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## Reframing Medical Malpractice Resolution: Restorative Justice between Indonesian Criminal Law and *Iṣlāḥ* in Contemporary Islamic Law

**Abstract:** The enactment of Law Number 1 of 2023 on the Indonesian Criminal Code marks a shift in Indonesia's criminal justice paradigm from retributive punishment toward restorative justice, emphasizing victim recovery, proportional accountability, and substantive justice. This transformation is particularly relevant to medical malpractice cases, which involve complex intersections of professional standards, medical ethics, and patient rights. Conventional punitive approaches have often failed to ensure victim restoration while risking excessive criminalization of medical practitioners. This study aims to analyze the application of restorative justice within the Indonesian criminal law system to resolve medical malpractice cases and to comparatively examine its conceptual convergence with the principle of *iṣlāḥ* in contemporary Islamic law, a peace-oriented dispute-resolution mechanism. This research employs a normative juridical approach by analyzing statutory regulations, legal doctrines, and contemporary Islamic legal scholarship related to restorative justice and *iṣlāḥ*. The analysis focuses on the philosophical foundations, normative structures, and practical implications of both legal frameworks. The findings reveal that the post-reform Indonesian Criminal Code provides a broader normative space for integrating restorative justice principles into criminal policy, including in the handling of medical malpractice disputes. Meanwhile, *iṣlāḥ* in contemporary Islamic legal thought emphasizes reconciliation, deliberation, proportional responsibility, and restoration of rights, grounded in Qur'anic values and Prophetic traditions. Comparatively, both frameworks demonstrate a shared restorative orientation that prioritizes balanced protection of victims and practitioners, social harmony, and sustainable conflict resolution, despite differences in epistemological foundations and normative sources. This study contributes to the development of an integrative restorative model by demonstrating the normative compatibility between Indonesian criminal law reform and Islamic legal principles, offering a more equitable, proportionate, and human-centered approach to resolving medical malpractice disputes in contemporary Indonesia.

**Keywords:** *Islah*; Islamic law; Medical Malpractice; Restorative Justice; Sentencing Reform.

## INTRODUCTION

The development of modern criminal law has seen a significant shift from a retributive to a more restorative approach.<sup>1</sup> This shift is driven by criticism of the classical penal system, which is considered too punishment-oriented and does not provide space for victim recovery, reintegration of perpetrators, and social harmonization.<sup>2</sup> In the Indonesian context, these changes gained normative legitimacy through the enactment of Law Number 1 of 2023 concerning the Criminal Code, which no longer views punishment solely as a means of retribution but also as an instrument for restoring balance and protecting human dignity.<sup>3</sup>

This paradigm transformation becomes particularly relevant when it is associated with cases of medical malpractice. Medical malpractice is not a criminal offense that can be understood simply as a conventional crime. It is at the intersection of criminal law, civil law, administrative law, and the ethics of the medical profession. In practice, medical errors can range from professional negligence to unavoidable medical risks.<sup>4</sup> The blurring of the line between malpractice and medical complications often leads to the criminalization of medical personnel, even in situations that are more substantively understood as professional risks.<sup>5</sup>

An overly repressive approach to malpractice cases can trigger a domino effect detrimental to the health care system. On the one hand, victims do need protection and support for the losses they have experienced. However, on the other hand, excessive

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<sup>1</sup> Nur Rochaeti et al., 'A Restorative Justice System in Indonesia: A Close View from the Indigenous People Practices', *Sriwijaya Law Review*, 27 January 2023, 87-104, <https://doi.org/10.28946/slrev.Vol7.Iss1.1919.pp87-104>.

<sup>2</sup> Purnomo, Hadi, Baharudin, and Mohammad Nasr Khater. 'The Return of State Finances: Effectiveness of the New Paradigm in Enforcing of Law on Corruption Crimes Cases'. *Jurnal Hukum Unissula* 41, no. 4 (2025): 1078-1092. <https://doi.org/10.30659/jh.v41i4.47218>.

<sup>3</sup> Muhammad Andy Lesmana, Muzdalifah, and Yamani Naufal, 'Efektivitas Restorative Justice Berbasis Kearifan Lokal Sebagai Sarana Penyelesaian Perkara Pidana Pada Masyarakat Banjar', *RIO LAW JURNAL* 5, no. 1 (February 2024): 1, <https://doi.org/10.36355/rlj.v5i1.1246>.

<sup>4</sup> Ahdiana Yuni Lestari and Muhammad Endriyo Susila, 'Konstruksi Hukum Malpraktik Medik Dalam Perspektif Hukum Islam', *Jurnal Media Hukum* 16, no. 1 (2009), <https://doi.org/10.18196/jmh.v16i1.15477>.

<sup>5</sup> Nurmalah, Hamzeh Abu Issa, Hendro Widodo, H. D. Djunaedi, and Anhdika Yuli Rimbawan. 'The Criminalization of Civil Disputes: A Legal Analysis of the Application of Criminal Charges in Cases Involving State Finances'. *Jurnal Hukum Unissula* 41, no. 4 (2025): 861-879. <https://doi.org/10.30659/jh.v41i4.48749>.

criminalization of doctors can lead to defensive medicine, lower the quality of health services, and create fear in medical practice.<sup>6</sup> Lengthy and confrontational criminal justice processes also do not always provide adequate dialogue space for victims to obtain clarity, confession,<sup>7</sup> and meaningful restoration. This condition shows the need to formulate a more proportionate, fair, and reconciliation-oriented approach to resolving cases.<sup>8</sup>

Within this framework, the concept of restorative justice exists as an alternative paradigm that offers dialogue-based, responsible, and restorative solutions. Restorative justice views criminal acts not solely as a violation against the state, but as a loss to individuals and social relations. Therefore, the focus of the settlement is on the recovery of victims, the recognition of the perpetrators' responsibility, and the reconstruction of social harmony. This approach is conceptually in line with the characteristics of medical disputes that are essentially rooted in the relationship of trust between physician and patient.

Interestingly, the idea of restorative justice<sup>9</sup> is not something unfamiliar in the Islamic legal tradition. Contemporary Islamic law recognizes the concept of *islah*, a dispute-resolution mechanism based on peace, deliberation, and reconciliation, oriented towards restoring rights and social balance. This concept has a normative foundation in the Qur'an and Sunnah, and develops in the *fiqh* tradition as part of conflict resolution that prioritizes substantive justice and benefits. In the modern context, *islah* is understood not only as a private settlement but also as a mechanism that can be integrated into the national legal system, provided it does not conflict with the principles of justice and legal certainty.

