

# Legal Certainty and Legal Protection for Healthcare Professionals in Hospital Medical Practice

Marzuki Yusuf, Sumarno, Irsyam Ridawati

## Abstract

This study aims to analyze legal protection and legal certainty for medical personnel in the practice of health services in hospitals, by highlighting various regulations that regulate the rights and obligations of medical personnel, doctors, and hospitals in providing health services. Legal protection for medical personnel is regulated in Law Number 17 of 2023 concerning Health, especially in Article 273, which guarantees the right of medical personnel to obtain legal protection while acting in accordance with applicable professional standards and procedures. This article provides legal certainty for medical personnel to be able to carry out their duties with a sense of security and avoid unfounded legal threats, as long as medical actions are taken in accordance with the principles of professionalism and ethics. The rights and obligations of doctors to patients are regulated in various provisions in this law, with emphasis on Article 274 which regulates the obligation of doctors to provide safe, quality, and in accordance with applicable professional standards. Doctors are required to provide a clear and thorough explanation to the patient about the medical procedure to be performed and the potential risks, and obtain approval from the patient or his family before performing the medical procedure. This aims to ensure that patients make informed decisions and that there is no violation of the patient's right to bodily autonomy. Furthermore, the hospital's obligation to provide protection for medical personnel is regulated in Article 273 and Article 274. Hospitals as health service providers have the responsibility to create a safe working environment for medical personnel and provide protection from potential physical and legal threats that are not in accordance with existing regulations. Hospitals are also obliged to ensure that every medical action carried out by medical personnel is in accordance with the applicable standard operating procedures (SOPs) and provides facilities to resolve medical disputes that may arise, either through mediation or appropriate legal processes. Through this study, it is hoped that it can be revealed how effective the legal protection provided to medical personnel in hospitals, as well as how hospitals' obligations are in supporting the sustainability of safe and professional medical practices. In addition, this study also aims to provide recommendations related to improvements in the legal protection system for medical personnel, in order to create better legal certainty in the practice of health services in hospitals.

**Keywords:** *Legal Protection, Legal Certainty, Medical Personnel, Hospitals.*

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## **Introduction**

### **1.1 The Urgency of Health Services in Hospitals**

Health services are a constitutional right of the community as stipulated in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that everyone has the right to receive proper health services. The fulfillment of this right is not only moral, but also the legal obligation of the state to ensure equal and quality access for all citizens. In the context of the national health system, hospitals are the main node in the implementation of this constitutional obligation because they provide comprehensive services, ranging from promotive, preventive, curative, to rehabilitative. The hospital serves not only as a place of healing, but also as a center for referral, education, research, and development of medical science. Its strategic role demands strong regulation-based management, especially given the complexity of the legal relationship between patients, health workers, and hospital institutions. In the modern health service system, hospitals are also the main indicator of the quality of a country's health services. The World Health Organization (WHO) emphasizes that the quality of services in health facilities is a determining factor for the success of the health system as a whole.

At the forefront of hospital services are medical personnel and health workers who interact directly with patients, not only responsible for the technical aspects of the medical but also assume ethical and legal responsibilities. High work pressure, limited resources, and high public expectations make medical personnel vulnerable to professional risks and legal disputes. Therefore, providing regulatory support, legal protection, and job certainty for medical personnel is an essential step to ensure the sustainability and quality of hospital services.

### **1.2 Legal Issues in Medical Practice**

In recent years, Indonesia has experienced a significant increase in the number of medical dispute cases and alleged malpractice involving health workers. Data from the Indonesian Medical Council (KKI) and media reports show an upward trend in patient complaints against medical personnel, both through litigation and non-litigation channels. Medical malpractice is often defined as the negligence of medical personnel in meeting professional standards, which causes losses to patients. This condition is cause for concern, especially since not all medical disputes are based on obvious procedural violations, but sometimes on public perceptions formed after treatment results are not as expected. In addition to civil disputes and malpractice, the phenomenon of criminalization of health workers is also a big concern. There are cases where medical personnel are reported criminally even before the ethical and professional discipline process is completed, which has the potential to cause injustice and psychological pressure for health workers. Premature criminalization not only weakens medical professionals' trust in the legal system, but can also reduce young professionals' interest in practicing in high-risk fields such as obstetrics and gynecology.

