Review of Health Law Based on Law Number 17 of 2023 Civil Law Liability for Negligence of Medical Actions in Independent Practice of Doctors

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Abstract

Law Number 17 of 2023 concerning Health is the legal foundation and new paradigm in legal protection for patients and the responsibilities of medical personnel in the jurisdiction of the Unitary State of the Republic of Indonesia. The most important and often prominent aspect is legal liability for negligence in medical actions against patients. Civil legal liability in the form of compensation will be a logical consequence if it is proven that there is malpractice caused by the doctor's mistake or negligence in carrying out his professional obligations. Law Number 17 of 2023 emphasizes the principle of lex specialis for health workers while still recognizing the application of the principle of responsibility based on Article 1365 of the Civil Code (KUHPercivil). Therefore, the legal relationship between doctors and patients is contractual as well as moral, so that any violation of professional standards can be held civilly liable.That the doctor's civil legal liability for negligence in medical action is still based on the elements of negligence, therapeutic legal relations (therapeutic contracts), and the principle of culpa. Law Number 17 of 2023 strengthens the legal protection mechanism for patients through professional standard obligations and reporting of medical incidents, as well as affirms legal protection for doctors while carrying out their profession according to applicable standards.This new regulation seeks to balance patients' right to safe medical services and doctors' right to legal protection in running independent practices. The role of strict regulators in terms of supervision and medical dispute resolution mechanisms will be balanced in legal protection for patients and medical personnel. In the end, it will be in line with its goal, which is to be an effective legal basis in realizing safe, ethical, and responsible medical practices.

***Keywords**: Patient Legal Protection; Doctor's Civil Liability; Medical Negligence*.

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3rd International Conference Epicentrum of Economic Global Framework (ICEEGLOF)
Theme: Cross-Sector and Cross-Disciplinary Strategies for Achieving the SDGS
https://proceeding.pancabudi.ac.id/index.php/ICEEGLOF

Introduction

The relationship between a doctor and a patient is basically a legal relationship based on trust and a health service agreement. Basically, the relationship between the doctor and the patient is paternalistic, that is, a relationship in which the patient is allowed to be absolutely obedient to the physician. However, at this time, interpersonal relationships that were previously based on the paternalistic vertical relationship pattern are transformed into contractual horizontal relationships patterns. This change causes all medical actions that doctors will take on their patients must have the patient's consent. In simple terms, the relationship between doctors and patients is built on the principle of trust. This form of relationship is called a fiduciary relationship. In the case of recovery from his illness, the patient relies entirely on the ability and integrity of the physician who treats him.Regarding medical actions carried out by doctors, it will always result in two possibilities, namely successful and unsuccessful. Failure can be caused by two things: first, caused by overmacht (coercive circumstances), and second, due to doctors performing medical actions that are not in accordance with the standards of the medical profession or can be said to be due to negligence. The existence of negligence is one of the elements of medical malpractice that is very common. Events such as medical malpractice open the patient's awareness that a doctor can be negligent and put the patient as a victim, thus causing losses to the patient.

In the context of independent practice, a doctor is fully responsible for every medical procedure performed. However, negligence or procedural errors can cause harm to the patient and lead to legal consequences. A doctor in carrying out his or her medical duties does not always succeed as expected by all patients. The failure of a doctor's medical action can be caused by a coercive situation (overmacht) or caused by the doctor performing medical actions that are not in accordance with the standards of his profession or negligence.Medical negligence can give rise to civil liability if it is proven that there was a doctor's mistake that resulted in losses. The doctor-patient relationship is based on a therapeutic agreement that is trustworthy, so a breach of professional duty can be considered a default or an unlawful act.

On August 8, 2023, Health Law in Indonesia entered a new stage with the enactment of the "Omnibus Law" Number 17 of 2023 concerning Health. Omnibus Law is a method or concept of making regulations that combine several rules with different regulatory substances, into one regulation under one legal umbrella.4 In the concept of omnibus law, a new law changes, cancels and repeals several laws and regulations (across sectors) at once, the purpose is to make the existing laws simple, non-overlapping and contrary to the regulation between one norm and another.

