

Criminal Responsibility of Medical Personnel After the Enactment of Law No. 17 of 2023: Analysis of Article 438 concerning Rejection of Emergency Patients

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Abstract

This study analyzes the criminal liability of medical personnel following the enactment of Law No. 17 of 2023, specifically focusing on Article 438 concerning the refusal of emergency patients. Utilizing a normative legal research method, this article examines the legal framework, relevant doctrines, and jurisprudential developments. The findings indicate that Law No. 17 of 2023 strengthens the legal protection for emergency patients by imposing stricter criminal sanctions on healthcare facilities and personnel who fail to provide initial assistance or refuse emergency care. Article 438 introduces a tiered criminal liability, with more severe penalties if the refusal leads to disability or death. This shift emphasizes the ultimum remedium principle, ensuring accountability and deterring negligence in emergency medical services. The study concludes that the new law aims to uphold patient rights and enhance the social function of healthcare providers, necessitating robust internal protocols and ethical adherence within healthcare facilities.

Keywords: *Criminal Liability, Medical Personnel, Emergency Patient, Law No. 17/2023, Article 438*

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Introduction

Health services are the basic rights of every citizen guaranteed by the constitution, as stipulated in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia. In the context of emergency services, this right is becoming increasingly crucial given the condition of patients who need immediate treatment to save lives or prevent permanent disability. Medical emergencies demand a quick and appropriate response from healthcare facilities, where every second of delay can be fatal to patient safety. However, the reality on the ground shows that the practice of refusing emergency patients by health care facilities or medical personnel is still an issue that often arises in Indonesia. These refusals are often based on administrative reasons, lack of costs or advances, to reasons of full room capacity, which ultimately raises serious questions about the effectiveness of legal protection for patients and clarity of accountability for those who refuse to provide help.

Law Number 17 of 2023 concerning Health (hereinafter referred to as the 2023 Health Law) is present as a comprehensive effort by the government to update, integrate, and harmonize various regulations in the health sector that were previously scattered in various laws. One of the crucial aspects that is expressly regulated in this omnibus law is regarding the absolute obligation of health service facilities and medical personnel to provide first aid to emergency patients. This regulation not only regulates obligations administratively and ethically, but also strengthens criminal sanctions for violations. Article 438 of the 2023 Health Law specifically and explicitly regulates criminal liability for leaders of health care facilities, medical personnel, and/or health workers who intentionally or through their negligence do not provide first aid to patients in an emergency.

Prior to the enactment of the 2023 Health Law, provisions regarding the prohibition of refusal of emergency patients and their criminal sanctions had been regulated in Law Number 36 of 2009 concerning Health (Health Law 2009) and Law Number 44 of 2009 concerning Hospitals. However, the implementation of previous regulations often encounters obstacles, both in terms of proving criminal elements and clarity of legal subjects who can be held accountable. The 2023 Health Law brings several significant paradigm shifts, including the expansion of legal subjects that can be criminalized directly, as well as an increase in the threat of sanctions that are tiered based on the consequences caused (disability or death). Therefore, an in-depth analysis of the legal construction of Article 438 of the 2023 Health Law is very relevant and urgent to be carried out in order to understand the legal implications involved, especially related to the shift in criminal liability of medical personnel and health service facilities.

This study aims to comprehensively analyze the criminal responsibility of medical personnel after the enactment of the 2023 Health Law, with the main focus on dissecting Article 438 concerning the rejection of emergency patients. This analysis will not only include a normative comparison with previous regulations, but will also dissect the criminal elements (*actus reus* and *mens rea*) contained in it. Furthermore, this study will examine how the application of the doctrine of *vicarious liability* and *corporate liability* within the framework of the 2023 Health Law affects the hospital legal liability landscape. It is hoped that the results of this study can provide a more complete and comprehensive understanding of legal protection for emergency patients, as well as provide legal certainty for medical personnel in carrying out their profession amid the threat of increasingly stringent criminal sanctions.

