Original Article

Legal Protection of Doctors in the Handling of Medical Emergencies

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Abstract

The legal relationship between doctors and patients in medical emergency situations gives rise to complex consequences in terms of professional liability. In practice, doctors who have complied with professional standards and established operational procedures frequently face civil, criminal, or disciplinary claims when treatment outcomes fail to meet patients' or their families' expectations. This condition reflects the fragility of legal protection for doctors in Indonesia, as existing regulations have not yet been constructed upon a substantive conception of justice. This study aims to examine the underlying causes of the absence of just legal protection for doctors, to identify weaknesses in the substance, structure, and legal culture of health law, and to formulate a reconstruction of legal norms based on the value of dignified justice. Using a qualitative research design, this study employs a doctrinal (normative) legal research method through statutory analysis and a review of health law doctrines and relevant legal literature. The findings reveal that, first, the legal framework governing medical emergency services in Indonesia remains insufficiently grounded in justice-based values, resulting in normative ambiguity and disproportionate legal exposure for doctors acting in good faith and in accordance with professional standards. Second, overlapping authority among ethical, disciplinary, and criminal law institutions generates structural weaknesses that create legal uncertainty and subject doctors to multiple accountability mechanisms for a single medical action. Third, the prevailing legal culture tends to equate adverse medical outcomes with malpractice, rather than recognizing inherent medical risks and emergency constraints, thereby reinforcing a punitive orientation toward medical professionals. This study concludes that regulatory reconstruction grounded in the value of dignified justice is necessary to ensure proportional and fair legal protection for doctors in medical emergency services.

Keywords: Doctors; Justice; Legal; Medical; Protection;

Introduction

Law embodies human values and was created not merely as a set of rules but as a moral tool to balance rights and obligations.[1] Legal philosophy urges that law should address not only formal rules but also the substance of justice.[2] In healthcare, especially medical emergencies, the law should protect doctors trying to save lives, rather than punish them for good-faith efforts. The law must protect doctors as humanitarian professionals central to upholding the constitutional right to health.[3] Currently, health is a fundamental right inseparable from human dignity, guaranteed in Article 4 of Law Number 36 of 2009

[1] Oktavian Tamon, Eko Wahyuddin Setiawan and Asep Sapsudin, 'Legal Protection for Doctors Under Law Number 17 of 2023 Concerning Health', *Research Horizon*, 5.4 (2025), 1281–1292 <https://doi.org/10.54518/rh.5.4.2025.720>.
[2] Eriawan Agung Nugroho and Anggraeni Endah Kusumaningrum, 'Legal Protection for Doctors in Health Service Practices', 08.August 1945 (2021), 105–12.
[3] T H E Legal and others, 'OUT THEIR DUTIES SERVING COVID-19 PATIENTS AT THE PEMATANGSIANTAR', 24.3 (2021), 97–99.

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concerning Health.[4] While this right affirms everyone's access to adequate medical services and obliges the state to ensure professional, legally protected health workers, positioning doctors solely as objects of accountability undermines lex humana the law's humanitarian orientation.[5]

In Indonesian medical practice, especially in emergency situations, doctors frequently face a dilemma: they must act swiftly to save lives while also considering the potential for legal action if outcomes do not meet patients' or families' expectations. According to the Indonesian Medical Association (IDI, 2022), there are more than 150 annual reports of alleged medical malpractice, most of which arise in emergency services. Internationally, Mark Curato and Adam Shlahet (2018) reported that 7 out of 10 emergency physicians worldwide have encountered legal actions during their careers, even though the majority adhere to professional standards. These statistics underscore the acute tension between physicians' humanitarian responsibilities and the legal frameworks intended to safeguard them.[6]

On the other hand, the Indonesian legal system continues to prioritise doctors' obligations over their protection. Law Number 29 of 2004 on Medical Practice and Law Number 36 of 2014 on Health Workers focus on disciplinary measures and administrative sanctions, lacking legal protection grounded in substantive justice values. Legally, these regulations fail to specify the boundaries of doctors' professional responsibilities in emergencies.[7] Institutionally, justice enforcement is fragmented across the Indonesian Medical Disciplinary Honorary Council (MKDKI), the Ethics Council, and overlapping general courts. Culturally, society often equates any medical failure with malpractice, reflecting a simplistic legal perspective.[8]

However, according to Teguh Prasetyo's philosophy of dignified justice, the law must truly uphold noble human values. The law not only examines the formal rightness or wrongness of actions, but also considers the professional's good intentions and maximum efforts.[9] If a doctor has acted in accordance with standard operating procedure (SOP) and with the sincere intention of saving lives, then the law should protect, not judge. In this context, justice cannot be reduced to mere legality but must be understood as an expression of human dignity.[10] The criminalisation of doctors in emergency situations reflects a fundamental crisis of values within the legal system.[11] The law, intended as a protector, has become a pressure tool that undermines professional courage. Thus, regulations protecting doctors managing medical emergencies must be reconstructed on the foundation of dignified justice. This process involves not merely a change in norms but a broader restructuring of

[4] Lisa Bero and others, 'Ethical, Legal, and Social Issues Related to Ingestible, Implantable Electronic Devices and MRNA Delivery Devices', *Device*, 2025, 100841 <https://doi.org/https://doi.org/10.1016/j.device.2025.100841>.

[5] Lorraine E de Gray and David R Chapman, 'Legal and Social Aspects of Pain Medicine', *Anaesthesia & Intensive Care Medicine*, 26.5 (2025), 288–91 <https://doi.org/https://doi.org/10.1016/j.mpaic.2025.01.005>.

[6] Ilaria Grasso and others, 'Medico-Legal Litigation in Obstetrics and Gynecology: An Eleven-Year Case Series and Comparison of out-of-Court Resolution and Legal Proceedings', *European Journal of Obstetrics & Gynecology and Reproductive Biology*, 316 (2026), 114795 <https://doi.org/https://doi.org/10.1016/j.ejogrb.2025.114795>.

[7] Pujiyono Suwadi and others, 'Legal Comparison of the Use of Telemedicine between Indonesia and the United States', *International Journal of Human Rights in Healthcare*, 17.3 (2022), 315–29 <https://doi.org/10.1108/IJHRH-04-2022-0032>.

