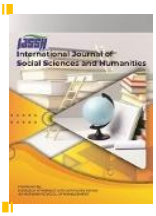

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Legal Uncertainty in the Criminal Liability of Health Workers: A Normative Analysis of Article 440 of the Health Law and Article 360 of the Criminal Code

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Abstract

Article 440(1) of Law Number 17 of 2023 on Health introduces a specific provision governing the criminal liability of health workers for medical negligence resulting in serious injury. Nevertheless, Supreme Court Decision Number 1241 K/Pid/2025 demonstrates that courts continued applying Article 360(1) of the Criminal Code despite the prosecutor's indictment under Article 440. This study analyses the normative relationship between both provisions and its implications for legal certainty in medical negligence cases. The research employs a normative juridical method using statutory, conceptual, and case approaches. The findings show that the district court, high court, and Supreme Court consistently relied on Article 360 of the Criminal Code in convicting a nurse who performed circumcision without a practice licence outside an authorised health facility, causing permanent injury to a child patient. The judgments did not adequately address the applicability of Article 440 as a specific provision concerning medical negligence. The study identifies conflicts, overlaps, and vagueness of norms that contribute to inconsistent judicial interpretation. Therefore, clearer legislative formulation and Supreme Court guidelines are required to ensure legal certainty and consistency in adjudicating medical negligence cases involving health workers.

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Introduction

The enactment of Law Number 17 of 2023 on Health constitutes a major transformation in the Indonesian health legal system. Through this legislation, the government consolidated numerous fragmented health regulations into a comprehensive statutory framework governing health administration, medical services, pharmaceutical regulation, health financing, and the legal responsibilities of health personnel. Among the most significant changes introduced by the Health Law is Article 440 paragraph (1), which specifically regulates criminal liability for health workers whose negligence causes serious injury to patients. The provision prescribes a maximum penalty of three years' imprisonment or a fine of up to IDR 250,000,000. The emergence of this provision is legally important because, prior to the enactment of the Health Law, criminal liability for medical negligence was generally prosecuted under Articles 359 and 360 of the Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana/KUHP), which apply broadly to all forms of negligence causing death or serious bodily harm (Quick, 2020; Herring, 2022).

The presence of Article 440 reflects a broader phenomenon within contemporary Indonesian criminal legislation, namely the expansion of criminal norms outside the Criminal Code through sector-specific statutes. This development has generated increasingly complex questions regarding the relationship between general criminal provisions and special criminal provisions enacted in administrative or professional legislation. Within criminal law doctrine, the principle lex specialis derogat legi generali is commonly understood to require the application of a more specific provision when two norms regulate substantially similar conduct (Kelsen, 1967). Nevertheless, the implementation of this principle is not always straightforward in judicial practice. The determination of whether a provision truly constitutes lex specialis depends not merely upon its existence within a special statute, but also upon the similarity of legal elements, legislative intent, protected legal interests, and the structure of criminal responsibility regulated by the law itself (Hadjon, 2011). Consequently, the enactment of Article 440 has raised an important normative debate concerning whether medical negligence committed by health workers should continue to be prosecuted under Article 360 KUHP or whether the Health Law has established an autonomous criminal regime specifically intended for professional medical negligence (Putri & Santoso, 2023).

The issue becomes increasingly relevant when examined within the framework of the legality principle (nullum delictum nulla poena sine praevia lege poenali), which forms one of the foundational principles of Indonesian criminal law. Article 1 paragraph (1) of both the old and the new Criminal Codes requires that criminal liability be based upon clear and previously established legal provisions. In this regard, legal certainty (rechtszekerheid) functions not only as a technical requirement of criminal legislation but also as a constitutional guarantee intended to protect individuals from arbitrary law enforcement (Radbruch, 1946; Otto, 2010). For health workers, legal certainty possesses particular significance because medical practice inherently involves risk, uncertainty, and the possibility of adverse outcomes even where professional standards have been observed. Unlike ordinary negligence committed in everyday social interactions, medical negligence occurs within a professional environment characterised by specialised expertise, emergency decision-making, therapeutic risk, and procedural limitations (Montgomery, 2019). For this reason, many legal systems distinguish professional medical negligence from ordinary negligence through disciplinary mechanisms, procedural safeguards, or differentiated standards of criminal accountability (Cohen & Shachar, 2020).