Research Methodology

This research uses normative legal research methods. The approaches used are the statute approach and the conceptual approach. Normative legal research is carried out by examining primary, secondary, and tertiary legal materials. Primary legal materials include Law Number 17 of 2023 concerning Health, Law Number 36 of 2009 concerning Health, and other relevant laws and regulations. Secondary legal materials include legal literature, scientific journals, books, and research results related to the criminal responsibility of medical personnel

and emergency patient rejection. Tertiary legal materials are in the form of legal dictionaries and encyclopedias.

Data collection is carried out through library research by identifying, inventorying, and analyzing relevant legal materials. Data analysis is carried out qualitatively with interpretation, systematization, and legal construction to draw conclusions regarding the criminal liability of medical personnel after the enactment of Law No. 17 of 2023, especially related to Article 438.

Results

Changes in the Criminal Liability Regulations for Medical Personnel

Prior to the issuance of Law Number 17 of 2023 concerning Health, known as the 2023 Health Law, the legal framework that regulates the obligation to provide first aid as well as criminal sanctions for those who refuse patients in an emergency has been regulated quite clearly in Law Number 36 of 2009 concerning Health (Health Law 2009) and Law Number 44 of 2009 concerning Hospitals. These two laws are an important foundation for health services in Indonesia, especially in the context of handling emergency cases that require a quick response.

One of the most significant provisions in the 2009 Health Law can be found in Article 32 paragraph (1), which expressly stipulates that every health service facility is required to provide health services to patients experiencing emergency cases without asking for an advance payment. These provisions are designed to remove the financial barriers that often stand in the way for patients to access the emergency services they need. In this context, the aspect of social justice becomes very important, given that in emergency situations, every second is precious and can determine the success of medical treatment.

Furthermore, the 2009 Health Law also regulates the legal consequences for the leaders of health care facilities who deliberately do not provide first aid to patients in an emergency. This is regulated in Article 190 paragraph (1), which states that such actions can be subject to criminal sanctions in the form of imprisonment for a maximum of two years and a maximum fine of Rp200,000,000.00 (two hundred million rupiah). The imposition of these clear sanctions reflects the legal commitment to protect patients' rights, while also giving healthcare facility leaders a firm responsibility to ensure that every patient who needs help immediately receives the services they need.

The provisions contained in the 2009 Health Law show that the focus of criminal liability at that time was more likely to be oriented at the managerial or institutional level. This means that legal responsibility is not only directed at the individual medical personnel who are directly involved in the healthcare process, but also at the parties who manage the facility. In other words, healthcare facility leaders are expected to create a supportive work environment, ensure that all medical staff are equipped with the necessary knowledge and skills to handle emergencies, and comply with all existing regulations.

In the context of legal reforms, the Health Law 2023 may bring significant changes to the legal framework governing healthcare in Indonesia, including the possibility of strengthening sanctions for individuals directly involved in the denial of first aid. This is important to note, as recent developments in health law can create a stronger foundation for the protection of patients' rights and the improvement of the quality of health services in the country. With the 2023 Health Law in place, it will be interesting to evaluate how these changes can affect the implementation of emergency health service obligations and sanctions for violators, as well as how it can improve the accessibility of health services for the entire community, especially in emergency situations.

The 2023 Health Law brings a significant paradigm shift in the legal system and health services in Indonesia through an omnibus law approach. This approach aims to integrate various provisions that were previously scattered within different laws, thus creating a more comprehensive and systematic framework. One of the most striking aspects of the 2023 Health Law is the affirmation regarding the handling of emergency patient refusal cases, which not

only emphasizes the obligations of health care institutions, but also expands the scope of legal subjects for which criminal liability can be held accountable.

In this context, the 2023 Health Law explicitly targets not only leaders of health care facilities, but also medical personnel and/or health workers. In other words, Article 438 of the law marks an important change whereby health workers can now be held criminally directly liable in the event of a refusal to an emergency patient. This creates a new dynamic in the relationship between health workers and the legal system, where medical personnel are expected to act not only on the basis of ethics and professionalism, but also an awareness of the legal consequences of their actions.

