

CRIMINAL LEGAL PROTECTION FOR MEDICAL PERSONNEL IN THE RESOLUTION OF MEDICAL DISPUTES

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Abstract

Medical disputes are a prevalent issue in medical practice, significantly affecting trust between medical personnel and patients. Moreover, the fear of legal repercussions often places medical professionals in ethical quandaries when making critical medical decisions. Therefore, ensuring adequate criminal law protections for medical personnel is essential to enable them to work with peace of mind and concentration. This research explores various forms of criminal law protection for medical personnel in managing medical disputes in Indonesia. Employing the judicial normative analysis method, it primarily examines Law No. 17 of 2023 on Health, supplemented by relevant literature and legal documents. Data collection involves analyzing legal texts and pertinent literature, using qualitative data analysis techniques. The study confirms that Law No. 17 of 2023 offers crucial legal safeguards for medical personnel, including the presumption of innocence, liability limitations, and equitable legal procedures. The Indonesian Medical Discipline Honor Council (MKDKI) plays a pivotal role in distinguishing between disciplinary and legal breaches, providing appropriate procedural frameworks. The establishment of the Indonesian Honor Council Mediation and Arbitration Institute (LMA-MKI) proves effective in resolving medical disputes through mediation and arbitration, promoting open communication, mutually beneficial solutions, and safeguarding confidentiality.

Keywords: *Criminal Law Protection, Medical Disputes, Mediation and Arbitration*

1. INTRODUCTION

Health is a fundamental aspect of human life that must always be given utmost importance. It plays a crucial role in enabling individuals to lead active, productive, and fulfilling lives. Good health encompasses physical, mental, and social well-being. Physical health is essential for providing the necessary energy, stamina, and capability to engage in daily tasks. Mental health is vital for ensuring clarity of thought, emotional stability, and effective stress management. Furthermore, health influences an individual's social interactions and roles within society. The significance of health extends beyond the individual level, as it contributes to enhancing overall societal productivity and quality of life. Therefore, it is imperative for every person to prioritize their health and well-being. Through maintaining good health, individuals can effectively carry out their responsibilities and meet their basic needs. Given the susceptibility of humans to various illnesses, the presence of quality health facilities is essential for safeguarding and promoting overall well-being.

The 1945 Constitution confirms that every Indonesian citizen has the right to health care as per Article 28H paragraph (1) (Muhtar et al., 2023; Timur et al., 2023). This constitutional provision underscores the fundamental nature of the right to health, emphasizing that the state must ensure the availability of quality and affordable health services for all citizens, without discrimination (Tan & Sinaga, 2023). In addition, legal frameworks in Indonesia, such as Laws No. 36 of 2009 and No. 44 of 2009, reinforce the equal right to health for all individuals and mandate hospitals to provide comprehensive

care to patients, both medically and non-medically, in a non-discriminatory manner (Suhariyanto, 2022). The constitutional rights enshrined in the 1945 Constitution, which are protected by institutions such as the Constitutional Court, play an important role in protecting citizens' rights, including the right to health care.

Patients have rights guaranteed by law to ensure that they receive safe, quality and fair healthcare. However, unfortunately, there are still many cases where these patient rights are ignored or not fully granted. Many patients are unaware that they are entitled to clear and complete information about their health condition, a right that is often overlooked. Patients have the right to know their diagnosis, the treatment options available, the risks and benefits of each medical procedure, as well as possible alternatives. However, sometimes doctors or hospitals do not provide adequate information or even hide important information from patients.

In addition to other rights, patients have the right to give consent or refuse certain medical measures, known as the right to patient autonomy. However, there are cases where patients are not given enough options or information to make an informed decision, clouding their right to autonomy. Some patients may even be forced to accept medical measures that they do not agree with. Another patient right that is often overlooked is the right to privacy and confidentiality. Patients have the right to keep their medical information confidential and to determine who can access that information. However, sometimes patients' medical information is disclosed without their permission or used for unauthorized purposes.

