

Legal Protection For Medical And Healthcare Staff In Hospitals

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ABSTRACT

Legal protection for medical personnel and health workers in hospitals in the perspective of Law Number 17 of 2023 concerning Health. This study aims to answer the problem regarding legal protection for medical personnel and health workers as regulated in Law Number 17 of 2023 concerning Health, the obligation of hospitals to protect and provide legal assistance to medical personnel and health workers who are suspected of committing medical negligence/errors/malpractice. The results of this study contain legal protection for medical personnel and health workers as regulated in Pancasila, the 1945 Constitution, Law Number 13 of 2003 concerning Manpower, Law Number 20 of 2023 concerning State Civil Apparatus and Law Number 17 of 2023 concerning Health, as well as examining the similarities and differences between non-PNS and PNS medical personnel and health workers who work in hospitals.

Keyword : Medical personnel, Health worker, legal

INTRODUCTION

Indonesia is a state governed by the rule of law/rechstaat.¹ The law is an instrument that governs the life of the nation and the state, including provisions on the protection of medical and healthcare staff in hospitals, which are specifically regulated by Law No. 17 of 2023 on Health. Health is one of the national objectives for the general welfare.² In order to achieve the national objective of promoting general welfare, it is necessary to implement health development programmes.³ Health is a human right⁴ and rights⁵ acquired from birth.⁶

Therefore, every effort to achieve the highest possible level of health is carried out in accordance with the principles of non-discrimination, participation, protection and sustainability, which are of paramount importance for the development of human resource particularly healthcare personnel in hospitals, comprising medical and healthcare staff in the performance of their duties under the hospital's protection. Legal protection for healthcare and medical staff has long been lacking, despite the existence of several provisions designed to safeguard them.⁷ Legal protection, which is considered to be insufficiently specific—particularly in the medical profession—seems to lack a clear distinction between medical negligence and medical risk; as a result, medical risks can be reported as breaches of legal norms.⁸

¹ Padmo Wahjono, *Indonesia Negara Berdasar Atas Hukum* (Jakarta, 1982) hlm.7.

² Makmur Jaya Yahya, *Pelimpahan Wewenang & Perlindungan Hukum Tindakan Kedokteran Kepada Tenaga Kesehatan Dalam Komteks Hukum Administrasi Negara* (Bandung, 2020), hlm.97.

³ Masrudi Muctar, *Etika Profesi dan Hukum Kesehatan, Perspektif Profesi Bidan dalam Pelayanan Kebidanan Di Indonesia* (Yogyakarta, 2016), hlm.132.

⁴ Wila Chandrawila Supriadi, *Hukum Kedokteran* (Bandung, 2001), hlm. 35.

⁵ Ruslan Renggong dan Dyah Aulia Rachma Ruslan, *Hak Asasi Manusia Dalam Perspektif Hukum Nasional* (Jakarta, 2021), hlm. 6.

⁶ Makmur Jaya Yahya, *Op.Cit*, hlm.120

⁷ *Ibid*, hlm. 198.

⁸ Muzakir Iskandar, *Tuntutan Hukum Malpraktik Medis: Apa saja yang termasuk katagori malpraktik?* (Jakarta, 2019), hlm.149.

The Government has sought to protect medical and healthcare staff working in hospitals by requiring hospitals to provide legal assistance; this is because, prior to the amendment of Law No. 17 of 2023 on Health, there was no explicit provision stating that hospital staff, including healthcare workers, were entitled to legal assistance from the hospital. Following the amendment, hospitals are now obliged to provide legal assistance to hospital staff and healthcare workers, particularly doctors,⁹ as provided for in Article 833(s) of Government Regulation No. 28 of 2024 concerning the Implementing Regulations of Law No. 17 of 2023 on Health.