Law Number 17 of 2023 consolidates, amends, cancels and repeals the rules in the Law on Medical Practice, the Law on Health (old), the Hospital Law, and the Health Workers Law, so that Article 454 of Law Number 17 of 2023 confirms that there are 11 laws that have been repealed and declared invalid, namely:

1. Law Number 419 of 1949 concerning Drug Ordinances;
2. Law Number 4 of 1984 concerning Infectious Disease Outbreaks;
3. Law Number 29 of 2004 concerning Medical Practice;
4. Law Number 36 of 2009 concerning Health;
5. Law Number 44 of 2009 concerning Hospitals;
6. Law Number 20 of 2013 concerning Medical Education;
7. Law Number 18 of 2014 concerning Mental Health;
8. Law Number 36 of 2014 concerning Health Workers;
9. Law Number 38 of 2014 concerning Nursing;
10. Law Number 6 of 2018 concerning Health Quarantine;
11. Law Number 4 of 2019 concerning Midwifery.

The enactment of Law Number 17 of 2023 has made many changes in the regulation of health-related matters, including changes in the regulation of medical and health profession

errors. The question that will arise is "What is the basis for civil law liability for negligence in medical actions in the independent practice of doctors reviewed from Law Number 17 of 2023 concerning Health?".

Problem Formulation

1. What is the legal relationship between doctors and patients in independent practice according to Law No. 17 of 2023?
2. What is the basis for civil law liability for negligence in medical actions according to Law No. 17 of 2023?
3. What are the implications of Law No. 17 of 2023 on legal protection for patients and doctors in independent practice?

Research Objectives

To find the answer to this problem, the author conducted research with a normative juridical method, with two main approaches, namely:

1. Statute approach — examining the provisions in Law No. 17 of 2023 and the Civil Code.
2. Conceptual approach — examining the doctrine of civil liability

Legal Ingredients

1. Primary legal material: Law No. 17 of 2023, Civil Code (KUHPerdata).
2. Secondary legal materials: books, journals, and articles on health law.
3. Tertiary legal materials: legal dictionaries, encyclopedias, and supporting scientific sources.

Research Benefits

This research is expected to provide benefits both theoretically and practically. Theoretically, the results of this research are expected to contribute to the development of legal science, especially in the field of civil law and health law, through the enrichment of studies on the legal relationship between patients and hospitals, the concept of default in health services, and civil liability arising from non-fulfillment of obligations by patients. In addition, this research can be an academic reference for researchers, students, and legal practitioners in understanding the application of the principles of engagement law in the field of health services. Practically, this research is expected to provide guidelines and input for hospitals in handling and resolving disputes arising from patient defaults, both through preventive and repressive efforts, so as to create more effective legal protection, legal certainty for the parties, and a balance between rights and obligations in the implementation of health services.

Literature Review

Health law is a branch of law that governs the legal relationships among healthcare professionals, patients, healthcare institutions, and the government in the provision of health services. Its primary objective is to ensure legal certainty, protect the rights and obligations of all parties, and promote accountability in healthcare delivery. In Indonesia, the enactment of Law Number 17 of 2023 concerning Health represents a significant reform by consolidating various health regulations into a comprehensive legal framework. This legislation emphasizes patient safety, professional accountability, ethical medical practice, and legal certainty for healthcare providers while strengthening the overall healthcare system.

The legal relationship between a doctor and a patient is generally recognized as a therapeutic relationship that gives rise to reciprocal rights and obligations. From a civil law perspective, this relationship constitutes a therapeutic contract in which the physician is obliged to provide medical services according to professional standards, scientific knowledge, and ethical principles. Unlike commercial contracts, a therapeutic contract is categorized as an obligation of best efforts (*inspanning verbintenis*) rather than an obligation to achieve a specific result (*resultaat verbintenis*). Consequently, physicians are legally required to exercise due care and professional competence but cannot guarantee a patient's recovery.

Medical negligence constitutes one of the principal grounds for civil liability in healthcare law. Negligence occurs when a healthcare professional fails to exercise the level of care that is reasonably expected under prevailing professional standards, thereby causing harm to a patient. Medical negligence may arise from misdiagnosis, delayed treatment, improper medical procedures, medication errors, or failure to provide adequate information before treatment. However, an unsuccessful medical outcome does not automatically constitute negligence. Liability can only be established when it is demonstrated that the physician deviated from accepted medical standards and that such deviation directly caused the patient's injury.

Civil liability for medical negligence in Indonesia is fundamentally based on the fault-based liability principle. Under Article 1365 of the Indonesian Civil Code, any person who commits an unlawful act that causes damage to another person is obliged to compensate the injured party. Furthermore, Article 1366 extends this liability to damages resulting from negligence. Therefore, a successful civil claim requires proof of four essential elements: the existence of an unlawful act, fault or negligence, actual damage suffered by the patient, and a causal relationship between the negligent act and the resulting damage. These principles remain the cornerstone of civil litigation involving medical malpractice.