This shift in focus reflects broader legislative efforts to strengthen patient protections in the health care system. In many cases, refusal of emergency patients can be fatal and is a serious violation of human rights. By regulating criminal liability for medical personnel, the 2023 Health Law shows that the state takes this issue very seriously and is committed to ensuring access to fast and adequate health services for all people, especially in emergency situations.

The increase in the threat of sanctions is also one of the crucial elements in this reform. In the 2023 Health Law, sanctions that can be imposed on violations related to the refusal of emergency patients are strengthened, reflecting the State's commitment to provide a deterrent effect and encourage compliance for every element in the health care system. This increase is not only symbolic, but it also emphasizes the legitimacy of the law in patient protection, creating a safer environment for those who need immediate medical help.

Overall, the Health Law 2023 is not only an administrative regulation, but it also reflects a fundamental change in the way the state views responsibility and accountability in the health sector. By including medical personnel as legal subjects, this law has the potential to raise awareness and vigilance among healthcare professionals of the importance of responsive and humane measures in dealing with patients, especially in urgent situations.

The provisions in the 2023 Health Law create new expectations that patient protection will be stronger and more guaranteed, as well as improve the integrity of the health service system as a whole. Thus, this law is not only a legal tool, but also an instrument to build a culture of legal and ethical awareness among health workers. As a step forward, it is important to continue to monitor the implementation of these provisions, as well as evaluate their impact on patient management practices in the field.

The expansion of the legal subject that is now applicable in the context of medical practice has had profound and significant implications for professionals in the health field. In this scope, medical personnel and health workers are not only bound by the professional code of ethics that has been a guideline, as well as the administrative sanctions that may be faced, but also now have to face personal criminal risks if proven to have refused patients in emergency conditions.

This obligation creates additional pressure for medical personnel to act more carefully and quickly. With this new legal provision, any action or decision taken by medical personnel in an emergency situation can have serious legal implications if the action is considered an unfounded refusal. This demands a higher level of prudence, where every health worker must prioritize the handling of emergency patients without exception, regardless of other considerations that may exist, such as administration or internal institutional policies.

In addition to the direct impact on individual medical personnel, this change in the law also places greater demands on healthcare facilities. Every health institution is now required to ensure that all its staff not only understand, but also comply with the applicable legal provisions. This includes training and socialization regarding their rights and obligations in handling emergency patients. Health facilities need to provide a supportive environment, both in terms of infrastructure and resources, so that emergency handling can be carried out optimally.

Legal awareness among medical personnel and health facilities is very important in this context. Without an adequate understanding of the legal implications of their actions, medical personnel may not be prepared for the consequences arising from refusing emergency

treatment. Therefore, education and training regarding legal obligations and professional ethics must be integrated into the medical education curriculum as well as ongoing training programs for health workers.

Overall, the expansion of legal subjects in medical practice demands a paradigm shift in the way medical personnel and healthcare facilities operate. Emergency handling is no longer only a moral responsibility, but also a legal responsibility that must be seriously faced by individuals and institutions. Thus, strengthening the legal and ethical system in the medical world will contribute to improving the quality of health services and protecting patient rights.

Analysis of Article 438 of Law No. 17 of 2023

Article 438 of the 2023 Health Law is the core of regulating criminal liability related to the rejection of emergency patients. This article consists of two paragraphs:

Article 438 paragraph (1): Leaders of Health Service Facilities, Medical Personnel, and/or Health Workers who do not provide first aid to Patients in an Emergency situation at Health Service Facilities as referred to in Article 174 and Article 275 paragraph (1) shall be sentenced to imprisonment for a maximum of 2 (two) years or a maximum fine of Rp200,000,000.00 (two hundred million rupiah).

Article 438 paragraph (2): In the event that the act as intended in paragraph (1) results in disability or death, the leader of the Health Service Facility, Medical Personnel, and/or Health Personnel shall be sentenced to a maximum of 10 (ten) years in prison or a maximum fine of Rp2,000,000,000.00 (two billion rupiah).