In this context, the Health Law appears to establish a more structured framework for resolving disputes involving health workers. Article 304 mandates the establishment of the Professional Discipline Council (Majelis Disiplin Profesi/MDP), while Article 308 requires recommendations from the MDP prior to criminal investigation against health workers. Furthermore, Article 310 emphasises the prioritisation of alternative dispute resolution before litigation is pursued. Systemically interpreted, these provisions demonstrate legislative recognition that disputes arising from medical services should not immediately be transformed into criminal proceedings without prior professional evaluation. The law therefore appears to construct a gradual accountability mechanism that balances patient protection with legal protection for health workers performing professional duties (Rachman et al., 2024). Similar models have also been observed in several comparative jurisdictions where disciplinary assessment mechanisms function as preliminary safeguards before criminal prosecution is initiated against medical professionals (Herring, 2022).

However, the normative expectations embodied in the Health Law appear to diverge from contemporary judicial practice. This tension is clearly illustrated in Supreme Court Decision Number 1241 K/Pid/2025. The case concerned a nurse employed at RS Prikasih Jakarta who conducted circumcision on a four-year-old child outside a licensed health facility and without an independent Practice Licence (Surat Izin Praktik/SIP). During the procedure, the laser device allegedly ceased functioning, prompting the defendant to continue the operation using surgical scissors, which resulted in permanent injury to the child's genital organ. Although the public prosecutor indicted the defendant under Article 440 of the Health Law and sought criminal punishment together with restitution, the Cibinong District Court, Bandung High Court, and ultimately the Supreme Court convicted the defendant under Article 360 paragraph (1) KUHP. More importantly, the Supreme Court affirmed the lower court judgment without substantially explaining the normative relationship between Article 440 of the Health Law and Article 360 KUHP, despite the prosecutor's explicit reliance on the Health Law provision.

The judicial approach adopted in this case demonstrates a broader problem concerning legal certainty and consistency in the adjudication of medical negligence cases in Indonesia. On the one hand, Article 440 may be interpreted as reflecting legislative intent to establish a more specific criminal framework applicable to health workers. On the other hand, courts continue to rely upon the general negligence provisions of the Criminal Code without comprehensive doctrinal justification concerning the applicability of the lex specialis principle. This situation creates uncertainty regarding the limits of criminal liability for health workers, the practical relevance of professional disciplinary mechanisms, and the coherence of criminal law enforcement within the health sector (Quick, 2020; Otto, 2010). In the broader context of health law reform, inconsistent judicial interpretation may ultimately undermine both professional legal protection and public trust in the criminal justice system governing medical services.

Based on these considerations, this study examines three principal issues: first, the regulation of the legal status and authority of health workers within Indonesian law and its implications for criminal liability; second, the normative problems arising from judicial application of Article 440 of the Health Law in relation to Article 360 KUHP; and third, the legal reconstruction necessary to achieve legal certainty and consistency in medical negligence prosecutions involving health workers.

Methods

This study employs a socio-juridical research design with a descriptive-analytical character. The socio-juridical approach was selected because the research does not merely examine legal norms as

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written in statutory regulations (das sollen), but also analyses how those norms are interpreted and implemented in judicial practice (das sein). Accordingly, this method is considered appropriate for examining the discrepancy between the normative formulation of Article 440 paragraph (1) of Law Number 17 of 2023 on Health and its practical application in criminal adjudication involving medical negligence committed by health workers.

The study combines three analytical approaches. First, the statutory approach (statute approach) is utilised to examine the hierarchy, consistency, and interrelationship of legal provisions governing criminal liability for medical negligence. The analysis focuses particularly on Article 440 of the Health Law, Articles 359–361 of the Indonesian Criminal Code (KUHP), Law Number 1 of 2023 concerning the New Criminal Code, and other related regulations concerning health workers and professional discipline. Second, the conceptual approach is employed to analyse relevant legal doctrines and theoretical frameworks concerning criminal liability, the principle of lex specialis derogat legi generali, legal certainty, and professional accountability within criminal law. In this regard, the study refers to the legal theories and doctrinal perspectives developed by scholars such as Moeljatno, Barda Nawawi Arief, Hans Kelsen, Philipus M. Hadjon, Gustav Radbruch, and Jan Michiel Otto. Third, the case approach is applied through an in-depth examination of Supreme Court Decision Number 1241 K/Pid/2025 together with its lower-court decisions, namely Bandung High Court Decision Number 55/PID/2025/PT BDG and Cibinong District Court Decision Number 621/Pid.Sus/2024/PN Cbi. These decisions function as the principal empirical basis for analysing judicial interpretation concerning the relationship between Article 440 of the Health Law and Article 360 KUHP.

