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Legal Protection of The Immunity Rights of Medical Personnel in Healthcare Service Practice in Indonesia

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ABSTRACT

The right to health is a human right guaranteed under Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the fulfillment of which depends heavily on the role of medical personnel as providers of health services. In practice, medical personnel frequently face legal claims over medical risks that were in fact carried out in accordance with professional standards, as reflected in the case of dr. Dewa Ayu Sasiary Prawani, giving rise to concern and underscoring the urgency of clearly and definitively regulating the immunity rights of medical personnel. This study aims to analyze the legal regulation of the immunity rights of medical personnel under Indonesian legislation, its implementation in facing legal claims over medical risk, and the legal remedies available to protect it. The study uses a normative juridical method that is descriptive-analytical in nature and prescriptive in form, through statutory, conceptual, and case approaches, grounded in the theory of the rule of law, the theory of legal protection, and the theory of legal certainty. The results show that Law Number 17 of 2023 on Health regulates the immunity rights of medical personnel, health workers, and hospitals through Articles 273, 440, 308, 310, and 192, which are conditional (qualified immunity) rather than absolute. Its implementation is realized through the establishment of the Professional Disciplinary Council (Majelis Disiplin Profesi) as a primum remedium mechanism, while legal protection efforts are realized through eight complementary instruments, ranging from strengthening regulations to developing alternative dispute resolution, although legal certainty still needs to be substantively strengthened.

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1. INTRODUCTION

The right to health is one of the human rights guaranteed under Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which affirms that everyone has the right to obtain health services. This constitutional provision is further elaborated through Law Number 17 of

2023 on Health, which regulates the national health system in an integrative and holistic manner. The fulfillment of this right to health depends heavily on the role of medical personnel as the primary providers of health services, whether in the form of promotive, preventive, curative, or rehabilitative services [1].

One of the rights that has developed in the practice of health law is the right to immunity, namely legal protection for medical personnel from criminal or civil claims so long as the medical action is carried out in accordance with professional standards, service standards, standard operating procedures (SOP), and the code of ethics. This immunity is important because medical personnel are frequently faced with clinical decisions that must be made quickly under time pressure and uncertainty, so that without a guarantee of legal protection, excessive caution (defensive medicine) has the potential to lower the quality of health services itself [2], [3].

In practice, medical personnel who have carried out their professional duties in accordance with standard procedures are often faced with legal claims. The case involving dr. Dewa Ayu Sasiary Prawani and colleagues became an important precedent: the three were found guilty by the Supreme Court at the cassation level, before ultimately being acquitted through a case review (peninjauan kembali). This case gave rise to a wave of concern within the medical profession, as it was seen as reflecting the criminalization of inherent and unpredictable medical risk, and became one of the main drivers of institutional reform in the legal protection of medical personnel, which was later accommodated in Law Number 17 of 2023 on Health [4], [5].

The fundamental issue that arises is the distinction between medical risk, which is an unwanted outcome even though the action was carried out in accordance with the highest professional standards, and medical negligence, which arises from a deviation from applicable professional standards. On the other hand, patients as recipients of health services still have the right to obtain protection over the safety and quality of services as regulated in Law Number 8 of 1999 on Consumer Protection, so that a balance is needed between the interests of patients and the interests of medical personnel [6].

Based on the foregoing, this article is prepared to analyze three main issues, namely: (1) how the immunity rights of medical personnel are regulated under Indonesian legislation; (2) how the protection of the immunity rights of medical personnel is implemented in facing legal claims over medical risk; and (3) what legal remedies are available to protect the immunity of medical personnel. The novelty of this article lies in situating the immunity rights of medical personnel after Law Number 17 of 2023 within an integrated framework of the theory of the rule of law, the theory of legal protection, and the theory of legal certainty, including an analysis of the judicial review of the Professional Disciplinary Council mechanism before the Constitutional Court, which has not yet been extensively examined in the literature.

2. LITERATURE REVIEW

2.1 Legal Protection and the Right to Immunity

Satjipto Rahardjo defines legal protection as an effort to provide safeguarding for human rights that have been harmed by another party, so that society can enjoy all the rights granted by law. Philipus M. Hadjon distinguishes legal protection into two forms, namely preventive legal protection, which provides an opportunity to file objections before a decision becomes final, and repressive legal protection, which is oriented toward resolving disputes that have already occurred [7], [8]. The immunity right of medical personnel, in this context, is understood as a form of legal protection that is conditional

(qualified immunity), not absolute immunity, because it only applies so long as medical personnel act in accordance with professional standards and are grounded in good faith [9].

2.2 *The Position of Medical Personnel and the Therapeutic Transaction*

The legal relationship between doctor and patient is commonly referred to as a therapeutic transaction, namely a contractual relationship that gives rise to an obligation of effort (inspanningsverbintenis), rather than an obligation of result (resultaatsverbintenis). Accordingly, a doctor is only required to provide a proper medical effort based on scientific standards, not to guarantee the patient's recovery [10]. The pattern of the doctor-patient relationship, which was originally vertical-paternalistic, has shifted into a horizontal-contractual relationship that places both parties on an equal footing, with informed consent as the key instrument bridging the patient's right to information and legal protection for medical personnel [11].