Law Number 17 of 2023 strengthens the legal framework governing healthcare professionals by emphasizing compliance with professional standards, clinical practice guidelines, competency requirements, patient safety measures, medical record management, and incident reporting mechanisms. The law adopts a balanced approach by providing legal protection not only for patients but also for healthcare professionals who perform their duties in accordance with applicable professional standards. This legislative framework reflects the principle that legal accountability should be assessed based on adherence to established standards of medical practice rather than solely on the outcome of medical treatment.

Independent medical practice presents unique legal challenges because physicians personally assume responsibility for the entire continuum of patient care. Unlike hospital settings, where responsibilities may be shared among multiple healthcare professionals and institutions, doctors operating independent practices are directly accountable for patient examinations, diagnosis, treatment decisions, informed consent procedures, medical record documentation, and follow-up care. Consequently, any administrative or professional negligence committed in an independent practice may expose the physician to direct civil liability. This underscores the importance of maintaining professional competence, accurate documentation, and strict compliance with healthcare regulations.

The doctrine of informed consent plays a fundamental role in protecting both patient autonomy and physicians' legal interests. Informed consent requires physicians to provide patients with comprehensive information regarding their diagnosis, proposed treatment, potential benefits, foreseeable risks, available alternatives, and possible complications before obtaining the patient's voluntary agreement to undergo medical treatment. From a legal standpoint, informed consent serves as evidence that the physician has fulfilled the duty to disclose material information, thereby reducing the likelihood of disputes arising from foreseeable medical risks. Proper implementation of informed consent reflects respect for patient autonomy while reinforcing ethical and legal standards in medical practice.

Based on these theoretical perspectives, civil legal liability for medical negligence forms an integral component of Indonesia's contemporary health law system. Law Number 17 of 2023 introduces a more comprehensive legal framework that seeks to balance patient rights with legal protection for healthcare professionals through the application of professional standards, ethical principles, and fair dispute resolution mechanisms. Accordingly, examining civil liability for negligence in independent medical practice is essential to evaluating the effectiveness of the new legislation in promoting patient safety, enhancing professional accountability, ensuring legal certainty, and fostering ethical and responsible medical practice throughout Indonesia.

Research Methodology

This research is a normative legal research that is descriptive using a statutory *approach* and a *conceptual approach*. The legislative approach is carried out through a study of the Civil Code (Civil Code), Law Number 17 of 2023 concerning Health, and regulations governing the operation of hospitals. The conceptual approach is used to examine the concepts of default, civil liability, and therapeutic agreements. The source of legal material consists of primary legal materials in the form of laws and regulations and court decisions, as well as secondary legal materials in the form of books and journal articles relevant to the research.

Results and Discussion

1.What is the legal relationship between doctors and patients in independent practice according to Law Number 17 of 2023 concerning Health?

Initially, the legal relationship between doctor and patient was based on a vertical paterballistic model, similar to the relationship between parent and child, assuming that "the doctor knows best". In this model, doctors are considered to have more knowledge and ability to deal with patients' diseases, putting them in a more dominant position. The legal relationship between the doctor and the patient can occur from two aspects, namely through contract (therapeutic) and the relationship through the law (zaakwarneming). In a contractual relationship, the doctor and the patient are considered to have agreed to make an agreement when the doctor has started to perform medical acts on the patient, while the relationship through the law arises because of the obligations given to the doctor.

In a therapeutic contract, the relationship begins with an anamnesis between the doctor and the patient, then continues with a physical examination. Sometimes doctors also need diagnostic tests to support and enforce the diagnosis, such as radiological or laboratory examinations. In the healing efforts carried out by doctors on patients, an engagement arises called inspanning verbintenis, an engagement that is carried out carefully and requires hard work. If successful, it is called an achievement, but on the other hand, if the effort fails, it is a risk that must be accepted by both parties.6 The Gospel of Jesus. According to Sofwan Dahlan, in Noor M. Aziz, it is emphasized that the contractual legal relationship that occurs between the patient and the doctor does not start from the moment the patient enters the doctor's practice as many people suspect, but precisely from the moment the doctor expresses his willingness which is expressed orally (oral statement) or implied (implied statement) by showing an attitude or action that concludes the willingness; such as accepting registration, provide the serial number, provide and record his medical records and so on. In other words, therapeutic relationships also require the willingness of a doctor. This is in accordance with the principle of consensuality and contract.

