

Shariah Principles of Liability Arising from the Treatment Contract and the Physician's Commitment to them

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ABSTRACT

This study examines the Shariah principles governing physician liability within the framework of a treatment contract, analyzing the extent to which physicians adhere to these principles in Islamic jurisprudence and modern legal systems. The research focuses on the concept of medical liability and its legal foundations, distinguishing between contractual and tortious liability while discussing whether a physician's obligation is to exert due care or guarantee a specific outcome. Furthermore, it explores civil and criminal liability from an Islamic perspective and reviews modern legal applications to assess their compatibility with Islamic jurisprudential principles. The study employs inductive and analytical methodologies, drawing on relevant jurisprudential and legal texts.

Keywords: Medical liability, treatment contract, Islamic jurisprudence, duty of care, contractual liability, tortious liability, criminal liability.

1. INTRODUCTION

Medical liability is a fundamental topic in both Islamic jurisprudence and modern legal systems, as it directly affects the rights of both patients and physicians. A physician, by virtue of their profession, is entrusted with patient health and is expected to adhere to well-established scientific and ethical principles. However, when a medical error occurs, it raises questions regarding the physician's liability and whether they are obligated to achieve a specific outcome or merely required to exercise due care in accordance with medical standards.

Islamic jurisprudence, as a comprehensive legal system, has established principles for physician liability based on the concept of *damān* (liability), which determines when a physician is responsible for harm and when they are exempt. Likewise, modern legal systems seek to regulate medical liability in a manner that aligns with advancements in healthcare. This study analyzes physician liability in Islamic jurisprudence and contemporary legislation, focusing on whether the physician is required to exert due care or guarantee results and identifying cases in which the physician is held civilly or criminally liable for their actions.

2. RESEARCH PROBLEM

The research problem revolves around defining the Islamic framework for physician liability arising from the treatment contract and the extent to which physicians are bound by it. The study seeks to answer the following questions:

- What is the concept of medical liability in Islamic jurisprudence?
- Is the physician obligated to achieve a specific outcome, or is their duty limited to exercising due care?
- What is the difference between contractual and tortious liability for physicians?
- Under what circumstances is a physician liable for harm caused to a patient?

How can Islamic legal principles be reconciled with modern laws in regulating medical liability?

3. RESEARCH OBJECTIVES

This study aims to:

1. Analyze the concept of medical liability in Islamic jurisprudence and modern legal systems.
2. Distinguish between contractual and tortious liability for physicians.
3. Clarify whether the physician's obligation is to exert due care or to guarantee an outcome.
4. Conduct a comparative study of Islamic legal principles and modern regulations regarding physician liability.
5. Propose solutions to harmonize Islamic jurisprudence with contemporary legal frameworks in regulating medical liability.

4. LITERATURE REVIEW

1. Civil Liability Arising from Childbirth Disabilities

- **Author:** M. M. Hussein Jalil Hassoun
- **Source:** *Journal of Humanities and Natural Sciences*
- **Summary:** This study examines civil liability for physicians in cases where negligence during childbirth leads to infant disabilities, linking the discussion to Islamic legal principles and contemporary legislation.

2. The Legal System of Anesthesiologist Liability

- **Author:** Nebras Alawi Najib Al-Sultani
- **Source:** *Journal of Humanities and Natural Sciences*
- **Summary:** This study explores the liability of anesthesiologists for medical errors during surgical procedures and their adherence to scientific standards.

3. The Civil Liability of Physicians Who Refuse to Provide Treatment: A Comparative Study

- **Authors:** Hanan Muhammad 'Ubādah & Husni Mahmoud 'Abd al-Samad
- **Source:** *Ajman University*
- **Summary:** This study analyzes the physician's liability for refusing treatment, comparing Islamic jurisprudence with modern legal systems.

5. RESEARCH METHODOLOGY

This study employs inductive, analytical, and comparative methodologies to examine Islamic jurisprudential and legal provisions on medical liability.

- **Inductive Method:** Collects and examines jurisprudential and legal provisions related to medical liability.
- **Analytical Method:** Analyzes Islamic and legal texts to derive the governing principles of physician liability.
- **Comparative Method:** Compares medical liability in Islamic jurisprudence with modern legal frameworks, highlighting similarities and differences.

6. RESULTS AND DISCUSSION

1. Concept of Medical Liability in Islam

- Medical liability in Islamic jurisprudence is based on the principle of *ḍamān* (compensation), wherein a physician is responsible for harm caused by their treatment if negligence or misconduct is established, following the legal maxim: "*Harm must be removed.*"

2. Difference Between Contractual and Tortious Liability

- **Contractual Liability:** The physician is obligated to exert due care but is not required to guarantee the patient's recovery.

- **Tortious Liability:** Arises when the physician commits gross negligence or an error that directly causes harm to the patient.

3. Physician's Obligation: Due Care vs. Guaranteed Result

- Islamic jurisprudence asserts that a physician's duty is to exert due care rather than ensure a specific outcome.
- If an explicit contractual clause obligates the physician to guarantee a cure, liability may be imposed accordingly.

4. Jurisprudential Rulings on Physician Liability

- If the physician is skilled and follows medical standards, they are not liable.
- If the physician makes a mistake or exceeds professional limits, they are responsible for the harm caused.
- The Prophet Muhammad's (PBUH) hadith: *"Whoever practices medicine without being known for it, he is liable"* establishes medical liability in cases of incompetence.

5. Criminal Liability of Physicians

- If the harm was unintended and resulted from a proper medical procedure, no criminal liability is imposed.
- If the physician's negligence or misconduct caused significant harm, they may face criminal charges.

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7. CONCLUSION

The study concludes that Islamic jurisprudence establishes physician liability based on the principle of *damān* and differentiates between contractual and tortious liability. While modern legal systems align with many Islamic principles, further adjustments are needed to fully integrate Islamic jurisprudence with contemporary regulations on medical liability.

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