

# From Individual to Corporate Criminal Liability : An Islamic Criminal Law Analysis of Anamnesis Inaccuracy and Misdiagnosis in Telemedicine

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**Abstract:** The advancement of digital health technology through telemedicine offers significant opportunities but also raises serious legal challenges, particularly concerning inaccurate anamnesis and misdiagnosis that may cause substantial harm to patients. Existing legal scholarship and regulatory frameworks in Indonesia predominantly focus on individual liability of medical practitioners, while the criminal liability of telemedicine corporations for systemic failures remains conceptually underdeveloped. This gap leaves corporate accountability insufficiently addressed in cases where patient harm arises from platform-based medical services. This study aims to analyze the forms of corporate criminal liability of telemedicine providers in cases of inaccurate anamnesis and misdiagnosis resulting in patient harm and to examine how Islamic criminal law approaches such liability. Using normative legal research with statutory and conceptual approaches, this study analyzes relevant regulations, legal doctrines, and principles of Islamic criminal law. The findings indicate that existing regulations assign responsibility for service quality to healthcare facilities but do not explicitly regulate corporate criminal liability for telemedicine providers. This study advances a theoretical argument that misdiagnosis in telemedicine should be reconceptualized as a form of corporate criminal responsibility rather than merely a professional individual negligence. From the perspective of Islamic criminal law, this article offers a conceptual contribution by applying the doctrine of *shakhsyah i'tibariyyah* to telemedicine corporations, with *diyāt* and *ta'zir* proposed as appropriate accountability mechanisms. Strengthening the regulatory framework to explicitly recognize corporate criminal liability is essential to enhance patient protection and ensure justice in the digital health sector.

**Keywords:** Telemedicine; Anamnesis Inaccuracy; Misdiagnosis; Corporate Criminal Liabilities; Islamic Criminal Law.

**Abstrak:** Perkembangan teknologi kesehatan digital melalui layanan telemedicine menawarkan berbagai kemudahan, namun sekaligus menimbulkan tantangan hukum yang serius, khususnya terkait ketidakakuratan anamnesis dan kesalahan diagnosis yang dapat menimbulkan kerugian bagi pasien. Kajian hukum dan kerangka regulasi yang ada di Indonesia masih didominasi oleh pendekatan yang menitikberatkan pada pertanggungjawaban pidana individual tenaga medis, sementara pertanggungjawaban pidana korporasi sebagai penyedia layanan telemedicine belum dikaji secara memadai dari sisi konseptual maupun normatif. Kondisi ini menimbulkan kekosongan hukum dalam menempatkan akuntabilitas korporasi atas kerugian pasien yang timbul akibat kegagalan sistem layanan kesehatan berbasis digital. Penelitian ini bertujuan untuk menganalisis bentuk pertanggungjawaban pidana korporasi penyedia telemedicine dalam kasus ketidakakuratan anamnesis dan kesalahan diagnosis yang mengakibatkan kerugian pasien, serta mengkaji pendekatan hukum pidana Islam terhadap persoalan tersebut. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan dan konseptual, melalui analisis terhadap peraturan perundang-undangan, doktrin hukum, dan prinsip-prinsip hukum pidana Islam. Hasil penelitian menunjukkan bahwa meskipun regulasi yang ada telah membebankan tanggung jawab mutu layanan kepada fasilitas pelayanan kesehatan, namun belum secara eksplisit mengatur pertanggungjawaban pidana korporasi. Penelitian ini menawarkan argumentasi teoretis bahwa kesalahan diagnosis dalam telemedicine perlu direkonstruksi sebagai bentuk pertanggungjawaban pidana korporasi, bukan semata-mata kelalaian profesional individual. Dalam perspektif hukum pidana Islam, artikel ini memberikan kontribusi konseptual melalui penerapan doktrin *syakhsyah i'tibariyyah* terhadap korporasi telemedicine, dengan sanksi *diyāt* dan *ta'zir* sebagai mekanisme pertanggungjawaban yang relevan. Penguatan kerangka regulasi yang secara tegas mengakui pertanggungjawaban pidana korporasi menjadi penting untuk meningkatkan perlindungan pasien dan mewujudkan keadilan dalam sektor kesehatan digital.

**Kata kunci :** Telemedisin; Inakurasi Anamnesis; Misdiagnosis; Tanggungjawab Pidana Korporasi; Hukum Pidana Islam.

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## Introduction

The development of digital health technology through telemedicine has changed the pattern of interaction between patients and medical personnel, while also presenting new legal issues related to diagnostic accuracy and criminal liability.<sup>1</sup> Telemedicine allows healthcare services to be delivered without face-to-face contact, improving access, particularly for people in remote areas and those with limited mobility, such as during the COVID-19 pandemic.<sup>2</sup> However, reliance on digital systems also increases the risk of misdiagnosis and mistreatment, which can lead to serious patient harm.