That a legal relationship arises when the patient contacts the doctor because he feels that something is perceived to be harmful to health. His psychological state gave a warning that he was feeling sick, and in this case it was the doctor who he thought was able to help him and provide help. So the doctor's position is considered higher by the patient, and his role is more important than the patient.

This relationship is built on the basis of trust (fiduciary relationship), where patients leave their health care to the doctor with the belief that the doctor will act in accordance with professional standards and medical ethics.

Law Number 17 of 2023 concerning Health provides a new legal basis that affirms that the relationship between doctor and patient is within a legal framework that prioritizes patient safety, professional accountability, and the rights and obligations of both parties.

1.Legal Basis of Doctor-Patient Relationship

According to J. Guwandi8 explained that the relationship between doctors and patients can be juridically included in the contract group. A contract is a meeting of minds of two people who are concerned about a thing (Solis). The first party binds itself to provide the service, while

the second party accepts the provision of the service. Thus, the nature of the relationship has 2 (two) characteristics, namely:

1. The existence of a consensual agreement on the basis of mutual agreement from the doctor and the patient regarding the provision of medical services;
2. There is a fiduciary relationship, because the contractual relationship is based on mutual trust and trust in each other.

Since the relationship between the doctor and the patient is a contractual relationship, the following requirements must be met:

1. There must be Consent from the Contracting Parties.
2. The agreement is between the doctor and the patient on the nature of the provision of medical services offered by the doctor and which has been well received by the patient. Thus, the agreement between each party must be voluntary. Consent obtained based on mistake, pressure or violence, intimidation, undue influence or fraud, will make the contract void according to the law.
3. There must be an object that is the substance of the contract.
4. The object or substance of the doctor-patient relationship is the provision of medical services that the patient wants and is given to him by the doctor. The object of the contract must be ascertainable, legal or not outside the profession.
5. There Must Be a Cause or Consideration
6. Cause or consideration is the factor that moves the doctor to provide treatment services to his patients. It can be by giving rewards or it can be just to help or on the basis of the doctor's generosity. Payment for the provision of medical services is already considered implied and known by the patient, unless required by law, or is considered to be for charity and helping others.

Law No. 17 of 2023 emphasizes that medical practice, including independent practice, must meet the principles of patient safety, professional accountability, and medical service standards. Doctors and patients have rights and obligations, as stipulated in:

Article 273

(1) Medical Personnel and Health Workers in carrying out their practice have the right:

a. Obtain legal protection while carrying out duties in accordance with professional standards, professional service standards, operational procedure standards, and professional ethics, as well as the needs of Patient Health;
b. Obtain complete and correct information from the Patient or his/her family;
c. Getting proper salary/wages, service rewards, and performance allowances in accordance with the provisions of laws and regulations;
d. Obtain compliance for safety, occupational health, and security; obtaining health insurance and employment insurance in accordance with the provisions of laws and regulations;
e. Obtain protection for treatment that is not in accordance with human dignity and dignity, morals, decency, and socio-cultural values;
f. Receive awards in accordance with the provisions of laws and regulations;
g. Getting the opportunity to develop themselves through the development of competencies, science, and careers in their professional fields;
h. Reject the wishes of the Patient or other parties that are contrary to professional standards, service standards, standard operating procedures, codes of ethics, or provisions of laws and regulations; and
i. Obtain other rights in accordance with the provisions of laws and regulations.

(2) Medical Personnel and Health Workers can terminate Health Services if they receive treatment that is not in accordance with human dignity and dignity, morals, morality, and socio-cultural values as referred to in paragraph (1) letter f, including acts of violence, harassment, and bullying.

Article 274

(1) Medical Personnel and Health Workers in carrying out mandatory practices:

a. Providing Health Services in accordance with professional standards, professional service standards, operational procedure standards, and professional ethics and patient health needs;
b. Obtain approval from the Patient or his/her family for the action to be taken;
c. Maintaining the confidentiality of the Patient's Health;
d. To make and keep records and/or documents about examinations, care, and actions taken; and refer the Patient to Medical Personnel or other Health Workers who have appropriate competence and authority.

(2) Medical Personnel and Health Workers can terminate Health Services if they receive treatment that is not in accordance with human dignity and dignity, morals, morality, and socio-cultural values as referred to in paragraph (1) letter f, including acts of violence, harassment, and bullying.