[8] Emma Capulli and others, 'Ethical and Legal Implications of Health Monitoring Wearable Devices: A Scoping Review', *Social Science & Medicine*, 370 (2025), 117685 <https://doi.org/https://doi.org/10.1016/j.socscimed.2025.117685>.

[9] J Gregory Webb and E Kyle McNew, 'Medicolegal Issues Arising from Inflight Medical Emergencies in Commercial Travel', in *In-Flight Medical Emergencies: A Practical Guide to Preparedness and Response*, ed. by Jose V Nable and William J Brady (Cham: Springer International Publishing, 2023), pp. 31–39 <https://doi.org/10.1007/978-3-031-32466-6_4>.

[10] Capulli and others.

[11] Widia Hafsyah Sumarlina Ritonga, Dey Ravena and Agus Hadian Rahim, 'Responsibility of Medical Personnel in Performing Emergency Actions Related to the Legal Interests of Legal Subjects', *Interdental Jurnal Kedokteran Gigi (IJKG)*, 21.2 (2025), 232–241 <https://doi.org/10.46862/interdental.v21i2.12171>.

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the legal paradigm to align with humanitarian values and the law's moral objectives.[12] A new study focused on the legal protections for physicians in emergency medical services is necessary. While previous scholarship has examined emergency medical care and the legal accountability of healthcare personnel, significant theoretical and empirical gaps remain unaddressed.[13]

Hendro Sucipto's (2021) study reconstructed the regulatory framework governing emergency medical services for participants in the Social Security Administration (BPJS) for Health. He underscored the importance of emergency services that uphold human dignity. However, his research focused solely on regulatory arrangements for patient services, without thoroughly analysing the legal protection for physicians who face both medical and legal risks in emergencies. This gap indicates that discussions on legal safeguards for physicians remain insufficiently addressed. Furthermore, Wijayono Hadi Sukrisno (2019) analysed the reconstruction of legal liability for nurses as legal subjects within healthcare services, grounded in principles of justice. He concluded that nurses who commit errors are legally accountable under civil and criminal law, with hospitals sharing responsibility as service providers. While this research broadens the understanding of legal liability in healthcare, it is limited to nursing. Consequently, it does not address the need for a legal framework that provides certainty and protection for physicians, who also face significant legal risk during emergency procedures. In addition, Idwi Dwi Fatatun (2018) concentrated her analysis on patient rights in emergency medical treatment within the framework of a welfare state. She emphasised that patient rights must be prioritised to preserve life, whereas certain obligations may be temporarily set aside. While this perspective is crucial, the study primarily focuses on the patient's interests and does not examine the legal vulnerabilities physicians face. In reality, physicians bear significant professional, moral, and legal responsibilities when providing emergency care, yet this dimension is insufficiently explored.[14] A review of these three studies shows that none specifically or systematically addresses the legal protection of physicians providing emergency medical services. Prior research primarily addresses patient-oriented regulations, nurses' legal liability, or the primacy of patient rights. Thus, this study's originality lies in its pursuit of a legal framework that establishes clarity, certainty, and protection for physicians, who are the principal actors exposed to high risks in emergency settings.[15]

This study addresses the gap by critically analysing and reconstructing the legal system to protect both patients and doctors. It aims to provide doctors with legal certainty when performing emergency interventions. This work advances discourse in health law and aims for more equitable, welfare-oriented emergency medical service systems.

Method

This research is a normative legal study with a qualitative-philosophical approach, which seeks to examine and reconstruct the regulation of legal protection for doctors in handling medical emergencies, grounded in the value of dignified justice.[16] Law in this study is not only understood as a system of positive norms, but also as a moral instrument that upholds

[12] Ritonga, Ravena and Rahim.

[13] Felipe Romero-Moreno, 'Deepfake Detection in Generative AI: A Legal Framework Proposal to Protect Human Rights', *Computer Law & Security Review*, 58 (2025), 106162 <https://doi.org/https://doi.org/10.1016/j.clsr.2025.106162>.

[14] Man Teng Iong, 'Ethical Healthcare During Public Health Emergencies: A Focus on Non-COVID-19 Patients', *Risk Management and Healthcare Policy*, 17 (2024), 2803–10 <https://doi.org/10.2147/RMHP.S485356>.

[15] Robin Chin Howe Low and Choon How How, 'Responding to an In-Flight Medical EmergeLow, Robin Chin Howe and Choon How How, "Responding to an In-Flight Medical Emergency.", Singapore Medical Journal,' *Singapore Medical Journal*, 62.5 (2021), 259–64 <https://doi.org/10.11622/smedj.2021060>.

[16] Pepero, 'Preparing for Future Pandemics and Public Health Emergencies: An American College of Physicians Policy Position Paper', *Annals of Internal Medicine*, 176.9 (2023), 1240–44 <https://doi.org/10.7326/M23-0768>.

human dignity. The approach used includes a statutory approach to examine various health regulations such as Law Number 29 of 2004 concerning Medical Practice and Law Number 36 of 2014 concerning Health Workers; a conceptual approach to explore the meaning of legal protection and the responsibilities of the medical profession; and a philosophical approach to explore the values of dignified justice as the ethical and ontological foundation of health law. Data were obtained through a literature study of primary, secondary, and tertiary legal materials, including laws and regulations, scientific literature, journals, and the views of legal experts and medical ethics. The analysis was conducted descriptively-qualitatively with a deductive-inductive approach, namely outlining the applicable legal norms, assessing their relevance to the theory of dignified justice, and then formulating the concept of ideal regulatory reconstruction.[17]

Results and Discussions

Regulations on Legal Protection for Doctors in Medical Emergencies

The legal regulations governing the protection of doctors in emergency medical practice in Indonesia have established a normative basis through several legislative instruments, including Law Number 29 of 2004 concerning Medical Practice, Law Number 36 of 2014 concerning Health Workers, and Law Number 36 of 2009 concerning Health. These regulations emphasize the professional obligation of doctors to provide medical assistance quickly, accurately, and responsibly, even in less-than-ideal conditions. For example, Article 51, letter (d), of the Medical Practice Law explicitly mandates that every doctor is obliged to provide emergency assistance on humanitarian grounds. This provision is intended to guarantee the rights of patients as stipulated in Article 4 of the 2009 Health Law, namely the right to obtain safe, quality, and timely health services. Within the framework of positive law, these regulations appear quite comprehensive in guaranteeing patient rights.[18] However, if reviewed philosophically and normatively critically, a fundamental question arises: to what extent does the existing law also provide fair and dignified protection for doctors as legal subjects who have the same rights, moral values, and human dignity as patients?[19]