One fundamental aspect of healthcare is the anamnesis process, which involves interviewing a patient to explore their medical history.<sup>3</sup> In conventional medical practice, anamnesis is conducted through direct interaction between doctor and patient, resulting in richer communication through non-verbal communication, physical examination, and direct observation.<sup>4</sup> However, in telemedicine, limitations in

communication media can lead to a less thorough or even inaccurate anamnesis. Consequently, the potential<sup>5</sup> for misdiagnosis increases, which can lead to both physical and psychological harm to patients.<sup>6</sup>

Misdiagnosis in telemedicine is not a simple matter, as it has broad legal, ethical, and moral implications. Misdiagnosis can have serious consequences, including delayed treatment, incorrect therapy, and even the risk of patient death.<sup>7</sup> This opens up the possibility of criminal and civil liability for both medical personnel and the provider. However, it should be noted that in the context of telemedicine, service providers are typically corporations that act as both technology facilitators and business entities. This raises<sup>8</sup> the question of to what extent corporations can be held criminally liable for patient losses resulting from inaccurate medical histories and misdiagnosis. Therefore, the issue of corporate criminal liability in telemedicine is becoming increasingly relevant and warrants in-depth study.

This limitation is further reinforced by studies highlighting that although Indonesia has established a legal framework for

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<sup>1</sup> Andi Fittrani et al., "Strengthening Human Resources in Supporting Digital Transformation at Dr. Adjidarmo Regional General Hospital | Journal of Knowledge Management," *Journal of Knowledge Management* 19, no. 1 (June 30, 2025): 54–74, <https://journal.uniga.ac.id/index.php/JKM/article/view/42491>.

<sup>2</sup> Memo Lukito and Ascobat Gani, "Efficient and Affordable Health Services Through Digital Health Transformation Via Telemedicine in Indonesia," *Jurnal Kesehatan : Jurnal Ilmiah Multi Sciences* 14, no. 2 (December 9, 2024): 107–17, <https://doi.org/10.52395/JKJIMS.V14I2.452>.

<sup>3</sup> Merita Arini, "Time of Contact Between Officers And Patients on Service Quality: A Study of Health Officers' Perspectives at Public Health Center X | Quality : Jurnal Kesehatan," *Quality : Jurnal Kesehatan* 15, no. 2 (November 30, 2021): 84–94, <https://ejournal.poltekkesjakarta1.ac.id/index.php/adm/article/view/194>.

<sup>4</sup> Nurfitriani et al., *Patient Experience Theory and Practice*, Print Pe (Ponorogo: Uwais Inspirasi Indonesia, 2024).

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<sup>5</sup> Silvia Pascaningrum Sunaryo, "Implementation of Online Communication Between Doctors and Patients Through Telemedicine During the Covid-19 Pandemic," *Journal of Lensa Mutiara Komunikasi* 7, no. 1 (June 15, 2023): 37–50, <https://doi.org/10.51544/JLMK.V7I1.3876>.

<sup>6</sup> Rinna Dwi Lestari, "Reconstruction of Legal Protection Regulations for Doctors and Patients In Health Services Through Telemedicine Based on Justice Values" (Sultan Agung Islamic University, 2023).

<sup>7</sup> RTH Suprptomoto, "Anesthesia Management in Cases of Peripartum Cardiomyopathy (PPCM)," *Indonesian Journal of Obstetric Anesthesia* 8, no. 1 (March 16, 2025): 49–60, <https://doi.org/10.47507/OBSTETRI.V8I1.203>.

<sup>8</sup> Tenggudai Petronella Littik et al., "Harmonization of the Implementation of Telemedicine Legislation to Respond to the Development of Health Technology Companies in Indonesia," *Jurnal Cahaya Mandalika* 3, no. 3 (October 5, 2024): 2662–75, <https://doi.org/10.36312/JCM.V3I3.3661>.

telemedicine, significant regulatory gaps remain, particularly concerning operational standards, data protection, and the clarity of liability for medical errors within digital healthcare systems.<sup>9</sup>

In Indonesia, the corporate criminal liability paradigm has been incorporated into various sectoral laws, although its implementation has often been controversial. However, its application in the context of telemedicine remains limited and has not been explicitly formulated. This has led to unclear boundaries of responsibility between doctors and corporations providing digital healthcare services.

From the perspective of Islamic criminal law, criminal responsibility does not only rest on the individual, but also on the principles of justice and benefit.<sup>10</sup> Islamic criminal law recognizes the concept of *syakhsiyah*. The Islamic legal system allows non-individual entities to be viewed as legal subjects. In a medical context, a misdiagnosis that results in a fatal outcome for a patient can be considered a crime, especially if there is negligence (*taqsir*) on the part of the individual involved.<sup>11</sup> However, questions arise regarding how Islamic criminal law views the role of corporations as non-individual entities in the context of technology-based medical services. Can corporations be considered

criminal subjects who share responsibility for the impacts of their systems, or should only individuals who interact directly with patients bear the legal burden?

This perspective is further supported by contemporary Islamic legal scholarship which emphasizes the dynamic role of *maqashid* Sharia in responding to modern legal issues, including technological developments in healthcare. Islamic law is not static but evolves to address new societal challenges by prioritizing the protection of life, welfare, and justice in emerging contexts such as digital health services.<sup>12</sup>

This approach is consistent with contemporary Islamic legal scholarship which views Islamic law as a dynamic system capable of responding to evolving social and technological challenges. Islamic legal studies emphasizes that the application of sharia principles must consider contextual realities while maintaining core objectives such as justice, legal certainty, and public welfare.<sup>13</sup>

This research is based on the argument that legal approaches that limit liability to individual physicians are no longer adequate in the context of modern telemedicine. Telemedicine involves not only the doctor-patient relationship but also the corporations that provide the technological infrastructure, determine system design, and regulate service procedures. Therefore, misdiagnosis and misdiagnosis errors cannot always be understood as mere individual negligence, but also as systemic failures that open up the possibility of corporate criminal liability.

discourse has become increasingly urgent as telemedicine has become widely adopted in various countries, including Indonesia, which

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<sup>9</sup> <https://ejournal.uinmybatusangkar.ac.id/ojs/index.php/Juris/index>,

<sup>10</sup> Muhammad Irfan Fadil, Yusup Azazy, and Opik Rozikin, "Analysis of Criminal Sanctions for Driving Negligence Resulting in Death in Decision Number: 313/Pid.Sus/2024/Pn Jmr Islamic Criminal Law Perspective," *MAQASID* 14, no. 1 (May 11, 2025): 184–203, <https://doi.org/10.30651/MQS.V14I1.26262>.

