

The Legal Position of The Feasibility Study in Hospital Development Under Law Number 17 of 2023 on Health

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ABSTRACT

This study aimed to analyze the legal framework governing the preparation of a feasibility study for hospital development under Law Number 17 of 2023 on Health and its implementing regulations, to examine the position of needs and feasibility assessment in the feasibility study as the basis for licensing and hospital establishment, and to analyze the legal consequences of hospital development carried out without a feasibility study that complies with statutory requirements. This research employed normative legal research using statutory, conceptual, and analytical approaches, with primary, secondary, and tertiary legal materials analyzed qualitatively. The results show that a feasibility study in hospital development functions as a substantive basis for licensing, an administrative control instrument, and a means of protecting public interest, since none of the regulations examined explicitly defines feasibility study as a mandatory legal document, leaving a normative gap regarding its definition, methodology, and evaluation mechanism. Hospital development without a feasibility study that complies with legal requirements may result in rejection or revocation of licenses, legal liability of the organizer, civil losses, and disruption of the protection of patients' and society's rights. The study concludes that a feasibility study must be positioned as a legal compliance instrument that is comprehensively prepared before hospital development is carried out, and recommends that the government formulate a national technical standard covering its definition, scope, methodology, and evaluation mechanism.

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1. INTRODUCTION

The enactment of Law Number 17 of 2023 on Health marks a new chapter in the reform of Indonesia's health law framework. This omnibus law revokes and consolidates several earlier health-related laws, including

Law Number 36 of 2009 on Health and Law Number 44 of 2009 on Hospitals, while at the same time strengthening the transformation of the national health system [1], [6]. With respect to hospitals, this law comprehensively regulates hospital governance, the

requirements for establishment and operation, classification, licensing, health human resources, and the legal liability of hospitals.

Hospital development cannot be treated merely as an ordinary investment project comparable to commercial property development, because it must satisfy a range of legal requirements relating to public health interests, service standards, licensing, the availability of facilities and infrastructure, and the readiness of health workers [2]. A feasibility study is a comprehensive assessment carried out at the pre-investment and pre-construction stage, covering legal, technical, financial, operational, organizational, and market aspects, and should not be understood merely as a business document but rather as a legal compliance instrument that reflects fulfilment of licensing requirements, conformity with spatial planning, hospital standards, and the protection of public interest.

The link between the feasibility study and the legal requirements for hospital establishment has become more explicit within the regulatory framework following the enactment of Law Number 17 of 2023, which, together with its implementing regulations, requires a needs and feasibility assessment as a precondition for the establishment and operation of a hospital [2], [3], [4]. In practice, however, many feasibility studies are prepared with a primary focus on market, investment, and cash-flow projections, while inadequately analyzing legal compliance, thereby creating a gap between the substance of the feasibility study and the legal requirements that must be fulfilled.

The inadequacy of feasibility studies from a legal perspective may give rise to serious consequences, ranging from the rejection of operating-license applications and administrative defects in the licensing process, to the administrative, civil, or criminal legal liability of hospital operators [17], [18]. Prior studies on hospital feasibility studies generally examine the issue from a management, financial, or health-policy perspective [19]–[22], while existing legal

studies on hospitals have focused more on legal liability and patient protection after services are rendered [17], [18], [23], [24], without specifically positioning the feasibility study as a legal compliance instrument within the framework of Law Number 17 of 2023.

Building on this gap in the literature, this article aims to analyze the legal framework governing the preparation of a feasibility study for hospital development under Law Number 17 of 2023 on Health and its implementing regulations, to examine the position of the needs and feasibility assessment as the basis for hospital licensing and operation, and to analyze the legal consequences of hospital development carried out without a feasibility study that complies with statutory requirements. The novelty of this article lies in positioning the feasibility study not merely as an investment document but as an administrative-law instrument within the new health-law regime, while also identifying a normative gap that has not been comprehensively addressed by previous research.

2. LITERATURE REVIEW

In-text citations follow the IEEE style using bracketed reference numbers, consistently linked to the reference list at the end of the manuscript.

2.1 *The Concept of Feasibility Study and Needs-Feasibility Assessment*

A feasibility study in hospital development is an assessment that evaluates the viability of a project from technical, economic, financial, marketing, organizational, and managerial aspects [4], [5]. In the context of health-service facilities, its scope expands to cover legal provisions on the administration of health services, spatial planning, the environment, business licensing, patient safety, and hospital technical standards. Nevertheless, Law

Number 17 of 2023 does not explicitly define the feasibility study as a legal term, so that understanding of its scope still varies among agencies and consultants preparing the document [1].

