

Legal Review of Legal Protection and Dispute Resolution Regarding Alleged Malpractice by Medical Personnel in Law Number 17 Of 2023 Concerning Health

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Abstract

Law No. 17 of 2023 concerning Health, an omnibus law that has been in effect since August 8, 2023, is expected to provide better legal protection for medical personnel compared to the existing law. However, in reality, cases of alleged medical malpractice disputes are increasingly emerging and even going viral. Generally, alleged medical malpractice disputes arise because the results of healthcare services do not meet expectations or demands. The public no longer considers whether there was intent to harm the patient (*mens rea*), how healthcare services are delivered, or the individual variability of each patient, which sometimes results in the inability to fully adhere to standard operating procedures. This thesis aims to answer the following questions: The implementation of Law No. 17 of 2023 concerning Health in providing legal protection for medical personnel in carrying out their profession, and the procedures for resolving alleged medical malpractice disputes under Law No. 17 of 2023 concerning Health. The purpose of this thesis is to determine the implementation of Law Number 17 of 2023 concerning Health in providing legal protection for medical personnel in carrying out their profession, and to determine the procedures for resolving medical disputes involving alleged medical malpractice. The results of this empirical normative research, which involved 26 respondents, all medical personnel at the Dr. Midiyato Suratani Naval Hospital in Tanjungpinang, revealed that all respondents (100%) felt that Law Number 17 of 2023 concerning Health was inadequate in providing legal protection for their profession. Only one respondent (3.8%) stated that the implementation of Law Number 17 of 2023 concerning Health was worse in terms of legal protection and the procedures for resolving disputes involving alleged medical malpractice. Eleven respondents (42.3%) stated that it was better, eight respondents (30.8%) stated that it was the same, and six respondents (23.1%) stated that they did not know. In terms of medical dispute resolution, 23 respondents (88.5%) stated that Law Number 17 of 2023 concerning Health has not provided a sense of justice for medical personnel, while 2 respondents (7.7%) stated that it has provided a sense of justice and 1 respondent (3.8%) stated that they did not know.

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1. INTRODUCTION

In carrying out their profession, medical personnel are regulated by various regulations related to aspects of professional ethics, aspects of professional discipline, and legal aspects in the form of a set of professional legal rules, with the aim of maintaining the dignity of the profession, ensuring patient safety, and legal protection for both medical personnel and the community (Muntaha, 2017, p. 242; Sadi Is, 2015, p. 60; Siregar, 2023, p. 46; Sofyan & Parawansa, 2025, p. 57; Wirawan, 2020, p. 25).

In addition, in order to provide legal certainty and legal protection to recipients of health services, doctors, and dentists, as well as to improve, direct, provide a legal basis and reorganize various legal instruments that regulate the implementation of medical practice so that it can run in accordance with developments in science and technology and also provide regulations regarding the implementation of medical practice, Law Number 17 of 2023 concerning Health has been enacted in the form of an Omnibus Law and is *Lex Specialis* and came into effect on August 8, 2023, replacing several laws and regulations that were previously in effect. In addition to the Health Law and the Regulations of the Minister of Health, there are many other regulations that regulate how the implementation of health services and medical practice should ideally be carried out both in health service facilities such as hospitals, community health centers, and independently (Budiyaniti, 2026).

Despite the many laws and regulations, health ministerial regulations, professional organization rules, and standard operating procedures issued, cases of medical disputes are increasingly emerging. This shows that the public's demands for the results of health service efforts, especially medical practice, are very high, because generally medical disputes occur because the results of these health efforts do not match what is expected or demanded (Sulaiman, Handayani & Mulyana, 2022). The public no longer considers the intention to harm a patient (*mens rea*), the process of healthcare delivery, or the individual variability of each patient, which sometimes results in standard operating procedures not being fully implemented. The public also often fails to recognize that medical practice is not a result-based agreement (*resultaat verbintenis*) but rather a business agreement (*inspanning verbintenis*) in which doctors strive to cure patients to the best of their ability (Asyhadie, 2017, p. 111; Chazawi, 2016, p. 105; Hatta, 2013, p. 127; Iskandar, 2014, p. 2).

Furthermore, differences in understanding of legal regulations between hospitals, including their medical personnel, and the public often lead to medical disputes that result in criminal reports and/or civil lawsuits. This situation makes doctors uneasy at work because they are always haunted by the threat of lawsuits if the results of their medical practice fail or do not meet the expectations of patients or their families (Adhalia, 2023).

The declining public trust in medical professionals and the increasing number of lawsuits filed by the public today are often associated with the failure of medical treatment efforts. Conversely, if the medical treatment performed is successful, it is considered excessive, even though doctors, with the scientific and technological tools they possess, are only trying to cure, and failure in the application of medical science is not always synonymous with failure in action. Various legal efforts have been made to provide comprehensive protection to the public as recipients of services and doctors as providers. However, the rapid development of medical science and technology is not balanced with legal developments (Silva-Diaz, *et. al.*, 2026).