The legal materials used in this study are divided into three categories. Primary legal materials consist of statutory regulations, court decisions, and official legal documents relevant to the subject matter of the research. These include Law Number 17 of 2023 on Health, Law Number 1 of 2023 concerning the Criminal Code, Law Number 12 of 2011 concerning the Formation of Laws and Regulations, Ministerial Regulation Number 3 of 2025 concerning Professional Discipline, and the judicial decisions examined in this study. Secondary legal materials comprise books, scientific journal articles, legal commentaries, and academic writings discussing medical negligence, criminal liability, and legal certainty. Tertiary legal materials include legal dictionaries, encyclopaedias, and forensic medical glossaries used to clarify legal and technical terminology.

Data collection was conducted through systematic library research using both offline and online sources. Offline research was undertaken through faculty law libraries and institutional repositories, while online research utilised academic databases and official legal portals, including Google Scholar, Garuda, and government websites containing statutory and judicial documents. The collected legal materials were subsequently analysed qualitatively through several stages, namely data collection and classification, editing and systematisation of legal materials, interpretative analysis using grammatical, systematic, and teleological methods of interpretation, and finally synthesis to formulate normative conclusions and recommendations concerning the application of criminal law in medical negligence cases involving health workers.

Results and Discussions

1. Legal Status and Authority of Health Workers Under Law Number 17 of 2023 on Health

Law Number 17 of 2023 on Health fundamentally restructures the Indonesian health legal system by integrating numerous sectoral regulations into a unified statutory framework governing health services, professional accountability, and public health administration. One of the most important reforms introduced by the Health Law is the differentiation between "Medical Personnel" (Tenaga Medis) and "Health Workers" (Tenaga Kesehatan). Article 1 paragraph (6) defines Medical Personnel as individuals who have completed professional education in medicine or dentistry, whereas Article 1 paragraph (7) defines Health Workers as persons possessing higher education qualifications in non-medical health sciences. Nurses are expressly categorised as Health Workers under Article 199 paragraph (1) letter b of the Health Law. This classification is not merely administrative in character but produces direct legal implications concerning professional authority, disciplinary jurisdiction, and criminal liability.

The legal authority of health workers is closely connected to Indonesia's licensing system. Under the Health Law, professional practice requires both a Registration Certificate (Surat Tanda Registrasi/STR) and a Practice Licence (Surat Izin Praktik/SIP). The STR confirms professional competency and registration status, while the SIP determines the specific location and legal scope of practice. Article 264 paragraphs (2) and (6) of the Health Law stipulate that the SIP is facility-specific and becomes invalid once medical services are performed outside the authorised institution. Consequently, a nurse who performs clinical procedures outside the licensed facility acts beyond the legally recognised scope of professional authority. Similar observations were expressed by Soge (2019), who argues that professional licensing in Indonesian health law functions not only as an administrative requirement but also as a legal boundary separating lawful professional conduct from unlawful medical practice.

The issue of professional competence becomes increasingly significant in relation to circumcision procedures. According to the Indonesian Medical Competency Standards (Standar Kompetensi Dokter Indonesia/SKDI), circumcision constitutes a Level 4A medical competency requiring independent performance by licensed physicians. Ministerial Regulation Number 26 of 2019 concerning Delegation of Medical Actions further restricts delegated medical procedures by nurses to situations involving written delegation from physicians within authorised health facilities. Thus, the defendant in Supreme Court Decision Number 1241 K/Pid/2025 lacked both institutional authority and professional competence when independently conducting circumcision outside a licensed medical facility. Kurniawan (2025) notes that medical actions performed outside legally authorised competence frameworks frequently generate dual legal consequences, namely professional disciplinary liability and criminal responsibility.