However, studies that comprehensively compare restorative justice in the Indonesian penal system with the concept of *islah* in contemporary Islamic law, particularly in the context of medical malpractice, remain relatively limited. Some previous studies can

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<sup>6</sup> Jelita Suryani Siregar et al., 'Malpraktik Tenaga Kesehatan Dalam Perspektif Hukum Islam', *Jurnal Kesmas Prima Indonesia* 8, no. 1 (January 2024): 5-14, <https://doi.org/10.34012/jkpi.v8i1.4629>.

<sup>7</sup> Mardhiah, A., Rizanizarli, Gani, I. A., Rahayu, S. W., & Khater, M. N. (2025). The femicide in Indonesia: Critical analysis and innovative legal reconstruction. *Jurnal Hukum UNISSULA*, 42(1), 139-166. <https://doi.org/10.30659/jh.v42i1.45735>

<sup>8</sup> Gomgom T. P. Siregar, 'Analisis Yuridis Perlindungan Hukum terhadap Pasien dalam Kasus Tindak Pidana Malpraktek Menurut Undang-Undang No. 29 Tahun 2004 tentang Praktik Kedokteran', *ARBITER: Jurnal Ilmiah Magister Hukum* 5, no. 2 (November 2023): 251-262, <https://doi.org/10.31289/arbiter.v5i2.2834>.

<sup>9</sup> Laksana, Andri Winjaya, Muhammad Ridwan Lubis, Denny Suwondo, Muhammad Ngazis, and Ratih Mega Puspa Sari. "Integrating Maqasid al-Shari'ah in Contemporary Islamic Legal Reform on Drug Policy." *MILRev: Metro Islamic Law Review* 4, no. 1 (2025): 416-439. DOI: <https://doi.org/10.32332/milrev.v4i1.10665>

be considered early groundwork. First, research on the application of restorative justice in the Indonesian criminal justice system generally focuses on general criminal acts such as misdemeanors, children's cases, or economic crimes.<sup>10</sup> These studies highlight normative and implementational aspects but have not specifically examined their application in medical malpractice cases, which have their own professional and ethical complexities.

Second, several studies in health law examine doctors' criminal liability in malpractice cases, focusing on the boundary between negligence and medical risk.<sup>11</sup> However, the approach used tends to remain within a retributive or civil framework, without developing a restorative settlement model that is integrated with national criminal policies. Third, studies of the concept of *islah* in contemporary Islamic law generally address it in the context of family law, civil disputes, or social conflicts, without explicitly linking it to cases of medical malpractice in the modern national legal system.<sup>12</sup> Comparative studies between *islah* and restorative justice remain conceptual and have not been directed at the health sector.

Based on these three tendencies, there is a research gap in integrative and comparative aspects, namely the absence of an in-depth analysis that simultaneously: (1) examines restorative justice in the Indonesian criminal system after the National Criminal Code, (2) analyzes the characteristics of medical malpractice as an object of applying the restorative approach, and (3) compares it systematically with the concept of *islah* in contemporary Islamic law to formulate a more comprehensive settlement model.

The novelty of this research lies in its attempt to synthesize the normative and conceptual dimensions of two legal systems, national criminal law and contemporary Islamic law, in a specific context: medical malpractice. This study not only conducts descriptive comparisons but also explores the possibility of integrating *islah* values into the

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<sup>10</sup> Minar Mushari and Abdul Rahman Maulana Siregar, 'Prinsip Keadilan Restoratif Dalam Penyelesaian Kasus Malpraktek: Suatu Pendekatan Alternatif', *Indonesian Journal of Law* 2, no. 1 (January 2025): 1-11.

<sup>11</sup> Liko Lazuardi Putra and Dewi Asri Yustia, 'Kajian Hukum Terhadap Kasus Malpraktik Dokter Yang Melakukan Tindakan Medis Tanpa Persetujuan Pasien (Informed Consent)', *Jurnal Ilmu Hukum, Humaniora Dan Politik* 6, no. 1 (November 2025): 775-783, <https://doi.org/10.38035/jihhp.v6i1.6474>.

<sup>12</sup> Joko Budi Darmawan et al., 'Incorporating *Islah* Principles into Restorative Justice: Bridging Contemporary Legal Practice and Islamic Values', *MILRev: Metro Islamic Law Review* 4, no. 1 (May 2025): 269-294, <https://doi.org/10.32332/milrev.v4i1.10435>.

framework of restorative justice as a more humanistic and contextual model of medical dispute resolution in Indonesia.

Based on this background, the research questions asked in this study are: What is the relevance and possibility of integrating the principle of restorative justice in the Indonesian criminal system with the concept of *islah* in contemporary Islamic law in the settlement of medical malpractice cases? The significance of this research is theoretical and practical. Theoretically, this research contributes to the development of progressive criminal law discourse by enriching the comparative perspective between national law and Islamic law. This study also expands the discourse on the application of restorative justice in the health sector, which has received relatively little attention. In practice, the results of this study are expected to serve as a reference for policymakers, law enforcement officials, and health institutions in formulating a fairer, proportionate, and recovery-oriented medical dispute-resolution mechanism.

## METHOD

This research employs normative legal<sup>13</sup> research methods, including legislative, conceptual, and comparative approaches.<sup>14</sup> The legislative approach is used to analyze the provisions in Law Number 1 of 2023 concerning the Criminal Code, as well as regulations in the health sector related to medical liability. A conceptual approach is used to examine the theoretical construction of restorative justice in the Indonesian criminal system and the concept of *islah* in contemporary Islamic law. In contrast, a comparative approach is used to identify similarities, differences, and potential integration of the two concepts in resolving medical malpractice cases. The analysis focuses on the coherence of norms, value orientations, and the goals of justice each system seeks to achieve.

Data collection is carried out through the study of positive legal norms,<sup>15</sup> Islamic legal principles, and policy documents relevant to the resolution of medical disputes. The

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<sup>13</sup> Hafidz, Jawade, Muhammad Dias Saktiawan, Agus Prasetia Wiranto, Aditya Noviyansyah, and Ahmed Kheir Osman. "Contemporary Legal Accountability Reform in Public Procurement: A Framework Integrating Ethical Norms and Anti-Corruption Mechanisms." *MILRev: Metro Islamic Law Review* 4, no. 1 (2025): 517-538. DOI: <https://doi.org/10.32332/milrev.v4i1.10664>

<sup>14</sup> Burhan Bungin, *Analisis Data Penelitian Kualitatif* (Jakarta: PT Raja Grafindo Persada, 2003).