Article 276

Patients have the right to:

a. Getting information about his health;
b. Get adequate explanations about the health services they receive;
c. Getting Health Services in accordance with medical needs, professional standards, and quality services;
d. Refuse or approve medical measures, except for medical measures necessary in the context of infectious disease prevention and CDC or Outbreak control;
e. Gain access to information contained in medical records;
f. Asking for the opinion of Medical Personnel or other Health Personnel; and
g. Obtain other rights in accordance with the provisions of laws and regulations.

Article 277

The patient has the obligation:

a. Getting information about his health;
b. Provide complete and honest information about their health problems;
c. Obey the advice and instructions of Medical and Health Personnel;
d. Comply with the provisions applicable to Health Service Facilities; and
e. Provide service rewards for services received.

Article 280

(1) In carrying out the practice, Medical Personnel and Health Workers who provide Health Services to Patients must carry out their best efforts.
(2) The best efforts as referred to in paragraph (1) are carried out in accordance with nonna, service standards, and professional standards as well as the health needs of patients.
(3) The best efforts as referred to in paragraph (i) do not guarantee the success of the Health Services provided.
(4) The practice of Medical Personnel and Health Workers is held based on an agreement between Medical Personnel or Health Workers and Patients based on the principles of equality and transparency.

Article 283

(1)Medical Personnel and Health Workers who carry out individual practices must have a clear identity including SIP and STR numbers at their individual practice places.

In the context of independent practice, a doctor acts as a party who provides health services directly, without the auspices of other health institutions, so that the legal relationship established is personal and individual. Therefore, all forms of errors or negligence that occur in

health services are the personal responsibility of doctors under civil law.This legal relationship is an inspanningsverbintenis, not a result (resultaatverbintenis). This means that doctors do not promise the patient's recovery, but are obliged to make the best efforts according to the applicable science and professional standards. If a doctor commits an act that is not in accordance with professional standards or is negligent in carrying out his obligations, then there is a potential for civil liability, either due to default (neglecting a health service agreement) or unlawful acts (depriving the patient of their rights and causing losses).

Thus, the legal relationship between doctors and patients in independent practice according to Law Number 17 of 2023 not only reflects ordinary civil relationships, but is also a professional legal relationship that is loaded with moral and ethical responsibilities. The 2023 Health Law emphasizes the balance between legal protection for patients and legal guarantees for medical personnel, so that both have complementary legal positions in the national health service system.

2.Nature of Legal Relations

In independent practice, the form of legal relationship between doctor and patient can be proven through:

1. Informed consent as a legal basis for the implementation of medical procedures.
2. Medical records that contain documentation of the entire health service process.
3. Compliance with professional standards and medical codes of ethics as stipulated in Article 274 Paragraph (1) of Law No. 17 of 2023.
4. The obligation to maintain patient confidentiality in Article 274 (c) and respect the rights of patients as stipulated in Article 276 of Law No. 17 of 2023.

3.Legal Implications

If the doctor performs actions that are not in accordance with standards or are negligent in professional obligations, this legal relationship can give rise to civil liability, either in the form of:

- Default, if in breach of a health care agreement, or
- Unlawful acts, if they cause losses without the basis of an agreement.

Law Number 17 of 2023 concerning Health provides a new legal basis that affirms that the relationship between doctor and patient is within a legal framework that prioritizes patient safety, professional accountability, and the rights and obligations of both parties. In the context of independent practice, doctors act as parties who provide health services directly without the auspices of other health institutions, so that the legal relationship established is personal and individual. Therefore, all forms of errors or negligence that occur in health services are the personal responsibility of doctors under civil law.

2.What is the Basis for Civil Law Liability for Negligence in Medical Actions According to Law Number 17 of 2023?

Doctors and patients who carry out medical interactions are automatically involved in the legal relationship of health services (medical services) or other medical measures, between health care providers and health care recipients. The responsibility of doctors is not only related to the medical aspect, but also related to the legal aspect. This is because legally every agreement will create rights and obligations. If one of the parties violates the agreement, the aggrieved party can sue or seek compensation from the party deemed to be violating.

According to Ninik Mariyanti9 stated that in the book: The Law of Hospital and Health Care Administration The Low of Hospital and Health Care Administration written by Arthur F. Southwick; it is stated that there are 3 theories stating the source of an act of malpractice, namely: 1. Breach of contract 2. Intentional tort 3. Negligence According to Ngesti Lestari and Soedjatmiko, who use the term Malpractice in Rospita Adelina Siregar10 divides medical malpractice into two types, namely ethical malpractice and juridical malpractice. These two

types are seen from the point of view of professional and legal ethics, which are as follows: 1. Ethical Malpractice, and 2. Juridical Malpractice.