<sup>11</sup> Anis Fitriana and Laras Fira Fauziyah, "Criminal Accountability (*Mas'uliyah Al-Jinayah*) in Medical Malpractice in Beauty Clinics," *Journal of Islamic Studies and Humanities* 7, no. 1 (August 4, 2022): 17–43, <https://doi.org/10.21580/JISH.V7I1.11679>.

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<sup>12</sup> <https://journal.iaincurup.ac.id/index.php/alistinbath>

<sup>13</sup> Al-Manahij : Journal of Islamic Law Studies

has a majority Muslim population.<sup>14</sup>On the one hand, the public requires fast, easy, and efficient digital healthcare services. On the other hand, the public also demands adequate legal protection in the event of medical errors resulting from inaccurate anamnesis in telemedicine.<sup>15</sup>The urgency of research on this issue lies in the need to formulate a criminal liability framework that aligns with the principles of justice in Islamic law and adapts to the realities of modern health technology developments. Therefore, this study is not only academically important but also has practical relevance in building a legal system that is responsive to the challenges of the digital era.

Research conducted by Ni Putu Ayu Angreny Widhiastuty et al., in the *Journal of Legal Analogy*, discusses the guarantee of legal protection for patients harmed by misdiagnosis in telemedicine services. This research focuses on how Indonesian positive law regulates the protection of patient rights in digital health practices, particularly regarding the responsibilities of medical personnel providing services.<sup>16</sup> Meanwhile, research conducted by Rendy Tridolok Silaban et al., in *The UNES Law Review* places greater emphasis on the individual criminal liability of

physicians for errors in telemedicine services.<sup>17</sup>Both studies demonstrate academic interest in the issue of diagnostic errors in telemedicine, but the studies still focus on the personal responsibility of physicians and the legal protection of patients from a national legal perspective.

The novelty of this research lies in its distinct focus, highlighting the criminal liability of corporations as providers of telemedicine services in cases of inaccurate medical history taking and misdiagnosis. While previous research focused on legal protection for patients and individual liability for medical personnel, this study presents a new dimension by analyzing the role of corporations as legal entities that may also be held accountable. Furthermore, this study integrates an Islamic criminal law perspective to examine the extent to which sharia principles can provide a fair and equitable accountability framework in telemedicine practices.

The purpose of this study is to analyze the forms of criminal liability of corporations as telemedicine providers for inaccurate anamnesis and misdiagnosis that cause harm to patients. Furthermore, this study aims to examine how Islamic criminal law views corporate responsibility in the context of digital-based healthcare services, thereby formulating a framework capable of addressing the challenges of modern healthcare technology developments without neglecting the principles of justice and the protection of patient rights.

From the perspective of Islamic criminal

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<sup>14</sup> Henky Fernando et al., "The De-Existence of Islamic Political Parties in General Elections: A Case Study of Indonesia as a Muslim-Majority Country," *Cogent Social Sciences* 9, no. 1 (December 31, 2023), <https://doi.org/10.1080/23311886.2023.2225838>.

<sup>15</sup> Raissa Orsayeva et al., "Telemedicine during COVID- 19: Features of Legal Regulation in the Field of Administrative Liability for Errors Committed by Medical Institutions," *Egyptian Journal of Forensic Sciences* 15, no. 1 (April 26, 2025): 26, <https://doi.org/10.1186/s41935-025-00443-3>.

<sup>16</sup> Ni Putu Ayu Angreny Widhiastuty, Anak Agung Sagung Laksmi Dewi, and I Gusti Agung Ayu Gita Pritayanti Dinar, "Legal Protection Against Misdiagnosis of Disease Through Telemedicine Platforms," *Jurnal Analogi Hukum* 6, no. 3 (March 19, 2024): 356–63, <https://doi.org/10.22225/JAH.6.3.2024.356-363>.

<sup>17</sup> Rendy Tridolok Silaban, YA Triana Ohoiwutun, and Ainul Azizah, "Criminal Liability of Doctors in Telemedicine Services," *UNES Law Review* 7, no. 4 (June 3, 2025): 1363–80, <https://doi.org/10.31933/UNESREV.V7I4.2413>.

law, liability is not limited to individual wrongdoing but is grounded in broader principles of justice, harm prevention, and public welfare (*maslahah*). Islamic legal discourse also emphasizes restorative approaches such as *islah*, which aim to restore balance between parties and ensure justice, benefits, and legal certainty within society. The concept of *shakhsyah i'tibāriyyah* (legal personality) further recognizes that non-individual entities, including corporations, may bear legal responsibility when their actions or systems cause harm. From the perspective of Islamic criminal law, liability is not limited to individual wrongdoing but is grounded in broader principles of justice, harm prevention, and public welfare (*maslahah*). Islamic legal discourse also emphasizes restorative approaches such as *islah*, which aim to restore balance between parties and ensure justice, benefits, and legal certainty within society. The concept of *shakhsyah i'tibāriyyah* (legal personality) further recognizes that non-individual entities, including corporations, may bear legal responsibility when their actions or systems cause harm.