The legal instruments governing the implementation of medical and dental practices are considered inadequate, so far still dominated by formal needs and government interests, while the portion of protection for the profession is still insufficient. In addition, the role of various professional organizations, associations of educational institutions that currently exist also needs to be empowered in order to improve the quality of health services

provided by medical personnel. Law No. 17 of 2023 concerning Health is expected to provide better legal protection and medical dispute resolution procedures for medical personnel compared to existing laws (Inayati, 2026).

The Indonesian government, through the Ministry of Health, has conducted extensive publicity campaigns both while the law was still in draft form and after its enactment. The Ministry of Health has assured that the Health Law provides greater legal protection for medical personnel in particular, and provides legal certainty, justice, and benefits to all levels of society in general (Alexander, Suryani & Apriyani, 2026). However, some medical personnel still believe they are not legally protected, are not protected from the threat of violence they may face, and are still anxious and worried about being reported to the police or sued in court if the outcome of their healthcare services does not meet the expectations of patients or their families. A number of cases that have gone viral recently seem to justify these concerns and doubts among medical personnel that the new Health Law can protect them from legal sanctions.

2. METHODS

This research is a literature review research, the data sources of which are obtained from library materials. In terms of its nature, it is a qualitative research, and is categorized as descriptive-analytical research, which is intended to provide an overview and analysis of the management of medical dispute resolution and legal protection regulated in Law Number 17 of 2023 concerning Health for medical personnel (doctors) in carrying out their profession and legal regulations related to legal protection for medical personnel. In terms of its form, this research is a Normative Empirical research or legal sociology, namely the approach used to see the implementation aspects of law in social interactions in society, especially regarding the medical profession (Ali, 2017, p. 27). The data in this study were collected and obtained through a search of library materials from secondary data and tertiary data relevant to the problem. In addition, data was also obtained from questionnaires given to medical personnel at the Dr. Midiyato Suratani Navy Hospital in Tanjungpinang. The selected data was then analyzed and constructed into a structured dataset, then made relevant to the current situation regarding legal regulations and legal protection for the medical profession in hospitals. Therefore, the primary sources of reference in this research were laws and regulations concerning medical practice, hospitals, health, and healthcare workers, as well as books discussing medical practice.

3. RESULTS AND DISCUSSION

The author conducted a research survey by giving questionnaires to doctors and dentists (medical personnel) at the Indonesian Navy Hospital (RSAL) dr. Midiyato Suratani Tanjungpinang. This study was attended by 26 medical personnel, consisting of 4 general practitioners, 20 specialist doctors, 1 dentist, and 1 dental specialist. From the results of the research survey, it was found that 100% of medical personnel felt that Law No. 17 of 2023 concerning Health had not provided adequate legal protection for them in carrying out their profession. All respondents stated that they did not feel safe in carrying out their profession, where 7 respondents (26.9%) sometimes felt unsafe and 19 respondents (73.1%) often felt unsafe in carrying out their profession as doctors or dentists, none felt completely safe when carrying out their profession in health services.

This study was attended by 26 respondents who were medical personnel at RSAL dr. Midiyato Suratani Tanjungpinang. The results showed that all respondents (100%) stated that Law Number 17 of 2023 concerning Health was inadequate in providing legal

protection for their profession, although only 1 respondent (3.8%) stated that the implementation of Law Number 17 of 2023 concerning Health was worse in terms of legal protection and procedures for resolving disputes regarding alleged malpractice of health workers, while 11 respondents (42.3%) stated that it was better, 8 respondents (30.8%) stated that it was the same, and 6 respondents (23.1%) stated that they did not know. In terms of resolving medical disputes, 23 respondents (88.5%) stated that Law Number 17 of 2023 concerning Health had not provided a sense of justice for medical workers, while 2 respondents (7.7%) stated that it had provided a sense of justice and 1 respondent (3.8%) stated that they did not know.

Some of the reasons cited by respondents regarding Law Number 17 of 2023 concerning Health, which they believe does not provide adequate legal protection for them in carrying out their profession, include: There are still many malpractice lawsuits against medical personnel. Medical personnel should not be criminalized. Medical personnel have no intention of harming patients, yet they are often criminalized. Medical personnel are consistently deemed incompetent. There is still a lack of clarity regarding the boundaries between ethical violations, professional discipline, criminal, and civil, which potentially exposes medical personnel to multiple layers of legal proceedings.

