

CRIMINAL LAW ENFORCEMENT AGAINST DOCTORS IN THE APPLICATION OF ARTICLE 308 OF THE HEALTH LAW

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Abstract

Medical healthcare services are tasks performed based on scientific knowledge and competencies acquired through formal, tiered education. Their goal is to restore and protect the health of the community, specifically patients within the scope of healthcare provision. A doctor's criminal liability arises when there is a medical malpractice, which involves errors in diagnosing and providing medical treatment. Patients who suffer harm may seek criminal accountability from doctors. The process of enforcing criminal law against doctors requires recommendations from the Professional Discipline Council to initiate an investigation by law enforcement officers. This, in turn, limits the authority of the police in conducting investigations in accordance with the Criminal Procedure Code (KUHP).

This study adopts a normative legal research method. Normative legal research is a type of legal study based on literature review, examining legal issues through an analysis of laws, including Law No. 17 of 2023, Law No. 8 of 1981, and other references related to the enforcement of criminal law against doctors under Article 308 of the Health Law.

The findings of this research are as follows: First, the recommendation from the Professional Discipline Council may obstruct victims from accessing legal protection from law enforcement authorities, as the council only evaluates the application of medical discipline, not the role of law enforcement. Second, the Professional Discipline Council serves merely as an advisory body to law enforcement officers, as it is not a law enforcement agency and lacks the capacity to assess whether there is a legal error in healthcare services.

Keywords: Criminal law enforcement, doctor, Article 308 Health Law

A. INTRODUCTION

Health is a fundamental supporting factor for human basic needs, which is a legally protected right. Every nation recognizes that health is indeed the greatest asset for achieving a high economic standard, and the improvement of healthcare services is fundamentally an investment in human quality for Indonesia to realize a prosperous society. Health is a basic right that must be protected, and such a right is classified as a fundamental right in medical services, as stipulated in Article 28H, Paragraph (1) of the 1945 Constitution of Indonesia. The right to obtain healthcare services ensures that every effort to maintain and improve the health quality of citizens is made with a non-discriminatory, participatory, and sustainable approach, aiming to shape an Indonesian society that enhances resilience and national competitiveness for sustainable development.¹

in healthcare services, the medical profession is carried out with knowledge and skills acquired through a systematic educational system, underpinned by an ethical code dedicated to serving the public. Therefore, the presence of doctors is clearly beneficial to society, as they provide healthcare services, particularly for patients, within the scope of medical care. This practice, in principle, adheres to

established medical service standard.² This requires the mastery of clinical knowledge and skills, with their implementation being aligned with applicable ethical guidelines. Moreover, doctors possess the ability to think systematically and apply these skills in practice.³

Doctors are required to uphold high moral and ethical standards in practicing their profession, prioritizing the interests and safety of their patients, and ensuring that medical practice is carried out with noble intentions and meticulous care. However, in recent times, issues have arisen where patients seeking treatment and recovery have instead experienced a decline in their condition, with some even suffering disabilities or the loss of life. A key factor contributing to such failures in patient care is negligence by medical personnel, specifically the failure to perform procedures in accordance with established medical service standard.⁴ In modern legal theory, medical malpractice is treated as a dual concept encompassing both medical and legal perspectives. Medical errors by doctors include instances where a physician makes a wrongful diagnosis or treatment decision due to the evolving state of medical knowledge, specific conditions, or situations that hinder the provision of impartial medical services. Additionally,

¹ Sri Siswati, *Etika Dan Hukum Kesehatan Dalam Perspektif Undang-Undang* (Jakarta: Pt. RajaGrafindoPersada, 2017).

² Hasrul Buamona, 'Tanggung Jawab Pidana Dokter Dalam Kesalahan Medis', *Almazahib*, 2.2 (2014), 215–38.

³ Ricky Ricky, 'Aspek Hukum Peraktik Kedokteran Melakukan Tindakan Medis Yang Bukan

Kewenangan Kompetensi Profesinya', *Jurnal Lex Renaissance*, 5.2 (2020).

⁴ Aria Chandra Gunawan, Dika Yudanto, and Amir Junaidi, 'Tinjauan Hukum Pidana Terhadap Tindakan Malpraktek Dalam Bidang Kesehatan Atau Medis', *Unnes Law Review*, 6.2 (2023), 5387–97.

errors may arise from a doctor's lack of experience or actions taken without awareness of potential dangers, failure to anticipate possible outcomes, or with the belief that such outcomes could have been prevented. These provisions apply to healthcare services.⁵

The legal responsibility of the medical profession is inherently tied to the various legal regulations governing its practice. Professional responsibility in relation to criminal law arises when there is professional misconduct, such as errors in diagnosing or mistakes in medical procedures or treatments. From a legal perspective, such errors are considered violations of the law, carried out by individuals who can be held accountable. To determine whether an act is right or wrong, the reference point is the applicable legal provisions, along with the presence of causality between the intent of the actor and the actions they have taken (intentional conduct or negligence). Negligence consists of two forms: performing an act that, in principle, should not have been done, and failing to perform an act that one is legally obligated to carry out. A significant distinction exists between criminal acts as regulated in the Criminal Procedure Code (KUHP) and criminal acts within the medical profession. In criminal offenses, the focus is on the consequences of the act, while in medical malpractice, the emphasis is on the underlying cause or trigger. Even if an act results in harm, the medical profession cannot be held liable in the absence of

negligence or error. For example, criminal malpractice may involve intentionally performing an abortion without medical risk, breaching doctor-patient confidentiality, or failing to provide first aid to an emergency patient.⁶