According to Soedjatmiko, this juridical malpractice is divided into three types, namely: 1. civil malpractice; 2. criminal malpractice; 3. Administrative malpractice. A more detailed explanation of civil malpractice occurs if there are things that are not fulfilled in the content of an agreement in a therapeutic transaction by health workers or there is an unlawful act (onrechtmatige daad) so as to accumulate losses. The content of the failure to fulfill the agreement can be in the form of: 1. Not doing what according to the agreement must be done; 2. Implement what is agreed, but it is too late to implement it; 3. To implement what is agreed, but not perfect and the result; and 4. Doing what the agreement says shouldn't be done.

As for unlawful acts, several conditions must be met, namely: 1. There is an act (whether to do or not to do); 2. The act is unlawful (written law or unwritten law); 3. There are losses; 4. There is a cause-and-effect relationship between the unlawful act and the loss suffered; and 5. There is a mistake.

To be able to claim compensation for the negligence of health workers, patients must prove the existence of four elements, namely: 1. The existence of the obligation of health workers to the patient; 2. Health workers violate the standard of medical services; 3. The patient suffers losses that can be filed for compensation; and 4. Factually, the loss is caused by substandard actions.

Every medical profession is always burdened with legal responsibilities based on the legal rules that govern the profession. Usually doctors hold responsibilities that can be categorized into three categories, namely: responsibility, administration, civil liability and criminal liability.11 The Gospel of Jesus Christ

Doctors have several responsibilities related to civil law, including not fulfilling the obligations agreed upon in an agreement (default)12. This aims to compensate for losses incurred due to default. Some examples of actions that can be categorized as defaults include not doing what was agreed, being late, doing something inappropriate or doing something that is considered a breach according to the agreement. In addition, doctors also have responsibilities related to Unlawful Acts (PMH). PMH is divided into 3 categories13, namely intentionally committing unlawful acts, unintentionally committing unlawful acts and negligence that causes unlawful acts.

To file a PMH lawsuit, you must meet 4 conditions, namely14:

1. There is a loss to one of the parties;
2. Any errors or omissions
3. There is a causal relationship between loss and error; and
4. This act is against the law.

Lawsuits on the basis of default and unlawful actions cannot be arbitrarily replaced and amended according to desire. To file a lawsuit for default, an agreement or agreement is required. From an agreement created a business alliance, doctors must try their best to cure the patient. Doctors are obliged to carry out treatment carefully in accordance with the doctor's oath and commitment to the patient. If the patient learns that the doctor has not fulfilled his or her obligations properly, the patient can sue for default and request the fulfillment or cancellation of the agreement with a claim for damages. In legal terms, when a doctor and patient first meet, it is not uncommon for them to make an agreement. However, if problems arise in the future, the parties can only seek compensation based on breach of contract because breach of contract may also involve unlawful actions.

The measures used to prove error are no longer based on subjective and individualistic standards. Therefore, it can be concluded that the elements of fault in default, both default and unlawful acts, cannot be considered known by doctors, especially if it is believed that the norms of society are not in accordance with the norms of community responsibility. If a doctor is found to be responsible for a breach of contract, they are held accountable. In cases involving unlawful acts, the doctor's actions must be held accountable and punished by law. Therefore, the measure

used to determine error is no longer based on subjective individual standards, but rather on the ability of doctors to act reasonably and reasonably. As a result, the element of error in breach of contract and violation of the law is often minimal. In the context of the enforcement of professional discipline as referred to in paragraph (1), the Minister establishes an assembly that carries out duties in the field of professional discipline.

(1) The assembly as referred to in paragraph (2) determines whether there is a violation of professional discipline committed by Medical Personnel and Health Workers.
(2) The Assembly as intended in paragraph (2) can be permanent or ad.hoc.
(3) Further provisions regarding the duties and functions of the assembly as intended in paragraph (2) are regulated by Government Regulation

Article 305

(1) Patients or their families whose interests are harmed by the actions of Medical Personnel or Health Workers in providing Health Services may complain to the panel as intended in Article 304.
(2) The complaint as intended in paragraph (1) must at least contain: a. the identity of the complainant; b. the name and address of the practice of the Medical Personnel or Health Workers and the time the action was carried out; and c. the reason for the complaint.