2.3 *Theoretical Framework*

This study is grounded in three theories. First, the theory of the rule of law (rechtsstaat/the rule of law), which emphasizes that acts of authority as well as law enforcement processes may only be carried out based on pre-existing written rules, as put forward by A.V. Dicey and F.J. Stahl, along with the principle of equality before the law as a counterbalance so that immunity does not place medical personnel above the law [12], [13]. Second, Philipus M. Hadjon's theory of legal protection, which distinguishes preventive and repressive protection as noted above. Third, Gustav Radbruch's theory of legal certainty, which requires that law be positive, based on fact, and clearly formulated so as not to give rise to multiple interpretations, complemented by Hans Kelsen's view that legal norms function as an objective guide for the conduct of legal subjects [14], [15].

3. METHODS

This study uses a normative juridical type of legal research, namely research that focuses on the study of positive legal norms concerning the legal protection of the immunity rights of medical personnel in healthcare service practice in Indonesia. The nature of the study is descriptive-analytical, which not only describes legal facts but also analyzes them in depth to uncover their meaning, relationships, and legal implications, while the form of this study is prescriptive, as it aims to provide recommendations on the legal remedies that should be taken [16].

The approaches used include the statute approach, to examine the consistency and disharmony among norms; the conceptual approach, to construct legal argumentation based on the doctrines of legal protection, human rights, and legal certainty; and the case approach, to examine the application of norms in legal practice, including the case of dr. Dewa Ayu Sasiary Prawani and the judicial review case before the Constitutional Court concerning the Professional Disciplinary Council mechanism.

The legal materials used consist of primary legal materials in the form of legislation and court decisions, including the 1945 Constitution of the Republic of Indonesia, Law Number 17 of 2023 on Health, Government Regulation Number 28 of 2024, and Supreme Court Decisions Number 2811 K/Pdt/2012 and Number 215 K/Pdt/2014;

secondary legal materials in the form of books, scholarly journals, and the opinions of legal experts; and tertiary legal materials in the form of dictionaries and legal encyclopedias. Data collection was carried out through library research, and the data were analyzed systematically through legal interpretation and reasoning to answer the study's research questions [17].

4. RESULTS AND DISCUSSION

4.1 Legal Regulation of the Immunity Right of Medical Personnel

The rights and obligations of medical personnel are explicitly regulated in Articles 273 and 274 of Law Number 17 of 2023 on Health. Article 273 paragraph (1) letter a affirms that medical personnel and health workers are entitled to legal protection so long as they carry out their duties in accordance with professional standards, professional service standards, standard operating procedures, and professional ethics, as well as the patient's health needs. From this formulation it is clear that the immunity granted is conditional (qualified immunity), not absolute immunity, because it always depends on the fulfillment of professional standards [18], [19].

The crucial point of this regulation lies in the distinction between medical risk, which falls into the category of zaakelijke fout, or an excusable error because it is unavoidable (verwijtbaarheid, vermijtbaarheid, verzienbaarheid) even though the action was carried out in accordance with the highest standards, and medical negligence, which arises from a deviation from professional standards, whether in the form of culpa levis or culpa lata [20]. The regulation of the immunity right also covers the position of hospitals under Article 192 paragraphs (1) and (2), which state that a hospital is not legally liable if a patient refuses treatment after receiving a comprehensive medical explanation, and cannot be sued in carrying out its duty to save a patient's life. Nevertheless, hospital immunity remains limited by the service obligation in Article 189, and by legal liability for the negligence of its health human resources in Article 193 [21].

Viewed from the principle of the rule of law, the restriction of investigators' scope of action through the obligation to obtain a recommendation from the Disciplinary Council (Article 308) is in line with the idea that the state's power of prosecution must be limited by law so that it is not used arbitrarily against individuals. Conversely, viewed from the principle of equality before the law, this immunity regulation is not intended to place medical personnel above the law, but rather to balance the right of medical personnel to work without the threat of baseless criminalization with the patient's right to justice and compensation should negligence in fact occur, as reflected in the fact that the avenues of administrative and civil liability remain open under Articles 189 and 193 [22].