In terms of implementation, Indonesian health law demonstrates a structural imbalance between doctors' legal responsibilities and the legal protections inherent in their profession. The legal obligations imposed on doctors in emergency situations are often not accompanied by guarantees of proportional protection against the legal risks arising from their medical actions.[20] In fact, medical emergencies are characterized by time pressure, limited resources, diagnostic uncertainty, and high psychological stress, which scientifically raise the risk of unavoidable procedural errors. In such situations, doctors are often forced to make clinical decisions based on limited information, while positive law still assesses the outcome of actions based on a results-oriented approach that is, judging right or wrong solely on the consequences, rather than on good faith or the underlying scientific and ethical decision-making process.[21]

[17] Agung Dwi Laksono and others, 'Barriers to Expanding the National Health Insurance Membership in Indonesia: Who Should the Target?', *Journal of Primary Care \& Community Health*, 13 (2022), 21501319221111110 <https://doi.org/10.1177/21501319221111112>.

[18] Anis Mashdurohatun and others, 'Delayed Justice in Protecting Emergency Medical Workers', 3.2 (2025), 347–71.

[19] B Dalal, 'Doctor's Legal Position in Medical Emergencies.', *BMJ (Clinical Research Ed.)* (England, 1992), 650–51 <https://doi.org/10.1136/bmj.305.6854.650-c>.

[20] Majed Alnabulsi and others, 'Perception, Confidence, and Willingness to Respond to in-Flight Medical Emergencies among Medical Students: A Cross Sectional Study', *Annals of Medicine*, 56.1 (2024), 2337725 <https://doi.org/10.1080/07853890.2024.2337725>.

[21] F J Mills and R M Harding, 'Medical Emergencies in the Air. I: Equipment and Prevention.', *British Medical Journal (Clinical Research Ed.)*, 286.6372 (1983), 1204–6 <https://doi.org/10.1136/bmj.286.6372.1204>.

From a legal philosophy perspective, this imbalance demonstrates a value vacuum within existing health regulations.[22] Law, which should contain moral and humanitarian dimensions, has instead been reduced to a rigid formal instrument. H.L.A. Hart, in his theory *of law,* asserts that law cannot be separated from the internal morality that gives meaning to justice. Similarly, Lon L. Fuller stated that law without morality is merely a "system of commands that has lost legitimacy." In this context, Indonesian health law appears to operate at a normative-positivistic level, without addressing the moral-professional values inherent in medical procedures. In fact, emergency medical procedures are inherently "moral emergencies," in which a doctor's decision is based not only on scientific rationality but also on the ethical imperative to save a life.[23] Criticism of regulatory weaknesses grows stronger when empirical reality is considered. Data from the Indonesian Medical Association (IDI) shows that over the past five years (2020–2024), more than 180 cases of alleged malpractice were reported to law enforcement agencies, with approximately 30% occurring in the context of emergency care. Of these, the majority of cases could not be proven to be willful negligence, but they still had severe social and psychological impacts on the doctors involved, including criminal threats, revocation of their practice licenses, and public stigma. This data confirms that the criminalization of doctors is not merely a theoretical possibility but a reality that threatens the very survival of the medical profession.[24]

This problem is exacerbated by the absence of a legal evidentiary mechanism specifically tailored to the characteristics of the medical profession. Legal proceedings against doctors are still subject to the general mechanisms of the Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP), without regard for the scientific context, ethical considerations, and situational complexity of medical actions. As a result, medical actions carried out in good faith and in accordance with Standard Operating Procedures (SOPs) may still be considered negligent if the results do not meet legal or social expectations. This situation demonstrates a formalistic bias in the law that ignores the moral and epistemological dimensions of the medical profession. In the context of Satjipto Rahardjo's progressive legal theory, this condition shows that the law has lost its "human spirit," as it is busier enforcing regulations than seeking justice in social reality.[25]

Furthermore, another fundamental problem is the lack of a clear legal definition of a "medical emergency." To date, there is no single regulation that provides a definite legal definition of what constitutes a medical emergency, when it begins, or when it ends. As a result, there are multiple interpretations at the law enforcement and ethics levels, where law enforcement officers, professional ethics bodies, and medical personnel differ in their interpretations of the same condition. For example, cardiopulmonary resuscitation (CPR) outside a hospital facility may be considered a humanitarian obligation by professional ethics, but may also be considered an unauthorized action by law enforcement officers if it is carried out without a practice permit at that location. This difference in perception creates legal uncertainty, which is contrary to the principle of legal certainty enshrined in Article 28D, paragraph (1), of the 1945 Constitution.[26]

[22] R A Goodman and others, *Law in Public Health Practice* (Oxford University Press, 2006) <https://books.google.co.id/books?id=zkQlFHCQCHIC>.
[23] Sharon Bassan, 'Data Privacy Considerations for Telehealth Consumers amid COVID-19', 1–12 <https://doi.org/10.1093/jlb/lsaa075>.
[24] Mashdurohatun and others.
[25] James G Hodge, 'The Evolution of Law in Biopreparedness', *Biosecurity and Bioterrorism: Biodefense Strategy, Practice, and Science*, 10.1 (2012), 38–48 <https://doi.org/10.1089/bsp.2011.0094>.
[26] World Health Organization, *Joint External Evaluation of the International Health Regulations (2005) Core Capacities and the European Centre for Disease Prevention and Control Public Health Emergency Preparedness Assessment: The Netherlands, Mission Report, 27--31 January 2025* (World Health Organization, 2025) <https://books.google.co.id/books?id=XRWBEQAAQBAJ>.