In addition to this, patients also have the right to file a complaint or protest if they are dissatisfied with the care they receive, ensuring that their voices are heard and respected. However, patients are often faced with administrative barriers or even intimidation when trying to file their complaints. In some cases, patients also experience medical conflicts with doctors, dentists, or hospitals. However, patients' rights in this regard are often not fully recognized or protected.

Doctors or dentists will get legal protection when performing their duties in accordance with the professional standards and operational procedures stipulated in Law Number 29 of 2004 on Medical Practice. This provision guarantees that they will not face administrative, civil, or criminal charges if they provide medical services in accordance with applicable rules, ensuring that they can work without worrying about unfair legal consequences. With this legal protection, doctors or dentists have the certainty to focus on providing quality and safe medical services to patients, provided they comply with established professional standards and operational procedures. Despite legal protection, violating these provisions will still make them vulnerable to lawsuits and liable for their actions.

Medical conflicts often arise due to disagreements between doctors and patients regarding diagnosis, treatment, or medical outcomes. In medicine, the relationship between doctors and patients is often illustrated as a biomedical relationship, where doctors play an active role in providing health care, while patients are expected to be passive by accepting and following the doctor's instructions. This model, as explained by (Wiradharma, 1996), It reflects an imbalance of power and knowledge between the two parties, which can sometimes be a source of conflict if the patient's expectations are not met or there is an error in the medical procedure. So, to reduce the possibility of medical

disputes, it is important for doctors and patients to communicate openly and honestly and understand each other's rights and obligations in the healing process.

In the period 2017-2021, there were 182 malpractice cases in Indonesia that have been processed by MKDKI. Of these, 60 cases were committed by general practitioners, 49 cases by surgeons, 33 cases by obstetricians, 16 cases by pediatricians, and 10 cases by other specialists (Purwoko, 2023). In addition, the number of lawsuits against doctors also continues to increase every year, indicating public awareness of their rights as patients. This increase should serve as a warning for doctors to provide quality and standardized medical services. MKDKI and PB IDI have an important role in resolving these cases. This increase in the number of malpractice cases and lawsuits reflects the growing challenges in the practice of medicine in Indonesia, as well as the urgent need to improve standards of professionalism and adherence to the medical code of ethics.

According to the 1945 Constitution Article 1 paragraph (3), Indonesia is a country based on law. However, the development of law in Indonesia still lags behind when compared to the progress of human civilization. This also applies to health regulations in the country, which have not provided adequate legal protection for medical personnel. Medical personnel are often victimized in the performance of their duties and faced with lawsuits.

In emergency or complex medical situations, doctors have to make difficult and complicated decisions. These circumstances need to be the focus of urgent attention quickly (Susanto, 2013). In maintaining fairness, the legal system and society must understand that the outcome of medical practice cannot always be predicted, so objective and fair decisions are important. In such a situation, adequate legal protection for doctors is crucial to maintain the continuity of safe and effective medical practice. Doctors try to make the best decision to save the patient's life, but the outcome cannot always be predicted. Therefore, doctors need to have the opportunity to defend themselves to explain the reasoning behind their medical decisions to the general public. It is imperative to strengthen the public's trust in the medical profession by providing equal justice to doctors and patients. In dealing with this issue, a system that facilitates transparency, open communication, and objective assessment of medical actions can provide better assistance.

In these situations, the presence of medical experts in the assessment is key to providing deeper and contextualized insights to the medical decision, keeping the decision based on a comprehensive and detailed understanding. This makes doctors feel valued and patients can understand the complex challenges faced by doctors. This research will involve an analysis of Law No. 17 of 2023 on Health and Article 310 which provides for out-of-court dispute resolution through alternative dispute resolution. In addition, this research will also refer to Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution.

In the context of medical dispute resolution, criminal law protection for medical personnel is important. Article 310 of Law No. 17 of 2023 on Health requires out-of-court dispute resolution through alternative dispute resolution first. This aims to provide an opportunity for parties involved in medical disputes, including patients and medical personnel, to reach a fair and effective settlement without having to go through a lengthy and expensive court process.

However, in the context of criminal law protection, there are still concerns for medical personnel who may face accusations of wrongdoing that harm patients.