2.2 *Legal Certainty, Legal Protection, and Licensing Theory*

Gustav Radbruch's theory of legal certainty holds that law must provide clarity regarding the rights, obligations, procedures, and legal consequences applicable to every legal subject [11], [12]. Philipus M. Hadjon's theory of legal protection distinguishes between preventive and repressive protection, whereby the feasibility study functions as a form of preventive protection because it allows early detection of inconsistencies between a development plan and legal requirements [8]. Licensing theory, in turn, positions a permit as an instrument through which government controls activities that may affect the public interest, so that the feasibility study becomes an objective basis for evaluating hospital-establishment license applications [9], [16]. These three theories are complemented by welfare-state theory, which affirms that the state must ensure that hospital development genuinely benefits the community rather than merely serving investors' economic interests.

2.3 *Prior Research and the Position of This Study*

Sira and Junadi [22] examined the considerations for developing primary health facilities into hospitals from the standpoint of service needs, but

did not position the feasibility study as a legal compliance instrument. Soge [23] and Adiana et al. [17] focused on the legal liability of hospitals and medical personnel after services are rendered, while Awangga [18] examined the legal protection of inpatients under the regime of Law Number 44 of 2009. Sugondo et al. [24] discussed medical staff credentialing without linking it to the needs and feasibility assessment in hospital establishment. This article therefore fills that gap by positioning the feasibility study as an object of administrative law within the framework of Law Number 17 of 2023 and its implementing regulations.

3. METHODS

This study is normative legal research (normative legal research), which focuses on examining legal norms, statutory regulations, legal principles, and legal doctrine as its primary object, rather than empirical research that collects primary data through observation or interviews [7], [10]. The study employs three complementary approaches: the statute approach, used to examine Law Number 17 of 2023 and its implementing regulations; the conceptual approach, used to understand the concepts of feasibility study, needs and feasibility assessment, and legal protection; and the analytical approach, used to examine the relationship between legal norms and the legal theories applied as analytical tools.

The legal materials used consist of primary legal materials, namely the 1945 Constitution of the Republic of Indonesia, Law Number 17 of 2023 on Health, Government Regulation Number 28 of 2024, Government Regulation Number 5 of 2021, and Minister of Health Regulation Number 6 of 2026 [1]–[4], [6]; secondary legal materials in the form of books, scholarly journals, and

prior research in the fields of health law and administrative law [7]–[16]; and tertiary legal materials in the form of legal and language dictionaries. The legal materials were collected through library research and processed using techniques of description, systematization, and interpretation, then analyzed qualitatively using grammatical and systematic interpretation to answer the three research questions.

4. RESULTS AND DISCUSSION

4.1 The Legal Position of the Feasibility Study within the Framework of Law Number 17 of 2023

Although Law Number 17 of 2023 does not explicitly define the feasibility study, the substance of the law indicates that every hospital establishment must be based on an analysis of health-service needs, fulfilment of service standards, the readiness of health resources, and conformity with national and regional development policy [1]. This provision is reinforced by Government Regulation Number 28 of 2024, which requires the fulfilment of administrative, technical, and operational requirements before an operating license is issued [2]. From the perspective of administrative law, the feasibility study functions as a document supporting the issuance of an administrative decision: every decision to grant or refuse a hospital-establishment license must be based on an objective assessment of feasibility, in line with the principles of legality, carefulness, and legal certainty.

The position of the feasibility study is further reinforced within the framework of the Risk-Based Business Licensing system (OSS-RBA) under Government Regulation Number 5 of 2021 [3]. Hospitals fall within the category of high-risk business activities because they relate directly to the safety of human life, so that the analysis contained in the feasibility study must be able to identify legal, technical, financial, operational, and health-service risks together with their mitigation strategies. Viewed through Radbruch's theory of legal certainty, the

existence of a feasibility study provides clarity for the government, investors, and the community regarding the fulfilment of legal requirements, while under Hadjon's theory of legal protection, this document constitutes a form of preventive protection because it enables correction before a license is issued [8], [11].

