

## **LEGAL PROTECTION FOR MEDICAL PERSONNEL IN INDONESIA: ANALYSIS OF THE 2023 HEALTH LAW AND ITS IMPLEMENTATION IN PROTECTING HEALTH WORKERS PRACTISING IN ACCORDANCE WITH PROFESSIONAL STANDARDS**

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### **Abstract**

Legal protection for medical personnel is a crucial issue in the Indonesian health system, especially since medical personnel are often vulnerable to lawsuits even though they have practised in accordance with professional standards. This study aims to analyse the forms of legal protection for medical personnel as stipulated in Law No. 17 of 2023 on Health and to examine its implementation in health service practice. The research method used is normative juridical with a legislative and conceptual approach, supported by relevant primary and secondary legal materials. The results show that the 2023 Health Law has normatively strengthened protection for medical personnel by emphasising that any medical personnel who act in accordance with professional standards, service standards, and professional codes of ethics cannot be automatically prosecuted. However, the implementation of legal protection in the field still faces serious challenges, including limited derivative regulations, low legal literacy among medical personnel, inconsistent understanding among law enforcement officials, and a lack of advocacy from professional organisations. These conditions result in the legal protection promised by the law often not being felt in practice by medical personnel in the field. Thus, this study concludes that legal protection for medical personnel is strong in terms of norms but weak in terms of implementation. To ensure its effectiveness, concrete steps are needed in the form of drafting more operational derivative regulations, increasing the legal literacy of medical personnel, strengthening the role of professional organisations, and training law enforcement officials on health law. These efforts are expected to create a more fair, balanced, and effective legal protection mechanism, enabling medical personnel to perform their professional duties safely and ensuring the public continues to receive quality healthcare services.

**Keywords:** Legal Protection, Medical Personnel, Health Law 2023, Professional Standards, Implementation.

### **Introduction**

Health is one of the basic human rights guaranteed by the 1945 Constitution of the Republic of Indonesia, specifically Article 28H paragraph (1), which states that every person has the right to physical and spiritual welfare, a place to live, a good environment, and access to health services. In order to fulfil this constitutional right,

the state has a major responsibility to provide quality, affordable healthcare services for all levels of society (Anna Sylva Roudlotul Jannati, 2024). However, the availability of quality healthcare services is inseparable from the role of medical personnel as the spearhead of the healthcare system.

Without professional, protected, and qualified medical personnel, the healthcare system cannot function optimally in achieving national health development goals (H. Hafrida, 2021). Medical personnel are a key component of the healthcare system and occupy a strategic position because they deal directly with the public in the provision of healthcare services.

They are not only required to provide services in accordance with professional standards, but also have to deal with various critical situations that often involve patient safety (F. Maulida & T. Rachmanto, 2024). The complexity of the legal relationship between medical personnel and patients gives rise to potential legal problems, especially in an era of information openness that has made the public more critical and aware of their rights. This raises the risk of increased legal claims against medical personnel, whether in the form of civil lawsuits, disciplinary sanctions, or criminal charges, even in cases where medical personnel have performed procedures in accordance with professional standards (Gerardus Gegen & Aris Prio Agus Santoso, 2023).

This situation creates legal vulnerability for medical personnel in Indonesia. The phenomenon of criminalisation of medical personnel who are considered to have committed malpractice often puts doctors and other health workers in a difficult position. On the one hand, they are required to provide the best service in accordance with their oath and professional standards, but on the other hand, every medical action always carries unavoidable risks (Prof. Dr. Hj. Titik Triwulan Tutik, 2025). It is not uncommon for medical complications, which are in fact a natural risk of healthcare services, to be misinterpreted as malpractice. This shows that medical practice is always on a fine line between professional risk and alleged legal violations that can threaten the freedom and reputation of medical personnel (Alfi Amaliah, 2023).

In practice, professional standards serve as an objective measure to assess whether a healthcare professional has fulfilled their duties properly. These standards include medical competence, technical skills, compliance with the code of ethics, and compliance with laws and regulations. If medical personnel work in accordance with professional standards, in theory they should be legally protected from unreasonable lawsuits (Fransiska Litania Ea Tawa Ajo, 2022). However, in practice, many cases show that even though medical personnel have complied with professional standards, there are still problems with legal protection, mainly due to a lack of understanding among law enforcement officials, patients, and the general public regarding the difference between medical risk and malpractice. This shows that there is a normative and implementative gap in the legal protection mechanism for medical personnel (Syafruddin, 2024).