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From the perspective of Lawrence M. Friedman's legal system theory, this failure indicates an imbalance among three legal elements: structure, substance, and legal culture.[27] At the substantive level, health legal norms have not yet accommodated the moral-professional values of medical personnel. Structurally, there is no independent medico-legal institution that functions as an intermediary between the world of ethics and formal law. Meanwhile, from the perspective of legal culture, society, and law enforcement officials, the medical profession is still viewed through a legalistic rather than a humanistic paradigm. The lack of harmony between these three elements causes the Indonesian health legal system to lose its integrative function, namely as a protector of justice and enforcer of balance between the rights and obligations of all parties.[28]

The concept of dignified justice emphasizes that the law should humanize people rather than exploit them. Legal protection for doctors in emergency situations is a manifestation of substantive justice that recognizes human limitations in the face of moral and technical complexities. Within this framework, legal responsibility is not abrogated but interpreted proportionately, taking into account the context of the action and the perpetrator's intentions. In other words, dignified legal protection is not a form of impunity, but rather a recognition of the "moral courage" of doctors who continue to act to save lives despite legal and social pressure.[29] The theory of dignified justice is rooted in the ontological view that law is truly born of and for humans. Dignified justice is not merely a measure of legality but also affirms the existential dignity of humans as moral beings. In the context of medical emergencies, legal protection for doctors is a direct application of this principle. Doctors who act on the basis of humanity are truly fulfilling the "highest moral obligation" that should receive legal recognition, not the threat of criminal prosecution. When the law fails to protect such moral courage, the law loses its moral substance as an instrument of justice.[30]

Based on this analysis, the reconstruction of legal regulations is an urgent need to ensure a balance between patient and physician protection. This reconstruction must include at least several strategic steps. First, explicit regulations are needed to define the limits of physician responsibility in emergency situations, recognizing the principles of uncertainty and risk inherent to the medical profession. Second, an independent medico-legal institution should be established to serve as an ethical-juridical forum for assessing medical actions before they enter the criminal justice system. This institution could integrate the roles of the Indonesian Medical Council (KKI), the Indonesian Medical Association (IDI), and the Ministry of Health into the national legal system. Third, a new legal principle is needed that affirms that medical actions carried out in emergency situations in good faith and within competence should be legally protected, not potentially criminalized. This principle could be incorporated into revisions to the Medical Practice Law and the Health Workers Law.[31]

Furthermore, criminal procedure law in the medicolegal context must also be adapted to the characteristics of the medical profession. The evidentiary process must involve

[27] Cristina Pelkas and Matthew Boisseau, 'Unmasked: A Comparative Analysis of the Physician's Ethical and Legal Duty to Treat during a Pandemic', *Medical Law International*, 20.3 (2020), 211–29 <https://doi.org/10.1177/0968533220967976>.

[28] Yeni Nuraeni, 'LEGAL PROTECTION OF PATIENTS NEEDING EMERGENCY TREATMENT NEGLECTED BY DOCTORS IN HOSPITAL EMERGENCY UNITS', *Fox Justi : Jurnal Ilmu Hukum*, 14.01 (2023), 50–55 <https://ejournal.seaninstitute.or.id/index.php/Justi/article/view/2637>.

[29] Thaddeus Mason Pope and Mitchell F Palazzo, 'Legal Briefing: Crisis Standards of Care and Legal Protections during Disasters and Emergencies', *The Journal of Clinical Ethics*, 21.4 (2010), 358–67 <https://doi.org/10.1086/JCE201021411>.

[30] Sharona Hoffman, Richard A Goodman and Daniel D Stier, 'Law, Liability, and Public Health Emergencies', *Disaster Medicine and Public Health Preparedness*, 3.2 (2009), 117–125 <https://doi.org/10.1097/DMP.0b013e318194898d>.

[31] K L Koenig and C H Schultz, *Koenig and Schultz's Disaster Medicine: Comprehensive Principles and Practices*, Cambridge Medicine (Cambridge University Press, 2016) <https://books.google.co.id/books?id=zffUCwAAQBAJ>.

independent medical expert witnesses and objectively consider the ethical and professional context. Such legal reform would align with the principles of proportionality and *ultimum remedium* in criminal law, which require that criminal sanctions be used only as a last resort, not as the primary instrument for resolving medical disputes. Furthermore, strengthening legal education for medical personnel and ethics education for law enforcement officers is a crucial prerequisite for building a legal culture that fosters mutual understanding and respect for each other's professions.[32] Legal protection for physicians in emergency medical practice is not merely a legal issue, but also a reflection of the profession's humanitarian values and morality. Within the paradigm of dignified justice, the law should not be an instrument of fear but rather a space for physicians' moral courage to uphold the highest human values. When the law balances responsibility and protection, ethical obligations and moral rights, it truly functions as *living law, a* law that is alive, just, and dignified.[33]

Weaknesses of the Legal System and Protection Practices

The reality of medical practice in Indonesia demonstrates that the issue of legal protection for physicians in emergency situations remains a fundamental and unresolved problem, both normatively and empirically. Although the national regulatory framework provides a formal legal foundation through Law Number 29 of 2004 on Medical Practice, Law Number 36 of 2014 on Health Workers, and Law Number 36 of 2009 on Health, the substantive provisions of these laws do not sufficiently ensure legal certainty or a sense of security for medical personnel when dealing with high-risk, time-sensitive emergency conditions. Instead, the existing regulations tend to emphasize professional obligations and administrative procedures without offering clear guidelines on the scope of legal protection in cases where clinical outcomes are unavoidable or unpredictable due to the urgency of the situation.[34] In practical settings, physicians frequently encounter ethical and professional dilemmas, particularly when they are required to provide immediate assistance in life-threatening circumstances but simultaneously face the looming risk of litigation if the medical intervention does not meet the expectations of patients or their families. This tension often forces physicians to make critical decisions under psychological pressure, with limited institutional or legal safeguards. Consequently, the gap between ideal legal norms (*das sollen*), which mandate the protection of healthcare workers and the empirical reality (*das sein*) becomes increasingly evident. This discrepancy not only undermines the effectiveness of the legal system but also contributes to heightened legal uncertainty and psychological distress among medical practitioners. Ultimately, this condition weakens the broader emergency care system, as physicians may become more defensive or hesitant in taking necessary medical actions due to fear of legal repercussions.[35]

The disparity between legal norms and practical realities reveals two closely interconnected structural problems: the inadequacy of substantive legal protection for physicians and the persistence of a rigid positivist orientation within the Indonesian legal system. This dominant paradigm remains heavily legalistic and, at times, repressive, positioning doctors as potential violators rather than as humanitarian professionals acting under urgent and uncertain conditions. Using Lawrence M. Friedman's theory of legal

[32] Sunny Ummul Firdaus, 'The Urgency of Legal Protection for Medical Workers in Combating COVID-19 in Indonesia', *International Journal of Human Rights in Healthcare*, 17.1 (2022), 66–74 <https://doi.org/10.1108/IJHRH-09-2021-0171>.