Legal protection and assistance are provided, in particular, in cases of negligence and risks ranging from the possibility of contracting a disease to legal claims and/or lawsuits, where such negligence results in a patient sustaining injury, disability and/or death due to medical malpractice. Medical malpractice is one of the legal issues occurring in Indonesia that is closely linked to both civil and criminal liability; indeed, many cases of medical malpractice end up in court.¹⁰ According to the MKDKI, there were 182 cases of medical negligence. Of these, 60 cases involved general practitioners, 49 involved surgeons, 33 involved obstetricians and gynaecologists, and 6 involved paediatricians. The remainder involved medical staff across Indonesia.¹¹

Patients who have suffered medical negligence are aware that proving causation is a challenge. The most common medical errors, accounting for 32 per cent of medical malpractice cases, are delayed diagnosis and misdiagnosis, as well as surgical errors. This contributes to legal claims against negligent hospitals. In addition to claims against doctors and specialists (medical staff), patients also bring claims against healthcare professionals for errors in prescribing and anaesthesia.¹² From a criminal law perspective, criminal law in Indonesia recognises negligence as a form of fault¹³ which may occur in a hospital due to the legal relationship between the patient and the medical staff through a therapeutic agreement or informed consent.¹⁴

However, in practice, failures (medical risks) and negligence (medical malpractice) occur, resulting in injury to patients. Following the enactment of Law No. 17 of 2023 on Health, hospitals may be held criminally or civilly liable for medical negligence occurring within their premises. Lawsuits or claims are not borne solely by medical and healthcare staff but also by the hospital itself, in accordance with the doctrine of *respondeat superior*.¹⁵ because, from an administrative point of view, medical and healthcare staff are hospital employees.

METHOD

⁹[https://idisumbar.org/artikel/opini/pengejawantahan-perlindungan-hukum- terhadap-profesi-dokter-melalui-revisi-undang-undang-kesehatan/diakses pada 3 Juni 2025](https://idisumbar.org/artikel/opini/pengejawantahan-perlindungan-hukum-terhadap-profesi-dokter-melalui-revisi-undang-undang-kesehatan/diakses%20pada%203%20Juni%202025).

¹⁰ Heri S Widodo, *Aspek Pidana Pada Kelalaian Institusi (corporate negligence) Rumah Sakit* (Surakarta, 2021), hlm.4

¹¹ Rumbewas, H. W., Indrayati, Y., & Sulistyanto, H. (2018). *Application of Risk Management and Patient Safety to Ensure Legal Protection for Patients and Health Personal Services in General Hospital of Abepura City of Jayapura* (*Soepra Jurnal Hukum Kesehatan*, 4(2)), hlm. 350-372.

¹² *Ibid*

¹³ Veronika Kumalasari, *Hukum dan Etika Dalam Praktik Kedokteran* (Jakarta, 1989), hlm.16

¹⁴ Zahir Rusyad, *Hukum Perlindungan Pasien* (Malang, 2018), hlm.9.

¹⁵ Amir Ilyas, *Pertanggungjawaban Pidana Dokter Dalam Malpraktik Medik di Rumah Sakit* (Yogyakarta, 2014), hlm. 29.

The type of research employed by the researcher in this paper is the normative legal research method. Normative legal research is legal research carried out by examining and analysing literature.¹⁶ In this study, the researcher examines legal protection for medical and healthcare personnel from the perspective of Law No. 17 of 2023 on Health. In this study, the types of legal sources used by the researcher are primary, secondary and tertiary sources obtained from:

1. Primary legal sources

Law No. 17 of 2023 on Health, Government Regulation No. 28 of 2024 on the Implementing Regulations for Law No. 17 of 2023 on Health, Minister of Health Regulation No. 3 of 2025 on Professional Discipline for Medical and Healthcare Personnel of the Republic of Indonesia.

2. Secondary legislation

The researchers utilised legal sources that provided explanations and confirmation regarding primary legal materials, such as interview transcripts, draft legislation, legal textbooks, journals, magazines, papers and articles from both print and electronic media, research findings and scholarly works from the legal community relating to medical and healthcare staff in hospitals.

3. Tertiary legal sources.

Legal materials that provide guidance or explanations regarding primary and secondary legal sources, such as dictionaries, encyclopaedias, indexes and so on.

The collection of legal materials involves searching through primary legal sources by identifying and analysing legislation relevant to Law - Law No. 17 of 2023 on Health, Government Regulation No. 28 of 2024 on the Implementing Regulations of Law No. 17 of 2023 on Health, and Minister of Health Regulation No. 3 of 2024 on the Enforcement of Professional Discipline for Medical and Healthcare Personnel.