Although not all of the above reasons are legally correct, they are the reality felt by the respondents of this study. The assumption that medical personnel should not be punished and the statement that medical personnel have no intention of harming but are often criminalized are not entirely true. Every citizen is equal before the law, including doctors. Similarly, citizens with patient status also have protected legal rights, including the right to sue or the right to sue parties who feel they have harmed them. The right of a doctor to refute the accusations, demands, or lawsuits of patients is also a right protected by the State. Doctors as the party being sued also have the right to sue or counter-sue the patient who sued them (reconventional lawsuit), a doctor can even sue a patient without the patient first suing or suing.

When a doctor receives treatment that is not in accordance with human dignity, morals, decency, and socio-cultural values, the doctor has the right to report such treatment to the authorities in accordance with Law No. 17 of 2023 concerning Health Article 273 paragraph (1) point f, namely (obtaining protection against treatment that is not in accordance with human dignity, morals, morality, and socio-cultural values and point j, namely obtaining other rights in accordance with statutory regulations (including the right to sue or sue patients). Article 273 paragraph (2) even provides the right to stop health services as stated that medical personnel and health workers can stop health services if they receive treatment that is not in accordance with human dignity, morals, morality, and socio-cultural values, including acts of violence, harassment, and bullying, where the wording of this paragraph does not exist in previous laws and regulations. Law Number 17 of 2023 concerning Health has provided fair legal protection for medical personnel (as well as for patients).

Providing legal protection does not mean that a medical doctor cannot be punished criminally or civilly. A doctor remains a citizen who has the same standing before the law according to the principle of equality before the law when he is suspected of committing an error, negligence, or negligence that results in a patient experiencing serious injury or death can be reported by the patient or his family to the criminal realm, and or sued civilly to the District Court. The form of legal protection includes that Law No. 17 of 2023 concerning Health only allows patients or the patient's closest family to make complaints or demands, according to Article 305 which states: Patients or their families whose interests are harmed

by the actions of medical personnel or health workers in providing health services can complain to the Council as referred to in Article 304. This is different from Law No. 36 of 2014 concerning Health Workers Article 66 which allows anyone who knows, not only the person who is harmed, to report a doctor. Article 66 paragraph (1) anyone who knows or whose interests are harmed by the actions of a doctor or dentist in carrying out medical practice can complain in writing to the chairman of the Indonesian Medical Disciplinary Honorary Council.

Another form of legal protection for doctors in the second case above is the obligation of Police Investigators to request a recommendation from the Professional Disciplinary Council when the case being investigated will be escalated to the investigation stage. This is in accordance with Article 308: Medical personnel or health workers who are suspected of committing unlawful acts in the implementation of health services that can be subject to criminal sanctions, must first request a recommendation from the council as referred to in Article 304. In paragraph (2) it is also written that the obligation to request such a recommendation if the act can be subject to civil sanctions. The requirement to request a recommendation from the MDP in criminal and civil cases is a form of legal protection where the MDP, which is more knowledgeable about the medical profession, first verifies whether there is a violation of professional discipline, violation of professional standards, violation of service standards, and or violation of standard operating procedures carried out by the doctor. Thus, the MDP here acts as a filter so that only cases where violations of professional discipline are found can be continued with complaints or lawsuits to the next legal process. Since the enactment of Government Regulation No. 28 of 2024 concerning Implementing Regulations of Law No. 17 of 2023 concerning Health, or since the Professional Disciplinary Council was actively established until the end of 2025, the MDP has received 53 complaints of medical dispute cases and 32 requests for recommendations from Police Investigators. Of the 53 complaints received, 20 cases have been completed, with 14 (70%) cases being decided as no violation of professional discipline and 6 (30%) cases being decided as violations of professional discipline. Of the 32 recommendation requests, 27 have been processed, with the result that 18 (65.3%) recommendation requests were not granted because no violation of professional discipline was found, and 9 recommendation requests (34.7%) were granted because violations of professional discipline were found, allowing the case to proceed to the investigation stage (Table 4.1).

Tabel 4.1 Jumlah Pengaduan Dan Permohonan Rekomendasi Diterima MDP

No.	Description	Amount	Progress		Decision			
			Under Investigation	Finished	Violate		No Violation	
1.	Complaint	53	33	20	6	30%	14	70%
2.	Recommendation	32	5	27	9	34,7%	18	65,3%

The Indonesian Medical Disciplinary Council (MDP) does not have the authority to provide or withhold recommendations requested by police investigators or the panel of judges in this civil case. The Indonesian Medical Disciplinary Council (MKDKI), the council that existed before Law No. 17 of 2023 concerning Health was enacted, does not have the authority to do so. This additional authority for the professional disciplinary council also provides legal protection for medical and healthcare personnel granted by the state. This MDP authority aligns with the mandate of Article 304 of Law No. 17 of 2023 concerning

Health, which stipulates that to support professionalism and uphold professional discipline, a council (Professional Disciplinary Council) is established with the authority to determine whether or not medical and healthcare personnel have committed disciplinary violations.