From the reading of the article, several important elements can be identified:

- 1 Legal Subject: Leaders of Health Service Facilities, Medical Personnel, and/or Health Workers. This shows the expansion of the subject for which accountability can be held accountable, not only limited to the leaders of health facilities as in the 2009 Health Law, but also includes medical personnel and health workers directly.
- 2 Actions: Not providing first aid to patients in an emergency. The phrases "first aid" and "emergency" refer to more detailed definitions in Article 174 and Article 275 paragraph (1) of the 2023 Health Law.
- 3 Criminal Sanctions:
 - Paragraph (1): Imprisonment for a maximum of 2 years or a maximum fine of Rp200,000,000.00.
 - Paragraph (2): If the act results in disability or death, imprisonment for a maximum of 10 years or a maximum fine of Rp2,000,000,000.00. This shows that there is a burden of sanctions based on the consequences caused, in line with the principle of causal liability.

A comparison with Article 190 of the 2009 Health Law shows that the 2023 Health Law not only expands the subject of the law, but also significantly increases the criminal threat, especially if it occurs as a fatal result. This reflects the state's commitment to providing stronger protections to emergency patients and demanding higher accountability from healthcare providers.

The regulation of criminal sanctions in Article 438 of the 2023 Health Law is in line with the principle of *ultimum remedium*, namely the use of criminal law as a last resort after other efforts (administrative, civil, ethical) are inadequate. In the context of health services, this principle means that the imposition of criminal sanctions should be the last resort after considering the ethical and disciplinary aspects of the profession. However, with the threat of a strict criminal act, Article 438 also serves as a deterrent effect to prevent the rejection of emergency patients.

In addition, the 2023 Health Law also adopts the doctrine of Central Responsibility or Corporate Responsibility for hospitals. This doctrine states that hospitals as legal entities can be held accountable for negligence committed by their medical personnel. Article 193 of the 2023 Health Law, for example, adopts this doctrine, which means hospitals are corporately

liable for acts of negligence committed by medical personnel working under their auspices. This complements the individual accountability of medical personnel regulated in Article 438, creating a comprehensive accountability system for both individuals and institutions.

The implication of this arrangement is that healthcare facilities are required to have a clear emergency triage system, adequate Standard Operating Procedures (SPO), and ensure the availability of the necessary resources for emergency management. Emergency ethics training and understanding of legal protection for medical personnel also need to be strengthened so that they can act according to professional standards without hesitation, but remain responsible.

Conclusion

Law Number 17 of 2023 concerning Health has brought significant changes in the regulation of criminal liability of medical personnel and health service facilities, with a special emphasis on the rejection of emergency patients. As stipulated in Article 438 of the 2023 Health Law, there is an expansion of the scope of legal subjects that can be held criminally liable. It is no longer limited to the leaders of health service facilities, but also includes medical personnel and/or health workers who are directly involved. This indicates that all parties involved in health services are expected to have a higher level of accountability. It is important to note that the threat of criminal sanctions regulated in this law has increased substantially. These sanctions are more severe especially in cases where refusal to treat an emergency patient results in disability or even death of the patient. This increase is a reflection of the state's commitment to providing stronger legal protections to patients facing emergency situations, as well as demanding higher accountability from healthcare providers.

In this context, the application of the principle of *ultimum remedium* in Article 438 confirms that criminal sanctions should be a last resort. However, the existence of strict sanctions also serves as a deterrent effect which is expected to prevent negligence in handling emergency patients. In other words, although sanctions are not the main solution, their existence is important in creating awareness of the responsibility of every medical personnel and institutions in providing optimal services. On the other hand, the adoption of the doctrine of Central Responsibility or Corporate Responsibility for hospitals complements the existing accountability system. This ensures that both individuals and institutions have a legal obligation to ensure optimal emergency services. In practice, this means that hospitals must actively play an active role in creating an environment that supports fast and appropriate health care.

The practical implication of these changes is that healthcare facilities are required to strengthen internal protocols, effective triage systems, and comprehensive ethical training for medical personnel. As such, all elements in the healthcare system must coordinate well to ensure compliance with these new regulations. This effort will not only guarantee patients' right to prompt and appropriate care, but also create a culture of safety and trust in health services. Overall, Law Number 17 of 2023 concerning Health creates a stronger legal foundation to protect emergency patients, while demanding higher accountability from medical personnel and health care facilities. This change needs to be responded to with a mature readiness from all stakeholders in the health world, so that its implementation can run effectively and sustainably.