In response to these challenges, the government and the House of Representatives passed Law No. 17 of 2023 on Health, which replaces the previous Health Law (Law No. 36 of 2009). This law brings a new paradigm to the health care system, including strengthening legal protection for medical personnel (Ian Kennedy & Andrew Grubb, 2000). Normatively, the 2023 Health Law emphasises that medical personnel who provide health services in accordance with professional standards and operational procedures will continue to receive legal protection from the state. The presence of this new regulation is expected to be a turning point in overcoming medical personnel's fear of criminalisation, while also providing a sense of security in carrying out their professional duties (Bernadette Richards & Jennie Louise, 2013).

However, new issues have arisen regarding the effectiveness of the implementation of the 2023 Health Law. Although legal norms provide protection to medical personnel, in practice there are still various obstacles that prevent this legal protection from being optimally realised (Abraham Ethan Martupa Sahat Marune, 2024). These include the limitations of derivative regulations that provide technical guidance, a lack of understanding among law enforcement officials, weak advocacy from professional organisations, and low public literacy about proper medical services. This situation creates a paradox, because even though the regulations provide guarantees, medical personnel do not yet fully feel real protection in the field (MM Kavanagh, 2024).

The legal vulnerability experienced by medical personnel not only has an impact on legal aspects, but also affects the social and psychological aspects of medical personnel. Many reports show that medical personnel become traumatised when facing legal charges, even though they have acted in accordance with procedures. Fear of legal entanglements often reduces work motivation, diminishes the courage to make important medical decisions, and even has the potential to reduce the quality of health services. In the long term, this condition can have an impact on reducing public trust in medical personnel, because health services become defensive in nature instead of emphasising the aspect of patient recovery (Michael M. Kavanagh, 2024).

In addition to social aspects, legal protection is also related to the economic and welfare dimensions of medical personnel. Legal cases involving medical personnel usually result not only in professional or criminal sanctions, but also financially burden medical personnel through legal costs and reputational damage (A Yulius, 2023). It is not uncommon for medical personnel involved in legal cases to lose patients or be dismissed from the health institutions where they work. Therefore, guaranteed legal protection is an integral part of the state's efforts to maintain the welfare of medical personnel, so that they can continue to provide optimal health services without being burdened by excessive fear (Juliyanti Tjua et al., 2024).

On the one hand, the 2023 Health Law has normatively provided a basis for legal protection for medical personnel. However, on the other hand, there is a gap between norms and practices in the field. Many law enforcement officials do not fully

understand medico-legal aspects, so professional standards are not always used as the main benchmark in legal proceedings. This means that medical personnel who have worked in accordance with professional standards can still be dragged into lengthy legal proceedings (J Tjua, 2024). This gap shows the importance of research to examine how the legal protection of medical personnel is normatively regulated in the 2023 Health Law and how it is implemented in the field (MM Kavanagh, 2024).

Based on this phenomenon, this research is of high urgency. By examining the normative aspects of the 2023 Health Law and its implementation in practice, it is hoped that this research will reveal the weaknesses in the legal protection mechanism for medical personnel. Furthermore, the results of this research are expected to provide concrete recommendations for the development of regulations and policies in the health sector, so that legal protection for medical personnel is truly in line with the spirit of the constitution in protecting every citizen, including those who work as health service providers.

### **Research Methodology**

This study utilises a normative legal method with a statutory approach and a conceptual approach to analyse the legal protection for medical personnel as stipulated in Law No. 17 of 2023 on Health. The data sources used consist of primary legal materials in the form of relevant legislation, including the 1945 Constitution, the Criminal Code, Law No. 17 of 2023 concerning Health, the Medical Practice Law, and implementing regulations in the health sector; secondary legal materials in the form of expert opinions, health law literature, academic journals, previous research results, and other scientific articles; and tertiary legal materials in the form of legal dictionaries and encyclopaedias to reinforce conceptual definitions (Eliyah & Aslan, 2025). The data obtained will be analysed using qualitative-descriptive analysis methods, namely describing the applicable legal principles, interpreting their relevance to cases or issues of legal protection for medical personnel, and then drawing systematic conclusions regarding the compatibility between legal norms and their implementation in practice (Cronin et al., 2008).

### **Results and Discussion**

#### **Analysis of Legal Protection for Medical Personnel in the 2023 Health Law**

The enactment of Law No. 17 of 2023 on Health marks a major paradigm shift in health regulation in Indonesia. This law is not merely a revision, but also replaces the 2009 Health Law and simplifies several previously separate laws related to health. By consolidating norms into a single law, legislators sought to create a clearer, more systematic and comprehensive legal framework, including in the area of medical personnel protection. This legal protection is seen as an important element in balancing the relationship between patients and medical personnel in health services (*Law No. 17 of 2023 on Health*, 2023).