The Health Law additionally introduces a differentiated procedural framework for disputes involving health workers. Article 304 mandates the establishment of the Professional Discipline Council (Majelis Disiplin Profesi/MDP), while Article 308 paragraph (1) requires disciplinary assessment before criminal investigation proceeds. Article 310 also prioritises alternative dispute resolution mechanisms before litigation. These provisions demonstrate legislative recognition that disputes arising from medical services possess characteristics different from ordinary criminal negligence cases. Rachman et al. (2024) argue that the Health Law reflects an attempt to balance patient protection with legal protection for health workers operating within high-risk professional

environments. From this perspective, criminal punishment becomes a last resort rather than the primary mechanism for resolving medical disputes.

This differentiated approach is theoretically consistent with broader doctrines concerning professional criminal liability. Moeljatno emphasises that criminal responsibility cannot be detached from the normative status of the actor within the legal system. Likewise, Barda Nawawi Arief explains that criminal law policy must integrate fairness, legal certainty, and proportionality in determining liability for professional actors. Within medical practice, negligence frequently arises within contexts characterised by scientific uncertainty, therapeutic risk, and emergency decision-making. Consequently, several comparative legal systems distinguish professional medical negligence from ordinary negligence through specialised disciplinary or procedural safeguards (Otto, 2010).

However, despite the normative framework established by the Health Law, institutional implementation remains weak. At the time Supreme Court Decision Number 1241 K/Pid/2025 was adjudicated, the MDP mechanism had not yet operated effectively. The absence of functioning disciplinary review mechanisms significantly affected the judicial process because courts lacked professional assessment concerning whether the defendant's conduct constituted disciplinary misconduct, civil negligence, or criminal negligence. As observed by Hadjon (2011), ineffective legal institutions often create discrepancies between normative expectations (das sollen) and legal reality (das sein), particularly in sectors undergoing rapid regulatory transition.

2. Normative Conflict Between Article 440 of the Health Law and Article 360 of the Criminal Code

The principal issue arising in Supreme Court Decision Number 1241 K/Pid/2025 concerns the normative relationship between Article 440 of the Health Law and Article 360 paragraph (1) of the Indonesian Criminal Code. Article 440 specifically regulates negligence committed by "Medical Personnel or Health Workers" causing serious bodily injury to patients, whereas Article 360 KUHP broadly regulates negligence causing serious bodily injury to "any person." From a doctrinal perspective, Article 440 possesses several characteristics associated with lex specialis norms, including a specific legal subject, specialised professional context, and integration with disciplinary review procedures. The principle lex specialis derogat legi generali traditionally requires that more specific norms prevail over general norms regulating substantially similar conduct. Hans Kelsen explains that norm conflicts within legal systems must be resolved through interpretative principles capable of preserving coherence and systematic consistency. Similarly, Philipus M. Hadjon argues that special norms are intended to regulate specialised legal relationships more proportionally than general legal provisions. In the context of medical negligence, Article 440 may therefore be interpreted as a legislative attempt to create a differentiated criminal liability framework specifically directed at professional medical conduct.

The facts of the case demonstrate that the constituent elements of Article 440 were substantially fulfilled. First, the defendant was a registered nurse and therefore qualified as a "Health Worker" under Article 1 paragraph (7) and Article 199 paragraph (1) letter b of the Health Law. Second, negligence (culpa) was evident from several acts, including failure to verify the operational readiness of the laser device, continuation of the circumcision after equipment malfunction, and substitution of surgical instruments without adequate procedural caution. Third, forensic examination confirmed permanent bodily injury suffered by the child victim. Consequently, the public prosecutor indicted the defendant under Article 440 and sought imprisonment together with restitution. Despite these circumstances, the Cibinong District Court, Bandung High Court, and Supreme Court uniformly

applied Article 360 paragraph (1) KUHP rather than Article 440. The district court reasoned that the defendant was not acting within his official professional duties because the circumcision occurred outside the hospital where he was employed. The Supreme Court subsequently affirmed the lower court's interpretation without substantial normative reasoning regarding the relationship between both provisions.