In the context of medical criminal offenses, Law No. 17 of 2023 on Health introduces a new regulatory framework that provides guidelines regarding legal violations in the medical field. Among the most significant new regulations in this law is the specific procedure or guidelines for examining doctors involved in criminal acts within medical services. Criminal investigations conducted by police investigators require additional procedures, involving the Professional Disciplinary Council (MDC), which is specifically applied to doctors who commit criminal acts in the course of performing medical procedures on patients. As stipulated in Article 308, Paragraph (1) of Law No. 17 of 2023 on Health, it explicitly states: "Medical and healthcare personnel suspected of committing unlawful acts in the provision of healthcare services, which may result in criminal sanctions, must first obtain a recommendation from the council as referred to in Article 304." This provision clearly defines the limits of investigative authority, mandating that the initial process be carried out by the Professional Disciplinary Council before any legal investigation is conducted by police investigators.⁷

⁵ S. Buletsa and others, 'Medical Error: Civil and Legal Aspect', *Georgian Medical News*, 2018, 161–66.

⁶ Nuralim, 'Tugas Dan Tangungjawab Dokter Menurut Undang-Undang Nomor. 36 Tahun 2009

Tentang Kesehatan', *Jurnal Al-Dustur*, 1.1 (2018), 1–17.

⁷ Jasmen Ojak Haholongan Nadeak, 'Penerapan Disiplin Profesi Sebagai Instrumen Penegakan Hukum Pidana Kesehatan Berbasis Keadilan Prosedural', *Law Perspective*, 07 (2024), 184–95.

From this formulation, it is evident that the enforcement of criminal law against doctors is highly dependent on the assessment of the Professional Disciplinary Council (MDC). Consequently, the process of criminal law enforcement can only proceed if the MDC provides a recommendation to the police investigators to initiate an investigation into healthcare-related criminal offenses. This requirement may hinder the enforcement of criminal law against doctors, as it necessitates an evaluation by the Professional Disciplinary Council. This process does not provide legal certainty for patients, as their rights may not be equally protected before the law, and they may not receive justice through the law enforcement procedures outlined in the Criminal Procedure Code (KUHP).

Previous research conducted by Jasmen Ojak Haholongan Nadeak (2020) utilized a qualitative method with a literature approach, employing secondary legal materials such as books, articles, and legal papers. This study focused on the implementation of the medical profession within the framework of criminal law, systematically addressing aspects of justice. The research examined the enforcement of law in the healthcare sector through the implementation of Law No. 17 of 2023 on Health. The findings revealed that the Professional Disciplinary Council (MDC) performs its duties in the enforcement of medical law by adopting a procedural legal method. This approach differs from the author's research, which emphasizes the enforcement of medical law based on legal certainty and justice for patients, where the

Professional Disciplinary Council is not considered a law enforcement agency in the process of investigating medical malpractice

Previous research conducted by Edwin and Yenny Fitri Z. (2025) is a normative study that analyzes the recommendations of the Professional Disciplinary Council concerning the alleged criminal actions committed by doctors, based on Law No. 17 of 2023. The findings indicate that the enforcement of law by the Professional Disciplinary Council depends on the morality and integrity of the law enforcement officers themselves, and that justice and benefits must be achieved for patients or the public. Furthermore, Law No. 17 of 2023 provides the legal basis for ensuring legal certainty in decision-making without neglecting justice. The distinction in the author's research lies in its focus on justice and legal certainty for patients who have been harmed due to medical actions that do not conform to established standards of medical professional services⁸

Previous research conducted by Gunawan Wijaya (2025) titled *The Professional Disciplinary Council as the Primary Remedium Institution in Handling Alleged Medical Malpractice in Indonesia* found that the Professional Disciplinary Council is capable of serving as a swift and proportional internal resolution forum, offering education and graduated sanctions for medical personnel. As a result, not all violations directly lead to criminalization or litigation in the general courts. The distinction in the author's research lies in the emphasis on the role and function of

⁸ Edwin and Yenny Fitri, 'Analisis Rekomendasi Majelis Terkait Adanya Dugaan Tindak Pidana Yang Dilakukan Tenaga Kesehatan Atau Medis

Berdasarkan Undang- Undang Nomor 17 Tahun 2023', *Sumbang*, 04.01 (2025), 188–95.

investigation and inquiry, which falls under the jurisdiction of police investigators, with the recommendations of the Professional Disciplinary Council serving as considerations for the investigators.