The 2023 Health Law explicitly emphasises the importance of legal protection for medical personnel who have performed their duties in accordance with professional standards, service standards, and codes of ethics. This provision emerged as a response to the previous phenomenon of criminalisation of health workers. With this specific norm, it is hoped that medical personnel will no longer be burdened with excessive fear when performing high-risk medical procedures, as long as these procedures are based on applicable operational standards (F. Maulida & T. Rachmanto, 2024).

Legal protection in the 2023 Health Law is not only a practical necessity but also has a strong philosophical basis. Modern health law is based on the principles of non-maleficence (do no harm) and beneficence (do good). This means that medical personnel try their best to benefit patients without harming them, but there are still limitations influenced by scientific knowledge and the patient's medical condition.

Therefore, it is unfair to automatically consider medical personnel negligent or guilty every time a medical risk occurs (Thérèse Murphy, 2013). The 2023 Health Law guarantees the rights of medical personnel, including the right to legal protection as long as actions are carried out in accordance with procedures, the right to competency development, the right to proper welfare, and the right to safe working conditions. Legal protection is an integral part of these rights because without protection, medical personnel will always be in a vulnerable position in the face of legal proceedings and potential criminalisation (Yussy A. Mannas & Siska Elvandari, 2022). This law also emphasises that medical personnel who perform actions based on professional standards and competence cannot be immediately prosecuted simply because a medical outcome does not meet the expectations of the patient or their family.

Thus, Law 2023 recognises that medical actions always carry inherent risks. This legal recognition is important so that law enforcement officials and the public understand the difference between malpractice and medical complications (Loane Skene, 2008).

Law 2023 not only emphasises positive law but also links legal protection to the obligation of medical personnel to adhere to professional codes of ethics. This means that legal protection applies as long as medical actions meet three main elements: they comply with professional standards, they comply with service standards, and they adhere to professional codes of ethics.

Thus, the law provides protection but still prioritises the professionalism of medical personnel so that they do not abuse this legal protection (Michael M. Kavanagh, 2024). Legal protection in the 2023 Health Law is also realised through the regulation of medical dispute resolution mechanisms.

The law encourages resolution through mediation, internal hospital mechanisms, or professional organisation mechanisms before entering the criminal realm. This is intended to reduce the trend of criminalisation or the criminal approach as the first step when medical disputes arise. With this tiered mechanism, medical

personnel have room to defend themselves professionally before facing formal legal proceedings (MM Kavanagh, 2024).

While providing protection to medical personnel, the 2023 Health Law does not diminish patients' rights. Patients still have the right to obtain information, file complaints, and even sue medical personnel in cases of clear negligence. However, the law explicitly seeks to balance this position by providing a normative filter so that not all medical issues are immediately escalated into legal cases.

Thus, the balance between the interests of patients and medical personnel is maintained (J Tjua, 2024). Compared to the 2009 Health Law, the legal protection of medical personnel in the 2023 Law appears more explicit and assertive. The previous law focused more on patient services and rights, while protection for medical personnel was more implicit.

This change indicates a shift towards a more balanced orientation, in which health services are understood as a two-way relationship between patients who are entitled to services and medical personnel who are entitled to protection (Juliyanthi Tjua et al., 2024). Apart from the Health Law, the previous norms on the protection of medical personnel were scattered throughout the Medical Practice Law No. 29 of 2004. However, many parties consider that these regulations are not strong enough to protect health workers from criminalisation. The 2023 Law reinforces and expands legal protection, while maintaining the relevance of the Medical Practice Law in terms of professional disciplinary mechanisms. Thus, these two laws complement each other in establishing a legal protection system for medical personnel (A Yulius, 2023).

The legal protection of medical personnel in the 2023 Health Law can also be viewed from a human rights perspective. Medical personnel, as citizens, have the right to feel safe at work, the right to respect for their dignity, and the right to protection from disproportionate criminalisation. Thus, this legal protection is not merely a form of favouritism towards medical personnel, but also a manifestation of respect for their basic rights as human beings (Michael M. Kavanagh, 2024).

However, some circles consider that the legal protection in Law 2023 is still normative in nature and requires more concrete regulations through implementing regulations. Law 2023 does not fully explain in detail the mechanism for determining whether medical personnel truly meet professional standards or not, leaving room for interpretation by law enforcement officials. The lack of legal certainty in this aspect of implementation is a weakness that must be addressed immediately (MM Kavanagh, 2024).