The increased legal risks have a direct impact on the stability of hospital services and public trust. Hospitals can become more defensive in providing services, for example by restricting certain procedures to avoid legal disputes, ultimately reducing patients' access to optimal care. A decline in public trust in medical institutions can worsen the patient-doctor relationship, which in turn reduces the quality of health services. Therefore, strengthening non-litigation dispute resolution mechanisms, adequate legal protection, and public education related to medical procedures are important steps to maintain a balance between patient rights and the safety of health workers' practices.

### **1.3 Relevance of the Health Law**

Law No. 17 of 2023 concerning Health is present as a fundamental update to the health regulatory framework in Indonesia which was previously regulated in several sectoral laws, such as Law No. 36 of 2009 concerning Health and Law No. 36 of 2014 concerning Health

Workers.\* This reform aims to simplify regulations, eliminate policy overlaps, and adapt regulations to the development of science, medical technology, and the dynamics of community needs. With an omnibus approach, this Law centralizes health regulation in a single legal instrument, so that it is expected to increase the effectiveness of health service governance.

The 2023 Health Law regulates more comprehensively the rights and obligations of health workers, medical dispute resolution mechanisms, and legal responsibilities in medical practice. The new provisions emphasize the importance of implementing professional standards, service standards, and standard operational procedures (SOPs) as a condition for legal protection for medical personnel. In addition, the resolution of medical disputes is prioritized through professional discipline mechanisms and mediation before the criminal or civil litigation process. This approach is intended to minimize the criminalization of health workers while safeguarding patients' right to justice. The relevance of this Law also lies in its efforts to ensure a balance of protection between health workers and patients' rights. By affirming patients' right to quality services while providing legal certainty for medical personnel, this Law seeks to create a more harmonious relationship between patients, health workers, and hospital institutions. This step is important to strengthen public trust in the health system, encourage the professionalism of medical personnel, and ensure the sustainability of health services in Indonesia.

#### **1.4 Challenges in the Implementation of Law Number 17 of 2023 concerning health**

Although Law Number 17 of 2023 concerning Health brings significant changes in national health governance, its implementation faces a number of serious challenges. One of them is the lack of clarity on implementing and technical regulations that are still in the process of being drafted. The absence of derivative rules makes many provisions in the Law not yet able to be applied effectively in the field. This causes confusion for hospitals, medical personnel, and health workers in carrying out service practices in accordance with the new regulations. Regulatory uncertainty has the potential to weaken the effectiveness of the Law, even giving rise to different interpretations between institutions.

In addition, there is a potential for overlapping authority between professional supervisory institutions and legal institutions. The Indonesian Medical Council (KKI), the Indonesian Medical Discipline Honorary Council (MKDKI), and judicial institutions often have intersecting roles in handling medical disputes. This overlap of authority poses a risk of criminalization of medical personnel before the ethical and disciplinary mechanisms of the profession are completed. Another challenge is the low legal literacy among medical personnel and health workers. Many practitioners have not had a deep understanding of the legal protection aspects regulated in the new law, thus creating vulnerability in dealing with disputes. Therefore, socialization, health law training, and the establishment of clear implementation guidelines are urgent needs so that Law Number 17 of 2023 concerning health can be applied optimally.

### **Literature Review**

#### **2.1 Theory of legal certainty and professional legal protection.**

Legal certainty theory refers to the basic principles in the legal system that prioritize clarity and firmness in regulations and their application. Legal certainty guarantees that every individual or party involved in a legal relationship will know their rights and obligations as well as the legal consequences arising from their acts or actions. In this context, legal certainty is not only related to the existence of clear regulations, but also to the willingness of judicial institutions and other state institutions to enforce the law consistently and without

discrimination. Legal certainty is one of the fundamental elements in creating justice, where each individual can predict how the law will be treated in a given situation.

Meanwhile, professional legal protection is a step taken to protect the rights and interests of professional members in carrying out their duties. Every profession, be it in the fields of law, medicine, education, or others, requires clear arrangements to ensure that members of the profession can work freely and safely, but remain responsible. Professional legal protection aims to create a safe work environment, as well as avoid abuse of authority or negligence that can harm other parties. In the context of the legal profession, this protection also includes advocate rights, such as freedom of opinion, the right to defend clients, and protection from harassment or intimidation that may obstruct a fair judicial process.

