not impact whether those people deserve legal protection as a reward. The reward should be given because of the action, not the voluntariness. Therefore, it is morally justifiable to offer legal protection as a reward to those who perform good actions in the form of emergency assistance, even if they are obliged to do so.

## **2. Shifting the Burden of Proof**

One of the most crucial aspects of regulation is the provision that regulates which party bears the burden of proof. To understand the impact of a burden of proof, an explanation is cited from the Australian Law Reform Commission of the Australian Government. According to this source, when a defendant in a case has the legal burden of proof, the defendant's failure to prove his innocence will allow their conviction despite some reasonable doubt regarding the defendant's guilt.<sup>38</sup>

Based on this understanding, if the burden of proof lies on a doctor who is being sued for medical negligence, they must establish their innocence. Further, because of the burden of proof that lies on the doctor, if they fail to prove their innocence, a conviction is allowed to be given to him even though there might still be some doubt regarding the doctor's guilt.

Such an arrangement does not in line with the spirit of the Good Samaritan Law. It is legally and ethically crucial for the law governing and protecting the good Samaritan act to provide proportionate legal protection for doctors to act in emergency without the fear of disproportionate liability afterwards.<sup>39</sup> Giving the burden of proof to the doctor to prove their innocence

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38 Australian Law Reform Commission of the Australian Government, "Traditional Rights and Freedoms—Encroachments by Commonwealth Laws (ALRC Interim Report 127)," 2015, <https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-interim-report-127/11-burden-of-proof/a-common-law-principle-7/>.

39 Timothy J Paterick, Barbara P Paterick, and Timothy E Paterick, "Implications of Good

indicates the law lack of adequate legal protection for doctors as a Good Samaritans and may discourage doctors from providing necessary assistance, which in contradict to the intention of a Good Samaritan Law.<sup>40</sup> This approach presumes guilt on the doctors unless they can provide evidence to the contrary. However, the Good Samaritan Law works the other way around. It intends to provide legal protection to the Good Samaritan, meaning that by default, the Good Samaritan are not assumed guilty unless proven otherwise. Therefore, to align with the principles of the Good Samaritan Law, doctors should not bear the burden of proof.

Moreover, from an ethical standpoint, it seems unjust to oblige a person to perform particular good deeds and then presume them guilty unless proven otherwise. If the law was constructed that way, the model of Good Samaritan Law implemented in Indonesia would harm the Good Samaritan. Given a doctor's heightened legal and moral responsibilities, the implementation of the Good Samaritan Law in Indonesia would be way more harmful to a doctor. Clearly, when a measure to achieve a goal is harmful, it is not morally justified based on the deontology approach.<sup>41</sup> Thus, if the law itself is harmful, it cannot be morally justified.

Those who object to this idea may argue that it is crucial to have the burden of proof lies on the doctors to ensure accountability from the doctor. Moreover, by having the burden of proof on the doctor, it is within their hope that the doctor would give extra care in their emergency assistance, which may increase the patient's safety.

However, transferring the burden of proof from the doctor to the other party will not eradicate the doctor's responsibility to be accountable. This is because putting the burden of proof on the doctor is not the only way to ensure accountability from the doctor. Even if the burden of proof lies on the party who sues the doctor, the doctor must argue against the other party to prove the accountability of the doctor's action. Failure of the doctors to establish accountability, regardless of the burden of proof, can lead to judicial conviction. Therefore, accountability can be upheld even when the burden of

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Samaritan Laws for Physicians," *The Journal of Medical Practice Management* 23, no. 6 (2008): 372–75.

40 Paterick, Paterick, and Paterick, "Implications of Good Samaritan Laws for Physicians."

41 Tseng and Wang, "Deontological or Utilitarian."

is in line with the spirit of Good Samaritan Law and can be morally justified. Moreover, by doing so, the goal of the law to require accountability from doctors is still achievable.