This research aims to analyze the enforcement of criminal law against doctors in relation to the recommendations provided by the Professional Disciplinary Council (MDC) to police investigators, which serve as the basis for whether or not an investigation should be conducted, as outlined in Article 308 of Law No. 17 of 2023. The existence of such recommendations does not reflect a sense of justice and legal certainty for patients and tends to primarily protect doctors. Based on the aforementioned discussion, the author finds it necessary to further explore. **Criminal Law Enforcement Against Doctors in the Application of Article 308 of the Health Law**

B. PROBLEM FORMULATION

1. What is the form of criminal law enforcement against medical doctors following the enactment of Article 308 of Law Number 17 of 2023 on Health?
2. How are the investigative and inquiry authorities of the police defined in the criminal law enforcement process involving medical practitioners?

C. RESEARCH METHODOLOGI

This research employs a normative/doctrinal legal method. Normative or doctrinal legal research constitutes a type of legal inquiry

conducted through comprehensive literature studies, utilizing both primary and secondary legal sources.⁹ This study is carried out through the interpretation of statutes, an examination of legal principles, legal history, and comparative law relevant to the criminal law enforcement of medical practitioners under Article 308 of the Health Law. The approaches employed in this research include.¹⁰

1. The statutory approach

This approach involves an examination of Law Number 17 of 2023 on Health; Law Number 8 of 1981 on the Criminal Procedure Code; Law Number 2 of 2002 on the National Police; Government Regulation Number 28 of 2023 concerning the Implementation of Law Number 17 of 2023 on Health; and Minister of Health Regulation Number 3 of 2025 on the Enforcement of Professional Discipline for Medical and Health Personnel

2. The Philosophical Approach

The philosophical approach is employed to examine and explore the application of Article 308 of the Health Law. This encompasses legal philosophy and legal theory, with the primary aim of obtaining a fundamental, profound, and comprehensive understanding

3. The comparative approach)

The comparative approach is one of the methods used in normative legal research to examine medical law enforcement across different countries. This comparison aims to identify elements of similarity and

⁹ peter mahmud Marzuki, *Penelitian Hukum*, edisi revi (jakarta: kencana, 2017).

¹⁰ Soetandyo Wingjosoebroto, *Hukum Paradigma, Metode Dan Dinamika Masalahnya* (jakarta: huma, 2002).

divergence. Such research is commonly referred to as comparative law

The legal materials employed in this research consist of primary legal materials, secondary legal materials, and tertiary legal materials:

a. Primary Legal Materials

This research draws upon several statutory instruments, including Law Number 17 of 2023 on Health; Law Number 8 of 1981 on the Criminal Procedure Code; Law Number 2 of 2002 on the National Police; Government Regulation Number 28 of 2023 concerning the Implementation of Law Number 17 of 2023 on Health; and Minister of Health Regulation Number 3 of 2025 on the Enforcement of Professional Discipline for Medical and Health Personnel

b. Secondary Legal Materials

The secondary legal materials in this research include legal journals, scholarly papers, legal science articles, and dissertations related to the criminal law enforcement of medical practitioners in the application of Article 308 of Law Number 17 of 2023

c. Tertiary Legal Materials

Legal dictionaries and encyclopedias

D. DISCUSSION

1. The Form of Criminal Law Enforcement Against Medical Practitioners Following the Enactment of Article 308 of Law Number 17 of 2023 on Health

W.L.G. Lemaire defines criminal law as a body of rules containing obligations and prohibitions which, as determined by the lawmaker, are connected to sanctions of a punitive and afflictive nature.¹¹ Criminal law is oriented toward the fulfillment of certain elements that give rise to criminal liability. Accordingly, criminal law is grounded in conduct that meets specific qualifying criteria and is therefore subject to punishment. Meanwhile, Simon defines criminal law as the entirety of commands and prohibitions established by the state, accompanied by the threat of imprisonment for any individual who fails to comply with them.¹²

Addressing violations of criminal law by medical practitioners cannot be separated from crime prevention efforts within the framework of the criminal justice system. The implementation of criminal law in cases involving medical misconduct—particularly when medical services are provided without adherence to established medical service standards—constitutes a component of the broader law-enforcement process. Fundamentally, the use of criminal law as a means of combating crime forms an integral part of the law-enforcement mechanism itself. Lawrence Friedman explicitly asserts that law constitutes an integrated system comprising legal substance, legal structure, and legal culture. Accordingly, the discussion of criminal law within the context of legal policy involves not only statutory policy but also policy related to the structure and culture of law, both of which evolve and interact dynamically within society.

¹¹ aryono Aris Prio Santoso, Rezi, *Pengantar Hukum Pidana*, cetakan pe (yogyakarta: pustakabarupress, 2024).

¹² Moeljatno, *Asas Asas Hukum Pidana* (jakarta: Rineka Cipta, 2008).

Efforts to prevent crime through the use of criminal law are, in principle, an integral part of the broader process of law enforcement, particularly criminal law enforcement. According to Achmad Ali, citing Lawrence Friedman, law enforcement constitutes an integrated whole consisting of the legal structure, legal substance, and legal culture. Consequently, when discussing criminal law within the context of legal policy studies, the focus extends beyond statutory procedures to include procedures related to the legal structure and legal culture, both of which develop within society in structural and non-structural forms.