## **2.2 The concept of responsibility (civil, administrative, criminal) in health services.**

The concept of responsibility in health services includes various legal dimensions that play an important role in maintaining the quality and integrity of services to patients. These responsibilities can be divided into three main categories, namely civil, administrative, and criminal liability. Civil liability relates to the obligation to compensate for damages incurred as a result of negligence or error in providing medical services. For example, if a medical professional makes a mistake that results in harm to a patient, then they may be subject to a claim for damages under civil law. Meanwhile, administrative responsibility relates to the obligation for healthcare providers, such as hospitals or clinics, to comply with regulations and standards set by health authorities. Violations of these regulations can result in administrative sanctions, such as revocation of practice licenses or fines.

On the other hand, criminal liability in health services is related to unlawful acts and risks seriously harming patient safety. This includes actions such as willful medical malpractice, disregard for standard medical procedures, or actions that could cause injury or death to the patient due to gross negligence. Medical personnel and health service providers can be subject to criminal sanctions if proven to have committed actions that meet the criminal element. These three forms of responsibility—civil, administrative, and criminal—complement each other in providing protection to patients and encouraging healthcare providers to conduct medical practices with care and in accordance with applicable standards.

## **2.3 Professional standards, informed consent, standard operating procedures (SOPs), and professional code of ethics.**

Professional standards, informed consent, standard operating procedures (SOPs), and professional codes of ethics are interrelated elements in ensuring quality and safe services in various professions, especially in the health sector. Professional standards refer to criteria that have been agreed upon and regulated by professional bodies to ensure that practicing individuals have the necessary competencies. In the medical context, these professional standards are essential to maintain the quality of care and patient safety. Meanwhile, informed consent is a process in which patients are given a clear and adequate explanation of the medical measures to be taken, including the risks and benefits, so that patients can make conscious and independent decisions about their treatment. This process is an integral part of the patient's rights and protection of privacy and autonomy.

On the other hand, Standard Operating Procedures (SOP) are guidelines or procedures that have been established to regulate how a task or procedure should be carried out in a particular profession. SOPs aim to ensure consistency, efficiency, and compliance with existing regulations, as well as minimize errors or omissions in the execution of tasks. In the medical profession, SOPs are essential to guarantee that clinical procedures are carried out in a safe manner and in accordance with approved protocols. The professional code of ethics, which is a set of moral principles and rules of conduct followed by members of the profession, serves as

a guideline for maintaining integrity, trust, and responsibility in carrying out duties. This professional code of ethics provides guidelines on how a professional should act in situations that may give rise to conflicts of interest or ethical dilemmas, and uphold moral standards in relationships with patients and peers.

## **Research Methodology**

This study uses a descriptive qualitative method that aims to describe in depth the conditions of legal protection and legal certainty for medical personnel and health workers in the practice of health services in hospitals. The case study approach was chosen to examine this phenomenon in a real context with a focus on the application of Law No. 17 of 2023 concerning Health as the latest legal umbrella governing the protection of medical and health workers. This approach allows researchers to understand holistically the various dynamics and challenges faced by health workers in carrying out their duties, as well as how these national regulations are implemented in the field. The data sources of this research are secondary, including Law Number 17 of 2023 concerning Health, relevant academic literature, and other applicable laws and regulations in Indonesia. Data collection techniques are carried out through literature study and analysis of legal documents to gain a comprehensive understanding of the regulatory framework and legal protection.

## **Results**

### **4.1 Textual Analysis of Law Number 17 of 2023 concerning health**

A textual analysis of Law Number 17 of 2023 concerning Health reveals that this law is the result of the application of the omnibus law method which aims to simplify and harmonize various regulations that were previously scattered in several health-related laws. However, the application of this method has also raised criticism regarding the lack of meaningful public participation in the law-making process, raising questions about transparency and accountability in its drafting. In addition, although the law aims to strengthen the national health system, its implementation still faces challenges, especially in terms of drafting effective implementing regulations and legal protection for health workers.