Therefore, this study will evaluate the extent of criminal law protection that can be provided to medical personnel in medical dispute resolution in Indonesia. In this study, Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution will be analyzed. This law regulates the process of dispute resolution through arbitration and other alternative dispute resolution, including mediation and negotiation. In the context of medical dispute resolution, this research will evaluate.

This research has high significance in the context of legal protection for medical personnel in Indonesia. With the existence of Law No. 17 of 2023, this research highlights the importance of the presumption of innocence, limitation of liability, and fair legal procedures in protecting medical personnel from the negative impact of unproven accusations. In addition, this study also emphasizes the important role of the Indonesian Medical Discipline Honor Council (MKDKI) in distinguishing between disciplinary violations and legal violations, and providing appropriate handling procedures. The establishment of the Indonesian Medical Honor Mediation and Arbitration Institute (LMA-MKI) is also considered effective in resolving medical disputes through mediation and arbitration, which encourages open communication, mutually beneficial solutions, and maintaining confidentiality.

This research uses a juridical normative analysis approach in legal studies. The main legal sources used as references are Law No. 17 of 2023 on Health, as well as various other regulations as a basis for developing legal analysis. Data collection is conducted through analysis of legal documents and relevant literature, with qualitative data analysis techniques that assist in identifying legal issues and potential solutions that can be applied. The results of this research are expected to provide a deeper insight into legal protection for medical personnel and a more efficient and fair dispute resolution mechanism. With a clear structure and significance, this research is expected to make a meaningful contribution in improving legal protection for medical personnel in Indonesia and strengthening public trust in the medical profession.

2. RESEARCH METHODS

This research uses a judicial normative analysis approach in juridical studies. The primary legal source used as a reference is Law Number 17 of 2023 concerning Health, as well as various other regulations as a basis for developing legal analysis. Data collection is done through analysis of legal documents and relevant literature. The data analysis method used is qualitative analysis, which helps in identifying legal problems and potential solutions that can be applied.

3. RESULTS AND DISCUSSION

Medical disputes between healthcare professionals and patients or their families are a common occurrence, often stemming from conflicts in therapeutic contract-based relationships and the dynamics of socio-moral oriented relationships evolving into materially oriented relationships (Kusworo & Fauzi, 2023; Ortega Villa et al., 2022; Sulistini et al., 2023). These disputes can lead to legal and ethical violations, including issues relating to professional ethics and health law violations (Limijadi & Purwanto, 2022). The prevalence of medical negligence has increased, with cases involving surgery

and obstetrics and gynecology being the most common (Sukumar, 2023). Efforts to resolve such disputes can be made through litigation or non-litigation mediation, emphasizing the importance of alternative dispute resolution methods to minimize concerns for doctors and stimulate improvements in the health system.

Health workers in Indonesia face several challenges due to societal misconceptions about their obligations. First, great moral responsibility and psychological pressure is often placed entirely on health workers, without considering their limitations. This creates significant psychological and emotional stress, potentially affecting their performance and well-being. Secondly, there is a risk of criminalization of medical decisions taken during patient care. This fear of legal repercussions may hinder their ability to perform their duties effectively and fearlessly. Third, while there are clear regulations regarding the duties of health workers, there is still a lack of understanding among the public regarding these roles.

This misunderstanding often leads to unrealistic expectations and the blaming of responsibility for patient health solely on medical staff. Fourth, health workers are often faced with ethical and legal dilemmas due to a lack of public awareness of the legal framework governing medical practice. This can result in undue moral burden and potential legal conflicts. These challenges point to the need for better public education on the roles and responsibilities of health workers, as well as legal protections to ensure they can perform their duties without undue pressure or fear of criminalization (Prayuni et al., 2023).

Criminal law protection for medical personnel in medical dispute resolution, as outlined in Law No. 17 of 2023, is crucial in ensuring the safety and legal rights of healthcare workers. Over the years, there have been significant developments in providing enhanced criminal protection to healthcare workers, especially those facing attacks or legal challenges (Minkó-Miskovics & Ács, 2023). In addition, there is a growing interest in trade union participation to protect the rights of medical workers, highlighting the need for institutional and legal mechanisms to support medical personnel facing legal issues (Handini, 2021).