<sup>15</sup> Mashdurohatus, Anis, Arpa Syura Tambuno, Sri Endah Wahyuningsih, and H. R. Mahmutarom. "Registration of Transfer of Land Rights in the Justice-Based Indonesian Legal System." *Sch Int J Law Crime Justice* 6, no. 4 (2023): 209-215. DOI: [10.36348/sijlcj.2023.v06i04.003](https://doi.org/10.36348/sijlcj.2023.v06i04.003)

data were analyzed qualitatively using systematic interpretation techniques and comparative analysis to assess the consistency, relevance, and normative implications of applying restorative justice and *islah*. Validation is carried out by testing the consistency of arguments, assessing the integration of norms, and comparing them with contemporary legal doctrines, to produce conclusions that are objective and can be accounted for academically.

## RESULTS AND DISCUSSION

### Characteristics of Medical Malpractice in the Indonesian Criminal System

Medical malpractice in the Indonesian criminal system has a distinctive character and is fundamentally different from conventional criminal acts. It is not born of ordinary social relationships, but of professional relationships built on trust (fiduciary relationships) between doctors and patients. This relationship is not only contractual in the sense of civil law, but also contains ethical, moral, and humanitarian dimensions. When a patient seeks medical services, they give up part of their right to autonomy to medical personnel, in the belief that the doctor will act in accordance with professional standards and the principle of prudence. In practice, medical personnel are still found performing procedures without adequate competency, potentially leading to morbidity and even death in patients.<sup>16</sup> It is in this context that medical disputes cannot be understood solely as violations of criminal law, but rather as problems at the intersection of various legal regimes.<sup>17</sup>

Normatively, medical practice in Indonesia is regulated by a comprehensive legal framework that spans medical practice and health regulations to professional codes of ethics. Doctors are bound by competency and operational procedure standards, as well as the obligation to obtain informed consent. However, the existence of such standards does not mean that every adverse medical outcome is automatically malpractice. In medical science, there are known risks and complications that can occur even when procedures are

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<sup>16</sup> Prasetyo Edi et al., 'Legal Responsibility of Medical Specialist for Illness or Death: The Essence of Justice', *Jurnal Hukum UNISSULA*, 42, no.1 (2026): 97-114, DOI: <https://dx.doi.org/10.26532/jh.v42i1>.

<sup>17</sup> Suharna, 'Doctor's Civil Responsibility in Malpractice Reviewed in Islamic Law Perspective', *Jurnal Risalah Addariyah: Studies in Islamic Sciences, Education, and Social Community* 8, no. 1 (2022), <https://doi.org/10.56324/jariyah.v8i1.62>.

carried out according to standards. Not all therapy failures are due to negligence; some are due to the patient's limited knowledge and unique biological conditions.<sup>18</sup>

This is where the complexity lies. To be qualified as malpractice in the criminal realm, it must be proven that there is an error that meets the elements of delicacy, both in the form of intentionality (*dolus*) and negligence (*culpa*) that can be accounted for.<sup>19</sup> In practice, most medical cases processed criminally involve allegations of negligence. However, proving professional negligence is not simple. It is necessary to prove that the medical measures carried out deviate significantly from the applicable professional standards and that the deviation directly causes the loss or death of the patient.<sup>20</sup> This evidentiary process often requires independent and objective expert testimony, as law enforcement officials lack the medical competence to determine whether an act constitutes negligence or poses a medical risk.<sup>21</sup>

However, in some cases that come to the public's attention, the criminal approach is often the first response. Public opinion pressure, empathy for victims, and the drive to bring "justice" often prompt law enforcement officials to immediately identify suspects. This phenomenon shows that medical malpractice cases have a strong emotional dimension in society. When a patient dies or suffers permanent disability after a medical procedure, public perception tends to lead to the assumption of physician error, although legally this is not necessarily the case. This situation has the potential to give birth to what is often referred to as the overcriminalization of the medical profession.<sup>22</sup>

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<sup>18</sup> Rini Apriyani et al., 'Criminal Liability Arising from Medical Malpractice on Patients: A Review from the Perspective of Positive Law And Islamic Law', *KRTHA BHAYANGKARA* 18, no. 1 (April 2024): 85-106, <https://doi.org/10.31599/krtha.v18i1.2919>.

<sup>19</sup> Khater, Mohammad Nasr, Hamzeh Abu Issa, Mohammad Saeed Alsheyab, and Naji Alwerikat. 'The crime of goods fraud in the Jordanian penal code'. *Multidisciplinary Reviews* 7, no. 2 (2024): e2024035. <https://doi.org/10.31893/multirev.2024035>.

<sup>20</sup> Abu Issa, Hamzeh, Mohammad Khater, Majd Almanasra, and Naji Al Wreikat. 'Common belief vs. science: Scientific fallacies in proving the victim's consent and lies in sexual crimes'. *Social Sciences and Humanities Open* 12 (2025): 102124. <https://doi.org/10.1016/j.ssaho.2025.102124>.

<sup>21</sup> Rini Apriyani et al., 'Criminal Liability Arising from Medical Malpractice on Patients: A Review from the Perspective of Positive Law And Islamic Law', *KRTHA BHAYANGKARA* 18, no. 1 (April 2024): 85-106, <https://doi.org/10.31599/krtha.v18i1.2919>.

<sup>22</sup> Irsyam Risdawati, 'Health Ethics in the Perspective of Islamic Law Towards the Practice of Modern Medicine and Medicine', *Proceedings of International Conference on Islamic Community Studies*, 27 October 2025, 635-643.

The characteristics of malpractice also differ because they involve health care institutions. Doctors rarely work individually; they are part of a hospital system that has administrative and managerial responsibilities. System failures, lack of facilities, or high workloads can affect the quality of service. However, in criminal practice, accountability often focuses on individual doctors as direct perpetrators. This approach simplifies problems that are actually systemic. In fact, in many cases, hospital management factors or health policies also contribute to patient losses.<sup>23</sup>

From the victim's side, the criminal route is often seen as a means to obtain justice.<sup>24</sup> However, a lengthy and formal criminal process does not always provide the expected satisfaction. A court ruling may impose a sentence, but it does not automatically bring a quick or adequate recovery. The process is also adversarial, putting the victim and the doctor in a confrontational position. Relationships that were originally based on trust have become conflictual. In such a situation, the space for dialogue, clarification, or apology becomes very limited.<sup>25</sup>

On the other hand, for medical personnel, criminal proceedings carry serious reputational consequences. Even if they are eventually released, the status of the suspect or defendant can damage their good name and professional career. In the medical world, reputation is a valuable form of social capital. Allegations of malpractice can undermine the trust of patients and colleagues, even before a ruling has the force of law. This risk encourages the emergence of defensive medicine practices, which are the tendency of doctors to perform excessive medical procedures or to refuse to handle high-risk cases to avoid lawsuits. As a result, the cost of health services can increase, and patients' access to certain services can become limited.<sup>26</sup>

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<sup>23</sup> Muhammad Hatta, 'The Position of Expert Witnesses in Medical Malpractice Cases in Indonesia', *Al-Ahkam*, 10 April 2018, 47-72, <https://doi.org/10.21580/ahkam.2018.18.1.2306>.

