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# Juridical Analysis of Law Number 17 of 2023 Concerning Health on Legal Protection for Medical and Health Personnel

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**ABSTRACT**

This study analyzes legal protection for medical and health personnel in Law Number 17 of 2023 concerning Health. The research method used is normative juridical, employing statutory, conceptual, and case approaches. The results show that the 2023 Health Law introduces significant reforms through an omnibus law mechanism by creating a more integrated legal protection system. The main innovation lies in the establishment of the Professional Disciplinary Council (MDP) and the application of the provisions in Article 308, which require the recommendation of the MDP before criminal or civil law proceedings can proceed. The findings reveal that while these mechanisms aim to protect health workers from criminalization and ensure professional assessment precedes legal proceedings, the provision has the potential to create legal uncertainty and limit public access to justice. Additionally, this study identifies that the regulation of professional liability insurance for medical and health personnel in Indonesia remains formalistic and is not comprehensively required. The conclusion emphasizes the need to balance the protection of the health profession with the legal certainty of the community, as well as the importance of reviewing the regulation of professional liability insurance to create comprehensive protection for medical and health personnel in Indonesia.



## INTRODUCTION

Law Number 17 of 2023 concerning Health provides a definition of health as a state of complete physical, mental, and social well-being, not merely the absence of disease, enabling a person to live productively (Sesulih & Noor, 2024; Sudaryat, 2024). Meanwhile, "Health Efforts" are defined as any form of activity or series of activities carried out in an integrated and continuous manner to maintain and improve public health through promotive, preventive, curative, rehabilitative, and/or palliative measures conducted by the central government, local governments, and/or the community (Wendimagegn & Bezuidenhout, 2019). These efforts represent the implementation of human rights in the context of quality health development aimed at achieving the highest possible standard of public health (Montel et al., 2022). In achieving this goal, one of the key resources required is the availability of medical personnel (Holmér et al., 2023). The role of medical professionals is to provide health services according to their competencies and to enhance the awareness, willingness, and ability of society to maintain health (Du et al., 2019; Jarva et al., 2022; Vähätalo et al., 2022).

Medical personnel play a crucial role in building the health system of a nation (Manyazewal, 2017; Ubochi et al., 2019). According to Domaradzki (2021), medical personnel are defined as individuals who dedicate themselves to the field of health and possess professional attitudes, knowledge, and skills obtained through medical or dental professional education, which grants them the authority to carry out health efforts. Therefore, improving the

quantity, quality, and welfare of medical personnel is essential for ensuring an effective and high-quality healthcare system (Dyrbye et al., 2017; Kruk et al., 2018). However, challenges remain in Indonesia, including unequal distribution and placement of medical personnel, limited access to education and training, and disparities between workload demands and welfare levels (Dong et al., 2021; Stolarchuk et al., 2025). The WHO has stated that achieving 12 key public health indicators requires a minimum ratio of 4.45 health workers per 1,000 population. In 2013, the global shortage of healthcare workers was estimated at 17.4 million, with the largest deficits found among nurses and midwives (9 million) and doctors (2.6 million). Specifically, Southeast Asia required an additional 6.9 million health workers, while Africa needed around 4.2 million (Asamani et al., 2024).

To ensure the quantity, quality, and welfare of medical personnel, the Health Law regulates the fulfillment of their rights, including legal protection during the exercise of their professional duties, as part of national health development efforts. This principle aligns with Article 28D Paragraphs (1) and (2) of the 1945 Constitution of the Republic of Indonesia, which guarantees every person's right to recognition, assurance, protection, and fair legal treatment, as well as the right to work and receive fair and proper compensation. The constitutional mandate of legal protection as a fundamental human right is implemented by the government through the principle of equality before the law, ensuring that all citizens, including medical personnel, are treated fairly in legal matters.

Legal protection for medical personnel is provided as long as they perform their professional duties in accordance with professional standards, service standards, and standard operating procedures (Nainggolan et al., 2024; Yulius et al., 2023). This protection includes occupational health and safety, respect for human dignity, and fair treatment (Ebikake-Nwanyanwu & Woripre, 2025; Politakis, 2023). In addition to legal protection, medical personnel are entitled to receive accurate information from patients and their families, fair compensation for services rendered, opportunities for professional development (Birhanu et al., 2021), and the right to refuse patient requests that contradict professional ethics or applicable laws. To ensure maximum legal protection, healthcare professionals must document every action or treatment performed within their competence in accordance with standard operating procedures (Omoit et al., 2020; Refaat et al., 2021).