### Method

This research is a normative legal study of a doctrinal and conceptual nature, which aims to develop and reconstruct the concept of corporate criminal liability in telemedicine services. This research focuses on the analysis of legal norms, doctrines, and concepts. With this approach, the research is directed at building a theoretical argument that inaccurate anamnesis and misdiagnosis in telemedicine can be understood not only as individual physician negligence, but also as a form of systemic failure that opens up the opportunity for corporate criminal liability.

The approach used includes a statutory

approach and conceptual approach. The statutory approach is used to examine positive legal regulations related to telemedicine practices, corporate criminal liability, and patient legal protection. The conceptual approach is used to examine and reconstruct the theoretical framework of corporate criminal liability by referring to modern criminal law doctrine and the principles of Islamic criminal law, especially the concept of *syakhsyah i'tibāriyyah*. Through this approach, research is consciously positioned as a conceptual and theoretical study, not merely a normative descriptive one.

Data processing techniques were carried out by inventorying and classifying legal materials, consisting of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations such as Law Number 29 of 2004 concerning Medical Practice, Law Number 11 of 2008 concerning Electronic Information and Transactions, and other related provisions. Secondary legal materials include books, journals, scientific articles, and previous research results discussing issues of telemedicine, criminal liability, and Islamic law. Meanwhile, tertiary legal materials include legal dictionaries and legal encyclopedias that help strengthen understanding of the terms and concepts used. All of this data is then processed systematically according to the research problem.

The analysis of legal materials was conducted qualitatively using prescriptive reasoning. The analysis was also argumentative and reconstructive, formulating a conceptual model of corporate criminal liability in telemedicine based on the principles of Islamic criminal law. By connecting positive law, criminal law doctrine, and the values of justice in Islamic law, this

research is expected to provide a theoretical contribution to the development of discourse on corporate criminal liability in the digital health era.

## Result and Discussion

### Criminal Liability of Telemedicine Service Providers for Inaccurate Anamnesis and Misdiagnosis

Corporate criminal liability is a concept that positions legal entities as subjects of criminal law that can be held accountable for criminal acts.<sup>18</sup> Initially, criminal law only recognized individuals as criminal subjects, but developments in modern business activities show that crimes are often committed within the corporate sphere.<sup>19</sup> In the context of telemedicine, corporations function not only as technology providers but also as controllers of system design, service standards, and digital medical interaction mechanisms.<sup>20</sup> Therefore, criminal liability in telemedicine cannot be reduced to individual physician errors but must be constructed as corporate criminal liability based on systemic failure.

This perspective is further reinforced by contemporary Islamic legal studies which emphasize that the application of *maqashid sharia* must prioritize the realization of public welfare and the prevention of harm in diverse and evolving social contexts. The principle of *maslahah* is not only normative but also

adaptive, allowing Islamic law to respond to complex modern issues through contextual legal reasoning<sup>21</sup>.

The mechanism for implementing telemedicine is regulated in the Minister of Health Regulation Number 20 of 2019 concerning the Provision of Telemedicine Services between Healthcare Facilities.<sup>22</sup> Article 2 of the Minister of Health Regulation on the Provision of Telemedicine Services between Healthcare Facilities states that "Telemedicine services are carried out by healthcare workers who have a practice permit at the healthcare facility provider."<sup>23</sup> Article 1 Number 2 of the Minister of Health Regulation on the Provision of Telemedicine Services between Healthcare Facilities confirms that telemedicine carried out between one healthcare facility and another is in the form of consultations to establish a diagnosis, therapy, and/or disease prevention.<sup>24</sup> This indicates that anamnesis and diagnosis are indeed core parts of telemedicine services that must be fulfilled by the provider. However, the Minister of Health Regulation places more emphasis on service standards between healthcare facilities, not specifically on the criminal liability of the corporation providing the platform service.

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<sup>18</sup> Fahreyz Reza Saputra, Hafrida Hafrida, and Herry Liyus, "Corporate Criminal Liability in Customs Crimes in Indonesia," *Jurnal Supremasi* 15 (March 10, 2025): 17–32, <https://doi.org/10.35457/SUPREMASI.V15I1.4178>.

<sup>19</sup> Lieselot Bisschop, Yogi Hendlin, and Jelle Jaspers, "Designed to Break: Planned Obsolescence as Corporate Environmental Crime," *Crime, Law and Social Change* 78, no. 3 (October 31, 2022): 271–93, <https://doi.org/10.1007/s10611-022-10023-4>.

<sup>20</sup> Widhiastuty, Dewi, and Dinar, "Legal Protection Against Misdiagnosis of Disease Through Telemedicine Platforms."

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<sup>21</sup> The Maqashid Sharia Construction on Inheritance in Dayak Ngaju Customs within the Tumbang Anoi Agreement

<sup>22</sup> Ismi Fadriah Hamzah, "Telehealth and Telemedicine: A Health Law Perspective," *Journal of Social Sciences and Education* 2, no. 2 (May 11, 2024): 125–31, <https://jurnal.unsultra.ac.id/index.php/jisdik/article/view/180>.