In the author's opinion, the legal protection and procedures for resolving medical disputes under Law No. 17 of 2023 concerning Health are already superior to those under the previous law. Several comparative aspects that make the new law superior are.

First, the parties entitled to report, as stated in Article 66 paragraph (1) of Law No. 29 of 2004, state that anyone who knows about or whose interests have been harmed by the actions of a doctor or dentist in carrying out medical practice can file a written complaint with the Indonesian Medical Disciplinary Honorary Council.

Article 305 of Law No. 17 of 2023 concerning Health states that patients and their families whose interests have been harmed by the actions of medical personnel and health workers in providing health services can file a complaint with the council as referred to in Article 304. From these two paragraphs of different laws, it is clear that Law No. 17 of 2023 concerning Health provides a clearer definition, stating that only the aggrieved party, whether the patient or their family, has the right (legal standing) to report, whether to the professional disciplinary council, the police, or the courts.

Second, the existence of a professional disciplinary council in Article 66 paragraph (2) of Law No. Law No. 29 of 2004 concerning Medical Practice states that a complaint to the Medical Disciplinary Council (MKDKI) does not eliminate the right to report suspected criminal acts to the authorities and/or file a civil suit in court. Article 308 paragraph (1) of Law No. 17 of 2023 concerning Health states that medical personnel and health workers suspected of committing unlawful acts in the provision of health services that are subject to criminal sanctions must first seek a recommendation from the panel as referred to in Article 304.

The requirement to seek a recommendation from the Professional Disciplinary Council (MDP) is part of legal protection and a more equitable medical dispute resolution process for medical personnel. MDP members, who possess medical skills and expertise, are expected to better understand the psychological situation, the reasons and medical considerations for decisions, and the best efforts of a doctor in treating a patient, which may not always yield the desired results for the patient or their family, compared to law enforcement officials.

Third, there is an obligation to prioritize dispute resolution through mediation. Article 310 of Law No. Law No. 17 of 2023 concerning Health states that if medical personnel and health workers are suspected of committing errors in their profession that result in harm to patients, any disputes arising from such errors must first be resolved through alternative dispute resolution outside the courts.

Fourth, the existence of alternative penalties in the form of fines. Article 440 of Law No. 17 of 2023 concerning Health provides for alternative penalties in the form of fines. This also serves as a form of legal protection. With this alternative penalty, a medical worker does not need to go to prison if proven negligent and harming a patient, as the judge can impose the alternative penalty. Judges must even prioritize imposing a lighter penalty, as stipulated in Article 57 of the New Criminal Code: "In the case of a crime punishable by an alternative principal penalty, the imposition of a lighter principal penalty must be prioritized if it is deemed appropriate and can support the achievement of the objectives of the sentencing." This alternative punishment does not exist in the previous applicable law which regulates the punishment for medical personnel if they commit negligence or negligence which harms patients in the form of serious injury and death, namely Article 84 of Law

Number 36 of 2014 which provides a maximum criminal penalty of 3 years for health workers who commit negligence and result in serious injury to patients, and a maximum criminal penalty of 5 years if the negligence results in death.

4. CONCLUSION

Legal protection for medical personnel practicing medicine in Indonesia remains inadequate. Although Law No. 17 of 2023 concerning Health is considered to provide better legal protection for medical personnel than the previous law, it is still considered inadequate. The increasing number of malpractice lawsuits against medical personnel raises concerns among medical personnel practicing medicine when the results of their best efforts do not meet the expectations of patients or their families. A lack of understanding among some members of the public regarding the concept of the doctor-patient relationship, which is a contract of business (*inspaning verbintenis*) rather than a contract of results (*resultaat verbintenis*), and medical personnel's lack of understanding of health law, particularly aspects of medical ethics and professional discipline, contribute to the inadequate legal protection for healthcare personnel practicing medicine.

Law No. 17 of 2023 concerning Health provides procedural guidelines for resolving medical disputes that may arise due to alleged malpractice between doctors and patients or their families. Dispute resolution must first be attempted through alternative dispute resolution outside the courts (non-litigation). Settlement through criminal proceedings must be a last resort when other efforts have failed (*ultimum remedium*). The role of the Professional Disciplinary Council in screening criminal and civil cases is an integral part of the legislation to assess whether the medical actions performed are in accordance with professional standards, service standards, and standard operating procedures. Only patients and their families whose interests have been harmed can file a complaint with the Professional Disciplinary Council. The Professional Disciplinary Council's recommendation in criminal cases is requested by the Indonesian National Police Investigator, while in civil cases it is requested by the defendant's medical personnel or their attorney.

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