Despite these weaknesses, it cannot be denied that the stronger legal protection provided by the 2023 Health Law has had a positive impact on medical practice in Indonesia. With a clear legal umbrella, medical personnel feel more secure in their work. This will ultimately improve the quality and courage of medical personnel in making the best medical decisions for patients, without being overly haunted by the fear of criminalisation (Abraham Ethan Martupa Sahat Marune, 2024).

Overall, the 2023 Health Law brings important progress in the legal protection of medical personnel in Indonesia. Through stricter regulations and a more balanced medical dispute resolution mechanism, this law seeks to reduce the criminalisation of health workers who have carried out their profession in accordance with standards. However, major challenges remain at the implementation stage, particularly in the form of derivative regulations, the understanding of law enforcement officials, and the empowerment of professional organisations to oversee this legal protection in practice.

### **Implementation of Legal Protection for Medical Personnel Practising in Accordance with Professional Standards**

Although Law No. 17 of 2023 on Health has provided a clear normative basis for legal protection for medical personnel, its implementation in the field still poses a number of challenges. The implementation of legal protection does not only depend on the text of the law, but also on how the provisions are carried out by hospitals, professional organisations, law enforcement agencies, and the community. In other words, the success of legal protection is greatly influenced by the synergy between the actors involved in the provision of health services (Bernadette Richards & Jennie Louise, 2013).

Hospitals and health care facilities are at the forefront of ensuring legal protection for medical personnel. Ideally, every health institution is required to provide a risk management system, standard operating procedures (SOPs), and internal mechanisms for resolving medical disputes. However, in practice, many hospitals still do not have adequate medico-legal teams, so medical personnel often face direct accusations without any internal defence mechanisms in place.

This shows that normative regulations have not been fully translated into operational procedures that protect medical personnel (Ian Kennedy & Andrew Grubb, 2000). Professional organisations such as the Indonesian Medical Association (IDI), the Indonesian National Nurses Association (PPNI), and the Indonesian Midwives Association (IBI) also play a central role in implementing legal protection for their members.

They can provide advocacy assistance, legal assistance, and publish expert opinions related to alleged violations of professional standards. However, the effectiveness of professional organisations is often hampered by limited resources, the lack of a solid legal aid unit, and internal dynamics. As a result, protection for medical personnel has not been fully standardised and still depends on the initiatives of each organisation (Syafuddin, 2024).

The implementation of legal protection is highly dependent on the police, prosecutors, and courts. Ideally, law enforcement officials should understand that not all medical failures are synonymous with criminal malpractice. In practice, there are still many cases where medical personnel are prosecuted before there is a comprehensive review by professional organisations regarding the professional

standards that are implemented. This shows a lack of medico-legal awareness among law enforcement officials, so that legal protection for medical personnel is not yet in line with the mandate of the 2023 Health Law (Fransiska Litania Ea Tawa Ajo, 2022).

Another factor that hinders implementation is the low level of understanding among medical personnel themselves regarding their legal rights. Many medical personnel do not understand the mechanisms of advocacy, the procedures for reporting to professional organisations, or the differences between civil, professional disciplinary, and criminal lawsuits. As a result, they often face legal problems without preparation, do not immediately seek legal assistance, or even sign legal documents that are detrimental to them without consultation.

The low level of legal literacy among medical personnel means that the legal protection provided by the law cannot be optimally utilised (Alfi Amaliah, 2023). In practice, there are still cases of criminalisation of medical personnel who have tried to work according to professional standards. For example, cases of patient deaths due to medical complications are immediately processed as alleged criminal malpractice.

Such cases show that without an initial screening mechanism, medical personnel remain in a vulnerable position even though the law provides normative protection. This case reinforces the view that legal protection is determined more by implementation in the field than by the existence of legal norms alone (Prof. Dr. Hj. Titik Triwulan Tutik, 2025).

The 2023 Health Law has actually opened up space for the settlement of medical disputes through non-litigation mechanisms, such as mediation and internal hospital mechanisms, before proceeding to criminal or civil proceedings. However, in practice, these alternative dispute resolution mechanisms are still rarely used optimally. The public prefers to report to the police rather than pursue mediation.

This situation highlights a legal culture gap between the spirit of the law and the public's practice in resolving medical disputes (Gerardus Gegen & Aris Prio Agus Santoso, 2023). Unfortunately, legal protection under the 2023 Law is not yet fully supported by operational derivative regulations. Many provisions in the law are general in nature and require government or ministerial regulations to be implemented.