The enforcement of criminal law against medical practitioners who perform medical actions that do not comply with professional standards, standard operating procedures, or the medical needs of the patient—commonly referred to as medical malpractice—falls within the domain of criminal law as acts of intent (*opzet*) or negligence (*culpa*). Various parameters are used to determine whether a medical act is erroneous or improper and may constitute malpractice, including legal provisions and established medical standards. Any form of healthcare provision or medical service inherently carries the potential for error, which may ultimately lead to malpractice when performed contrary to service standards and resulting in harm, disability, or the death of a patient. Errors in establishing a diagnosis, in particular, constitute one of the forms of misconduct that may trigger criminal liability.¹³

In general, variations in policy demonstrate that the effectiveness of

criminal law enforcement against medical practitioners depends significantly on the consistency of regulations, the capacity of law-enforcement authorities, the institutional strength of enforcement bodies, and the legal awareness of both physicians and patients. The enforcement of medical criminal liability across different countries reveals several distinctions. For example, a physician may fail to order a blood test for a child, mistakenly believing that the child's medical condition is not alarming and presents no risk of complications. In reality, such a test would have easily detected a serious infection that could have been treated without complications through appropriate antibiotic therapy. Medical service standards therefore require the physician to perform continuous blood testing. A failure to do so constitutes a breach of the applicable standard of care. This omission becomes the direct cause of further injury to the child, and such negligence represents conduct that deviates from the professional standard of medical practice.¹⁴ Therefore, physicians are required to provide healthcare services with constant caution and diligence, uphold and implement the medical oath, perform their professional duties without being influenced by personal gain, and ensure that every form of medical service prioritizes the best interests of the patient.¹⁵

a. Medical Law Enforcement in China

The handling of medical disputes in China generally involves resolution through negotiation between hospitals, hospital personnel, and patients, facilitated by third parties such as the People's

¹³ Adami Chazawi, *Malpraktek Kedokteran* (Jakarta: Sinar Grafika, 2008).

¹⁴ Miha Šepec, 'Medical Error – Should It Be a Criminal Offence?', *Medicine, Law & Society*, 11.1

(2018), 47–66 <<https://doi.org/10.18690/2463-7955.11.1.47-66>>.(2018).

¹⁵ Takdir, *Pengantar Hukum Kesehatan* (Palopo: kampus IAIN Palopo, 2018).

Mediation Committees for Medical Disputes and the Health Administrative Mediation mechanism. If mediation fails to produce an agreement between the hospital and the patient, the dispute is subsequently brought before the courts.¹⁶ All information related to the medical dispute, including the treatment provided and evidence of negligence, is submitted to the Supreme People's Court. Officials of the Chinese Ministry of Health then assess the severity of injury, disability, or death, which serves as a basis for determining the amount of compensation.¹⁷

b. Medical Law Enforcement in Malaysia

The method used to resolve cases of medical negligence in Malaysia involves the application of a mediation model introduced in 2010 under the Federal Court's Practice Direction No. 5 of 2010 on Mediation. However, this practice direction provides no specific guidelines for medical negligence claims. If mediation fails to produce an agreement, the dispute proceeds to judicial adjudication. Within the adversarial system, specific requirements must be met in order to establish a claim of medical negligence, with the burden of proving breach of duty and causation resting upon the patient. This includes demonstrating the standard of care applied by the

physician in the performance of their professional duties¹⁸

c. Medical Law Enforcement in the United States

In the United States, allegations of medical malpractice against physicians are implemented through a special framework under the Federal Tort Claims Act (FTCA), known as the Medical Malpractice Immunity Act (MMIA). Under this framework, the state grants individuals or injured patients the freedom to pursue legal remedies either against the government or directly against the physician in various jurisdictions across the United States. When a patient chooses to file a claim against a physician personally, the physician may then seek indemnification from the state for any penalties or fines arising from the alleged negligence or careless conduct. In practice, prosecutors frequently direct claims against the government in many of the cases they handle, as individual physicians are often unable to bear the financial burden of compensation for disability or death resulting from negligent conduct amounting to medical malpractice

d. Medical Law Enforcement in Indonesia Prior to the Amendments to Law Number 36 of 2009 on Health and Law Number 29 of 2004 on Medical Practice

In carrying out their professional medical obligations across various domains

¹⁶ Peiliang Zhao and others, 'Status of Thyroid Surgery-Related Medical Disputes in China', *Gland Surgery*, 14.2 (2025), 196–206 .

¹⁷ Istiana Sari and Yasarman, 'Alternative Dispute Resolution In Medical Dispute Resolution: Initiating The Establishment Of An Alternative Medical Dispute Resolution Institution In

Indonesia', *Fox Justi: Jurnal Ilmu Hukum*, 2.15 (2025), 392 .