Table 1. Recapitulation of Key Articles on the Immunity Right of Medical Personnel in Law Number 17 of 2023

Article	Regulatory Substance
Art. 273	The right of medical personnel to legal protection so long as they comply with professional standards
Art. 274	Obligations of medical personnel, including informed consent and medical records
Art. 308	Obligation to obtain a Professional Disciplinary Council recommendation before criminal/civil proceedings
Art. 310	Obligation of non-litigation dispute resolution before pursuing the criminal track
Art. 440	Criminal sanctions for negligence proven to deviate from standards
Art. 192	Hospital immunity in saving a patient's life

Arts. 189, 193	Obligations and liability of hospitals for the negligence of health human resources

Source: Processed From Law Number 17 of 2023 on Health

4.2 Implementation of Protection in Facing Legal Claims

The implementation of the immunity right of medical personnel following the enactment of Law Number 17 of 2023 is realized primarily through the establishment of the Professional Disciplinary Council (Majelis Disiplin Profesi/MDP), a council formed by the Minister of Health with the task of determining whether or not there has been a violation of professional discipline by medical personnel and health workers. The position of the MDP is broader than that of the Indonesian Medical Disciplinary Honor Council (MKDKI) under Law Number 29 of 2004, because the MDP also has the authority to issue recommendations that determine whether an alleged malpractice case may proceed to the criminal or civil sphere [23].

Normatively, this mechanism operates like the dismissal procedure in administrative court proceedings, namely as an initial filtering mechanism to separate pure medical risk from allegations of negligence that meet the elements of legal liability, before the case proceeds to a longer judicial process. The MDP recommendation mechanism also applies to participants in specialist medical education programs (PPDS), so long as their actions are consistent with their competence and the lawful limits of delegated authority, given that the definition of medical personnel under Article 198 includes PPDS participants who already hold a Certificate of Registration [24].

Nevertheless, the implementation of this mechanism still faces challenges. The provision that the MDP is deemed to have recommended an investigation if it does not provide a response within 14 working days has the potential to harm medical personnel, as it gives rise to legal consequences without a substantive assessment of compliance with professional standards. The requirement to obtain an MDP recommendation has also become the subject of judicial review before the Constitutional Court, both in Case Number 156/PUU-XXII/2024, which argues that it conflicts with the principle of equality before the law, and Case Number 161/PUU-XXIII/2025, filed by patients' legal counsel concerning the patient's right to fair legal certainty. Both cases affirm an unresolved tension between protecting medical personnel from criminalization and guaranteeing patients' access to swift and independent justice [25]. Empirically, the number of applications for MDP recommendations remains relatively small, at 25 applications as of the end of April 2025, so that its effectiveness as a comprehensive protective instrument still requires further evaluation, particularly regarding the independence of its membership and its dissemination to medical personnel throughout Indonesia.

4.3 Legal Remedies to Protect the Immunity of Medical Personnel

Legal remedies to protect the immunity of medical personnel can be identified through eight complementary instruments. First, strengthening regulation through a more detailed formulation of the phrases "professional standards," "professional service standards," and "standard operating procedures" in Article 273, in line with Radbruch's principle of legal certainty. Second, optimizing dispute resolution through the professional disciplinary mechanism before pursuing the criminal track, in line with the principle of ultimum remedium. Third, applying the principle of lex specialis derogat legi generali so that law enforcement officers give precedence to the Health Law over the general provisions of the Criminal Code in medical cases [26].

Fourth, strengthening the role of informed consent as evidence that medical personnel have fulfilled their obligation to provide information. Fifth, strengthening medical records as the primary legal evidence

in assessing whether an action complies with professional standards. Sixth, improving the legal competence of medical personnel through periodic health law training. Seventh, providing legal assistance to medical personnel facing legal problems in carrying out their professional duties. Eighth, developing Alternative Dispute Resolution (ADR), which prioritizes restoring the relationship between patient and medical personnel over a punitive approach [27].

Viewed from the element of Radbruch's legal certainty, most of these legal remedies have satisfied the formal element, as they are available in the form of written, fact-based, and verifiable rules. However, when tested more strictly against the requirement of clarity of norms so as not to give rise to multiple interpretations, the phrase "professional standards" in Article 273 paragraph (1) has not been further elaborated, so that legal certainty for the immunity of medical personnel is currently realized only in a formal-procedural sense, and has not yet been fully substantive [28].

5. CONCLUSION

Based on the results of the analysis, it can be concluded that Law Number 17 of 2023 on Health explicitly regulates the immunity rights of medical personnel, health workers, and hospitals through Articles 273, 440, 308, 310, and 192, but that immunity is conditional (qualified immunity) rather than absolute, because it only applies so long as professional standards, standard operating procedures, professional ethics, and administrative and service obligations have been fulfilled. Its implementation is realized through the establishment of the Professional Disciplinary Council as a filtering mechanism (primum remedium) under Articles 308 and 310, the scope of whose protection also extends to doctors participating in specialist medical education programs, although its effectiveness remains constrained by issues of certainty in examination timelines and limited dissemination, as reflected in the judicial review before the Constitutional Court. Legal remedies to protect this immunity are realized through eight complementary instruments, ranging from strengthening regulation, optimizing the Professional Disciplinary Council, and applying the principle of lex specialis, to strengthening informed consent, medical records, legal competence, legal assistance, and the development of ADR, which formally satisfy the element of legal certainty even though substantively they still require further strengthening, particularly through implementing regulations that detail objective indicators of professional standards and strengthen the institutional independence of the Professional Disciplinary Council.

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