In recent years, disputes between medical professionals and patients have frequently emerged, often involving hospitals or clinics as healthcare providers (Adams et al., 2018; Van Keer et al., 2015). These disputes resemble an iceberg phenomenon—visible on the surface but rooted in deeper systemic issues that remain unresolved. They are often triggered by patient dissatisfaction with medical services, whether due to perceived negligence, abuse of authority, or malpractice (Madan et al., 2024; Shan et al., 2016). Many of these conflicts escalate into legal cases, both through litigation and non-litigation channels (Shan et al., 2016). According to Article 273 Paragraph (1) of Law Number 17 of 2023 concerning Health, "Medical and Health Workers are entitled to legal protection while performing their duties in accordance with professional standards, service standards, standard operating procedures, professional ethics, and patient health needs." Furthermore, under Law Number 17 of 2023 and Government Regulation Number 28 of 2024 as its implementing regulation, several important provisions are established regarding the extent and mechanism of legal protection for medical and health personnel. These laws represent a significant legal reform aimed at strengthening the rights and protection of healthcare professionals in Indonesia, ensuring that they can perform their duties ethically, safely, and with legal certainty.

Previous studies have extensively discussed legal protection for health workers, particularly in the context of medical practice laws and health workforce regulations (Dejene et al., 2019; Kavanagh et al., 2024). Research by Feeney (2020) highlighted the vulnerability of health workers to legal disputes and the importance of ethical and legal safeguards. However,

most of these studies were conducted before the enactment of Law No. 17 of 2023, which fundamentally restructures the health legal framework in Indonesia through an omnibus approach.

The research gap identified is the lack of comprehensive juridical analysis regarding the new mechanisms of legal protection under the Health Omnibus Law, particularly the role of the Professional Discipline Council (MDP) and the mandatory recommendation mechanism as stipulated in Article 308. Previous regulations did not integrate disciplinary and legal processes in a unified manner, leading to fragmented protection and legal uncertainty for health workers. The novelty of this research lies in its focused examination of the legal reforms introduced by Law No. 17 of 2023, especially the pre-litigation recommendation requirement by the MDP and its implications for the constitutional rights of health workers and the public. This study also explores the synergy between the new Health Law and its implementing regulation, Government Regulation No. 28 of 2024, in shaping a more structured and protective legal environment for medical and health personnel.

The objective of this study is to analyze the juridical framework of legal protection for medical and health personnel under Law No. 17 of 2023, with a specific focus on the mechanisms, constraints, and implications of the new legal provisions. Additionally, this research aims to assess the alignment of these provisions with the principles of legal certainty, equal treatment, and access to justice as guaranteed by the 1945 Constitution. The benefits of this research are both theoretical and practical. Theoretically, it enriches the academic discourse on health law and human resource protection in the health sector. Practically, it provides insights for policymakers, health facility managers, and health workers in understanding and implementing the new legal mechanisms, as well as recommendations for further regulatory refinement to ensure equitable and effective legal protection.

## METHOD

The research method employed in this study was normative juridical, involving theoretical, conceptual, and doctrinal analysis of legal principles and norms relevant to the topic. The research relied primarily on secondary sources (Bogo & Buno, 2021). Legal materials included the 1945 Constitution of the Republic of Indonesia, Law Number 29 of 2004 on Medical Practice, Law Number 36 of 2009 on Health, Law Number 44 of 2009 on Hospitals, Law Number 36 of 2014 on Health Workers, Law Number 17 of 2023 on Health, and Government Regulation Number 28 of 2024 on the Implementation of Law Number 17 of 2023 on Health. Data were analyzed qualitatively using statutory, conceptual, and case approaches to interpret legal norms, identify gaps, and assess the effectiveness of legal protections for medical and health workers under the new Indonesian health law framework.

## RESULT AND DISCUSSION

In 2023, Indonesia's healthcare system entered a new era with the enactment of Law Number 17 of 2023 on Health, an omnibus law designed to consolidate and reform the country's previous health regulations. The initiative was led by the House of Representatives (DPR) as part of an effort to modernize Indonesia's legal framework in the health sector, especially after the global COVID-19 pandemic that began in 2019, which profoundly disrupted healthcare systems worldwide. This omnibus approach was chosen to harmonize overlapping laws, streamline healthcare governance, and ensure that the legal system could better support the improvement of public health standards. The law was ratified by the DPR in a plenary session on July 11, 2023, and officially signed by the President on August 8, 2023, marking a milestone in Indonesia's healthcare reform (Health Law No. 17/2023).