Article 306

(1) Violations of discipline of Medical Personnel or Health Workers as referred to in Article 304 paragraph (3) are given disciplinary sanctions in the form of: a. written warning; b. the obligation to attend education or training at an education provider in the field of Health or the nearest teaching hospital that has the competence to conduct such training; c. temporary deactivation of STR; and/or d. recommendations for revocation of SIP.
(2) The results of the examination as referred to in paragraph (1) are binding on Medical Personnel and Health Workers.
(3) Medical personnel or health workers who have implemented disciplinary sanctions as referred to in paragraph (1) where there is an allegation of a criminal act, law enforcement officials prioritize the resolution of disputes with restorative justice mechanisms in accordance with the provisions of laws and regulations.

Article 308

(1) 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 be asked for a recommendation from the panel as referred to in Article 304.
(2) Medical Personnel and Health Workers who are held accountable for actions/deeds related to the implementation of Health Services that are detrimental to patients civilly, must be asked for a recommendation from the panel as referred to in Article 304.
(3) The recommendation from the panel as intended in paragraph (1) is given after the Civil Servant Investigator or the investigator of the National Police of the Republic of Indonesia submits a written application.
(4) The recommendation from the panel as intended in paragraph (2) is given after the Medical Personnel, Health Personnel, or the person authorized by the Medical Personnel or Health Personnel submit a written request for a lawsuit filed by the patient, the patient's family, or the person authorized by the patient or the patient's family.
(5) Recommendations as referred to in paragraph (3) in the form of recommendations that may or may not be investigated because the implementation of professional practices carried out by Medical Personnel or Health Workers is in accordance with or not in accordance with professional standards, service standards, and standard operational procedures.
(6) Recommendations as referred to in paragraph (4) are in the form of recommendations for the implementation of professional practices carried out by Medical Personnel or Health Workers in accordance with or not in accordance with professional standards, service standards, and operational procedure standards.

(7) Recommendations as intended in paragraph (5) and paragraph (6) shall be given within a maximum period of 14 (fourteen) working days from the receipt of the application.
(8) In the event that the panel does not provide recommendations within the period as intended in paragraph (7), the panel is considered to have given recommendations to be able to conduct an investigation into the criminal act.
(9) The provisions as intended in paragraph (1), paragraph (3), paragraph (5), and paragraph (7) do not apply to the examination of Medical Personnel or Health Workers who can be held accountable for alleged criminal acts that are not related to the implementation of health services.

Each article in the law carries a specific essence, and a detailed explanation of each of these articles will be presented in the context of the legislation governing the liability of medical negligence. Thus, it can be understood clearly and deeply regarding the efforts and provisions regulated by Health Law Number 17 of 2023 to deal with medical negligence involving patients and health workers. In certain cases, there are exceptions to the claim for compensation for medical personnel and health workers who provide health services, as affirmed in Article 275, namely: (Verse 2) Medical personnel and health workers who provide health services in the context of life-saving actions or prevention of a person's disability in an Emergency and/or in a disaster are exempt from claims for compensation.

According to S. Soetrisno, it is stated that: In civil law, culpa lata is termed "grove schuld", "govenalatigheid", gross-negligence, faute laurde, which originates from unlawful acts (Article 1365 of the Civil Code / 1401 BW Bld). In addition to the absence of a material unlawful nature (ontbreken van de materiele wederrechtelijkheid) there is another basis of juridical justification (straf uitsluitingsgronden), namely15:

a. A compelling situation in the sense of an emergency (overmacht in de zin van emergencytoestand)
b. Coercive states related to the psyche (de psychische overmacht)
c. Medical exemption (medical exception)

What is meant by the "compelling circumstance in the sense of emergency" is a situation in which a person must choose between a provision of a law/prohibition and the obligation to serve the interests above all the interests protected by a legal provision, for example: a psychiatrist does not obey the obligation to keep confidential where the personal circumstances of the patient must be protected, because to maintain the existence of life-threatening dangers. As for what is meant by "coercive state related to obligation", it is a coercive state that arises from within the heart in human beings, personal/individual behavior is not or almost cannot distinguish, so it cannot be punished. Included in the sense of "psychische overmacht" is the impulse of the closed (depressed) heart. A medical exception is a reason for an unwritten legal justification and is a special matter related to medical actions carried out with all professional skills (professional zorgvudigheid) including the necessary consent, so it cannot be punished.16 The Gospel of Jesus Christ

However, in Article 304 and Article 305 of Law Number 17 of 2023, it is explained that if a Medical Personnel or Health Worker is suspected of making an error in carrying out their profession that causes losses to the Patient, then the dispute arising from the error is resolved first through an alternative dispute resolution outside the court. Mediation is the attempt of the parties involved to reach an agreement for their own benefit. The cost of mediation is the responsibility of the litigant.