Law No. 17 of 2023 on Health contributes significantly to the regulation of medical and health dispute resolution by stipulating that disputes arising from alleged professional misconduct by medical personnel must first be resolved through out-of-court alternative dispute resolution. This is expressly stated in Article 310, which reads:

“In the event that a Medical or Health Worker is suspected of committing an error in carrying out his/her profession that causes harm to the Patient, disputes arising from the error shall first be resolved through alternative dispute resolution outside the court.”

The three main forms of protection for medical personnel under Law No. 17 of 2023 on Health include the principle of not being immediately presumed guilty, limitation of liability, and due process. A more in-depth analysis of each of these forms of protection follows:

- a. Principle of Indirect Presumption of Guilt
 - a) Article 310 of Law No. 17 of 2023

“Medical personnel should not be immediately assumed to have made a mistake if a report comes in. They have the right to be treated fairly and considered as suspects until there is evidence to the contrary.”

- b) Article 8 paragraph 1 of Judiciary Law No. 48 of 2009
“All suspected criminals are presumed innocent until proven otherwise.”

Article 310 of Law No. 17 of 2023 on Health and Article 8 paragraph 1 of Judiciary Law No. 48 of 2009 explain the importance of principles in law enforcement and protection of human rights in Indonesia, including the right to fair treatment and presumption of innocence until proven otherwise for medical personnel and suspected perpetrators. This presumption of innocence emphasizes that in the context of medical disputes, medical personnel should be treated as suspects until proven guilty. This is important to protect the reputation and professional career of medical personnel from the negative impact of unproven accusations. It also aims to safeguard human rights by ensuring that all persons, including medical personnel, are treated fairly and objectively in legal proceedings. Thus, these two articles together strengthen Indonesia's legal foundation based on the protection of human rights and justice.

- b. Limitation of Liability

Law No. 17 of 2023 on Health explicitly emphasizes that the obligations of health workers have been clearly detailed in accordance with applicable laws and regulations. This limitation of liability reflects the need for balance between the professional responsibilities of medical personnel and legal protection for them. While medical personnel have a great moral responsibility, it is important to always pay attention to humanitarian principles and maintain a balance in carrying out these responsibilities. This means that medical personnel can only be held liable to the extent that their duties and obligations are set out in law. This restriction prevents excessive and unfair lawsuits that could arise from unrealistic expectations from the public or patients. As such, it seeks to protect healthcare workers from disproportionate legal risks while still ensuring that they perform their duties professionally and ethically.

- c. Due Process of Law

Health-related legislation, Law No. 17 of 2023, strongly emphasizes the importance of providing fundamental rights to medical personnel. With this, the right to due process is important and should not be overlooked. The importance of due process cannot be overlooked, as it is a key basis in protecting medical personnel in the performance of their duties. This right ensures that in any case or dispute involving medical personnel, the legal process must proceed in accordance with established principles of fairness. Measures such as investigations and trials should be conducted in the

absence of undue external pressure, so that there is no outright criminalization without due process. This protection is crucial as it not only ensures that medical personnel can work with peace of mind and focus on healthcare, but also maintains their trust in the legal system. As such, the Act not only protects the rights of medical personnel, but also maintains the integrity and trust of the profession in carrying out their duties in the interest of overall public health.

The Health Law No. 17 of 2023 which came into effect on August 8, 2023 replaces 11 previous laws, creating many significant changes. It is vital to pay attention to legal protection for medical personnel, especially through the involvement of the Assembly which has a crucial role in enforcing discipline and law. According to Article 304, before medical personnel are criminally prosecuted for alleged violations of the law in healthcare, they must seek recommendations from the Disciplinary Tribunal. This aims to ensure that any alleged violation of the law is first screened and evaluated by the competent authority before legal action is taken, following the principle of fairness (Hutabarat et al., 2022). This approach is not only to uphold justice, but also to ensure that criminal sanctions are only applied to eligible cases and after careful evaluation has been conducted, reducing the possibility of abuse or unfair use of criminal sanctions against medical personnel who are innocent or involved in non-serious misconduct. Therefore, with these measures, the principles of justice and legal protection for medical personnel are effectively safeguarded.