¹⁸ Maizatul Farisah Mohd Mokhtar, 'Medical Negligence Dispute in Malaysia: Choosing Mediation as the Best Constructive Approach to Address the Paradoxes in Medical Negligence Claims', *European Journal of Natural Sciences and Medicine*, 5.2 (2022).

correlated with medical interventions, physicians frequently encounter circumstances that place them within the scope of legal liability.¹⁹ Statutory regulations govern the legal responsibilities associated with the criminal law enforcement of medical practitioners, as stipulated in Articles 360 and 361 of the Indonesian Criminal Code (KUHP). Provisions concerning such liability were also previously regulated under Law Number 36 of 2009 on Health, Law Number 36 of 2014 on Health Personnel, and Law Number 29 of 2004 on Medical Practice. However, these statutes do not provide a definition of medical malpractice.²⁰ The criminal provisions contained in Article 190 of Law Number 36 of 2009 on Health state that.

“The head of a healthcare facility and/or health personnel who, while practicing or performing duties within a healthcare facility, intentionally fail to provide first aid to a patient in an emergency situation as referred to in Article 32(2) or Article 85(2), shall be subject to imprisonment for a maximum of two years and a fine of up to Rp200,000,000. If the act referred to in paragraph (1) results in disability or death, the head of the healthcare facility and/or the health personnel concerned shall be subject to imprisonment for a maximum of ten years and a fine of up to Rp1,000,000,000.”²¹

Article 66 paragraph (1) of Law No. 29 of 2004 on Medical Practice stipulates that “any person who is aware of, or whose interests have been harmed by, the actions of a physician or dentist in the course of providing medical services may submit a written complaint to the Indonesian Medical Disciplinary Board (MKDKI).” The MKDKI is vested with the authority to receive complaints, conduct examinations, and render decisions concerning violations of professional discipline by physicians. Accordingly, this provision confers upon the Board both the right and the obligation to determine whether a physician has committed a professional error in the implementation of medical science. The primary objective of this mechanism is to safeguard the autonomy of the medical profession so that physicians are not easily subjected to criminalization each time a healthcare service fails to meet the expectations of the public or patients.²²

Furthermore, Article 66 paragraph (3) provides that “this provision does not eliminate the right of any person to report an alleged criminal act to the competent authorities and/or to file a civil lawsuit in court.” This article reaffirms that disciplinary and ethical mechanisms do not preclude patients’ access to criminal justice. Such a safeguard constitutes an embodiment of Article 28D paragraph (1) of the 1945 Constitution, which guarantees the right to recognition, assurance, protection, and fair legal certainty. The

¹⁹ Muntaha, *Hukum Pidana Malpraktik Pertanggungjawaban Dan Penghapusan Pidana* (Jakarta: Sinar Grafika, 2017).

²⁰ Budi Handoyo, ‘Tinjauan Yuridis Penegakan Hukum Malpraktik Dokter Pada Pelayanan Kesehatan Dalam Perspektif Hukum Pidana’, *At-Tasyri: Jurnal Ilmiah Prodi Muamalah*, 12.36

(2020), 47

<<https://doi.org/10.47498/tasyri.v12i01.360>>.

²¹ *Undang Undang Nomor 29 Tahun 2004*, 2023 <file:///C:/Users/HP/Downloads/UU Nomor 36 Tahun 2009.pdf>.

²² Zulfikri Toguan, ‘Hak Imunitas Dokter Dalam Penyelenggaraan Praktik Medis Di Rumah Sakit’, 193–205.

purpose of this provision is to ensure that patients do not lose their right to seek justice when suffering harm as a result of medical actions that deviate from professional standards and standard operating procedures, and that any alleged violation of the law must be examined before the competent judicial authority.

e. Medical Law Enforcement in Indonesia Based on Law No. 17 of 2023 on Health

Since the enactment of Law No. 17 of 2023 on Health, significant changes have occurred in the regulatory framework governing criminal law enforcement against medical practitioners. Article 308 paragraph (1) explicitly stipulates that “medical personnel and health workers who are suspected of committing an unlawful act in the provision of health services that may be subject to criminal sanctions must first obtain a recommendation from the Professional Discipline Council”²³

A recommendation concerning alleged criminal conduct by a physician is a formal assessment issued by the Professional Discipline Council (MDP) to the police investigator, indicating whether an investigation should proceed. This recommendation addresses whether the medical practice in question conforms to established medical service standards. In situations where a physician commits a professional error in the performance of medical duties resulting in patient harm, such as disability or death, and the case leads to a criminal report, Article 308 requires that the initial step be an examination by the Professional Discipline

Council to evaluate and issue the necessary recommendation.