<sup>24</sup> Wahyu Abdul Jafar et al., 'Gender Justice in the Concept of Iddah: A Contextual Reading of Al-Kasani's Thought for Working Women in Indonesia', *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 12, no. 2 (June 2025): 406-419, <https://doi.org/10.29300/mzn.v12i2.7683>.

<sup>25</sup> Aby Maulana, Chrisna Bagus Edhita Praja, and Muhammad Luthfie Hakim, 'Compensation as Hospital Liability for Negligence in Medical Services Harming Patients: Empirical Study of Several Peace Agreements', *Varia Justicia* 19, no. 2 (August 2023): 153-167, <https://doi.org/10.31603/variajusticia.v19i2.10947>.

<sup>26</sup> Rahmayanti Rahmayanti et al., 'Malpractice and Risk Of Medical Procedures', *International Journal Reglement & Society (IJS)* 5, no. 2 (May 2024): 144-151, <https://doi.org/10.55357/ijrs.v5i2.532>.

Normatively, the direction of national criminal law reform has created space for a more proportionate approach. The purpose of punishment in the National Criminal Code emphasizes the restoration of balance and the protection of human dignity, not mere retribution. However, this normative transformation has not been fully reflected in law enforcement practices. In sensitive cases that have received public attention, the retributive approach is still dominant. This shows a gap between norms and implementation.<sup>27</sup>

Another characteristic to be observed is the plurality of medical dispute-resolution pathways. In addition to criminal channels, there is a civil mechanism for compensation and an ethical mechanism through the honorary council of medical disciplines. However, coordination between these lines has not always been harmonious. Often, the process runs in parallel without adequate synchronization, leading to legal uncertainty. Doctors can face ethical and criminal proceedings simultaneously, while victims must undergo different procedures to obtain compensation. This situation shows that the medical dispute-resolution system remains fragmented.<sup>28</sup>

By paying attention to these various facts, it can be concluded that medical malpractice in the Indonesian criminal system has multidimensional characteristics: grounded in trust relationships, situated in the area of professional negligence, influenced by systemic factors, and full of emotional and social dimensions. These characteristics set it apart from conventional delicacies and require a more careful, contextual approach. An approach that places too much emphasis on punishment not only risks creating new injustices but can also disrupt the sustainability of the health care system.

Table 1. Characteristics of Medical Malpractice in the Indonesian Criminal System

Yes	Aspects	Features	Implications in the Criminal System
1	Legal Relations	Based on a fiduciary relationship between doctor and patient	Disputes are not only violations against the state, but also damage to professional relations

<sup>27</sup> Vincentius Setyawan and Bariah Safrut, 'Rethinking Law and Justice: The Core Principles of Critical Legal Studies against Legal Formalism', *NUSANTARA: Journal Of Law Studies* 4, no. 2 (October 2025): 74-85, <https://doi.org/10.5281/zenodo.17332128>.

<sup>28</sup> Rendita Dwibarto, Fikri Rahman, and Risdiarto, 'Management of Malpractice Cases Against Patients in Government and Private Hospitals', *Citra Delima Scientific Journal of Citra Internasional Institute* 9, no. 2 (January 2026): 145-150, <https://doi.org/10.33862/jtmnz454>.

2	Liability Policy	Therapeutic agreements, professional standards, standard operating procedures, and codes of ethics	Error assessment should take into account medical standards, not just general criminal norms.
3	Forms of Error	Generally in the form of negligence (culpa), rarely intentional (dolus)	Proof is more complex than general deliction
4	Medical Risks	There are inherent medical risks and complications in medical procedures	Not all patient losses can qualify as criminal offenses
5	Proof	Requires medical expert information to assess deviations from professional standards	Law enforcement officials rely on medical and scientific interpretation.
6	Systemic Dimension	Influenced by institutional factors (hospitals), management, facilities, and workload	Accountability is not always purely individual.
7	Social Impact	High public spotlight and strong emotional dimension	Potential for overcriminalization
8	Impact on the Profession	Reputational risk and the emergence of defensive medicine	Can reduce the quality and access to health services
9	Completion Path	Can be through criminal, civil, and professional ethics	Systems often run in parallel and are not yet integrated
10	Criminal Orientation	Normatively, towards recovery (National Criminal Code), but the practice remains retributive.	There is a gap between norms and implementation.

Source: Author's Interpretation

The table above shows that medical malpractice in the Indonesian criminal system has a multidimensional character that fundamentally distinguishes it from conventional criminal offenses. The trust-based legal relationship between doctors and patients makes medical disputes not only a violation of the state but also a breach of deeply ethical and moral professional relations. The elements of fault, which are generally in the form of negligence (culpa), the existence of inherent medical risks, and the need to prove through expert testimony, show the complexity of proof that is not simple. In addition, systemic factors such as hospital management and limited facilities also affect the occurrence of medical events, so accountability is not always individual. The high public spotlight and reputational impact on medical personnel also magnify the potential for excessive

criminalization, which can ultimately lead to defensive medicine practices and lower the quality of health services. Although normatively, the national penal system has shifted toward a recovery orientation, law enforcement practices still show a retributive tendency, creating a gap between the direction of legal policies and their implementation in cases of medical malpractice.