RESULTS AND DISCUSSION

Legal Protection for Medical and Healthcare Staff in Hospitals from the Perspective of Law No. 17 of 2023 on Health

Legal protection for workers is generally enshrined in the Pancasila and Article 27(1) of the 1945 Constitution of the Republic of Indonesia, which states that all citizens are equal before the law and the government and are obliged to uphold the law and the government without exception. Every citizen has a legally protected right to medical and healthcare personnel. Philosophically, Law No. 17 of 2023 on Health has provided for legal protection for medical and healthcare personnel in hospitals in recital (a) as the philosophical basis that,

“The State guarantees the right of every citizen to lead a good, healthy and prosperous life, both physically and spiritually, in order to achieve the national objective of protecting the entire Indonesian nation and all those of Indonesian descent, and to promote the general welfare, as mandated by the 1945 Constitution of the Republic of Indonesia.”.

The endeavour to achieve national objectives centres on the highest possible standard of healthcare. However, in practice, this endeavour is not without legal complications: should the healthcare provided by medical and healthcare staff in hospitals fail to meet patients’

¹⁶ Soerjono Soekanto dan Sri Mamuji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat* (Jakarta,1985), hlm.13.

expectations, resulting in disability and/or death, such medical risks may be reported as malpractice; to date, there are still no clear boundaries in this regard. Legal protection for healthcare and medical staff remains far from satisfactory; consequently, it is hoped that the enactment of Law No. 17 of 2023 on Health will be in line with the objectives of healthcare set out in Article 3(h), which states that “the provision of healthcare aims to provide protection and legal certainty for patients, healthcare personnel and the public”.

In light of these objectives, hospitals, as healthcare institutions, are obliged to protect medical and healthcare staff working within them, as stipulated in Article 189(1) of Law No. 17 of 2023 on Health, as follows: “Every hospital has a duty to protect and provide legal assistance to all hospital staff in the performance of their duties”, as further stipulated in Government Regulation No. 28 of 2024 concerning the Implementing Regulations of Law No. 17 of 2023 on Health, Article 833(s) and Article 851. The forms of legal protection mandated by this government regulation range from providing support and legal consultation with legal advisers to providing the following legal assistance

a. Providing legal advice

To provide legal consultation and legal advice from legal advisers, solicitors, barristers or legal consultants. The role of a legal consultant is to provide legal advice and opinions to clients (medical staff or healthcare professionals) who are alleged to have committed negligence, errors and/or medical malpractice in a hospital.

b. Facilitating mediation and court proceedings

Facilitating mediation and court proceedings. Mediation is an alternative means of resolving disputes. Before proceedings commence in court, the judge always offers mediation first; this is one of the options available to the parties for resolving medical disputes outside the court system (non-litigation).

c. Providing legal advocacy

Providing legal representation to medical and/or healthcare personnel who are alleged to have committed medical negligence or malpractice by seeking the assistance of a solicitor or barrister to act as their defence counsel and provide legal representation. Legal representation refers to legal defence (litigation) carried out by a barrister and constitutes work relating solely to the practice of law in court.

d. Providing support in the resolution of medical disputes

Assistance in the resolution of medical disputes for medical and/or healthcare professionals alleged to have committed medical negligence or malpractice. The resolution of medical disputes in Indonesia is governed by various legal mechanisms designed to ensure justice for all parties. Mechanisms for resolving medical disputes include professional bodies, non-litigation settlement and resolution through the courts (litigation). If resolution through professional bodies and non-litigation settlement proves unsuccessful, medical disputes may be resolved through the civil, criminal and administrative courts. The general procedures for resolving medical disputes include:¹⁷ Complaints, investigations and mediation are carried out to reach an agreement between the parties; litigation is conducted in accordance with the type of dispute (civil, criminal or administrative).

¹⁷ [https://www.ilslawfirm.co.id/Aturan Penyelesaian Sengketa Medis di Indonesia - ILS Law Firm](https://www.ilslawfirm.co.id/Aturan-Penyelesaian-Sengketa-Medis-di-Indonesia-Ils-Law-Firm) diakses pada 30 Juni 2025.

e. Allocate funds to cover the costs of legal proceedings and compensation, and provide legal protection and assistance

Hospitals allocate funds to cover the costs of legal proceedings and compensation in several ways, namely through insurance funds and a budget fund contributed to each month by doctors, medical staff and hospital management as a precaution in the event of legal cases involving the hospital's healthcare personnel.