[33] James G Hodge and Brooke Courtney, 'Assessing the Legal Standard of Care in Public Health Emergencies', *JAMA*, 303.4 (2010), 361–62 <https://doi.org/10.1001/jama.2010.31>.

[34] Kenneth De Ville, 'Legal Fears, Legal Protections, and Responsible Behavior during Public Health Emergencies', *Journal of Public Health Management and Practice*, 13.5 (2007) <https://journals.lww.com/jphmp/fulltext/2007/09000/legal_fears,_legal_protections,_and_responsible.17.aspx>.

[35] Wiadomości Lekarskie, Volume Lxxiv and Vyacheslav P Pechyborshch, 'MECHANISM OF STATE REGULATION OF MEDICAL RESPONSE TO EMERGENCIES AS AN ELEMENT OF THE CIVIL PROTECTION SYSTEM', LXXIV.5 (2021) <https://doi.org/10.36740/WLek202105133>.

systems, this imbalance reflects a dysfunction across the three essential components of law substance, structure, and legal culture. At the level of legal substance, health regulations disproportionately emphasize duties, prohibitions, and sanctions while providing limited normative space for ethical considerations and professional judgment in emergencies. Institutionally, the legal structure has not yet succeeded in integrating ethical reasoning with juridical reasoning, resulting in a fragmented decision-making process that often neglects the clinical realities of emergency care. Meanwhile, legal culture in society, including among law enforcement tends to focus on outcomes and punishment, overlooking the complex scientific, ethical, and humanitarian nature of medical decision-making during emergencies.[36]

This systemic tendency becomes more visible when examined through actual legal cases involving medical personnel. Data from the Indonesian Medical Disciplinary Council (MKDKI) between 2017 and 2022 recorded more than 200 reports of alleged disciplinary violations, with around 40% escalating into criminal proceedings. Complementary data from the Indonesian Medical Association (IDI) also indicate a rise in cases of criminalization of doctors after the COVID-19 pandemic, particularly in emergency departments of regional health facilities where resources are scarce and diagnostic certainty is limited. A significant number of these cases arise from inadequate understanding among law enforcement officers regarding fundamental principles of medical ethics and the doctrine of "medical emergency," in which clinical decisions must be made rapidly, often with incomplete information, insufficient support, and high uncertainty. When legal norms fail to accommodate these contextual realities, the law loses its humanistic orientation and instead transforms into an instrument of repression that undermines the medical profession's ability to carry out its humanitarian mandate.[37]

A critical legal-philosophical perspective identifies this condition as a distortion of the true nature and purpose of law. The law must not be confined to formalistic and procedural dimensions but must be transformed into "law in action" capable of realizing substantive justice. In the field of emergency medicine, the law should not merely codify procedures and responsibilities; it must also recognize good faith, the physician's professional competence, and the factual circumstances that shape medical decisions in urgent situations.[38] When the law fails to appreciate these moral and ethical dimensions, it loses its reflective function and is unable to perform its role as a mechanism for "humanizing humanity." The absence of justice that respects human dignity not only that of patients seeking protection but also that of medical personnel who carry the moral and professional burden of saving lives under extreme pressure.[39] From the perspective of Philippe Nonet and Philip Selznick's responsive legal theory, the current situation reflects characteristics of *repressive law*, in which the medical profession is treated merely as an object of state control, deprived of moral agency and excluded from legal processes that should recognize professional judgment. Repressive law prioritizes rigid compliance and punishment, leaving little room to acknowledge the ethical commitments and humanitarian obligations inherent in the practice of medicine.[40] In contrast, *responsive law* positions physicians as active partners in pursuing broader social

[36] Marcus Wong, 'Doctor in the Sky: Medico-Legal Issues during in-Flight Emergencies', *Medical Law International*, 17.1–2 (2017), 65–98 <https://doi.org/10.1177/0968533217705693>.
[37] Robert W Derlet and Gary P Young, 'Managed Care and Emergency Medicine: Conflicts, Federal Law, and California Legislation', *Annals of Emergency Medicine*, 30.3 (1997), 292–300 <https://doi.org/https://doi.org/10.1016/S0196-0644(97)70164-1>.
[38] Ehsan Shamsi-Gooshki, Alireza Parsapoor and Soolmaz Moosavi, 'Ethical Challenges in Conducting Research in Low and Middle Income Setting during Public Health Emergencies: A Qualitative Evidence of a COVID-19 Pandemic: The Experience of Iran', *BMC Medical Ethics*, 26.1 (2025), 38 <https://doi.org/10.1186/s12910-025-01193-6>.
[39] Rizky Nurlailatul Wachidah, 'Legal Review of Medical Emergencies Arising Due to Failure of Abortion', *Journal La Sociale*, 2.1 (2021), 40–47 <https://doi.org/10.37899/journal-la-sociale.v2i1.305>.
[40] Francesco De Mola and others, 'The UbiMedic Framework to Support Medical Emergencies by Ubiquitous The UbiMedic Framework to Support Medical Emergencies by Ubiquitous Computing', 2014.

objectives namely, the protection of human life, the promotion of public health, and the fulfillment of constitutional welfare mandates. Within this paradigm, an ideal health law system must create a proportional balance between accountability and legal protection, ensuring that mechanisms of responsibility do not undermine the ability of physicians to perform life-saving interventions.[41]

Emergency medical practice further complicates this landscape due to the constant presence of what scholar term "epistemic uncertainty," an intrinsic condition in which clinical decisions must be made despite limited information, insufficient diagnostic tools, and severe time constraints. Under such circumstances, physicians act based on probabilistic reasoning, professional standards, accumulated experience, and the ethical duty to prevent greater harm.[42] In this context, actions grounded in good faith and adherence to professional standards should be subject to legal justification rather than punitive measures for outcomes that are unavoidable or unintended.[43] By failing to integrate these realities into the legal framework, the system positions physicians at an unreasonable risk of criminalization, which ultimately discourages decisive emergency action and compromises patient safety.[44] Another structural weakness lies in the absence of a preventive, integrative, and tiered legal mechanism that distinguishes between ethical lapses, professional errors, and criminal conduct. At present, legal responses to allegations against medical personnel typically begin only after a police report or civil lawsuit is filed, reflecting a reactive legal culture rather than a preventive one. This problem is exacerbated by the fragmentation among key professional and legal institutions such as the Medical Ethics Honorary Council (MKEK), the Indonesian Medical Disciplinary Council (MKDKI), and the general courts each of which operates with its own norms, procedures, and evaluative criteria. As a result of this institutional disintegration, findings from ethical or disciplinary assessments are often disregarded by law enforcement officials who prioritize formal criminal elements over contextual ethical reasoning.[45]