The Tribunal, as outlined in Articles 304-310 of Law No. 17 of 2023 on Health, serves two primary functions: evaluating disciplinary infractions by medical and healthcare personnel and offering recommendations regarding legal violations committed by them. It is crucial to differentiate between disciplinary violations and legal offenses, as articulated in Article 3 of the Indonesian Medical Council Regulation Number 4 of 2011 concerning Professional Discipline of Doctors and Dentists. Disciplinary violations pertain to breaches of professional ethics rather than violations of the law.

Despite the existence of dedicated forums like the Indonesian Medical Disciplinary Honor Council (MKDKI) to address disciplinary issues, Article 66(3) of Law No. 29/2004 on Medical Practice clarifies that submitting a written complaint to the MKDKI does not preclude individuals from pursuing civil legal action through the courts for damages incurred. This underscores the importance of discerning between disciplinary and legal infractions and adhering to appropriate procedures in handling each case.

However, when the MKDKI Decision was implemented, concerns were raised amongst the Trial Judges, resulting in a variety of different Court Decisions, as will be explained below:

- a) The court requires an examination and decision of MKDKI prior to the filing of a lawsuit.
- b) The court does not require the examination and decision of MKDKI prior to the filing of the lawsuit.
- c) The court rejects the lawsuit because there has been no examination and MKDKI Decision prior to the filing of the lawsuit.
- d) The court uses the examination and decision of MKDKI as a consideration in processing and deciding the lawsuit.

- e) The court does not use the examination and decision of MKDKI as a consideration in processing and deciding the lawsuit.
- f) Dissenting opinion in the Court Decision due to the Judge's difference of opinion regarding the MKDKI Decision.

Doctors often encounter situations where emergency patients require complex and risky medical procedures. They involve the use of sophisticated equipment to treat life-threatening conditions, carry significant risks associated with treatment, and may result in harm or dangerous side effects from the medications used (Baroto & Mangesti, 2023). Meanwhile, Article 293 paragraph (5) of Law Number 17 of 2023 concerning Health mandates that written consent must be obtained in advance before performing invasive procedures or actions that contain high risks.

In emergency situations, doctors often face a dilemma. On the one hand, they must perform high-risk medical actions to save the patient's life, but on the other hand, they are worried about lawsuits related to the risk of death that may arise. However, Article 275 paragraph (1) of Law No. 17 of 2023 on Health emphasizes the obligation for medical personnel to provide first aid to patients in emergency conditions.

Article 273 of Law No. 17 of 2023 on Health protects health and medical personnel who perform medical actions. If proven negligent, they can be sanctioned according to Article 440. However, the matter must be resolved non-judicially before criminal sanctions are imposed. This article also guarantees that medical personnel will not be penalized if their actions are in accordance with professional standards and patient requirements. This demonstrates the commitment to protect the rights and interests of health workers and patients, and improve the quality of health services.

The establishment of the Indonesian Medical and Health Arbitration Mediation Institute (LMA-MKI) in 2023 is in line with efforts to address medical disputes in Indonesia through alternative dispute resolution methods (Kusworo & Fauzi, 2023; Sukumar, 2023). LMA-MKI complements existing mechanisms such as the Indonesian Medical Discipline Honor Council (MKDKI) to handle complaints and resolve disputes between patients, medical personnel, and health institutions (Alawiya et al., 2023). Indonesia has witnessed a growing trend in utilizing both court-annexed and out-of-court mediation to resolve disputes, with out-of-court mediation showing higher success rates (Atmoko, 2022).

By establishing the LMA-MKI, Indonesia aims to provide a dedicated platform to address health-related conflicts, emphasizing the importance of an efficient and fair dispute resolution process in the medical field. The mediation and arbitration process at LMA-MKI is designed to be faster compared to traditional court proceedings, providing a more efficient solution. Its simplified and uncomplicated procedures make it easier for parties to go through the dispute resolution process. In addition, the fees required to resolve disputes through LMA-MKI are generally lower compared to litigation, making it a more cost-effective solution.