### **3. Synchronisation of the Complaint Mechanism against Doctors**

The concern regarding the complaint mechanism against a doctor to the authoritative institutions has been raised by the Indonesian Medical Association (*Ikatan Dokter Indonesia/IDI*). In 2014, IDI submitted an application to the Indonesian Constitutional Court for a judicial review of the Medical Practices Law.<sup>1</sup> Article 66 of the Medical Practices Law allows patients to submit a complaint against their doctor to the Indonesian Medical Discipline Honorary Council (IMDHC) for alleged ethical and/or disciplinary violation, alongside filing a report with the police for potential criminal violations. In their submission, IDI argued that a patient should obtain a decision from the IMDHC before submitting a report to the police. Only by having this sequential procedure, legal certainty and protection for doctors can be upheld.

Article 359 of the Indonesian Penal Code, commonly used as the legal basis to criminalise doctors such as Doctor Ayu, requires ‘negligence’ to prosecute the suspect. Based on Art. 1 of Medical Practices Law, the IMDHC holds the authority to determine the existence of negligence in a doctor’s or dentist’s conduct within the practice of medical discipline. Therefore, IDI argued that a patient should be able to submit a report to the police for an alleged criminal violation only after the IMDHC has established the existence of negligence conducted by a doctor or a dentist.

This paper argues that the argument raised by IDI should be accepted because it would only be legally and logically acceptable for the existence of negligence to be decided by the IMDHC rather than by the police, public prosecutor, or even by the judge in a general court. There are two main reasons why IMDHC must be the one who shall determine the existence of medical negligence. First, it is because Medical Practices Law has given the authority to decide the existence of a doctor’s negligence to the IMDHC.

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42 MK 14/PUU-XII/2014.



Suppose a patient is allowed to submit a report to the police before or without a decision from the IMDHC. In that case, the law indirectly provides police, public prosecutor, and judges with the authority to determine the existence of negligence conducted by a doctor within the scope of medical discipline, which such authority should only be upheld by IMDHC.

Second, a negligence in medical field must be determined by those who understand the field of medicine, i.e., IMDHC, instead of the police and other law enforcers, as they are the one who is equipped with sufficient knowledge and training in medical field.<sup>2</sup> For instance, if the doctor fails to make the judges understand that he did not do medical negligence, the judges might convict the doctor. It should be considered that failure to convince the judges regarding the doctors' innocence may not always indicate the fault of the doctor. It may also resulted from the judges' failure to understand the explanation brought by doctors using medical data and evidence. If this occurs, it would be unfair to allow a layperson such as the judge to impose sanctions on doctors because the judges failed to understand some concepts, principles, or procedures in medical field. In other words, doctors should not be held accountable for the judges' inability to understand medical science concepts. Therefore, due to the complexity and special nature of medical profession and science, it is crucial to strictly uphold what the Medical Practices law has mandated, that is IMDHC must hold the authority to determine the existence of medical negligence prior to be submitted to the legal authority.<sup>3</sup>

Furthermore, the House of Representatives, as the legislative body that enacted the law, argued that the law was created in such a way as to ensure equality between doctor and patient and to protect the people by ensuring that doctor will conduct his duty following the prevailing medical standard.<sup>4</sup> In other words, the law threatens the doctor with the chance for the patient to submit a report to the police without the necessity for the case to go through the IMDHC first, with the hope that the doctor will perform at their best

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43 Sigit Setiaji, Adi Sulistiyono, and Isharyanto, "The Role and Position of the Indonesian Medical Discipline Honorary Council in the Fair Resolution of Medical Disputes," *The 5th International Conference on Technology, Education, and Social Science* 1, no. 3 (2023): 1–14.

44 Jovita Irawati, "Inkonsistensi Regulasi Di Bidang Hukum Dan Implikasi Hukumnya Terhadap Penyelesaian Perkara Medik Di Indonesia," *Law Review Universitas Pelita Harapan* 19, no. 1 (2019): 54–76.

45 MK 14/PUU-XII/2014.



following the prevailing medical standard.

Contrary to the House of Representatives' argument, this paper argues that the statement from the House of Representatives indicates an ethical issue within the law itself. The current mechanism does not promote equality between doctor and patient because it creates ambiguity regarding whether IMDHC should be the only authority to determine the existence of negligence conducted by doctors or whether other authorities, such as police and judges, can determine medical negligence without the decision from IMDHC. In the absence of a decision from IMDHC on the existence of a doctor's negligence, the likelihood of a doctor being penalized heavily relies on the doctor's ability to effectively present a defence using medical concepts and data to judges who may lack the capacity to comprehend such information. Since the current mechanism creates more harm for the doctor rather than equal protection for the doctor and patient, the law failed to achieve its goal, as the House of Representatives mentioned. Therefore, the argument to synchronize mechanism should not be dismissed as it aims to create equality between doctors and patients.