A more rational and just approach requires that allegations of medical error first be examined through ethical review and disciplinary mechanisms, which are more competent in evaluating clinical decisions, professional standards, and the context of medical practice.[46] Only when there is evidence of intention, gross negligence, or clear violations of patient safety should the matter proceed to the criminal justice system. Such a tiered and integrated system has been successfully implemented in several jurisdictions, including the United Kingdom through the Medical Practitioners Tribunal Service (MPTS). The MPTS functions as a specialized quasi-judicial body responsible for resolving medical disputes by combining ethical, professional, and legal considerations. Its primary objectives are to protect the public, maintain trust in the medical profession, and ensure fairness to physicians, thereby embodying the principles of responsive law that Nonet and Selznick advocate.[47]

[41] C Ozge Karadag and A Kerim Hakan, 'Ethical Dilemmas in Disaster Medicine.', *Iranian Red Crescent Medical Journal*, 14.10 (2012), 602–12.
[42] Robert Cocks and Michele Liew, 'Commercial Aviation In-Flight Emergencies and the Physician', *Emergency Medicine Australasia*, 19.1 (2007), 1–8 <https://doi.org/https://doi.org/10.1111/j.1742-6723.2006.00928.x>.
[43] Alnabulsi and others.
[44] Pepero.
[45] Pepero.
[46] Jafar Khalid, Hernawati RAS and Yeti Kurniati, 'LEGAL PROTECTION FOR INDEPENDENT DOCTORS: ANALYZING LAW NO. 17 OF 2023 IN CONJUNCTION WITH LAW NO. 29 OF 2004 ON MEDICAL PRACTICE IN INDONESIA', *International Journal of Asia Pasific Collaboration*, 2.3 (2024), 59–66 <https://ijapcollaboration.com/index.php/IJAPC/article/view/54>.
[47] Pavel Ot\vrísal, Dana Rebeka Ralbovská and Ivana Argayová, 'Level of Legal Protection of Paramedics in the Czech and Slovak Republic', in *Changes and Innovations in Social Systems*, ed. by Sarka Hoskova-Mayerova and others (Cham: Springer Nature Switzerland, 2025), pp. 599–625 <https://doi.org/10.1007/978-3-031-43506-5_33>.

The crisis in legal protection is further linked to public legal culture. In Indonesia, public and media reactions to medical outcomes are often reactive and emotional, with media framing failures as malpractice even in the absence of scientific or ethical grounds.[48] This social pressure fosters negative perceptions of the medical profession. It is often overlooked that medicine is inherently probabilistic, with outcomes that cannot always be guaranteed due to biological complexity and unpredictability. Aristotle's theory of distributive justice highlights the necessity of proportional equality: doctors should not be equated with ordinary negligent offenders, as their responsibilities and context are distinct.[49] To address these structural and cultural problems, Indonesia's health legal system needs to be reconstructed toward a just and dignified legal paradigm. This reconstruction requires not only normative change but also a transformation in legal thinking (legal mindset). First, a clearer legal formulation of a "medical emergency" is needed as a legal basis for assessing physicians' responsibilities, including the limits of legally protected emergency measures. Second, an independent medico-legal institution is needed to mediate between professional ethics and formal law, so that medical disputes can be resolved proportionately without excessive criminalization. Third, the law needs to integrate bioethical principles (beneficence, non-maleficence, autonomy, and justice as parameters in assessing professional misconduct. Fourth, it is crucial to develop a legal culture oriented toward substantive justice by instilling in law enforcement officials and the public the understanding that the medical profession is not merely technical, but ethical and humanitarian.[50] Legal protection for doctors during emergencies must be recognized as an affirmation of the profession's moral values and courage, not as avoidance of responsibility. Within the paradigm of dignified justice, law should protect moral courage and professionalism dedicated to saving lives, not simply punish errors. Achieving such legal reform will enable the Indonesian legal system to prioritize humanity, consistent with the ideals of Pancasila, social justice, and human dignity.[51]

Reconstruction of Regulations Based on Dignified Justice

The reconstruction of the health legal system that provides protection for doctors in medical emergencies must begin with the fundamental awareness that law cannot remain confined to the realm of normative prescriptions and administrative procedures, but must evolve into a moral institution capable of affirming and safeguarding human dignity.[52] The concept of *dignified justice* offers an important philosophical foundation for this transformation. In this view, law is not a mechanical structure of commands and sanctions; rather, it constitutes an ethical space that recognizes and humanizes both doctors and patients as subjects with inherent worth.[53] Dignified justice requires that every legal norm operate within a framework that balances the intrinsic value of human life, ensuring that patients receive safe and effective medical treatment while simultaneously guaranteeing that doctors obtain adequate legal and moral protection for decisions made under emergency conditions. Within this conceptual framework, legal reform should move beyond procedural

[48] Jurnal Pembaharuan Hukum, 'JPH: Jurnal Pembaharuan Hukum Volume 7, Number 1, April 2020', 7.1 (2020), 16–30.
[49] Zeynep Esra Tarakçıoğlu, Bora Özdemir and Mehmet Necmeddin Sutaşır, 'Evaluation of Problems Arising in Emergency Services from the Perspectives of Medical and Criminal Law: The Example of TüRkiye', *Heliyon*, 10.22 (2024) <https://doi.org/10.1016/j.heliyon.2024.e39492>.
[50] Kevin Williams, 'Doctors as Good Samaritans: Some Empirical Evidence Concerning Emergency Medical Treatment in Britain', *Journal of Law and Society*, 30.2 (2003), 258–82 <https://doi.org/https://doi.org/10.1111/1467-6478.00256>.
[51] . Asmariah and Dadang Rochman, 'Implementation of Abortion Regulations on Medical Emergency Indications in Hospitals Based on Legal Aspects', *KnE Social Sciences*, 8.14 (2023), 80–90 <https://doi.org/10.18502/kss.v8i14.13821>.
[52] de Gray and Chapman.
[53] Olfa Mansouri, Nadia Yusuf and Chokri Kooli, 'Ethical Frontiers and Legal Boundaries: Proposing a Unified Framework for AI Regulation and Accountability', *Next Research*, 2.4 (2025), 101087 <https://doi.org/https://doi.org/10.1016/j.nexres.2025.101087>.