### **The Relevance of Restorative Justice in the Resolution of Medical Malpractice**

The development of the idea of restorative justice in the Indonesian criminal system<sup>29</sup> cannot be separated from the long criticism of the retributive paradigm that has dominated law enforcement practice. The retributive system views criminal acts as violations of the state, so the main response is punishment. In this model, the focus is on proving fault and imposing sanctions, while the needs of victims and the dynamics of damaged social relations are often secondary. Criticism arises because this approach does not always present substantive justice, especially in cases of a relational and professional nature, such as medical malpractice. In this context, *restorative justice* becomes relevant.<sup>30</sup>

Medical malpractice is basically not just a problem of violating criminal norms, but a conflict born from the therapeutic relationship between doctors and patients. This relationship is built on trust and hope for healing. When medical measures fail, not only the patient's body but also the trust and professional relationships established are damaged. In many cases, the victim does not simply want punishment for the doctor, but rather an honest explanation, an acknowledgment of the mistake, and a guarantee that similar events will not be repeated. However, adversarial criminal justice mechanisms often do not provide space for these needs.<sup>31</sup>

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<sup>29</sup> Hafidz, Jawade, Dini Amalia Fitri, Muhammad Azam, Achmad Arifullah, and Agus Prasetya Wiranto. "The Corruption Reduction with an Administrative Law Approach: Evidence from Australia." *Journal of Human Rights, Culture and Legal System* 4, no. 3 (2024): 822-841. DOI: <https://doi.org/10.53955/jhcls.v4i3.396>

<sup>30</sup> Sulianto Sulianto et al., 'Restorative Justice Sebagai Penyelesaian Tindak Pidana Malpraktek Dokter Pada Polda Jawa Timur', *JOURNAL OF SHARIA ECONOMICS* 4, no. 1 (2022): 106-130, <https://doi.org/10.35896/jse.v4i1.1203>.

<sup>31</sup> M. Aris Munandar Nandar et al., 'Restorative Justice in Medical Cases: Reflections on Criminal Law Reform', *Jurist-Diction* 8, no. 3 (September 2025): 353-370, <https://doi.org/10.20473/jd.v8i3.76991>.

*Restorative justice* views criminal acts<sup>32</sup> as conflicts that cause harm to individuals and communities, so the resolution must be oriented towards recovery. In this paradigm, perpetrators, victims, and the community are actively involved in seeking just solutions. This approach is particularly relevant to medical disputes because it enables direct dialogue between doctors and patients.<sup>33</sup> The dialogue opens up space for clarification, comprehensive medical explanations, and proportionate recognition of responsibility. In health practice, open communication is often key to defusing tensions and preventing the escalation of conflict into the criminal realm.<sup>34</sup>

Substantively, there are three important elements in *restorative justice*: recognition of responsibility, victim participation, and recovery of losses. In the context of malpractice, an acknowledgment of responsibility does not mean an absolute admission of guilt in a criminal sense, but rather the willingness of the doctor to explain the actions taken, admit to procedural errors if they occur, and show empathy for the patient's suffering. The defensive attitudes prevalent in litigation often exacerbate the situation, as doctors tend to shut themselves off to protect their legal position. Through restorative mechanisms, communication can take place in a more constructive atmosphere.<sup>35</sup>

The active participation of victims is also crucial. In the conventional criminal system, victims often act as mere witnesses, while law enforcement officials fully control the process. In the restorative approach, victims have the opportunity to convey their experiences, the impact of their losses, and their hopes for resolution. This involvement provides a sense of appreciation and recognition, which is often more meaningful than just

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<sup>32</sup> Laksana, Andri Winjaya, Akhmad Ikraam, and Anila Robbani. "The Liability of Criminal Law for Perpetrators of Goods Embezzlement." *Journal of Justice Dialectical* 2, no. 2 (2024): 70-83. DOI: <https://doi.org/10.70720/jjd.v2i2.50>

<sup>33</sup> Almanasra, Majd, Abdullah Alkhseilat, Ahmad S. Haider, Hamzeh Abu Issa, Saad Meqdad, and Mohammad Nasr Khater. 'Judges' perspectives on the use of modern standard Arabic versus vernacular in court proceedings'. *Research Journal in Advanced Humanities* 6, no. 4 (2025). <https://doi.org/10.58256/9vb1qg73>.

<sup>34</sup> Sulistyanta Sulistyanta et al., 'Restorative Justice Sebagai Alternatif Penyelesaian Secara "Win-Win Solution" Kasus Resiko Atau Kekeliruan Medis (Medical Malpractice)', *Lex Librum : Jurnal Ilmu Hukum*, 19 June 2021, 229-242, <https://doi.org/10.46839/lljih.v7i2.459>.

<sup>35</sup> Ni Wayan Eka Mustika et al., 'Restorative Justice Settles Health Disputes Between Patients and Hospitals from an Inclusive Justice Perspective', *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 3 (December 2023): 423-436, <https://doi.org/10.29303/ius.v11i3.1293>.

seeing the perpetrator sentenced. In medical cases, the victim's needs are often multidimensional, including cost recovery, health rehabilitation, and sincere apologies.<sup>36</sup>

In terms of efficiency, restorative justice offers a faster resolution than court processes, which can last for years. In the health sector, time is of the essence. Protracted disputes can erode public trust in medical institutions and create an atmosphere of uncertainty. Faster and proportionate settlement can help maintain the stability of the health care system. In addition, a restorative approach can help minimize the emergence of defensive medicine practices, namely the tendency of doctors to overreact or avoid high-risk cases out of fear of lawsuits.<sup>37</sup>

Facts on the ground show that many medical disputes stem from miscommunication. Research in various countries shows that transparency and open communication between doctors and patients significantly lowers the likelihood of lawsuits. In the Indonesian context, the culture of deliberation and family settlement aligns with the restorative spirit. However, in practice, this mechanism has not been systematically institutionalized in the penal system. Despite its strong relevance, the application of *restorative justice* in malpractice cases continues to face challenges. One of the main obstacles is the lack of technical guidelines that specifically regulate restorative mechanisms for medical disputes. Law enforcement officials may be hesitant to apply this approach for fear that it will be perceived as ignoring victims' interests or weakening deterrence. On the other hand, health institutions also have concerns that confessions of wrongdoing in restorative forums could be used as evidence in other legal proceedings.<sup>38</sup>

In addition, there is a problem with maintaining professional standards. Not all cases of malpractice can be resolved through a restorative approach. In cases involving gross negligence or serious ethical violations, criminal mechanisms remain necessary to maintain the integrity of the profession and to send a normative message to the public. Therefore,

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<sup>36</sup> Minar Mushari and Abdul Rahman Maulana Siregar, 'Prinsip Keadilan Restoratif Dalam Penyelesaian Kasus Malpraktek : Suatu Pendekatan Alternatif', *Indonesian Journal of Law* 2, no. 1 (January 2025): 1-11.

<sup>37</sup> Sulianto Sulianto et al., 'Restorative Justice Sebagai Penyelesaian Tindak Pidana Malpraktek Dokter Pada Polda Jawa Timur', *JOURNAL OF SHARIA ECONOMICS* 4, no. 1 (2022): 106-130, <https://doi.org/10.35896/jse.v4i1.1203>.