The communicative mediation process at LMA-MKI encourages open communication between the parties, which can foster better understanding and lead to more amicable settlements. It also emphasizes on achieving win-win solutions, which are more satisfying for both parties involved. Confidentiality is also well maintained as mediation sessions are conducted in private, ensuring that sensitive information remains

confidential. In addition, LMA-MKI prioritizes neutrality and integrity in its processes, ensuring fair treatment of all parties involved. With these advantages, LMA-MKI is an attractive option for resolving disputes in the medical and health sector.

Criminal law protection for medical personnel in resolving medical disputes is crucial for promoting fairness and enhancing professionalism in medicine. Law No. 17 of 2023, along with dispute resolution mechanisms like MKDKI and LMA-MKI, establishes a robust framework to shield medical professionals from unjust criminalization and offers efficient, equitable avenues for dispute resolution.

Based on these findings, the first policy recommendation to effectively address identified challenges is to strengthen the principle of presumption of innocence in law enforcement related to medical disputes. Consistent application of this principle ensures that medical personnel are presumed innocent until proven otherwise, safeguarding their reputations and professional careers from unfounded allegations. Secondly, prioritizing the enhancement of medical professionalism and ethics is crucial. Given the rise in malpractice cases, ongoing training and stricter supervision by bodies like MKDKI and PB IDI are essential to uphold adherence to medical codes of ethics.

Furthermore, policies should ensure adequate legal protection for medical personnel, particularly in high-risk medical scenarios, through fair and transparent legal procedures. Strengthening mediation and arbitration, facilitated by institutions like the Indonesian Medical Honor Mediation and Arbitration Institute (LMA-MKI), offers faster and more cost-effective alternatives to traditional litigation, thereby enhancing dispute resolution efficiency.

Lastly, raising public awareness of patient rights and medical responsibilities through educational campaigns is pivotal. This initiative aims to mitigate baseless lawsuits and foster trust between patients and medical practitioners. Implementation of these policy recommendations aims to address challenges in Indonesian medical practice more effectively and equitably.

4. CONCLUSION

The protection of medical personnel under criminal law in the resolution of medical disputes is paramount for ensuring justice for both healthcare providers and patients. It serves to prevent premature culpability of medical professionals, thereby safeguarding decisions made in good faith from unwarranted criminal allegations. Law No. 17 of 2023 on Health establishes a robust legal framework that includes liability limitations and ensures fair procedural safeguards for medical personnel. The Indonesian Medical Discipline Honor Council (MKDKI) assumes a crucial role in enforcing disciplinary standards and legal compliance, distinguishing between disciplinary infractions and criminal offenses while ensuring procedural fairness.

Mediation, facilitated through institutions such as the Indonesian Honor Council Mediation and Arbitration Institute (LMA-MKI), offers a viable alternative for resolving disputes outside of conventional litigation. It fosters transparent communication, promotes mutually beneficial resolutions, and upholds confidentiality. Nevertheless, medical professionals continue to face ethical dilemmas in emergency scenarios, balancing high-risk medical decisions with apprehensions about legal repercussions. The objective of criminal law protection is to mitigate such concerns, provided medical actions adhere to established professional standards.

These legal protections are indispensable in enabling medical personnel to execute their duties without undue apprehension of unjust legal ramifications, thereby advancing standards of professionalism and equity within the medical profession. Recommendations include the consistent application of the presumption of innocence in law enforcement pertaining to medical disputes, continuous enhancement of professionalism through rigorous training and oversight by bodies like the MKDKI, and the enactment of comprehensive legal safeguards to support medical personnel in high-stakes medical contexts. Strengthening the institutional capacity of the LMA-MKI to ensure expedient and equitable dispute resolution, alongside efforts to educate the public on patient rights and medical ethics, are critical endeavors to curtail unfounded litigations and foster trust between healthcare providers and the community.

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