correctness and embrace a deeper legal morality that enables physicians to exercise their professional judgment without constant fear of criminalization.[54]

However, empirical conditions demonstrate that Indonesia's current health law system still falls short of this ethical aspiration. Data from the National Commission on Human Rights (Komnas HAM) (2022) show at least 70 public reports of alleged medical malpractice over the past five years, the majority of which escalated directly into criminal complaints without preliminary assessment by ethical or professional disciplinary bodies. Parallel findings from the Indonesian Medical Association (IDI) reveal that more than 60% of cases reviewed by the Indonesian Medical Disciplinary Honorary Council (MKDKI) should not have entered into criminal proceedings at all, as the issues were fundamentally ethical or administrative rather than criminal in nature.[55] Nevertheless, the absence of an integrated mechanism and weak institutional coordination cause many of these cases to be processed immediately by law enforcement agencies, despite the lack of medical context or ethical interpretation. This condition illustrates that the operational paradigm of health law in Indonesia remains predominantly repressive prioritizing formal legal processes and punitive approaches rather than protective, preventive, and humanistic as mandated by the dignified justice framework.[56]

The persistence of this repressive approach indicates a deeper structural flaw: the legal system has not yet internalized the moral dimensions of medical practice, especially in emergency settings where physicians must act quickly in conditions characterized by uncertainty, resource limitations, and high clinical risk.[57] Instead of recognizing emergency medical decisions as acts driven by professional duty and humanitarian obligation, the legal system often interprets adverse outcomes as evidence of negligence.[58] This misalignment between legal expectations and medical realities generates a climate of fear among physicians, which may deter timely intervention and ultimately endanger patient safety. Therefore, reconstructing the health legal system requires not only changes in legal norms but also a transformation of legal culture and institutional practices to ensure that law becomes a guardian of dignity protecting the rights, responsibilities, and humanity of both patients and medical professionals.[59]

In the context of medical emergencies, these issues become even more complex. Emergency situations require doctors to make decisions in a very short time, often without complete equipment or complete medical information.[60] According to research by the Ministry of Health (2023), approximately 18% of emergency cases in regional hospitals occur under conditions of limited facilities and delays in medical equipment. In such a context, the risk of treatment failure is part of the "uncertainty principle" in medical science. However, Indonesian positive law specifically Article 51, letter (d), of Law Number 29 of 2004 concerning Medical Practice only imposes an obligation on doctors to provide emergency assistance for humanitarian purposes, without any explicit article guaranteeing legal

[54] Silvi Sakinatunnisa and Nayla Alawiya, 'Legal Responsibility of Healthcare Facilities in the Management of Medical Emergencies', *Jurnal Hukum In Concreto*, 4.2 (2025), 257–270 <https://doi.org/10.35960/inconcreto.v4i2.1933>.

[55] Allison D Crawford and others, 'A Reproductive Justice Investigation of Utilizing Digital Interventions among Underserved Populations with Criminal Legal System Supervision: Policy Brief', *Nursing Outlook*, 73.2 (2025), 102349 <https://doi.org/https://doi.org/10.1016/j.outlook.2025.102349>.

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[58] Crawford and others.

[59] de Gray and Chapman.

[60] James G Hodge, Lexi C White and Andrew Sniegowski, 'Public Health and the Law: "Gaming the System" During Public Health Emergencies', *Journal of Law, Medicine & Ethics*, 40.3 (2012), 690–695 <https://doi.org/10.1111/j.1748-720X.2012.00700.x>.

protection if the results of medical treatment do not meet expectations. This imbalance in norms causes the law to lose its reflective capacity."[61]

From the perspective of Lawrence M. Friedman's legal system theory, this issue demonstrates an imbalance between legal substance, legal structure, and legal culture.[62] The legal substance demonstrates weaknesses in the formulation of norms that fail to recognise emergency conditions as a legitimate legal exception. The legal structure demonstrates fragmentation between ethical, disciplinary, and judicial institutions, so that the process of resolving medical cases often proceeds without coordination. Meanwhile, legal culture shows a low public understanding of the risks and probabilities in medical procedures, so that medical failures are often perceived as negligence or criminal violations. These three dimensions create a domino effect of professional fear among medical personnel, potentially reducing doctors' courage to make life-saving decisions.[63] To address this systemic problem, the reconstruction of health law must begin with a reformulation of the legal substance. Articles in Law No. 29/2004 and Law No. 36/2014 need to be updated to emphasise the principles of good faith and professional discretion in emergency medical practice.[64] Regulations must guarantee that doctors who act in accordance with standard operating procedures (SOPs), scientific knowledge, and a sincere intention to save lives cannot be subject to legal sanctions, so long as there is no element of intent or gross negligence. This reform will strengthen the principle of proportionality of legal responsibility, as recognised in the theory of restorative justice and humanistic jurisprudence, which assesses culpability not only by the consequences but also by the intention and moral context of the action.[65]

In terms of legal structure, it is necessary to establish an independent medico-legal institution as a forum for ethical and disciplinary clarification before medical cases can be processed criminally. This institution can act as a liaison between the MKDKI, MKEK, and law enforcement officials, ensuring that each case is reviewed professionally before entering the courts.[66] Such a model has proven effective in other countries: in the United States, the Good Samaritan Law provides legal protection for medical personnel who provide emergency assistance, as long as the actions are carried out without economic motives and within professional boundaries. In the United Kingdom, the General Medical Council (GMC) conducts fitness-to-practice reviews before ethical cases are brought to court. Meanwhile, in Japan, the Medical Accident Investigation System (JMSRO) focuses on ethical and systemic investigations rather than immediately criminalising doctors. These three models demonstrate that effective legal protection depends not only on normative texts but also on reflective and educative institutional design.[67]

In the Indonesian context, such an institution could be designed as the National Medical Ethics and Protection Enforcement Agency (BEPMN) under the coordination of the

[61] Francisco Epelde, 'Doctor on Board: Ethical, Legal, and Practical Reflections on Responding to in-Flight Medical Emergencies', *European Journal of Internal Medicine*, 141 (2025), 106417 <https://doi.org/https://doi.org/10.1016/j.ejim.2025.07.013>.