According to Black's Law Dictionary, an omnibus bill is "a single bill containing various distinct matters, drafted in such a way as to force the executive to either accept all the

provisions or veto the entire proposal." The term omnibus itself means "relating to or dealing with numerous items or purposes at once." Thus, the Health Omnibus Law reflects a comprehensive legal instrument that integrates multiple legislative areas under a single legal framework. The enactment of Law No. 17/2023 repealed 11 existing health-related laws, including the laws on medical practice, hospitals, nursing, mental health, health quarantine, and midwifery, among others. This repeal underscores the law's goal to unify fragmented regulations and establish a single, coherent legal basis for healthcare management and delivery in Indonesia.

The significance of health as a fundamental human right makes medical and healthcare professionals indispensable in maintaining and improving public well-being (Skolnik, 2020; Merson et al., 2020). The Health Law categorizes health human resources into medical personnel and health workers. Both groups serve as the backbone of healthcare delivery and are responsible for carrying out professional duties that directly affect the lives of patients. Every medical act, guided by ethics and competence, is intended to help patients in good faith. However, disparities in the availability of medical professionals across regions remain a major challenge, reflecting ongoing inequalities in access to healthcare services.

According to data from the Directorate General of Human Resources for Health, Indonesia's ratio of general practitioners stood at 57.4 per 100,000 population in 2024, far below the WHO standard of 100 per 100,000. The highest ratio was recorded in Jakarta (169.7), while Papua Pegunungan had the lowest with only 3.9 per 100,000. Specialist doctors were even fewer, averaging 18.2 per 100,000, with Jakarta leading at 81.18 and Papua Pegunungan trailing at 0.68. This unequal distribution not only hampers the quality and accessibility of healthcare services but also undermines Indonesia's goal of achieving Universal Health Coverage (UHC). These figures illustrate the urgent need for legal and policy mechanisms that ensure fair distribution and adequate protection for healthcare professionals, particularly those serving in remote and underserved regions.

The therapeutic relationship between medical professionals and patients establishes reciprocal rights and obligations grounded in trust and professional ethics (Mason & Laurie, 2019). Unlike typical social or commercial contracts, therapeutic transactions focus not on achieving a guaranteed outcome but on the effort or endeavor made in pursuit of healing. This concept, known in civil law as *inspanning verbintenis* (obligation of effort), emphasizes that a doctor's responsibility lies in performing medical procedures according to professional standards rather than ensuring a patient's recovery. Therefore, when a legal relationship arises from the delivery of medical care, it must be understood as a commitment to ethical practice rather than a contract of results (*resultaat verbintenis*).

Nevertheless, this relationship can lead to medical disputes, often rooted in perceived negligence, malpractice, or patient dissatisfaction. Such disputes may evolve into civil or criminal cases, highlighting the necessity of a legal framework that protects both patients and healthcare providers. To ensure fairness and accountability, Law No. 17/2023 grants medical and health workers the right to legal protection, fair compensation, occupational safety, professional development, and ethical treatment in accordance with Article 273. These protections ensure that professionals can perform their duties without undue pressure, while patients retain their rights to safe, ethical, and effective medical care.

Prior to the new law, legal protections for medical professionals were fragmented across several statutes, such as Law No. 29 of 2004 on Medical Practice and Law No. 36 of 2014 on Health Workers. The former recognized doctors' rights to legal protection and fair remuneration (Article 50), while the latter guaranteed similar rights to health workers (Article 57). However, the Health Law of 2023 expands these provisions to include professional ethics, patient health needs, and broader professional standards, thereby strengthening the legal safeguards available to healthcare providers. Furthermore, Government Regulation No. 28 of

2024, which implements the Health Law, clarifies the responsibilities of central and local governments, as well as healthcare facility administrators, in preventing violations and providing legal support when medical professionals face legal challenges.