<sup>38</sup> Siprianus Damai Nar, Simplexius Simplexius, and Orpa G. Manuain, 'Tinjauan Yuridis Terhadap Keadilan Restoratif Dalam Pidana Penyelesaian Perkara Di Kepolisian Resort Kota (Polresta) Kupang', *Pemuliaan Keadilan* 1, no. 4 (October 2024): 95-108, <https://doi.org/10.62383/pk.v1i4.172>.

the application of restorative justice must be accompanied by clear criteria and strict monitoring mechanisms.<sup>39</sup>

Nonetheless, if carefully designed, a restorative approach can be an adaptive solution to the characteristics of medical disputes. The integration of mechanisms for dialogue, compensation, and professional supervision can balance the protection of patients' rights with doctors' accountability. This approach does not aim to abolish criminal law, but rather to place it as the *ultimum remedium*—a last resort when a recovery mechanism cannot be achieved.

### **The Concept of *Islah* in Contemporary Islamic Law and Its Relevance**

The concept of *islah* in contemporary Islamic law<sup>40</sup> cannot be understood simply as a peaceful procedural effort, but rather as a dispute-resolution paradigm rooted in the ethical and social vision of sharia. Etymologically, *islah* means to repair or reconcile, while, terminologically, it refers to the process of reconciliation between the parties to the dispute, to restore the relationship and remove the damage (*façade*). The Qur'an explicitly emphasizes the importance of peace in social relations, as reflected in the command to make amends between the warring parties. In this framework, *islah* is not merely a compromise but a corrective mechanism that aims to restore the social and moral balance disturbed by a legal event.<sup>41</sup>

In the construction of classical Islamic law, *islah* has been widely recognized across various fields, including family law (*muamalah*) and *jinayah*. However, in the development of contemporary Islamic law, this concept has undergone a more systematic reinterpretation through the *maqāṣid al-syarī'ah* approach. Contemporary thinkers place *islah* as an instrument of actualization of the values of soul protection (*ḥifẓ al-naḥs*), property protection (*ḥifẓ al-māl*), and honor protection (*ḥifẓ al-'ird*). Thus, *islah* is understood as a manifestation of the principles of benefit (*maṣlaḥah*), justice ('*adl*), and balance (*tawāzun*).

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<sup>39</sup> T. Riza Zarzani, Ismaidar Ismaidar, and Abdur Rahman Sirait, 'Kebijakan Hukum Pidana Terhadap Korporasi Atas Terjadinya Tindak Pidana Malpraktik Medis Oleh Dokter Yang Bertugas Di Rumah Sakit', *Innovative: Journal Of Social Science Research* 4, no. 3 (May 2024): 5593–5604, <https://doi.org/10.31004/innovative.v4i3.11041>.

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<sup>41</sup> Ariyani Ariyani, Fikri, and Andi Marlina, 'The Concept of Al-Islah and the Restorative Justice Approach in Settlement of Criminal Cases: Konsep Al-Islah Dan Pendekatan Restorative Justice Dalam Penyelesaian Perkara Pidana', *DELICTUM: Jurnal Hukum Pidana Islam*, 1 August 2023, 28–43, <https://doi.org/10.35905/delictum.vi0.6403>.

This approach affirms that the primary goal of the law is not retaliation, but rather the restoration and prevention of broader damages.<sup>42</sup>

Normatively, the legitimacy of *islah* in Islamic law<sup>43</sup> can be found in the practice of the Prophet Muhammad PBUH, who often prioritized reconciliation in resolving social conflicts. History shows that many disputes among the people of Medina are resolved through dialogue and peace agreements, without always leading to formal sanctions. In this context, *islah* serves as an ethical instrument that strengthens social cohesion. This value was then passed on in the *fiqh* tradition by recognizing the *ṣulḥ* contract as a valid and binding peace agreement.<sup>44</sup>

In the context of professional misconduct, including medical malpractice, Islamic law recognizes the principle of liability based on the degree of fault (*ta'addī*, *taqṣīr*, or *khata'*). If an act causes loss or injury, the perpetrator may be liable to compensate (*ḍamān*) or pay certain compensation, such as *diyāh*, in certain cases.<sup>45</sup> However, this accountability structure is not always synonymous with repressive punishment. Classical jurisprudence provides ample scope for settlement through a peaceful agreement between the perpetrator and the victim or the victim's family. Even in certain cases, the victim's right to forgive and receive compensation becomes an integral part of the legal mechanism itself.

In contemporary reality, this approach resonates with the concept of restorative justice. Both *islah* and restorative justice position the victim as an active subject in the settlement process, rather than merely an object of the justice system.<sup>46</sup> Both emphasize

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<sup>42</sup> Azwar et al., 'Iṣlāḥ of Al-Ghazālī's Ideas and Movements And Their Relevance To Contemporary Islamic Preaching', *Ulumuna* 28, no. 1 (2024): 453-484, <https://doi.org/10.20414/ujis.v28i1.513>.

<sup>43</sup> Mashdurohaturun, Anis, Eid Abed Alhaleem Maslat Harahsheh, Muhammad Irwan Datuiding, Abun Hasbulloh Syambas, and Prasetiyo Adhi Wibowo. "Contemporary Reassessment of Punishment in Islamic and Secular Law: A Comparative Study of Justice and Penal Philosophy." *MILRev: Metro Islamic Law Review* 5, no. 1 (2026): 80-100. DOI: <https://doi.org/10.32332/milrev.v5i1.11887>

<sup>44</sup> Joko Sriwidodo, 'Ensuring Restorative Justice Through Penal Mediation in Indonesia: An Examination from the Perspective of *Islah* (Reformation) in Islamic Criminal Law', *Manchester Journal of Transnational Islamic Law and Practice* 20, no. 3 (2024): 45-57.

<sup>45</sup> Jajang Arifin, 'Reformulasi Mekanisme Keadilan Restoratif pada Penyelesaian Perselisihan Pelayanan Kesehatan Berbasis Perlindungan Korban dalam Omnibus Law Kesehatan', *Jurnal Hukum Positum* 10, no. 2 (December 2025): 275-313, <https://doi.org/10.35706/positum.v10i2.13515>.

<sup>46</sup> Taufik Hidayat Nasution and Efrila Efrila, 'Perlindungan Hukum Terhadap Dokter Menjalani Pemeriksaan Perkara Pidana Mempekerjakan Dokter Yang Tidak Memiliki Izin Praktik Dalam Sistem Peradilan Pidana Dibidang Pelayanan Kesehatan', *Jurnal Ilmu Hukum, Humaniora Dan Politik* 6, no. 1 (November 2025): 741-750, <https://doi.org/10.38035/jihhp.v6i1.6546>.

dialogue, recognition of responsibility, and proportionate recovery of losses. The difference lies in its normative basis: if restorative justice develops from modern criminological theory, then *islah* is rooted in Islam's theological and ethical foundations. However, in substance, the two share a common orientation toward recovery and social reconciliation.