The restrictive interpretation adopted by the courts is doctrinally problematic for several reasons. First, it conflates professional identity with institutional location. A nurse remains legally recognised as a health worker regardless of where the medical act occurs. Professional status derives from education, registration, and licensing rather than geographical location alone. As Moeljatno explains, legal responsibility inheres in the actor's normative status rather than merely situational circumstances. Accordingly, the absence of institutional authorisation should constitute an aggravating factor rather than a reason to exclude application of Article 440. Second, the interpretation creates paradoxical legal consequences. A health worker who performs medical acts outside authorised facilities, thereby increasing professional risk and violating licensing requirements, effectively escapes the specialised provision intended specifically for health workers. Such reasoning undermines the legislative purpose underlying Article 440 and weakens the coherence of criminal law policy in the health sector. Barda Nawawi Arief argues that criminal law interpretation should avoid producing protection gaps (rechtsgutverletzung) that contradict the social objectives of legal regulation.

Third, the courts failed to provide adequate doctrinal reasoning concerning the applicability of lex specialis principles. Gustav Radbruch emphasises that legal certainty requires not only the existence of clear legal rules but also transparent and consistent judicial interpretation. Jan Michiel Otto similarly identifies predictability and consistency as essential components of effective legal systems. In the present case, the Supreme Court merely stated that the lower court had correctly applied the law without explaining why Article 440 was disregarded despite explicit reliance by the prosecutor. Such limited reasoning creates uncertainty concerning the future application of Article 440 in similar medical negligence cases. The discrepancy between the prosecutor's indictment and the court's reasoning also demonstrates broader inconsistency in criminal law enforcement. The prosecutor requested two years and six months' imprisonment together with restitution exceeding IDR 230 million under Article 440. However, the courts ultimately imposed a ten-month suspended sentence under Article 360 KUHP without restitution. This disparity illustrates how differing normative interpretations may substantially affect sentencing severity, victim protection, and legal predictability.

3. Factors Contributing to Legal Uncertainty in Medical Negligence Cases

Several factors contribute to the normative uncertainty reflected in Supreme Court Decision Number 1241 K/Pid/2025. First, no Supreme Court Regulation (PERMA) or Supreme Court Circular Letter (SEMA) currently provides technical guidance concerning the relationship between Article 440 of the Health Law and general negligence provisions under the Criminal Code. Consequently, judges retain broad interpretative discretion in determining whether Article 440 should function as lex specialis in medical negligence cases. As noted by Rachman et al. (2024), the absence of interpretative uniformity remains one of the principal obstacles to legal certainty in Indonesian health law adjudication.

Second, Article 440 itself contains normative ambiguity. The provision does not explicitly clarify whether its application extends to medical acts performed outside authorised health facilities. This ambiguity permits restrictive interpretations that may conflict with the broader objectives of the Health

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Law. Kelsen's theory of normative hierarchy suggests that ambiguity within specialised legislation frequently generates interpretative conflict when courts continue relying upon older general provisions possessing more established jurisprudence.

Third, judicial conservatism and institutional path dependency contribute significantly to continued reliance upon Article 360 KUHP. For more than a century, Indonesian negligence prosecutions involving medical harm were processed using general negligence provisions under the Criminal Code. Article 440, by contrast, represents a relatively recent legislative innovation lacking extensive jurisprudential support. Kurniawan (2025) observes that judges within transitional legal systems frequently prefer familiar legal frameworks in order to minimise interpretative uncertainty and maintain continuity in adjudication.

Fourth, the ineffective operation of the Professional Discipline Council (MDP) weakens the procedural safeguards envisioned by the Health Law. Ministerial Regulation Number 3 of 2025 formally operationalises the MDP mechanism, yet institutional implementation remained limited during the relevant period of adjudication. Without disciplinary evaluation, courts lack professional-technical assessment capable of distinguishing between disciplinary violations, ethical misconduct, and criminal negligence. According to Hadjon (2011), ineffective institutional coordination frequently produces gaps between legislative intention and practical law enforcement.

The urgency of resolving these normative conflicts will increase following the implementation of Law Number 1 of 2023 concerning the New Criminal Code. Article 474 paragraph (1) of the New Criminal Code regulates negligence causing serious bodily injury with a lighter maximum penalty than Article 440 of the Health Law. Consequently, future medical negligence cases may involve overlapping application among Article 440 of the Health Law, Article 474 of the New Criminal Code, and transitional application of Article 360 KUHP. Without clear doctrinal guidance, practitioners, prosecutors, and defendants will face substantial uncertainty concerning which legal regime governs particular medical conduct.