Under Article 723 of the regulation, the government must provide legal protection through preventive and responsive measures. Preventive actions include setting professional standards, issuing practice licenses, and facilitating coordination between healthcare regulators and law enforcement agencies to avoid unnecessary criminalization of medical practice. Healthcare facilities are also required to establish internal complaint mechanisms, ensure informed consent, and provide anti-harassment and anti-discrimination safeguards. When disputes do occur, the law prioritizes alternative dispute resolution (ADR), such as mediation or arbitration, before resorting to court litigation. This aligns with Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, emphasizing that disputes should first be settled amicably within 14 to 30 days, ensuring fairness, confidentiality, and expedience.

The inclusion of ADR mechanisms in the Health Law reflects a shift toward restorative justice and mutual understanding in medical disputes. Rather than viewing doctors as adversaries, this approach encourages collaboration and open communication between patients and healthcare providers. Mediation offers an efficient and humane process that prevents reputational damage, reduces psychological stress for medical professionals, and maintains patient trust in the healthcare system. Furthermore, the establishment of a Professional Discipline Council (*Majelis Disiplin Profesi*) under Article 713 of Government Regulation No. 28/2024 reinforces disciplinary accountability. This council receives and investigates complaints, determines violations, and issues sanctions while also providing recommendations for cases involving alleged criminal or civil offenses.

Ultimately, the Health Omnibus Law of 2023 represents a significant legal reform that integrates Indonesia's fragmented healthcare regulations into a unified framework. It not only enhances healthcare governance but also strengthens the protection, accountability, and professionalism of medical and health workers. In line with Articles 28H(1) and 34(3) of the 1945 Constitution, the law reaffirms the state's duty to oversee the ethical and professional conduct of healthcare practitioners while prioritizing public safety and welfare—a principle deeply rooted in the *maxim salus populi suprema lex esto* ("the welfare of the people shall be the supreme law").

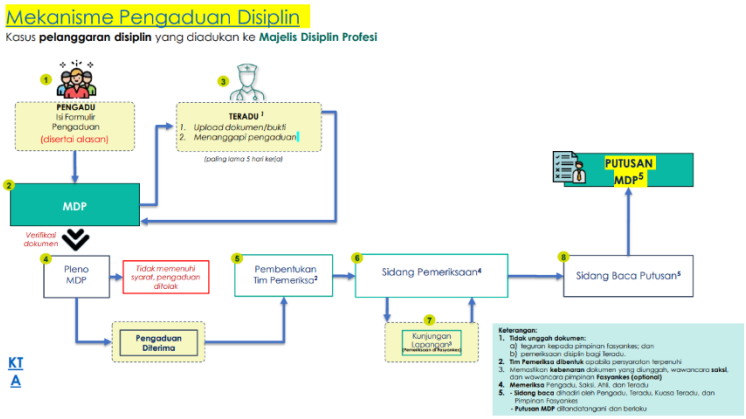


**Figure 1. Disciplinary Complaint Mechanism to the Professional Disciplinary Council**
Source: Indonesian Medical Council (2024)

The recommendations issued by the Professional Disciplinary Council are limited to whether or not an investigation can be carried out into non-conformities in health services due

to non-compliance with professional standards, professional service standards, operational procedure standards, and professional ethics, as well as the health needs of patients, in accordance with Article 713 of Government Regulation Number 28 of 2024 concerning Implementing Regulation of Law Number 17 of 2023 concerning Health. The provisions of Article 308 paragraph (1) and paragraph (2) of the Health Law are considered to cause legal uncertainty, this is because it may conflict with the provisions in the criminal procedure law and civil procedure law, where legal problems can be directly submitted through agencies that have the authority to examine and resolve legal problems. However, the regulation of the Health Law seeks to comprehensively provide new pay, where the process can only be followed up after a recommendation from the MDP, this is solely to see objectively that what has been done by medical personnel and health workers is in accordance with SOPs, etc.

Ahmad Redi in the hearing of Case Number 156/PUU-XXII/2024 related to the testing of Article 308 paragraphs (1), (2), (3), (4), (5), (6), (7) and (8) of Law (UU) Number 17 of 2023 concerning Health against the 1945 Constitution of the Republic of Indonesia (UUD NRI) said that since the establishment of the MDP institution until May 21, 2025, MDP has received requests for recommendations from various agencies in all regions. MDP has made recommendations in criminal cases that can be investigated as many as 27 names/health workers, cannot be investigated for 11 names/health workers, and are still in the process of examining three applications. MDP has also issued recommendations in civil cases according to the standards for 5 named/health workers and not according to the non-existent/nil standards. Until now, MDP is still compliant with examining and providing answers to all requests for recommendations requested to MDP. The limited composition of the MDP organization which is only at the central level with 9 members does not hinder the quality and quantity of MDP performance or the abandonment of requests for recommendations requested by various agencies throughout Indonesia.