The relevance of *islah* in the context of medical malpractice becomes even more evident when considering the complex relationship between medical personnel and patients. Malpractice does not always occur due to malicious intent, but rather often due to negligence, limitations in competence, or unforeseen emergency conditions. In situations like this, an approach that solely emphasizes criminalization can have a defensive effect in medical practice, leading to defensive medicine that actually increases the cost of health services. The *islah* approach offers a more proportionate alternative by encouraging open dialogue, the confession of faults, and fair compensation without permanently damaging professional relationships.

Sociologically, Indonesian society has a strong tradition of deliberation in resolving conflicts. The culture of kinship and the tendency to avoid open confrontation are significant social capital for the implementation of *islah*-based mechanisms. Customary practices across regions show that peace is often more acceptable than a lengthy litigation process, which is emotionally and financially exhausting. In this context, the integration of *islah* values into the national legal system is not foreign but is in harmony with the social culture that has taken root.<sup>47</sup>

In addition to cultural legitimacy, *islah* also has strong moral legitimacy in Muslim society. An approach grounded in religious values tends to be more acceptable to the parties because it is seen not only as resolving disputes legally but also spiritually. The process of forgiving each other and reaching a peaceful agreement can provide a more substantive sense of justice than a formal court decision alone.<sup>48</sup> In malpractice cases, the victim and

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Mujiono, M., Ticalu, C., Mawardi, K., Riyadi, S., & Zuhri, B. (2025). Islamic law and campus governance against drug abuse: Preventive strategies and restorative rehabilitation in Indonesian universities. *Global Islamic Research Journal*, 1(1), 43–58. <https://doi.org/10.65960/girj.1.1.2025.4>

<sup>47</sup> Yusi Amdani, 'Konsep Restorative Justice dalam Penyelesaian Perkara Tindak Pidana Pencurian oleh Anak Berbasis Hukum Islam dan Adat Aceh', *Al'Adalah* 13, no. 1 (July 2017): 81–76, <https://doi.org/10.24042/adalah.v13i1.1130>.

<sup>48</sup> Saidah Saidah, 'Konsep *Ishlah* Dalam Hukum Islam (Perspektif Tafsir Maudhu'iy)', *DIKTUM: Jurnal Syariah Dan Hukum* 10, no. 2 (July 2012): 2, <https://doi.org/10.35905/diktum.v10i2.260>.

his family need not only material compensation but also a sincere acknowledgment of the mistake and empathy from medical personnel.

However, applying *islah* in the context of the modern state cannot be done in a simplistic manner. The state has an obligation to guarantee legal certainty, the protection of human rights, and clear professional standards. Not all cases can be resolved peacefully, especially when gross negligence or systemic ethical violations are involved. Therefore, *islah* must be placed as a complementary mechanism, not as a total substitute for a positive legal system. This integration requires a regulatory framework that prevents a peace deal from occurring under pressure, unequal bargaining power, or the neglect of victims' rights. In practice, the application of *islah* values can be realized through penal mediation, facilitation of dialogue between victims and perpetrators, and supervision by independent authorities. The process must ensure transparency, accountability, and voluntary participation by the parties. The state still has a role to play in ensuring that medical safety and professional standards are upheld, so that peace does not become a means to avoid ethical or administrative responsibilities.

### **Integration of Restorative Justice and *Islah*: A Synthesis Model in Malpractice Resolution**

Efforts to formulate a fairer model for resolving medical malpractice cannot stop at mere conceptual comparisons. The key question is whether restorative justice and *islah* can be brought together in a single, concrete, operational framework without sacrificing legal certainty and medical professional standards. A comparative analysis shows that both have strong substantive common ground, especially in their orientation towards recovery, dialogue, and reconciliation. The difference lies in the epistemological foundation—restorative justice was born from modern criminological criticism of the retributive system, while *islah* rests on sharia theological and ethical norms. However, in the context of a pluralistic legal system like Indonesia's, these differences create space for productive synthesis.

Empirically, many medical disputes in Indonesia do not start from malicious intent, but from misunderstandings, miscommunication, or procedural failures. When the legal process is directed toward the criminal route, the doctor-patient relationship becomes adversarial. Doctors tend to shut themselves off because they are worried that every

statement will be used as evidence. Patients, on the other hand, feel unheard because the judicial process focuses on proving the elements of delicacy, not on the experience of the loss they experienced. In such a situation, both restorative justice and islah offer a more dialogical solution.<sup>49</sup>

The proposed synthesis model is based on four main pillars. First, proportionate recognition of professional wrongdoing. In medical practice, not all adverse events are malpractice. There are inherent risks in every medical procedure, and not all bad outcomes can be punished.<sup>50</sup> Therefore, a confession of error must be based on a professional audit and an objective ethical assessment. In the framework of restorative justice, this recognition is a moral prerequisite for starting a dialogue. In the framework of islah, the recognition reflects the moral responsibility (mas'uliyah) that is part of Islamic ethics. The synthesis of both allows for recognition that is not cornered, but still maintains accountability.

Second, participatory dialogue between doctors and patients. Dialogue is not just a mediation formality, but a professionally facilitated, neutrally conducted communication process. Facts show that in various jurisdictions, the open disclosure mechanism—that is, doctors' openness in explaining medical incidents—has reduced the number of lawsuits.<sup>51</sup> This indicates that the victim's primary need is often explanation and empathy, not just punishment. In the tradition of islah, deliberation is the main instrument to achieve peace. By combining modern mediation techniques and the value of deliberation, dialogue can take place in a more equal and constructive atmosphere.

Third, compensation and rehabilitation-based recovery agreements.<sup>52</sup> In Islamic law, the concepts of *diyah* and *ḍamān* emphasize the importance of compensation as a form of responsibility. In restorative justice, reparations are central to the recovery process. The integration of the two can be achieved through financial compensation, advanced

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<sup>49</sup> Risha Shindyani Halim, Tofik Yanuar Chandra, and Hedwig Adianto Mau, 'Pemenuhan Hak Restitusi Terhadap Korban Tindak Pidana Kelalaian Medis Di Indonesia', *Jurnal Multidisiplin Indonesia 2*, no. 9 (September 2023): 3048–3075, <https://doi.org/10.58344/jmi.v2i9.580>.