Without these derivative regulations, law enforcement officials and hospitals tend to use their own interpretations. As a result, the implementation of legal protection becomes inconsistent and depends on the local context. This confirms that the legal protection for medical personnel promised by the law is still more normative than practical (F. Maulida & T. Rachmanto, 2024).

Another challenge in implementation comes from the community. The high level of public distrust of medical services, as well as the lack of health literacy, often causes patients and their families to react emotionally to treatment outcomes that do not meet their expectations.



These reactions often take the form of legal complaints or criminal reports (H. Hafrida, 2021). Thus, the implementation of legal protection will be difficult to achieve without improving the legal and health literacy of the community so that they understand the difference between medical risk and medical negligence. The implementation of legal protection often differs between private and public hospitals.

Public hospitals generally have administrative support and legal assistance from the state, while private hospitals often leave the defence entirely to the medical personnel concerned. This creates an imbalance in protection, so that not all medical personnel feel the same legal security even though the law applies nationally (Anna Sylva Roudlotul Jannati, 2024).

Weak implementation also has an impact on the psychology of medical personnel. Many medical personnel admit to feeling afraid when facing the risk of complications in medical procedures, even though they are confident that they are working according to standard operating procedures. Fear of criminal charges or civil lawsuits causes some doctors and nurses to prefer to be defensive, for example by being excessive in administrative procedures or avoiding high-risk medical cases.

This condition certainly reduces the essence of medical services, where medical personnel should be able to focus on patient health (Riskin, 2002). Optimal implementation requires strengthening legal capacity through health law education. Every medical personnel needs to acquire medico-legal knowledge during their professional education to reduce legal vulnerability when dealing with cases (Susanto, 2023).

In addition, law enforcement officials also need to receive special training on health law in order to distinguish medical risks from malpractice. With a better understanding on both sides, the implementation of legal protection will be more effective (Moore, 2014).

Despite many challenges, the 2023 Health Law still offers great hope for the protection of medical personnel. If the implementation is carried out in accordance with the spirit of the law, medical personnel will have stronger legal guarantees in carrying out their profession. This will not only increase the sense of security for medical personnel, but also encourage the creation of higher quality health services because medical personnel will no longer work under conditions of intense legal pressure (Menkel-Meadow, 2006).

Thus, the implementation of legal protection for medical personnel in the 2023 Health Law is still not optimal. The main obstacles lie in the weak support of derivative regulations, the lack of understanding of law enforcement officials, the low legal literacy of medical personnel, and the strong tendency of the public to choose criminal proceedings. Therefore, legal protection in the 2023 Health Law can only be felt in a tangible way if there are collective efforts from the government, professional organisations, hospitals, law enforcement officials, and the public to uphold the principle that medical personnel who practise in accordance with professional

standards are entitled to full protection from criminalisation and unreasonable legal claims.

## Conclusion

Law No. 17 of 2023 on Health has normatively brought about significant progress in providing legal protection for medical personnel. This law explicitly states that medical personnel who practise in accordance with professional standards, service standards, and codes of ethics cannot be automatically prosecuted simply because the medical results do not meet the patient's expectations. This norm reinforces the principle that medical practice inherently involves unavoidable risks, and therefore medical risks should not be equated with malpractice. Conceptually, the 2023 Health Law successfully provides legal guarantees and recognition of the medical profession as a high-risk profession that is essential for humanity.

However, this study found that the implementation of legal protection for medical personnel still faces serious challenges. Operational derivative regulations are not yet fully in place, so law enforcement officials and health institutions often use different interpretations that have the potential to weaken legal protection. On the other hand, the low level of legal literacy among medical personnel, the limited capacity of professional organisations, and the tendency of the public and law enforcement officials to immediately pursue criminal charges when medical disputes arise, are real obstacles to implementing the spirit of legal protection as stipulated in the 2023 Law. This implementation reveals a gap between progressive legal norms and the reality of practice in the field.

Taking into account this normative and implementative analysis, it can be concluded that legal protection for medical personnel in Indonesia is relatively strong in legal terms through the 2023 Health Law, but is not yet fully effective in practical reality. Therefore, concrete steps are needed in the future, such as accelerating the issuance of derivative regulations, increasing the capacity of professional organisations, training law enforcement officials on health law, and educating the public about the difference between medical risk and medical negligence. With the synergy of these various elements, the ideal of protecting medical personnel from disproportionate criminalisation can be realised, while maintaining the quality of fair, safe, and high-quality health services for the community.

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