Law Number 17 of 2023 concerning Health introduces a new mechanism in the professional supervision system for medical personnel and health workers, where there is a process of examination, investigation, and reporting of medical personnel or health workers for alleged violations of the law, which must be preceded by a request for recommendations from the assembly, as stipulated in Article 304 and Article 308 of the Health Law. This provision is specifically reflected in Article 308 paragraph (1) to paragraph (9), especially in the phrase that a recommendation from the assembly must be requested first, as referred to in Article 304. The issue of constitutionality arises against the phrase, where the requirement of recommendations from the assembly before the start of the legal process has the potential to limit public access to justice, as well as hinder a fair and equal legal process. Whether the provision of recommendations by the MDP in accordance with these provisions can be interpreted to stop the applicable criminal procedure law and civil procedure law.

Professional liability for medical personnel and health workers is insurance that provides protection for professions that are directly related to the human body such as general practitioners, specialists, dentists, specialist dentists, midwives, nurses and pharmacists, for losses experienced by patients in the process of providing medical services (Marshall). Uncertainty that may overshadow medical personnel and health workers at the same time can be changed into certainty with insurance premiums paid which provide everything from legal assistance to compensation payments to victims.

Understanding the liability of medical personnel is a crucial aspect in medical practice because it involves three main dimensions, namely law, ethics, and patient protection. In the legal dimension, this understanding must be possessed by every Medical Personnel to provide legal certainty in terms of the limitation of legal responsibility of a Medical Personnel in order to avoid the snares of malpractice disputes. Understanding this legal dimension will affect the

way medical personnel make clinical decisions, including in terms of informed consent, documentation of medical records, and the application of standards of care.
The ethical dimension, understanding the balance between Medical Obligations and Patient Rights where Medical Personnel need to apply the principles of non-maleficence (do no harm) and beneficence (do good) in medical ethics must be in line with the provisions of the law. Ethical violations can be the basis for a lawsuit if proven to violate professional standards. Medical personnel need to be equipped with an understanding that every ethical violation can have legal implications, so that compliance with the professional code of ethics becomes the first bulwark of defense.

The liability of medical personnel and health workers is regulated in Government Regulation Number 28 of 2024 concerning Implementing Regulation of Law Number 17 of 2023 concerning Health, namely in Article 723 paragraph (2) letter c form of legal protection in order to prevent medical personnel or health workers from committing violations in the form of facilitating medical personnel or health workers to have professional liability protection benefits and in the Regulation of the Minister of Health 755/MENKES/PER/IV/2011 regarding the Implementation of Medical Committees in Hospitals, it is also regulated in Chapter III of the Credentials Subcommittee letter D of the Mechanism of Credentialing and Granting of Clinical Authority for Medical Staff in Hospitals number 12 regarding the Criteria that must be considered in providing recommendations for clinical authority.

From these provisions, it can be seen that at this time medical professional liability insurance in Indonesia is not mandatory for all practicing doctors (not a requirement in the process of submitting a Registration Certificate as a medical professional practice license). Participation in medical professional liability insurance is only valid as one of the considerations for providing recommendations for clinical authority for doctors who will work in hospitals, with the aim of reducing exposure to risks faced by hospital institutions. The absence of doctors who open private practice causes medical professionals to lack protection against the risk of liability that can threaten their professional careers and personal finances.

## CONCLUSION

Law Number 17 of 2023 concerning Health introduced significant changes to the criminalization of medical and health personnel, particularly through Article 308, which mandates obtaining recommendations from the Professional Discipline Council before pursuing legal action. This requirement raises questions about its consistency with other regulations and whether it ensures equal procedural treatment across different legal issues, balancing fairness without granting excessive immunity to medical professionals. While the law aims to protect practitioners who adhere to professional and ethical standards, the regulation of liability insurance remains largely formal and ambiguous, lacking a mandatory requirement for all practicing medical personnel. Future research should evaluate the practical implementation of these legal provisions, especially the effectiveness and fairness of the disciplinary recommendation process and the impact of non-mandatory liability insurance on accountability and legal protection in healthcare.

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