In terms of Civil Law, there are several types of acts that are considered unlawful, including promise injuries, when there is a failure in medical acts that have been agreed upon to the patient or their family through informed consent as outlined in Articles 1243-1289 of the Civil Code. In addition, medical negligence as stipulated in Articles 1365-1366 of the Civil Code occurs when a medical act causes injury or loss to the patient.

What are the implications of Law No. 17 of 2023 on legal protection for patients and doctors in independent practice?

Law Number 17 of 2023 concerning Health brings a number of fundamental changes in the health legal system in Indonesia, including in terms of legal protection for patients and doctors, especially in independent practice.

1. Legal Protection for Patients

Law No. 17 of 2023 emphasizes the position of patients as legal subjects who have the right to safe, quality, and humane health services. Some of these forms of protection include:

- Legal certainty through professional standards and medical ethics (Article 280 and Article 283), which are guidelines in the implementation of medical measures. As long as the doctor practices according to professional standards, he or she has the right to obtain legal protection from unfounded claims.
- Protection from criminalisation: the law emphasises an ethical and disciplinary approach before the criminal realm, especially if disputes arise as a result of differences in professional judgment, rather than gross negligence.
- Strengthening of practice licenses and registration of medical personnel (Articles 260–263), which ensure that doctors have legal legitimacy and administrative protection in carrying out independent practice.
- Balance between responsibility and rights : this law places doctors not only as parties who are obliged to provide services according to standards, but also as professionals who are entitled to respect and legal security in carrying out their profession.

2.Implications for the Legal Relationship of Doctors and Patients

Legal relationships in independent practice are therapeutic engagements, namely trusts based on agreements to achieve results in the form of healing efforts, not guarantees of healing. Law No. 17 of 2023 strengthens the legal basis of this relationship by clarifying the rights and obligations of both parties, as well as providing a proportionate dispute resolution mechanism between ethical, administrative, and civil law aspects.

Some of the important implications include:

- The right to information and informed consent is explicitly regulated as a form of protection for patients' autonomy rights (Article 276)
- The right to medical confidentiality is reaffirmed (Article 274), which binds all medical personnel to maintain the confidentiality of patients' health data, except under certain conditions regulated by law.
- The right to obtain compensation in the event of negligence or error in medical services, as guaranteed in the principle of responsibility of medical personnel and health service facilities.
- Improving the supervision mechanism through the Professional Discipline Council (MDP), which is tasked with enforcing professional discipline and protecting the interests of patients from practices that do not meet standards.

3.Legal Protection for Doctors in Independent Practice

Law No. 17 of 2023 also provides guarantees of legal protection for doctors as health professionals, especially those who open independent practices. Doctors who have carried out their duties in accordance with professional standards, service standards and operational procedure standards are entitled to legal protection. In carrying out medical practice, doctors must fulfill Informed Consent and Medical Records as evidence that can exempt doctors from all lawsuits in the event of alleged negligence. There are several things that are the reasons for the abolition of the law so as to exempt doctors from legal pursuits, namely: Medical risks, medical accidents, Contribution negligence, Respectable minority rules & error of (in) judgment, Volenti non fit iniura or assumption of risk, and Res Ipsa Loquitur.

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Conclusion

Law No. 17 of 2023 provides balanced legal protection between patients and doctors in independent practice. Patients are guaranteed their rights as recipients of health services, while

doctors receive legal certainty as long as they act in accordance with professional and ethical standards. The legal relationship between doctor and patient is increasingly clear as a therapeutic engagement based on trust and good faith on both sides. Thus, the legal relationship between doctors and patients in independent practice according to Law Number 17 of 2023 not only reflects ordinary civil relationships, but is also a professional legal relationship that is loaded with moral and ethical responsibilities. This law emphasizes the balance between legal protection for patients and legal guarantees for medical personnel, so that the two have complementary legal positions in the national health service system. For patients, this law strengthens protection from the risk of medical negligence, while for doctors, it provides a stronger legal foundation to conduct independent practice safely, professionally, and responsibly. The main implication of Law Number 17 of 2023 is to increase accountability as well as legal protection of the medical profession through ethical and disciplinary supervision, while preventing criminalization of medical personnel who work professionally. As a regulator, the Government is expected to strengthen the supervision system and medical dispute resolution mechanism so that legal protection for patients and medical personnel can be carried out in a balanced manner. Thus, regulations in the Health Law can be an effective legal basis in realizing safe, ethical, and responsible medical practices.

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