<sup>23</sup> Max Bonsapia and Jumiran, "Legal Aspects of Telemedicine in Indonesia," *The Juris* 9, no. 1 (June 30, 2025): 259–68, <https://doi.org/10.56301/JURIS.V9I1.1636>.

<sup>24</sup> Juni Rahmadhani Simatupang, Ardiansah, and Sudi Fahmi, "Effectiveness of Telemedicine Media Use Based on Indonesian and Malaysian Law," *Samudra Keadilan Law Journal* 18, no. 1 (March 4, 2023): 15–32, <https://doi.org/10.33059/JHSK.V18I1.7183>.

The Minister of Health's regulation does not contain explicit provisions regarding criminal liability for misdiagnosis due to negligence in the telemedicine system.<sup>25</sup> Although the regulation affirms that responsibility for service quality rests with healthcare facilities, it has not explicitly extended this to the criminal realm for corporations operating telemedicine applications. This creates a legal vacuum, as patient harm due to inaccurate anamnesis and misdiagnosis has not been adequately addressed in criminal regulations.

The elements of a criminal act essentially include prohibited actions or negligence that harm others.<sup>26</sup> In telemedicine, inaccurate anamnesis can occur when a patient's medical history is not properly obtained due to limitations in digital communication or inadequate application systems.<sup>27</sup> This potentially violates medical professional standards, which require doctors to conduct a thorough anamnesis. When the anamnesis results are inaccurate, the diagnosis is prone to error or misdiagnosis.<sup>28</sup> Therefore, this erroneous act can be considered a form of legal violation that opens the door to criminal

liability.

History taking is a fundamental step in medical practice, as it is the initial information that forms clinical decisions.<sup>29</sup> In telemedicine systems, communication is limited to voice, text, or video, often resulting in incomplete communication of critical information.<sup>30</sup> Weaknesses in application systems, a lack of adequate documentation features, or inadequate technical guidance from providers can increase the risk of errors. For example, telemedicine applications that don't provide standard patient history forms can easily overlook important information.<sup>31</sup> Consequently, the history taking process depends not only on the physician but also on the quality of the system provided by the corporation.

Misdiagnosis is a consequence of inaccurate history taking.<sup>32</sup> If the patient's basic information is incorrect or incomplete, the medical interpretation will be flawed.<sup>33</sup> In criminal law, misdiagnosis can be categorized as negligence, which is punishable if it results

<sup>25</sup> Dedy Saputra, Rica Regina Novianty, and Hetty Ismainar, "Criminal Liability of Healthcare Personnel in Telemedicine Services," *ANDREW Law Journal* 4, no. 1 (June 30, 2025): 201–8, <https://doi.org/10.61876/ALJ.V4I1.58>.

<sup>26</sup> Andin Dwi Safitri and Khalimatuz Zuhriyah, "Understanding Criminal Acts and Elements of Criminal Acts," *Journal of Law and Justice* 14, no. 1 (June 12, 2025): 34–47, <https://doi.org/10.55499/JUDICIARY.V14I1.310>.

<sup>27</sup> Mustika Bagus Cahyani et al., "Literature Review: The Role of Electronic Medical Records in Health Services," *Indonesian Journal of Health Information Management* 12, no. 2 (October 22, 2024), <https://doi.org/10.33560/JMIKI.V12I2.648>.

<sup>28</sup> Metha Dian Puspa Nasawida and Siti Hatika Sari, "Resolving Medical Disputes Resulting from Misdiagnosis," *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 2, no. 1 (2022): 10–27.

<sup>29</sup> Muhammad Sultan Mandalika et al., "Digitalization of Medical Records in the Legal Vortex of Medical Malpractice Liability Analysis and Patient Data Protection," *Journal of Law and Public Policy Studies* 2, no. 2 (June 23, 2025): 1362–69, <https://doi.org/10.62379/VEEGJ712>.

<sup>30</sup> Sunaryo, "Implementation of Online Communication Between Doctors and Patients Through Telemedicine During the Covid-19 Pandemic."

<sup>31</sup> Lestari, "Reconstruction of Legal Protection Regulations for Doctors and Patients In Health Services Through Telemedicine Based On Justice Values."

<sup>32</sup> James M. Ringer, "Legal Consequences of the Misdiagnosed Patient," in *The Misdiagnosis Casebook in Clinical Medicine*, ed. Hassaan Tohid, Larry G. Baratta, and Howard Maibach (Cham: Springer International Publishing, 2023), 515–30, [https://doi.org/10.1007/978-3-031-28296-6\\_69](https://doi.org/10.1007/978-3-031-28296-6_69).

<sup>33</sup> Rezyana Budi Syahputri, Rheni Haryanti, and Frehtasya Nora Putri Rohma, "Analysis of Completeness of Inpatient Medical Record File Filling at Hospital X in Klaten Regency," *Journal of Health Information Management and Administration* 7, no. 2 (November 26, 2024): 222–31, <https://doi.org/10.32585/JMIK.V7I2.5921>.

in harm to the patient.<sup>34</sup> In such circumstances, responsibility rests not solely with the doctor but also with the corporation that failed to provide adequate service systems and mechanisms. Furthermore, if misdiagnosis occurs repeatedly due to structural weaknesses in the telemedicine system, the corporation's responsibility becomes even clearer.