The Professional Discipline Council is a statutory body established to enforce professional discipline for medical practitioners and health workers, as mandated by Government Regulation No. 28 of 2024. Article 713 of the Regulation stipulates that the Council is obligated to impose and uphold professional disciplinary standards for medical personnel, including physicians, and other health workers. In carrying out its mandate, the Council assumes a crucial role in ensuring adherence to professional norms, maintaining the integrity of medical practice, and safeguarding patient safety.²⁴

- a. to receive and examine complaints regarding the conduct of medical practitioners and health workers
- b. to investigate allegations of professional disciplinary violations
- c. to determine whether a professional misconduct or error has been committed by a medical practitioner or health worker
- d. to render decisions on complaints and impose sanctions for proven professional misconduct.
- e. to provide recommendations concerning medical practitioners and health workers suspected of committing unlawful acts in the provision of health services, or those who are subject to legal accountability for actions related to healthcare delivery that have caused harm to patients

Furthermore, the regulation of the Professional Discipline Council is elaborated in Ministry of Health Regulation

²³ Undang-Undang Nomor 17 Tahun 2023 Tentang Kesehatan, 2023
<<https://peraturan.bpk.go.id/details/258028/uu-no-17-tahun-2023>>.

²⁴ PP Nomor 28 Tahun 2024 Tentang Pelaksanaan Undang-Undang Nomor 17 Tahun 2023 Tentang Kesehatan, 2024.

Number 3 of 2025 concerning the Enforcement of Professional Discipline for Medical Personnel and Health Workers. Article 29 of this regulation stipulates that.²⁵

1. "Medical personnel and health workers who are suspected of committing unlawful acts in the provision of health services that may give rise to criminal sanctions must first obtain a recommendation from the Professional Discipline Council.
2. The recommendation of the Professional Discipline Council as referred to in paragraph (1) is issued after a written request is submitted by a Civil Service Investigator or an Investigator of the Indonesian National Police.
3. "The recommendation of the Professional Discipline Council as referred to in paragraph (1) consists of an assessment determining whether a criminal investigation may or may not be initiated, based on whether the professional practice carried out by the medical personnel and health workers complies or does not comply with professional standards, service standards, and standard operating procedures"

Citing the opinion of Sundoyo, a legal expert in health law at the Ministry of Health of the Republic of Indonesia, when a physician is alleged to have committed a criminal act in the course of providing medical services to a patient and such allegation is reported to the police, law-enforcement officers are not permitted to

initiate an examination. According to this view, allegations of criminal conduct may only be investigated by law-enforcement authorities after a recommendation has been issued by the Professional Discipline Council

a) Legal Protection Theory

According to Satjipto Rahardjo, legal protection serves as a means to safeguard the exercise of human rights that may be infringed upon by other parties, and such protection must ensure that every individual is able to fully enjoy the rights granted to them by law.²⁶ From Satjipto Rahardjo perspective, legal protection should not be confined merely to formal mechanisms established through statutory regulations, but must also encompass substantive protection. The requirement to obtain a recommendation from the Professional Discipline Council (MDP) provides only a formal layer of protection for the medical profession. Legal protection, however, must not end at legal formalities; rather, it must be oriented toward safeguarding the weaker party namely patients who suffer harm due to medical actions that deviate from professional standards. When patients are required to wait for a recommendation from the Professional Discipline Council, their ability to enjoy the rights guaranteed by law is effectively undermined. Moreover, Article 28D paragraph (1) of the 1945 Constitution stipulates that "every person has the right to recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law." In practice, Article 308 tends to prioritize legal protection for physicians

²⁵ Peraturan Menteri Kesehatan Nomor 3 Tahun 2025 Tentang Penegakan Disiplin Profesi Dokter, 2023.

²⁶ Satjipto Rahadjo, *Ilmu Hukum* (Bandung: Ramdja Karya, 2000).

rather than for patients as victims. In fact, the Constitution mandates that legal protection and justice must ensure that all individuals, including patients, receive equal treatment and equitable legal safeguards

b) Legal Certainty Theory

legal certainty constitutes a guarantee that legal rules must be implemented through proper and appropriate mechanisms. Legal certainty requires deliberate and well-prepared regulatory actions established by authorities vested with the legitimate power to formulate policies. Consequently, such norms possess legal force that ensures the realization of legal certainty, as the law functions as a set of binding rules that must be observed to ensure that legal processes operate effectively. empirically, however, Article 308 of Law No. 17 of 2023 fails to provide legal certainty because it creates an overlap of authority between the Professional Discipline Council and the police. As a result, law enforcement officials become hesitant to act in accordance with their statutory powers under the Criminal Procedure Code, while patients feel that their legal rights are being neglected.

2. Authority of Investigation and Criminal Investigation by the Police in the Enforcement of Medical Criminal Law

The concept of authority constitutes a fundamental pillar in the implementation of

a constitutional state. Authority delineates the boundaries of actions that may be undertaken by state organs or institutions. It represents the legally conferred right possessed by governmental bodies or institutions to exercise power in accordance with applicable legal provisions. Authority reflects the capacity to undertake official legal actions; thus, it can be understood as a form of legal and formal power inherent in public officials and institutions. the exercise of authority is not merely a matter of possessing power, but also entails the responsibility to act within the limits of legality. The effectiveness of authority depends on compliance with established regulations, which function to prevent abuses of power and to ensure that public officials act in the best interests of society.²⁷

a. Analysis of Police Authority as Part of the Criminal Justice System

The status and institutional existence of the police within the criminal justice system are clearly delineated in Law No. 8 of 1981 concerning the Indonesian Criminal Procedure Code, as well as in the Law on the Indonesian National Police. The police constitute a key component of the criminal justice subsystem, functioning specifically in the capacities of preliminary investigators and criminal investigators.²⁸ The authority to conduct preliminary inquiry and criminal investigation constitutes a fundamental legal prerogative vested in the police. From the perspective of criminal law policy and the criminal justice system, the essence of criminal law is the enforcement of penal provisions

²⁷ Gregorius Yoga Panji Asmara, 'Konstruksi Pengaturan Penyidikan Terhadap Tenaga Medis Yang Berkeadilan', *Jurnal Ilmiah Hukum Dan Hak Asasi Manusia*, 5.1 (2025), 49–66 .