4.2 The Needs and Feasibility Assessment as the Basis for Licensing

The needs and feasibility assessment is the concrete form of the feasibility study that serves as the substantive basis for licensing, an instrument of administrative control, and a means of protecting the public interest. Law Number 17 of 2023, together with Government Regulation Number 28 of 2024 and Minister of Health Regulation Number 6 of 2026, affirms that hospital establishment must fulfil requirements including a feasibility study, a master plan, and various other technical requirements [2], [4]. This assessment is intended to ensure that hospital development is genuinely based on the health-service needs of the community in the relevant area, rather than on commercial considerations alone, consistent with welfare-state theory, which requires the state to ensure that the development of health facilities delivers real benefit to the community.

4.3 Normative Gap in the Regulation of the Feasibility Study

Analysis of Law Number 17 of 2023, Government Regulation Number 28 of 2024, Government Regulation Number 5 of 2021, and Minister of Health Regulation Number 6 of 2026 shows that the existing regulations have governed the operation of hospitals fairly comprehensively, but have not specifically regulated the legal status, substance, preparation methodology, assessment indicators, or evaluation mechanism of the feasibility study. This condition results in variation in the form and quality of feasibility studies among hospital operators, making it difficult for the government to conduct an objective

assessment. A summary of the five identified aspects of normative gap is presented in Table 1.

Table 1. Summary of Normative Gaps in the Regulation of the Hospital-Development Feasibility Study

No	Aspect of Normative Gap	Brief Description
1	Legal definition of feasibility study	No provision provides a juridical definition, so its scope is understood differently by different preparers.
2	National preparation standard	No standardized methodology exists; document quality depends heavily on the preparer's experience.
3	Integration of investment and health regulation	The orientation of GR 5/2021 (accelerating investment) is not yet firmly integrated with Law 17/2023 and GR 28/2024 (service standards).
4	Integration of national health data	Needs analysis still relies on data independently collected by consultants, not yet mandated to use the national health database.
5	Evaluation mechanism	No national indicators or parameters exist for the government to assess the quality of a feasibility study.

Source: processed by the authors from Law No. 17/2023, GR No. 28/2024, GR No. 5/2021, and Minister of Health Regulation No. 6/2026 (202)

In the authors' analysis, this normative gap does not constitute a substantive weakness of Law Number 17 of 2023, but rather reflects the need for further technical regulation. At least five aspects require specific regulation through a Minister of Health regulation or a national guideline: the definition and legal status of the feasibility study, a national preparation standard, an obligation to use national health data, an evaluation and verification mechanism involving both central and regional government, and the legal liability of the preparer of the document if proven to have used false or misleading data.

4.4 Legal Consequences of Hospital Development without a Compliant Feasibility Study

Hospital development that is not based on a feasibility study meeting statutory requirements may give rise to legal consequences in the form of rejection or revocation of licenses, administrative defects in the licensing process, the administrative, civil, or criminal legal liability of the operator, and civil losses to the parties involved. Furthermore, such a condition may harm the interests of patients and the community, for

example through health services that fail to meet quality and safety standards, or the unavailability of competent health workers appropriate to the hospital's classification. Within the OSS-RBA system, an incomplete feasibility study can also hinder the risk-evaluation process that forms the basis for government approval, so that fulfilment of the legal aspects of the feasibility study is not merely an administrative formality but a guarantee of legal protection and the public interest.

Overall, the results of this study show that the feasibility study has undergone a significant functional development: from an investment-analysis instrument into a strategic administrative-law instrument within the hospital-licensing process. This strengthened function needs to be followed by the establishment of technical norms governing its preparation standards, so that the risk-based licensing system can operate objectively, transparently, and accountably, while at the same time strengthening legal protection for the government, hospital operators, health workers, and the community.

5. CONCLUSION

The feasibility study holds an important legal position in hospital development under Law Number 17 of 2023 on Health, functioning as an administrative-law instrument that forms the basis for the government's assessment of development feasibility prior to the issuance of approval or an operating license, and as the concrete form of the needs and feasibility assessment that serves as the substantive basis for licensing, a risk-based instrument of administrative control, and a means of protecting the public interest; nevertheless, no explicit regulation yet exists concerning its legal definition, preparation standard, or evaluation mechanism, so that hospital development without a compliant feasibility study may give rise to rejection or revocation of licenses, legal liability of the operator, civil losses, and

disruption of the protection of patients' and the community's rights.

Based on this conclusion, the government is advised to formulate technical regulations that specifically govern the legal definition, scope, preparation methodology, minimum analytical standards, assessment indicators, evaluation mechanism, and the obligation to use national health data in the hospital-development feasibility study; regional governments need to strengthen data coordination and evaluation capacity; hospital operators need to prepare feasibility studies comprehensively, taking into account legal aspects, service needs, and operational sustainability; and future research is recommended to adopt an empirical or socio-legal approach in order to examine the implementation of the feasibility study and the effectiveness of the OSS-RBA system in the practice of hospital development in Indonesia.