To assess whether a corporation can be held accountable, it is necessary to analyze the elements of a criminal offense. The first element is the existence of a prohibited act, namely the provision of healthcare services that do not meet standards. If a telemedicine platform is found to be in violation of statutory provisions during its use, the corporation may be deemed to have committed an unlawful act.<sup>35</sup> If the provider fails to comply with the medical service standards stipulated in Minister of Health Regulation No. 20/2019, there is a legal basis for holding the corporation accountable. Therefore, the elements of a criminal offense can be imposed on the corporation.

The second element is the existence of an error (*schuld*), whether intentional or negligent.<sup>36</sup> In telemedicine, a corporation can be considered negligent if it fails to establish clear standard operating procedures (SOPs), fails to provide training to medical personnel,

or fails to provide a reliable technology system.<sup>37</sup> This negligence can be categorized as negligence in selecting medical personnel or negligence in overseeing the operation of the service. If it is proven that the error stemmed from weak corporate oversight and management, then the element of fault can be imposed on the provider.

The third element is the resulting consequences. Misdiagnosis resulting from inaccurate medical history has the potential to cause real harm, such as worsening patient health, disability, or even death.<sup>38</sup> In a criminal context, life-threatening consequences qualify as grounds for criminal liability.<sup>39</sup> Therefore, when adverse consequences arise from a telemedicine service system provided by a corporation, a causal relationship can be proven. This element strengthens the legal basis for holding the corporation criminally liable.

In addition to the elements of a criminal offense, it is also important to assess causality. In telemedicine, the causal relationship between system weaknesses and patient harm can be demonstrated through technical analysis. For example, if an application fails to record a complete medical history or the communication network frequently fails due to the provider's negligence, then the corporation contributed to the medical error. This causal relationship justifies that the error was not solely the result of the doctor's actions, but also the

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<sup>34</sup> Viona Wahyu Rusnita, "Criminal Responsibility for Medical Negligence Committed by Doctors from a Health Perspective in Indonesia" (Andalas University, 2025), <http://>.

<sup>35</sup> Littik et al., "Harmonization of the Implementation of Legislation on Telemedicine to Respond to the Development of Health Technology Companies in Indonesia."

<sup>36</sup> Turkhan Ismayilzada, "The Mistake Doctrine in German and English Contract Law," in *A Framework for AI-Made Mistakes in German and English Contract Law* (Cham: Springer, 2024), 11–68, [https://doi.org/10.1007/978-3-031-61999-1\\_2](https://doi.org/10.1007/978-3-031-61999-1_2).

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<sup>37</sup> Mega Astriana et al., *Health Organization and Management*, ed. Selvi Yona Sari, Printed by Pe (Agam: Tri Edukasi Ilmah Foundation, 2025).

<sup>38</sup> Nasawida and Sari, "Resolving Medical Disputes Resulting from Diagnosis Errors."

<sup>39</sup> Nils Urbach, Daniel Feulner, and Valentin Mayer, "Ethical, Legal, and Social Implications of AI," in *Managing Artificial Intelligence*, ed. Nils Urbach and Daniel Feulner (Cham: Springer, 2026), 291–320, [https://doi.org/10.1007/978-3-032-13308-3\\_13](https://doi.org/10.1007/978-3-032-13308-3_13).

weaknesses in the system managed by the corporation. Therefore, criminal liability can be directed at the corporation.

The form of corporate criminal liability, based on reconstruction from a criminal law perspective, can be constructed on three pillars: structural responsibility, functional responsibility, and normative responsibility. Structural responsibility is inherent in the corporation as the controller of the telemedicine system, including the provision of anamnesis features, data security, and medical documentation mechanisms. Second, functional responsibility arises from the corporation's failure to establish and oversee adequate standard operating procedures (SOPs). Third, normative responsibility relates to the corporation's legal and ethical obligations to ensure patient safety as the primary goal of digital healthcare.

The construction of elements of corporate criminal liability for telemedicine includes: a failure of the corporate system or policy that affects the anamnesis and diagnosis process; managerial or organizational negligence; actual harm to the patient; and a causal relationship between the system failure and the harm. This model shifts the paradigm from individual liability to corporate liability. system-based This model asserts that corporate criminal liability does not depend on proving individual malice, but rather on the failure of digital health service governance.

Thus, corporate criminal liability for cases of inaccurate anamnesis and misdiagnosis in telemedicine services is not only theoretically possible but needs to be systematically constructed as a form of criminal liability based on corporate system failures. Corporations, as telemedicine providers, have structural, functional, and normative control over the digital healthcare system, and

therefore cannot escape patient losses arising from system design weaknesses, managerial negligence, or supervisory failures. By fulfilling the elements of act, error, consequence, and causal relationship stemming from service governance failures, the model of corporate criminal liability for telemedicine shifts from an individual liability approach to a corporate one. system-based Therefore, strengthening positive regulations in Indonesia is urgent, explicitly recognizing telemedicine companies as criminal entities, so that legal protection for patients and the principle of justice in digital healthcare can be more effectively realized.

### **Corporate Responsibility for Inaccurate Anamnesis and Misdiagnosis in Telemedicine Practice from an Islamic Criminal Law Perspective**

The main principle in Islamic criminal law that forms the basis of responsibility is the existence of an act that is detrimental or dangerous to another person (*dharar*).<sup>40</sup>The principle of Islamic jurisprudence states "*la dharar wa la dhirar*", which means there should be no actions that harm oneself or others.<sup>41</sup>Errors in anamnesis and misdiagnosis in telemedicine that result in harm to patients clearly fall into the category of *dharar*.<sup>42</sup>Unlike Indonesian positive law, which still

<sup>40</sup> Melati Sukma Dewi, "Violation of Islamic Business Ethics Principles in the Pertamina Adulteration Corruption Case by PT. Pertamina," *Quranomic: Journal of Islamic Economics and Business* 4, no. 2 (July 11, 2025): 72–92, <https://doi.org/10.37252/JEBI.V4I2.1474>.