²⁸ Rudy Sembiring, 'Peran Kepolisian Negara Republik Indonesia Dalam Penerapan Sistem Peradilan Pidana', *Jurnal Ilmu Kepolisian*, 17.3 (2023), 17
<<https://doi.org/10.35879/jik.v17i3.416>>.

aimed at combating crime. In terms of legal legitimacy, the functional authority of the Indonesian National Police is to implement and enforce the law, thereby safeguarding the integrity and normative operation of the legal order. Consequently, all actions performed by the police must remain within the bounds of established legal regulations governing criminal law enforcement. Pursuant to Law No. 2 of 2002 concerning the Indonesian National Police is mandated to maintain public order and security. Accordingly, within the scope of its statutory authority, the police are empowered to implement the provisions of the law through investigative measures, including summoning individuals, conducting examinations, making arrests, detaining suspects, carrying out searches, and executing seizures.²⁹

According to Yahya Harahap, the Indonesian Code of Criminal Procedure (Kuhap) constitutes the *lex fori*, namely the procedural law governing how state authorities undertake legal actions in the enforcement of criminal law. The mechanisms of criminal procedure must operate in accordance with the procedures established under (Kuhap) to ensure a balance between the interests of the state in upholding the law and the protection of human rights. Sudarto asserts that criminal procedure functions as an instrument for seeking and discovering material truth. Therefore, the operation of the criminal justice process must not be reduced to a

mere procedural formality; rather, it must be directed toward achieving substantive justice. In other words, judges, prosecutors, and police officers should not be bound solely to the literal text of statutory provisions, but must also take into account the broader sense of justice within society.³⁰ Andi Hamzah asserts that the Indonesian Code of Criminal Procedure (KUHP) constitutes formal law that regulates the enforcement of substantive criminal law. The procedural mechanisms of criminal justice begin from the investigative stage and extend to execution, and at each stage the principles of *due process of law* must be upheld. Non-compliance with these procedures may render the judicial process legally defective. Citing the view of M. Yahya Harahap, and based on Article 6 paragraph (1)(a) of KUHP, one of the institutions authorized to conduct investigations is the state police. The functional differentiation embedded in KUHP places the responsibility for investigative functions squarely within the authority of the police institution.³¹

The role of an investigator is to carry out a series of actions aimed at uncovering and verifying events suspected to constitute criminal acts. Investigations are initiated based on reports received or directly observed by investigators, reports from the police, records of on-site examinations, and records of statements from witnesses or suspects. Once the investigation stage is completed and an event suspected of being

²⁹ Ni Ketut Sari Adnyani, 'Kewenangan Diskresi Kepolisian Republik Indonesia Dalam Penegakan Hukum Pidana', *Jurnal Ilmiah Ilmu Sosial*, 7.2 (2021), 135
<<https://doi.org/10.23887/jiis.v7i2.37389>>.

³⁰ Pidana D I Indonesia, 'Mekanisme Jalannya Hukum Acara Pidana Di Indonesia', 16.1 (2025), 1–24.

³¹ makmur jaya yahya, *Pelimpahan Wewenang Dan Perlindungan Hukum Tindakan Kedokteran Kepada Tenaga Kesehatan Dalam Konteks Hukum Administrasi Negara* (Bandung: Pt. Refika Aditama, 2020).

a criminal offense is identified, the investigator is obliged to promptly submit the findings to the criminal investigator so that the formal investigation process can be conducted. According to Article 1(1) of Law No. 8 of 1981 concerning the Indonesian Criminal Procedure Code, “A criminal investigator is an official of the Indonesian National Police or a specific civil servant granted special authority by law to conduct investigations.” Investigation refers to a series of actions undertaken by the criminal investigator to search for and collect evidence, which serves to clarify the occurrence of a criminal act and to identify the responsible suspect.

Based on Article 7 of the Indonesian Criminal Procedure Code (KUHP), a criminal investigator is vested with authority.