REFERENCES

- [1] Republic of Indonesia, Law Number 17 of 2023 on Health, State Gazette of the Republic of Indonesia of 2023 No. 105.
- [2] Republic of Indonesia, Government Regulation Number 28 of 2024 on the Implementing Regulation of Law Number 17 of 2023 on Health.
- [3] Republic of Indonesia, Government Regulation Number 5 of 2021 on the Implementation of Risk-Based Business Licensing.
- [4] Ministry of Health of the Republic of Indonesia, Minister of Health Regulation Number 6 of 2026 on Hospitals.
- [5] Ministry of Health of the Republic of Indonesia, Guidelines for the Preparation of a Feasibility Study for Hospital Establishment. Jakarta: Ministry of Health, Republic of Indonesia.
- [6] The 1945 Constitution of the Republic of Indonesia.
- [7] Z. Ali, Legal Research Methods. Jakarta: Sinar Grafika, 2021.
- [8] P. M. Hadjon, Legal Protection for the Indonesian People. Surabaya: Bina Ilmu, 1987.
- [9] Ridwan HR, Administrative Law. Jakarta: RajaGrafindo Persada, 2020.
- [10] J. Ibrahim, Theory and Methodology of Normative Legal Research. Malang: Bayumedia, 2019.
- [11] P. Mahmud Marzuki, Legal Research. Jakarta: Kencana, 2021.
- [12] S. Mertokusumo, Understanding Law: An Introduction. Yogyakarta: Liberty, 2019.
- [13] S. Rahardjo, Legal Science. Bandung: Citra Aditya Bakti, 2014.
- [14] Salim HS and E. S. Nurbani, The Application of Legal Theory in Thesis and Dissertation Research. Jakarta: RajaGrafindo Persada, 2021.
- [15] S. Soekanto and S. Mamudji, Normative Legal Research: A Brief Overview. Jakarta: RajaGrafindo Persada, 2020.
- [16] N. M. Spelt and J. B. J. M. ten Berge, Introduction to Licensing Law. Surabaya: Yuridika, 1993.
- [17] I. N. Adiana, I. B. A. Pidada, and K. M. Herawati, "Hospital legal liability for medical negligence resulting in permanent patient disability," *Jurnal Analogi Hukum*, 2023.
- [18] A. Awangga, "Legal protection of inpatients under Law Number 44 of 2009 on Hospitals," *Jurnal Ilmiah Hukum*, 2023.
- [19] Ernawati et al., "Analysis of hospital feasibility studies from a service-management perspective," *Jurnal Manajemen Pelayanan Kesehatan*, 2022.

- [20] Lamri et al., "Hospital feasibility study and health service development," *Int. J. Health Plan. Manage.*, 2022.
- [21] Pradana, "Legal protection of health workers in the provision of health services," *Jurnal Hukum Kesehatan Indonesia*, 2023.
- [22] S. A. Sira and P. Junadi, "Scoping review: Considerations for developing primary health facilities into hospitals," *Jurnal Administrasi Rumah Sakit Indonesia*, vol. 9, no. 2, 2023.
- [23] A. D. Soge, "Handling of medical and health professional errors under Law Number 17 of 2023 on Health from a health-law perspective," *Jurnal Hukum Kesehatan Indonesia*, 2023.
- [24] Sugondo et al., "Credentialing of medical personnel at advanced health-care facilities in Indonesia," *Jurnal Kebijakan Kesehatan Indonesia*, 2024.
- [25] Tahir, "Transformation of the national health system under Law Number 17 of 2023 on Health," *Jurnal Legislasi Indonesia*, 2023.
- [26] R. Aditya, "A legal study of hospital-establishment licensing in Indonesia," thesis, Universitas Indonesia, 2022.
- [27] M. Hidayat, "An administrative-law analysis of private hospital establishment," thesis, Universitas Airlangga, 2021.
- [28] N. Sari, "Legal protection of patients in hospital services," undergraduate thesis, Universitas Gadjah Mada, 2020.
- [29] Ministry of Health of the Republic of Indonesia, *Indonesia Health Profile 2024*. Jakarta: Ministry of Health, Republic of Indonesia, 2024.
- [30] World Health Organization, *Health Systems and Hospital Planning*. Geneva: WHO Press, 2023.