Furthermore, an analysis of the substance of this law shows that despite efforts to improve the quality of health services and protection for health workers, some articles are still considered ambiguous and have the potential to cause legal uncertainty. For example, the article that regulates criminal sanctions for health workers for negligence is considered to have unclear limits, so it can give rise to different interpretations and risk harming health workers. Therefore, further studies and the preparation of comprehensive implementing regulations are needed to ensure that the implementation of Law Number 17 of 2023 can run in accordance with the expected goals and provide maximum benefits for the community and health workers.

### **4.2 Legal Certainty and Dispute Resolution Mechanism**

The mechanism of legal certainty in dispute resolution is a fundamental element in the legal system that aims to provide clarity and certainty for the parties to the dispute. In the context of civil law, legal certainty is reflected through the litigation process regulated in the civil procedure law. This process begins with the filing of a lawsuit by the aggrieved party, followed by an examination of evidence and evidence in court. The judge's decision is expected to provide legal certainty, especially if it has permanent legal force (*inkracht van gewijsde*). However, in practice, the implementation of judgments often encounters obstacles, both juridical and non-juridical in nature, which can reduce the effectiveness of the legal certainty.

Dispute resolution through alternative mechanisms, such as mediation, is also an important part of creating legal certainty. Mediation offers a more flexible, efficient, and low-cost dispute resolution process compared to litigation. In Indonesia, mediation is recognized as part of alternative dispute resolution as regulated in Law Number 30 of 1999 concerning Arbitration

and Alternative Dispute Resolution. However, the implementation of mediation as a mandatory step in dispute resolution has not been fully regulated, which can create uncertainty for parties who wish to resolve disputes outside the litigation route. Therefore, legal reform is needed to strengthen the obligation of mediation as a first step before the litigation process, in order to create a more efficient dispute resolution system and provide clear legal certainty for all parties involved.

#### **4.3 Impact on Hospital Practice**

Law Number 17 of 2023 concerning Health has a significant impact on hospital practices in Indonesia, especially in terms of legal responsibility and service quality. Article 193 of this Law stipulates that hospitals are legally liable for losses incurred due to the negligence of health workers working under their supervision. This clarifies the legal position of hospitals in malpractice cases, which were previously often vague. In addition, this law also encourages the improvement of service standards through the obligation of hospitals to provide individual health services in the form of specialists and subspecialists, as well as establishing teaching hospitals that follow international standards. However, these changes also pose challenges, such as the need for clear implementing regulations and the readiness of hospitals to meet the new standards. Therefore, hospitals need to make adjustments in their organizational structure, risk management, and reporting systems to ensure compliance with applicable regulations and maintain optimal quality of health services.

#### **4.4 Implementation Obstacles and Legal Certainty Gaps**

The implementation of legal certainty in dispute resolution in Indonesia faces various obstacles that hinder its effectiveness. One of the main challenges is the lack of clarity in regulations that often lead to multiple interpretations, making it difficult for parties to understand and apply the law consistently. In addition, weak law enforcement and overlapping authority between state institutions are also inhibiting factors, creating gaps in legal certainty that should be guaranteed by the judicial system. Other obstacles include a lack of public awareness and understanding of alternative dispute resolution, such as mediation, which is often considered to have less legal force than litigation. This is exacerbated by low trust in the neutrality of the mediator, especially if the election is not transparent or involves parties who have a close relationship with one of the parties to the dispute. All of these factors contribute to legal uncertainty in dispute resolution, which in turn can be detrimental to the parties seeking justice.

The impact of the implementation of Law Number 17 of 2023 concerning Health on hospital practice is very significant, especially in terms of regulation and legal responsibility. Hospitals are now faced with greater obligations to ensure compliance with stricter standards of medical services and provide clearer legal protections to medical personnel. With provisions that regulate legal protection for medical personnel, hospitals must be more proactive in providing legal training to medical staff and strengthen risk management systems to reduce the potential for medical disputes. In addition, hospitals must also be prepared in the face of possible lawsuits due to medical errors or malpractice, which are now more clearly regulated by the law. Another impact is the improvement in the quality of services that is expected to be achieved with compliance with these new regulations, although this also requires greater resources for effective implementation.