Moreover, to further counter the argument from the House of Representatives, this paper argues that synchronising the complaint mechanism will be more ethically justified as it will provide equal protection towards doctors and patients. Having IMDHC as the only authority to determine medical negligence conducted by a doctor will benefit both parties. For doctors, it is apparent that it will provide more legal certainty and protection to have the existence of negligence evaluated and determined by the authority who has competency in the medical discipline.

While for the patient, having IMDHC determine a doctor's negligence will not limit the opportunity to report a proven case to the police. This is because an ethical and medical discipline evaluation would be stricter than the criminal adjudication.<sup>5</sup> For instance, when a doctor forgets to wash his hand before conducting surgery, it is an ethical and medical discipline violation despite the result of the surgery. However, based on the penal code, it would not constitute a criminal violation if the patient did not experience any major infections post-surgery. Moreover, even if a patient needs to wait for the

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46 MK14/PUU-XII/2014.

IMDHC to be able to submit its report to the police, it does not limit the rights of the patient to seek justice through the criminal justice process if it is proven by the IMDHC that there is medical negligence.

Lastly, one of the strongest objections towards synchronisation is the concern that if other doctors evaluate doctors, they may tend to protect each other. This paper counters this objection with two arguments. First, such critique is an *ad hominem* objection because such an argument believes that doctors cannot professionally judge another doctor just because they have the same profession. Furthermore, data from the Annual Report of the Indonesian Council of Doctors in 2020 shows that in every year between 2016-2019, the Indonesian Council of Doctors (the institution responsible for the IMDHC) was able to overachieve its annual target regarding the number of complaints that are settled by the IMDHC.<sup>47</sup> It shows the effectiveness of IMDHC. Therefore, an *ad hominem* objection questioning doctors' ability to evaluate other doctors fairly is not valid, as the data in Indonesia indicates otherwise.

Secondly, as an independent organisation under the Ministry of Health of Indonesia, the management of the Indonesian Council of Doctors, including the selection process of the IMDHC's members, is under the supervision of the government. Moreover, there are plenty of procedures within the organisation that the government establishes to ensure the trustworthiness and independency of IMDHC. Therefore, just because the members of IMDHC are doctors, it does not mean they are not trustworthy in evaluating other doctors' negligence.

In conclusion, synchronising the complaint mechanism is crucial to make the law provide equal and balance protection for doctors and patients, which becomes the initial goal of the House of Representatives as the lawmaker. Moreover, synchronising the complaint mechanism will create more ethically justified laws as it will not harm doctors in the process of protecting the patient and prevent the bystander effect and diffusion of responsibilities among doctors that will not benefit the society. Therefore, it is crucial to regulate that a patient must obtain a decision from IMDHC on the negligence conducted by a doctor before submitting a report to the police.

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47 Indonesian Council of Doctors, "Laporan Kinerja Tahun Anggaran 2020 (Annual Report of the Indonesian Council of Doctors 2020)" (Indonesian Council of Doctors, 2020).

## E. Conclusion

This paper has concluded that to act as a good Samaritan is the ethically correct thing to do for doctors in any emergency. However, doctors in Indonesia have argued that the national legislations do not provide proportionate legal protection for them to act as a good Samaritan. The legal issue comes from the threats that follow the obligation to assist a person in an emergency if the assistance results in death, inadequate protection for doctors to defend themselves, and the problem of burden of proof that lies on the doctor's side. Moreover, the law has also raised some ethical concerns which result into the law becoming ethically unjustified.

This paper has proposed three solutions to overcome such issues and transform the law to be morally justified. First, it is crucial to implement the comprehensive model of Good Samaritan Law to ensure adequate legal protection for anyone who becomes a Good Samaritan, including a doctor. Secondly, transferring the burden of proof from the doctor to the party who brings the case against the doctor is crucial to ensure that the law is in line with the spirit of Good Samaritan Law and can be morally justified. Lastly, synchronising the complaint mechanism against doctors should provide equal and balanced protection for doctors and patients.

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