- a. “Receiving reports or complaints from individuals regarding the occurrence of a criminal act
- b. Conducting initial actions at the scene of the incident
- c. Ordering a suspect to stop and examining the suspect’s identification
- d. Carrying out arrests, detentions, searches, and seizures
- e. Examining and seizing documents
- f. Collecting fingerprints and photographing individuals
- g. Summoning individuals to be heard and examined as suspects or witnesses
- h. Engaging experts as needed in relation to the case examination
- i. Terminating an investigation
- j. Undertaking other lawful actions as required by legal responsibilities”

The enactment of Law No. 17 of 2023 concerning Health has introduced

changes in the regulation of law enforcement. According to Article 308 paragraph (1), the Professional Discipline Council (MDP) is tasked with examining and providing recommendations to investigators regarding alleged violations of professional discipline committed by medical personnel. The Professional Discipline Council is an institution established to evaluate the application of medical discipline and forms part of the oversight mechanism for the medical profession, aiming to assess whether a doctor has committed ethical violations or breached medical disciplinary standards. The primary function of the Council is the enforcement of professional discipline (*Professional Misconduct*), rather than the enforcement of criminal law (*Criminal Misconduct*). The composition of the Professional Discipline Council involves representatives from the government, the medical profession, healthcare facilities, the community, and legal experts to ensure the objectivity of its assessments. The Council is required to issue recommendations within 14 days of receiving a request. If this time limit is exceeded, the legal process may proceed without the Council's recommendation.

The Indonesian Criminal Procedure Code places a strong emphasis on the principle of humanity, marking a new era in Indonesia’s judicial system, as functions to uphold human rights. KUHP reflects the structure of the Indonesian criminal justice system, which consists of key elements including the National Police, the Public Prosecutor’s Office, the Courts, and Correctional Institutions. The purpose of KUHP is to establish a just procedural framework for handling criminal cases. According to Article 1(2) of KUHP, is a

series of actions undertaken by a criminal investigator in the manner prescribed by law to search for and collect evidence, which is suspected to clarify the occurrence of a criminal act and to identify the responsible suspect.” Based on this provision, police investigators are granted the authority, as mandated by law, to determine whether a complaint or report is eligible to proceed to a formal investigation. Police investigators are not bound by recommendations from the Professional Discipline Council and operate independently from the structure of criminal law enforcement. Their authority is autonomous exercised without intervention from any party, including the Professional Discipline Council (MDP). This authority is based solely on criminal procedural law, not on administrative or ethical considerations. Consequently, granting the Professional Discipline Council the power to determine whether an investigation may proceed contradicts the provisions of the Indonesian Criminal Procedure Code.

Recommendations issued by the Professional Discipline Council (MDP) to police investigators should serve as professional advice (*advisory opinion*) rather than a final legal decision. These recommendations function solely as input for the police investigators regarding the examination conducted on the doctor and are not the legal basis for determining whether a criminal investigation may or may not proceed. Consequently, the recommendations of the Professional Discipline Council do not determine the

continuation of the criminal legal process. Investigators may take the MDP’s opinions into consideration, but they are not obligated to follow them. Investigators must still adhere to legally valid evidence as regulated under Article 184 of the Indonesian Criminal Procedure Code (KUHP). Such legally valid evidence includes witness statements, expert testimony, documents, indications, the defendant’s statement, informed consent for medical actions, and medical records. In healthcare services, these medical records and consents primarily function as evidence regarding the treatment provided to patients.³²

CONCLUSION

1. Before the enactment of Law No. 17 of 2023 on Health, the enforcement of criminal law against doctors was regulated under several previous statutes, including Law No. 29 of 2004 on Medical Practice and Law No. 36 of 2009 on Health. The role of the Indonesian Medical Honorary and Disciplinary Council (MKDKI) was to examine the application of medical disciplinary standards without eliminating the patient’s right to report to the competent authorities any alleged criminal acts committed by doctors in healthcare services. The enactment of Law No. 17 of 2023 on Health introduced a new paradigm in the enforcement of criminal law for doctors, requiring a recommendation from the Professional Discipline Council (MDP), which previously was the MKDKI, before a police

³² Rahman Syamsuddin Amruddin Pabpu, *Kode Etik Dan Hukum Kesehatan* (makassar: kedai aksara, 2012).

investigation could be conducted. This change primarily provides legal protection for doctors and does not accommodate protection for patients. In contrast, Article 28D (1) of the 1945 Constitution guarantees that every person has the right to recognition, assurance, protection, and fair legal certainty, as well as equal treatment before the law.

2. The duties of investigators, as regulated in the Indonesian Criminal Procedure Code (KUHP), involve a series of actions to search for and identify events suspected to constitute criminal acts. Investigations are conducted based on reports received or directly known by investigators, reports from the police, records of examinations at the crime scene, and records of examinations from witnesses or suspects. Upon completion of the investigation, if an event suspected to constitute a criminal act is found, the investigator is obligated to immediately submit the results to the criminal investigator so that the investigation process can proceed. Recommendations issued by the Professional Discipline Council (MDP) to police investigators should be regarded as professional advice (*advisory opinion*) rather than a final legal decision. These recommendations function solely as input for police investigators regarding the examination conducted on the doctor and are not the legal basis for determining whether a criminal investigation may proceed. Consequently, the recommendations of the Professional Discipline Council do not determine the continuation of the criminal legal process. Investigators may consider the MDP's opinions but are not obliged to follow them.

Investigators must continue to rely on legally valid evidence as stipulated in Article 184 of the Indonesian Criminal Procedure Code (KUHP).

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