#### **4.5 Law Number 17 of 2023 concerning Health regulates legal protection for medical personnel.**

Law Number 17 of 2023 concerning Health provides a strong legal basis in protecting medical personnel, the rights and obligations of doctors to patients, and the obligation of

hospitals in ensuring protection for medical personnel. Among them is Legal Protection for Medical Personnel Article 273 paragraph (1) letter a of Law No. 17 of 2023 emphasizes that medical personnel and health workers are entitled to legal protection as long as they carry out their duties in accordance with professional standards, professional service standards, operational procedure standards, professional ethics, and patient health needs. In addition, Article 310 stipulates that medical disputes arising from alleged errors in medical actions must be resolved first through alternative dispute resolution out of court. This shows an effort to provide legal protection for medical personnel in the face of potential lawsuits. The Rights and Obligations of Doctors to Patients are outlined in Article 276 of Law No. 17 of 2023 which regulates patients' rights, including: obtaining correct information about their health conditions, obtaining adequate explanations about the services received, obtaining services according to medical needs, professional standards, and service quality, and refusing or approving medical procedures. Article 277 establishes the obligations of patients, such as providing honest and complete information about their health conditions, complying with instructions and advice from health workers, and complying with the applicable provisions in health facilities. The Hospital's Obligation to the Protection of Medical Personnel is regulated in Article 189 of Law No. 17 of 2023 which stipulates the obligations of hospitals, including: providing safe, quality, anti-discriminatory, and effective health services by prioritizing the interests of patients in accordance with hospital service standards; providing emergency services to patients in accordance with their service capabilities; playing an active role in providing health services in disasters according to their abilities Ministry; providing facilities and services for the underprivileged or poor; and implementing hospital ethics. In addition, hospitals are required to protect and provide legal assistance for all hospital staff in carrying out their duties.

Law Number 17 of 2023 concerning Health clearly regulates legal protection for medical personnel with the aim of creating a safe and fair climate in health service practices. This law provides a strong legal basis for medical personnel in carrying out their professional duties, protects them from potential unfounded lawsuits, and ensures clear procedures for resolving medical disputes. In addition, hospitals as healthcare providers are also required to provide adequate legal protection for medical personnel, ensuring that they can work by following applicable professional standards. However, challenges in the implementation of these regulations remain, especially in terms of the preparation of effective implementing regulations and socialization so that medical personnel can understand their rights and obligations in the new legal context.

## Conclusion

Legal protection for medical personnel in the context of health services in hospitals is very vital. Medical personnel, including doctors, nurses, and other healthcare workers, are often in a position of vulnerability to legal risks due to medical errors or omissions. Law Number 17 of 2023 concerning Health provides a strong legal framework to protect medical personnel in carrying out their duties, by regulating the obligation of hospitals to provide adequate legal protection, as well as providing clear medical dispute resolution channels through mediation mechanisms or other alternative dispute resolution. However, even though legal protection has been regulated in regulations, the implementation of legal certainty in medical practice in hospitals still faces a number of obstacles. One of them is the lack of clarity in the application of several articles related to medical malpractice and negligence, which can give rise to various different interpretations of the law. This can create uncertainty for medical personnel who carry out their profession, as they do not always know the extent of their responsibility for the medical

measures taken. Therefore, it is important to clarify the provisions in the law that govern malpractice, and ensure that medical personnel receive sufficient training and understanding of applicable regulations. In addition, hospitals as health service providers also have a key role in creating legal certainty and protecting medical personnel. Hospitals are obliged to ensure that their operational procedures and internal policies are in line with applicable legal provisions, as well as to provide effective legal protection for medical personnel in the face of potential lawsuits. Hospitals must also ensure that risk management systems and procedures for handling medical claims are implemented transparently and fairly.

### Suggestion

The need for a more detailed and clear preparation of implementing regulations related to legal protection for medical personnel. The current regulations still contain several articles that can give rise to double interpretation, especially related to medical negligence and malpractice. Therefore, it is necessary to harmonize between laws, government regulations, and internal hospital guidelines to ensure that all parties clearly understand their rights and obligations. Medical personnel must also be provided with periodic training on the latest regulations and how to avoid potential legal problems in daily practice. In addition, hospitals should strengthen risk management systems that include legal protection mechanisms for medical personnel. Hospitals need to establish transparent procedures for handling medical claims and provide alternative avenues for efficient and fair dispute resolution, such as mediation or arbitration.

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