References

- Andrianto, W. (2026). *Hukum kesehatan dalam berbagai perspektif*. Jakarta, Indonesia: Prenada Media.
- Fadillah, M. R. H., & Sewu, L. S. (2025). Perlindungan hukum bagi pasien yang diberi tindakan medis tanpa *informed consent* dihubungkan dengan asas perlindungan dan keselamatan pasca lahirnya Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan. *Jurnal Ilmu Hukum, Humaniora dan Politik*, 5(3).
- Fitri, S. R., & Hoesein, Z. A. (2025). Urgensi pembaharuan hukum dalam perlindungan tenaga kesehatan sebagai tinjauan terhadap Undang-Undang Nomor 17 Tahun 2023. *Jurnal Retentum*.

- Khalid, J., RAS, H., & Kurniati, Y. (2024). Legal protection for independent doctors: Analyzing Law No. 17 of 2023 in conjunction with Law No. 29 of 2004 on Medical Practice in Indonesia. *International Journal of Asia Pacific Collaboration*, 2(1), 59–66.
- Negara, T. A. S. (2023). Normative legal research in Indonesia: Its origins and approaches. *Audito Comparative Law Journal*, 4(1).
- Ngompat, Y. L., Ngebos, F. F., Faot, P., & Jocta, A. A. (2025). Perlindungan hukum bagi pasien terhadap praktik penolakan pelayanan medis. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 3(6).
- Nuraeni, Y. (2023). Legal protection of patients needing emergency treatment neglected by doctors in hospital emergency units. *Fox Justi: Jurnal Ilmu Hukum*, 14(1), 50–55.
- Pabidang, S., Prasetyo, T., Jaeni, A., & Purnomo, B. (2025). Tanggung jawab pidana tenaga medis atau tenaga kesehatan menurut Pasal 440 Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan. *Jurnal Cahaya Mandalika*.
- Rosidi, A. (2022). *Metode penelitian hukum normatif dan empiris*. Mataram, Indonesia: Universitas 45 Mataram Press.
- Sangadji, N. J., Wadjo, H. Z., & Tuhumury, C. (2023). Penolakan pasien dalam keadaan darurat karena belum divaksin. *Tatohi: Jurnal Ilmu Hukum*, 3(5).
- Siti Rufaidah. (2025). Analisis implikasi Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan terhadap praktik keperawatan di Indonesia. *Jurnal Siti Rufaidah*.
- Tim Penulis. (2024). Kelalaian dalam pelayanan gawat darurat dan pertanggungjawaban hukumnya dalam perspektif Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan. *Jurnal Hukum & Sosial*.
- Tim Penulis. (2024). Perlindungan hak pasien dalam layanan gawat darurat: *Literature review*. *Jurnal Pendidikan dan Pengabdian Masyarakat*.
- Tim Penulis. (2025). Tanggung jawab pidana pelayanan kesehatan yang tidak memberikan pertolongan pertama terhadap pasien dalam keadaan gawat darurat menurut Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan. *Lex Privatum*, 15(3).
- Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana. (2023). *Lembaran Negara Republik Indonesia Tahun 2023 Nomor 1, Tambahan Lembaran Negara Republik Indonesia Nomor 6842*.
- Undang-Undang Republik Indonesia Nomor 17 Tahun 2023 tentang Kesehatan. (2023). *Lembaran Negara Republik Indonesia Tahun 2023 Nomor 105, Tambahan Lembaran Negara Republik Indonesia Nomor 6887*.
- Undang-Undang Republik Indonesia Nomor 29 Tahun 2004 tentang Praktik Kedokteran. (2004). *Lembaran Negara Republik Indonesia Tahun 2004 Nomor 116, Tambahan Lembaran Negara Republik Indonesia Nomor 4431*.
- Wijaya, H., & Pardede, C. D. L. (2025). Rekonstruksi perlindungan hukum bagi dokter dalam praktik telemedicine: Perspektif Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan. *Jurnal Hukum Lex Generalis*.