<sup>50</sup> Eva Savariah and Tajul Arifin, 'Malapraktik Medis dalam Perspektif Hadits Riwayat Abu Dawud dan Pasal 58 UU No 36 tahun 2009: Studi Perbandingan', *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab*, 31 January 2024, 213–226, <https://doi.org/10.24252/shautuna.v5i1.37514>.

<sup>51</sup> Savariah and Arifin, 'Malapraktik Medis dalam Perspektif Hadits Riwayat Abu Dawud dan Pasal 58 UU No 36 tahun 2009'.

<sup>52</sup> Anisa Anisa and Hudi Yusuf, 'Penerapan Restorative Justice Dalam Penyelesaian Sengketa Medis Di Indonesia', *Jurnal Intelek Insan Cendikia 2*, no. 1 (January 2025): 758–67.

medical rehabilitation, or psychological support for the victim. This agreement must be formulated transparently and voluntarily agreed to by the parties. Thus, the settlement is not only symbolic but also addresses the concrete needs of the victims.

Fourth, institutional supervision to maintain medical standards. One criticism of the peaceful approach is that it weakens deterrence and opens the door to impunity.<sup>53</sup> To address these concerns, the synthesis model must ensure the involvement of professional institutions and health authorities in monitoring the agreement's implementation. If serious ethical violations or gross negligence are found, disciplinary or criminal mechanisms can still be implemented. In other words, a restorative approach does not remove accountability, but rather places it within a more proportionate framework.

Comparatively, the differences and potential integration of the two approaches can be understood through the following table:

Table 2. Differences and Potential for Integration of Restorative Justice and *Islah* Approaches

Aspects	Restorative Justice	Islah	Integration Potential
Orientation	Recovery of victims	Peace and prosperity	Social harmony-based recovery
Anvil	Modern criminal law policy	Sharia principles and ethics	The value of substantive justice
Mechanism	Criminal mediation, dialogue	Deliberation, reconciliation	Structured dialogue forums
Accountability	Recognition and reparations	Moral and material responsibilities	A combination of ethical and legal accountability
Final goal	Social reintegration	Balance and benefits	Humanist and proportionate justice

Source: Author's Interpretations

The table shows that there is no fundamental contradiction between the two. Restorative justice provides a procedural and institutional framework compatible with the national legal system, while *islah* enriches the approach with ethical and spiritual dimensions that resonate strongly with Indonesian society. In practice, the penal mediation forum can embody the values of deliberation, empathy, and moral responsibility as taught in the Islamic tradition. Furthermore, this integration also answers the need for dual

<sup>53</sup> Diah Arimbi, 'Legal Responsibility for Medical Risks, Medical Errors, and Malpractice in Health Services', *Lex Publica* 12, no. 1 (June 2025): 63–89, <https://doi.org/10.58829/lp.12.1.2025.283>.

legitimacy: legal legitimacy and social legitimacy. A court ruling may be formally valid, but it is not necessarily socially acceptable. In contrast, informal peace may be accepted by the community, but it does not necessarily have the force of law. The synthesis model seeks to bridge the two by ensuring that peace agreements are recorded and recognized within a positive legal framework, while also being rooted in moral values that the parties respect.

In the context of Indonesia's post-national codification reform, the normative space for a restorative approach is increasingly open. The principle of *ultimum remedium* establishes that imprisonment is not the only response to violations. With clear technical guidelines, for example, criteria for mediated cases, procedures for facilitating dialogue, and monitoring mechanisms, the integration of restorative justice and *islah* can be operationalized without causing legal uncertainty.<sup>54</sup> In the end, this synthesis addresses research questions about the relevance and potential integration of the two concepts. Both have a common orientation on restoration, dialogue, and substantive justice. Integration is not only possible, but also normative and sociologically relevant in the Indonesian context. The challenge lies in formulating technical guidelines that balance protecting patients' rights, holding medical personnel accountable, and ensuring legal certainty.

## CONCLUSION

The findings of this study demonstrate that the characteristics of medical malpractice within the Indonesian criminal law system are not fully compatible with the dominant retributive approach commonly applied in law enforcement practices. Medical malpractice cases arise within a therapeutic relationship grounded in trust, involve complex professional standards, and are generally characterized by negligence (*culpa*) rather than intentional wrongdoing (*dolus*). These characteristics indicate the need for a more contextual, balanced, and proportionate legal response. The comparative analysis further reveals that restorative justice in Indonesian criminal law reform and the concept of *iṣlāḥ* in contemporary Islamic law share a common orientation toward reconciliation, dialogue, responsibility, and restoration of rights. The convergence of these two frameworks provides

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<sup>54</sup> Al-Billeh, Tareq, and Hamzeh Abu Issa. 'The Community Penalties in the Jordanian Criminal Law: What are the Alternatives to Liberty-Depriving Penalties?'. *Pakistan Journal of Criminology* 14, no. 3 (2022): 1-18.

the basis for a synthesis model that promotes victim recovery while simultaneously ensuring professional accountability and legal certainty for medical practitioners.

Through this integrative perspective, the resolution of medical malpractice disputes can gradually shift from a purely punitive paradigm toward a restorative model that emphasizes humanistic values, substantive justice, and social harmony. Such an approach allows legal institutions to better balance the interests of victims, medical professionals, and society. Nevertheless, this study remains normative; therefore, future research should expand the analysis to the empirical level by examining the implementation of penal mediation or similar restorative mechanisms in medical dispute resolution across different regions. In addition, interdisciplinary studies in health law, medical ethics, and public policy are necessary to develop practical, measurable technical guidelines for implementing restorative approaches in medical malpractice cases in contemporary Indonesia.

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#### **AUTHOR CONTRIBUTIONS**

Hadi Purnomo was responsible for conceptualizing the research, designing the study, curating the data, and preparing the original manuscript draft. Widhi Handoko contributed to the development of the research methodology, supervised the overall research process, and provided critical review and editing of the manuscript to ensure its academic quality. Murad Altwaiqat contributed to the development of the theoretical framework, conducted the comparative legal analysis, and participated in the validation and refinement of the research findings. All authors have read and approved the final version of the manuscript and agree to be accountable for all aspects of the work.

## CONFLICT OF INTEREST

The authors declare that there is no conflict of interest regarding the publication of this paper. This research was conducted independently, without any financial, commercial, or personal relationships that could be construed as a potential conflict of interest. All interpretations, analyses, and conclusions presented in this article are solely those of the authors and were carried out in accordance with academic and ethical research standards.

## AI USAGE STATEMENT

AI tools were used solely for language editing and formatting. All ideas, analyses, interpretations, and conclusions are entirely the authors' own, and all AI-assisted outputs were reviewed to ensure academic integrity.

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