From the perspective of legal certainty theory, such overlap threatens predictability, consistency, and equality before the law. The Supreme Court possesses constitutional responsibility to ensure uniformity in legal interpretation under Article 30 paragraph (1) of Law Number 14 of 1985 concerning the Supreme Court. Nevertheless, Supreme Court Decision Number 1241 K/Pid/2025 failed to provide adequate doctrinal clarification regarding the normative relationship between specialised medical negligence provisions and general criminal negligence norms. Instead of resolving uncertainty, the decision risks perpetuating inconsistent judicial practice in future medical negligence cases.

Accordingly, several reforms are necessary. The legislature should clarify the scope and applicability of Article 440, particularly concerning medical acts performed outside authorised health facilities. The Supreme Court should additionally issue technical interpretative guidance concerning the interaction between Article 440 and general negligence provisions under both the old and new Criminal Codes. Finally, institutional strengthening of the Professional Discipline Council is essential to ensure that medical disputes undergo professional evaluation before criminal prosecution proceeds. Without such reforms, the differentiated accountability framework established by the Health Law will remain normatively fragmented and practically ineffective.

Conclusion

This study demonstrates that Indonesian health law has established a comprehensive normative framework governing the legal status, authority, and criminal accountability of health workers through

Law Number 17 of 2023 on Health. The Health Law adopts a tiered accountability model consisting of professional disciplinary review through the Professional Discipline Council (Majelis Disiplin Profesi/MDP), prioritisation of alternative dispute resolution, and criminal prosecution as ultimum remedium. Normatively, this framework reflects legislative recognition that medical negligence differs from ordinary negligence because health workers operate within professional environments characterised by scientific uncertainty, therapeutic risk, and specialised competence. Nevertheless, the implementation of this framework remains institutionally weak, particularly due to the ineffective operation of the MDP mechanism and the absence of integrated procedural coordination between disciplinary and criminal law enforcement institutions.

The study further finds that Supreme Court Decision Number 1241 K/Pid/2025 reveals a substantial normative inconsistency in the judicial application of Article 440 of the Health Law. Although the factual and legal elements of Article 440 were substantially fulfilled, the district court, high court, and Supreme Court uniformly applied Article 360 paragraph (1) of the Criminal Code without comprehensive doctrinal justification regarding the relationship between both provisions. The restrictive interpretation adopted by the courts, which linked the applicability of Article 440 solely to authorised institutional settings, creates legal uncertainty and weakens the function of Article 440 as a specialised provision governing medical negligence involving health workers. This normative gap is influenced by several interconnected factors, including ambiguity within Article 440 itself, the absence of Supreme Court interpretative guidance, judicial reliance upon established Criminal Code provisions, and the non-functioning disciplinary review mechanism envisioned by the Health Law.

Based on these findings, this study recommends several normative and institutional reforms. The Supreme Court should issue technical guidelines through a Supreme Court Regulation (PERMA) or Circular Letter (SEMA) clarifying the relationship between Article 440 and general negligence provisions under the Criminal Code. The legislature should also provide further clarification concerning the scope and applicability of Article 440, particularly regarding medical acts performed outside authorised health facilities. In addition, the Ministry of Health should accelerate the operationalisation of the Professional Discipline Council to ensure that professional assessment mechanisms function effectively before criminal prosecution proceeds. Strengthening coordination between disciplinary institutions and criminal law enforcement agencies is essential to achieve consistency, legal certainty, and proportionality in the adjudication of medical negligence cases involving health workers.

This study is limited by its focus on a single judicial case study and normative doctrinal analysis. Consequently, the findings may not fully represent broader judicial tendencies across different regions or categories of medical negligence cases in Indonesia. Future research should therefore undertake comparative empirical analysis of multiple court decisions involving Article 440, examine prosecutorial and judicial interpretation patterns following the implementation of the New Criminal Code, and explore comparative approaches to medical negligence regulation in other jurisdictions to enrich the development of Indonesian health criminal law.

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