<sup>41</sup> Mohamad Sobirin and Karimatul Khasanah, "The Pesantren Scholars' Fatwa on Global Warming and Climate Change: An Integrative Analysis of Islamic Law, Theology, and Environmental Sciences on the Practice of Multidisciplinary Ijtihad," *Cogent Arts & Humanities* 10, no. 1 (December 31, 2023): 1–16, <https://doi.org/10.1080/23311983.2023.2193023>.

<sup>42</sup> Novita Listyaningrum et al., "Legal Protection for Telemedicine Patients Suffering Losses Due to Misdiagnosis in Online Health Platforms," *Unizar Law*

places medical errors within the framework of individual liability, Islamic criminal law has from the beginning placed victim protection and prevention of harm as the primary orientation of legal accountability. Inaccurate anamnesis and misdiagnosis in telemedicine that harm patients are thus not only seen as professional misconduct, but as a violation of the principle of substantive justice.

Corporations from the perspective of Islamic law are not a legal subject that is explicitly mentioned in classical texts.<sup>43</sup> However, the concept of *syakhsiyah l'tibariyah*, or legal personality, as recognized in modern *muamalah* jurisprudence, can be the basis for holding legal entities, including corporations, accountable.<sup>44</sup> Corporations are considered entities with rights and obligations because their activities directly impact society. Therefore, if systemic errors in the implementation of telemedicine result in patient harm, the corporation as an entity can be subject to sanctions. This aligns with the principle of collective responsibility in Islam.

In the context of inaccurate anamnesis, failure to accurately collect a patient's medical history can occur due to systemic weaknesses or procedural omissions established by the corporation. Under Islamic law, this negligence can be categorized as *taqsir* (avoidable negligence), which gives rise to

liability.<sup>45</sup> This approach differs from positive law, which strictly requires proof of individual fault, because under Islamic law, preventable systemic negligence still gives rise to liability. If this negligence results in a misdiagnosis and causes actual harm, then liability lies not only with the doctor but also with the provider.

Misdiagnosis that results in more serious consequences, such as worsening health, disability, or even death, can be considered a crime under Islamic criminal law.<sup>46</sup> If a misdiagnosis results in death, it can be categorized as *qatl (a crime of murder). khatha'* (murder due to negligence).<sup>47</sup> In this context, responsibility is not only placed on the individual perpetrator but can also involve parties involved in the negligence, namely the corporation providing the telemedicine service. The Islamic criminal law approach has the ability to link consequences to a collective responsibility structure, thereby positioning the corporation as a party contributing to the fatal outcome. This demonstrates that Islamic law is more adaptive in dealing with modern, organizational crimes.

Sanctions in Islamic criminal law for negligence can take the form of *diyat* (compensation) or *ta'zir* (sanctions

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Review 7, no. 2 (December 25, 2024): 185–95, <https://doi.org/10.36679/ULR.V7I2.79>.

<sup>43</sup> Ikhlasil Amri, "Corporate Criminal Liability as Subjects of Corruption Crimes from the Perspective of Positive Law and Islamic Law" (Faculty of Sharia and Law, UIN Syarif Hidayatullah Jakarta, 2023), <https://repository.uinjkt.ac.id/dspace/handle/123456789/72139>.

<sup>44</sup> Panji Adam Agus Putra, "Position of Legal Entities as Legal Subjects in Sharia Economic Law," *Syiar Hukum Jurnal Ilmu Hukum* 17, no. 2 (2019): 216–42.

<sup>45</sup> Ari Anto Wibowo, "Cooperation System Between Boat Owners and Fishermen in Muara Gading Mas, Labuhan Maringgai District, Sharia Economic Perspective" (Metro State Islamic Institute, 2025).

<sup>46</sup> Maulana Zubaidi Rachman, "THE CRIMINAL ACT OF MURDER BY A CHILD WITH PSYCHOPATHIC MENTAL DISORDERS REVIEWED FROM POSITIVE LAW AND ISLAMIC CRIMINAL LAW." (Faculty of Sharia and Law, Syarif Hidayatullah State Islamic University, Jakarta, 2022), <https://repository.uinjkt.ac.id/dspace/handle/123456789/59677>.

<sup>47</sup> Nurul Hidayah Ritonga and Zulkarnain, "The Position of the Defendant's Statement as Evidence in the Perspective of Islamic Criminal Justice," *Justitia Jurnal Hukum* 9, no. 2 (July 31, 2025): 193–204, <https://doi.org/10.30651/justitia.v9i2.27417>.

determined by the authorities).<sup>48</sup>In cases of misdiagnosis that result in financial loss or worsening of the patient's condition, corporations can be required to pay compensation in the form of *diyat*. This approach addresses the weakness of positive law, which tends to focus on administrative sanctions, because *ta'zir* allows the state to impose sanctions proportional to the level of systemic harm, including the suspension or revocation of telemedicine business licenses. Thus, Islamic law provides a legal instrument that is more responsive to the risks of digital health technology.