Measures to Provide Legal Protection for Medical and Healthcare Staff in Hospitals

The measures that hospital management must take to prevent legal breaches and to address cases that have already occurred as a result of negligence on the part of medical and healthcare staff in the performance of their professional duties within the hospital are outlined as follows:

1. Preventive Measures.

Preventive measures are implemented to prevent patients from bringing claims or lawsuits against the hospital for negligence or medical malpractice through: providing legal education and awareness regarding medical malpractice; raising the standards of competence and quality of medical and healthcare staff through training; staff are required to comply with SOPs/SPOs/IKs, and implementing patient safety measures, namely: accurate patient identification, improved effective communication, enhanced safety regarding high-alert medicines, ensuring the correct location, correct procedure and correct patient for surgery, reducing the risk of infection and reducing the risk of patient falls.

Furthermore, hospitals are obliged to raise awareness of applicable legislation through regular monthly meetings (morning reports) at the hospital, with the agenda focusing on prohibitions and sanctions in healthcare services as set out in health legislation. Doctors and medical staff who wish to perform high-risk medical procedures that could result in disability or death should opt for defensive medicine, as legal protection in Indonesia tends not to favour doctors in particular. Therefore, to reduce the use of defensive medicine, clear protection for healthcare professionals in Indonesia is required, whilst continuing to prioritise patient safety.

This protection is necessary because the healthcare provided by doctors and healthcare professionals in hospitals is not a black-and-white matter governed solely by protocols and checklists. Medicine is not a perfect science, but rather an imperfect art, as the same medical procedure performed on different patients can lead to different outcomes. However, patients' expectations regarding the success of treatment are rising, so that when a medical procedure does not yield the desired outcome, it is often regarded as a mistake or malpractice.¹⁸

¹⁸ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3728884/> diakses pada 2 Juli 2025.

2. Repressive Measures

Repressive measures taken to provide legal protection to medical and healthcare staff suspected of negligence, errors or malpractice, as follows:

- a. In the event of negligence, error or malpractice, immediately carry out a case evaluation and implement mitigation measures.
- b. Medical staff and healthcare professionals suspected of negligence, error or malpractice shall consult with the hospital's legal team and public relations department to undertake mediation or non-litigation measures with regard to the patient and/or their family who are alleged to be victims.
- c. The hospital provides protection in the form of legal assistance from solicitors or legal advisers appointed by or working in partnership with the hospital as part of the hospital's legal team.
- d. Should mediation fail, the hospital, together with its legal team and solicitors, will continue to support the patient and provide legal assistance, starting with the ad hoc professional disciplinary hearing as provided for in Ministry of Health Regulation No. 3 of 2025 on the Enforcement of Professional Discipline for Medical and Healthcare Personnel.
- e. If the panel's recommendation finds that a medical or healthcare professional has been negligent or guilty of malpractice, the hospital and its legal team are obliged to provide support throughout the process, from the investigation through to the court hearing and the court's ruling.
- f. Hospitals shall provide insurance, funds and a budget to cover the costs relating to medical and/or healthcare staff suspected of negligence, error or malpractice.

CLOSING

Legal protection for medical and healthcare staff in hospitals, as set out in Law No. 17 of 2023 on Health, is ineffective in providing legal protection, is contradictory and gives rise to new legal issues; consequently, its effectiveness in protecting medical and healthcare staff in hospitals when resolving medical disputes still requires substantive review.

Preventive measures that can be taken include: legal education and awareness-raising, improving the quality of human resources in hospitals, complying with SOPs/SPOs/IKs, implementing the six patient safety goals, and practising defensive medicine. Repressive measures include conducting case evaluation and mitigation, consulting with the hospital's legal and public relations teams, undertaking mediation or non-litigation procedures, providing legal support and assistance from the police investigation stage through to court proceedings, and setting aside funds and budgets for compensation in medical disputes.

This study recommends, firstly, that the Government of the Republic of Indonesia should immediately establish medical tribunals specifically to handle medical claims and/or disputes in every province, and designate the PPNS as law enforcement officers and judges from the medical profession and healthcare workers who possess a bachelor's or master's degree in law, as the formation of PDP panels contravenes Law No. 8 of 1981 on the Code of Criminal Procedure. Secondly, doctors who are unwilling to take risks in their practice a practice known as 'defensive medicine' can have a detrimental impact on the quality of

healthcare services; therefore, the government and the Ministry of Health must immediately introduce regulations governing medical risk in medical practice.

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