[62] Jahanzeb Shahid and others, 'Data Protection and Privacy of the Internet of Healthcare Things (IoHTs)', *Applied Sciences*, 12.4 (2022) <https://doi.org/10.3390/app12041927>.

[63] Tamara Kudaibergenova and others, 'Documentary Assessment of the Abilities of Kyrgyzstan's Research Ethics Committees During Public Health Emergency and Non-Emergency Situations', *Journal of Empirical Research on Human Research Ethics*, 18.3 (2023), 99–108 <https://doi.org/10.1177/15562646231176711>.

[64] Ryenchindorj Erkhembayar and others, 'Early Policy Actions and Emergency Response to the COVID-19 Pandemic in Mongolia: Experiences and Challenges', *The Lancet Global Health*, 8.9 (2020), e1234–41 <https://doi.org/10.1016/S2214-109X(20)30295-3>.

[65] Nicole Lurie and others, 'Local Variation In Public Health Preparedness: Lessons From California', *Health Affairs*, 23.Suppl1 (2004), W4-341-W4-353 <https://doi.org/10.1377/hlthaff.W4.341>.

[66] Chao Wang, Tao Zhang and Jiayi Tang, 'Exploring "Ritualized Institutions": Public Health Emergency Plans in China's Rural Communities', *Journal of Asian Public Policy*, 17.1 (2024), 68–87 <https://doi.org/10.1080/17516234.2022.2116767>.

[67] Dedet Steavanno, Zudan Arief Fakrulloh and Herman Bakir, 'Hospital Criminal Law Refusing Emergency Patient Medical Services', 2023 <https://doi.org/10.4108/eai.12-11-2022.2327372>.

Ministry of Health and the Indonesian Medical Association (IDI). BEPMN could be mandated to conduct pre-litigation reviews, provide ethical and legal recommendations to law enforcement officials, and act as a mediator in medical disputes.[68] Thus, the legal system would shift from a reactive to a preventive approach, from punishment to remediation, in progressive legal theory, which positions law as a tool for humanising human beings.[69]

In addition to updating substance and structure, legal reconstruction must also encompass a transformation of legal culture. Public perception of the medical profession must be directed toward a scientific understanding that medicine is a probabilistic discipline, fraught with risk, rather than an absolute profession that guarantees perfect results.[70] Health law literacy campaigns, training law enforcement officers in medical ethics, and collaboration between law universities and medical schools can foster an empathetic and rational legal culture. Countries like Finland and Sweden have demonstrated that humanistic legal systems grow from public education that places justice and empathy as shared social values.[71] Classical medical ethical values, such as beneficence, non-maleficence, justice, and autonomy, must be incorporated into the design of positive law.[72] By making dignified justice a philosophical foundation, Indonesian health law will undergo a paradigm shift from a repressive to an affirmative and reflective legal system. The law will no longer act as a frightening tool of control, but as an ethical space that fosters moral courage and professionalism among physicians. Thus, health law will not only protect patients from mistakes but also protect physicians from fear, realising justice that is not only legally correct but also humanly just.[73]

Conclusion

Based on the overall analysis, this study concludes that the reconstruction of the health legal system to protect doctors in medical emergency situations cannot be pursued in isolation, but must be undertaken through a systemic approach that simultaneously reforms the substance, structure, and culture of the law. These three dimensions constitute an integrated legal system that determines whether the law is capable of delivering dignified justice within medical practice. First, at the substantive level, positive legal norms in Indonesia, particularly the Medical Practice Law (Law Number 29 of 2004) and the Health Workers Law (Law Number 36 of 2014), require reformulation to explicitly emphasise the principles of good faith and professional discretion in emergency medical actions. Legal protection for doctors who act in accordance with professional standards and standard operating procedures must be expressly guaranteed to prevent disproportionate criminalisation. Such protection does not imply immunity from legal accountability, but rather affirms rational, moral, and professional responsibility. Second, from a structural perspective, the Indonesian health legal system requires the establishment of an independent medicolegal institution that functions as an integrative liaison between ethical, disciplinary, and criminal law mechanisms. Comparative institutional models, such as the Good

[68] Gregory L Larkin and others, 'The Emergency Physician and Patient Confidentiality: A Review', *Annals of Emergency Medicine*, 24.6 (1994), 1161–67 <https://doi.org/https://doi.org/10.1016/S0196-0644(94)70249-7>.

[69] Zafar Mahfooz Nomani and Rehana Parveen, 'Legal Dimensions of Public Health with Special Reference to COVID-19 Pandemic in India', 11.7 (2020), 131–34.

[70] Stephan Achenbach, Susanna Price and Thomas Schmitt, 'Medical Emergencies on Board Commercial Passenger Flights: What You Need to Know: An ESC TV Today Interview with Lufthansa Physician Dr Thomas Schmitt', *European Heart Journal*, 44.31 (2023), 2883–84 <https://doi.org/10.1093/eurheartj/ehad066>.

[71] Kenshata Watkins and others, 'Race, Neighborhood Disadvantage, and Prehospital Law Enforcement Handcuffing in Children With Behavioral Health Emergencies', *JAMA Network Open*, 7.11 (2024), e2443673–e2443673 <https://doi.org/10.1001/jamanetworkopen.2024.43673>.

[72] Derlet and Young.

[73] Endah Triwulandari and Edy Tarsono, 'Socio-Juridic Analysis of Abortion According to Article 75 of Law Number 36 / 2009 Concerning on Health and Law Number 35 / 2014 Concerning on Child Protection', 1.2 (2022), 43–59.

Samaritan framework in the United States, the General Medical Council in the United Kingdom, and Japan's Medical Accident Investigation System, demonstrate that effective legal protection depends on transparent, educational, and professionally grounded institutional designs. The formation of a comparable body in Indonesia would represent a concrete step toward a more just and humanistic health law system. Third, at the level of legal culture, a paradigm shift is essential to foster a more nuanced understanding of the inherent risks and complexities of medical practice. Public education, training for law enforcement officials, and the strengthening of medical ethics literacy are crucial to cultivating a legal culture that is empathetic, rational, and reflective. Without such cultural transformation, formal legal reforms risk becoming merely symbolic. Ultimately, the reconstruction of a just and dignified health legal system must be understood as a moral and intellectual commitment to humanising the law, positioning doctors as ethical subjects entrusted with a humanitarian mission rather than objects of punishment.

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