Islamic<sup>49</sup> concept of *hisbah* is also relevant, namely the state's obligation to oversee economic activities and public services to ensure they comply with *sharia* and do not harm the public. In the context of telemedicine, the state plays not only an administrative regulator but also a guardian of the public interest, actively correcting market failures and corporate system failures. This demonstrates that under Islamic law, public protection always takes precedence over corporate interests.

The principle of public welfare (*maslahah*) can be used as a basis for assessing corporate responsibility. Telemedicine, as a modern innovation, does bring many benefits, but when it poses a risk of harm due to system negligence, the principle of *maslahah* demands control and accountability. Corporations, as the parties managing the system and profiting

from the service, are obligated to bear the resulting risks. Therefore, criminal liability in Islam is directed at safeguarding the welfare of patients, the vulnerable party.

The principle of *al-ghunmu bi The phrase "al-ghurmi,"* meaning "profit commensurate with risk," is relevant in this context.<sup>50</sup> Corporations profit from telemedicine services, and therefore are obligated to bear the legal risk for any resulting losses. Inaccurate medical history taking and misdiagnosis that harm patients cannot be left solely to the individual physician, as the system used belongs to and is the corporation's responsibility. Therefore, the Islamic criminal law perspective requires that the burden of responsibility be shared proportionally.

Corporate criminal liability under Islamic law can be enforced through *ta'zir mechanisms* by the authorities. Corporations can be fined, have their licenses suspended, or other forms of sanctions appropriate to the severity of the offense and its impact on society. This approach aligns with the objectives of Islamic law (*maqasid al-shariah*) which emphasizes the protection of the soul (*hifz al-nafs*) and protection of assets (*hifz al-mal*). Thus, criminal sanctions against corporations are not merely a form of punishment, but also an instrument to safeguard the public interest.

Thus, from an Islamic criminal law perspective, corporations as telemedicine providers can be held criminally liable for inaccurate anamnesis and misdiagnosis. Corporations are considered collective legal entities with an obligation to protect patient

<sup>48</sup> Melita Mulyani and Hasuri, "Problems of Criminal Sanctions for Narcotics Abuse: Comparative Study of National Crime and Islamic Crime," *Jurnal Mahkamah: Kajian Ilmu Hukum dan Hukum Islam* 9, no. 1 (June 29, 2024): 33–50, <https://doi.org/10.25217/jm.v9i1.4502>.

<sup>49</sup> Elvira Sitna Hajar, "Public Supervision Institution (*Hisbah*) According to Ibn Taimyah," *An Nawawi* 1, no. 2 (October 11, 2021): 71–78, <https://doi.org/10.55252/ANNAWAWI.V1I2.11>.

<sup>50</sup> Popi Puadah et al., "Synergy of Islamic Religious Education in Increasing Literacy and Access to Sharia Finance," *Iqra' Journal: Educational Studies* 10, no. 1 (July 19, 2025): 386–402, <https://doi.org/10.25217/ji.v10i1.6338>.

safety. The elements of negligence, consequence, and causality can be proven in this case, thus clarifying the basis for corporate criminal liability. Islamic criminal law provides scope for punishing not only individuals but also entities that cause harm through the systems they manage. Thus, the principles of justice and public protection are maintained in the development of digital healthcare services.

### Conclusion

Misdiagnosis and misdiagnosis errors in telemedicine practice cannot be understood solely as professional failures of individual medical personnel, but must be read as a legal phenomenon that also stems from the systemic failure of the service provider corporation. While Minister of Health Regulation No. 20 of 2019 does regulate standards for the provision of telemedicine services, this regulation is still limited to administrative aspects and service quality, and fails to address the issue of corporate criminal liability when patient losses arise from system design, internal policies, and structural negligence of the provider.

Corporate criminal liability model based on system failure (corporate system-based liability) shifts the dominant paradigm from individual liability to collective corporate responsibility. From an Islamic criminal law perspective, corporations are positioned as legal subjects through the concept of *syakhsiyah i'tibāriyyah*, so that systemic errors can be qualified as *taqshir* that give rise to criminal responsibility. This approach offers new conceptual insights by positioning Islamic criminal law not merely as an ethical norm, but as an alternative theoretical framework capable of addressing modern technology- and organization-based crimes. *Diyāt* and *ta'*

*zīr* sanctions are understood not only as instruments of punishment, but as mechanisms for protecting the soul (*hifz al-nafs*) and public welfare.

Telemedicine regulations in Indonesia need to be expanded to explicitly address the criminal liability of service providers, not just administrative aspects or the responsibilities of medical personnel. The government can integrate criminal provisions that emphasize the role of corporations as legal entities, providing patients with stronger legal protection in the event of medical errors. Furthermore, telemedicine providers should develop application systems that meet medical safety standards, provide clear standard operating procedures (SOPs), and conduct ongoing monitoring to minimize the risk of errors. This approach will enable telemedicine practices to be more fair, transparent, and oriented toward protecting patient rights.

### CRedit Authorship Contribution

Handoyo Prasetyo: Conceptualization, Supervision, Writing – original draft. Bambang Waluyo: Methodology, Formal analysis, Writing – review & editing. Subakdi: Investigation, Data curation, Writing – review & editing. Edward Benedictus Roring: Data collection, Literature review, Writing – original draft. Bakhytbek Begaliyev A: Comparative analysis, International perspective, Writing – review & editing. All authors have read and approved the final version of the manuscript.

### Declaration of Competing Interest

The authors declare that they have no known competing financial, institutional, or personal interests that could have influenced the work reported in this paper.

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