

Legal Certainty in Resolving Medical Malpractice Issue in Indonesia: A Review of the 2023 Health Law

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ABSTRACT: Medical malpractice disputes can occur in health services, treatments, actions, and care when patients feel disadvantaged or do not get the results they expected. It often arises when there are patients who are sick or unhealthy, then receive medical/medical actions that cause their illness to not heal or even become sicker or can also cause disability to the patient and even death or death. Medical malpractice disputes are disputes about bad practices, namely doing what should not be done or not doing what should be done. This incident often occurs in health services, both in hospitals, health centers, clinics, and even in independent practice places that end up in court. The purpose of the study is to understand and analyze the implementation of health law in Indonesia in resolving medical malpractice disputes with a legal certainty approach based on Law Number 17 of 2023 in conjunction with Government Regulation Number 20 of 2024, to understand, analyze, and seek proposals on what government policy should be in regulating the settlement of medical malpractice. The research method used is descriptive analysis with a normative legal approach through library and field research with data collection techniques through literature studies. Results of the study show that the policies contained in Law Number 17 Year 2023 still lack clarity because the law has yet to establish a precise and authoritative definition of medical malpractice which results in there being no legal certainty.

Keywords: Medical Malpractice, Disputes, Patients and Medical Personnel/Health Workers, Legal Certainty.



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INTRODUCTION

The practice of medicine, while fundamentally aimed at healing and preserving life, is inherently fraught with complex risks and uncertainties. These uncertainties occur particularly during the process of healthcare services such as when a patient does not receive the expected results or even experiences an adverse event (AE) (I Gusti Ayu Apsari Hadi, 2018). Patients or their representatives may feel aggrieved and assume that the medical personnel or healthcare professionals have committed an error or negligence (Mustopa & Yusuf, 2024). When this occurs, it may lead to a dispute between the patient and the medical personnel/healthcare professionals, with each party drawing different conclusions based on their respective perspectives regarding the

service, treatment, actions, and healthcare provided to the patient (Sulistiyani & Syamsu, 2015).

In such circumstances, patients or their families have the right to file complaints concerning alleged professional misconduct in the medical field, whether in the administrative, civil, or criminal domain (Afiful Jauhani et al., 2022). This is as regulated under Law Number 17 of 2023 concerning Health in conjunction with Government Regulation Number 28 of 2024. Referring to the provisions of Article 305 paragraph (1) of Law Number 17 of 2023, it is stipulated that a patient or their family who feels that their interests have been harmed because of the actions of medical personnel/healthcare professionals in providing healthcare services may submit a complaint to the Council. Furthermore, Article 308 paragraph (1) of the same Law provides that in cases where a medical personnel/healthcare professional is suspected of committing an act that violates the law in the performance of healthcare services, which may lead to criminal sanctions, a recommendation from the Council must first be obtained. In addition, the explanatory note to Article 308 paragraph (2) also clarifies that in cases where a medical personnel/healthcare professional is held civilly liable for an act or omission in the performance of healthcare services that has caused harm to the patient, a recommendation from the Council must also be obtained. Meanwhile, under the previous legislation, namely Law Number 29 of 2004 on Medical Practice, Article 66 paragraph (1) states that any person who knows of or feels harmed by the actions of a doctor or dentist during medical practice may file a written complaint to the Indonesian Medical Disciplinary Board (MKDKI) (Baby Ivonne Susan Kainde et al., 2021). In the process of resolving disputes related to medical malpractice, the public may sometimes hold the prejudice that medical personnel/healthcare professionals are shielded by their professional status and therefore are never held accountable (Nugroho & Kusumaningrum, 2021). However, medical personnel/healthcare professionals also possess the same rights under the principle of presumption of innocence, which is a legal doctrine stating that every person shall be presumed innocent until proven guilty by a final and binding court decision (Runtunuwu & Barakati, 2024). This means that a person accused of committing an unlawful and/or criminal act cannot be considered guilty before credible evidence has been presented, due legal process has been followed, and a court of law has rendered a final judgment of guilt (Saputra et al., 2022).

On the other hand, medical personnel/healthcare professionals may feel that the public often demands accountability that is not appropriate (Njoto, 2023). Medical treatment inherently involves medical risks, medical errors, and medical negligence which are distinct concepts and must not be conflated (Kolib, 2020). Medical risks, medical errors, and medical negligence are not the same as deliberate wrongdoing (*dolus*) or fault (*culpa*) merely because an undesirable outcome occurred (Tsanie, 2023). This distinction must be understood by the public. Indeed, the results of medical services, treatment, procedures, and care may not always align with expectations, even when all actions have been performed in accordance with the service standards, professional standards, standard operating procedures, as well as professional ethics and conduct. Law enforcement authorities themselves may not fully comprehend whether the medical personnel/healthcare professional in question truly committed a wrongful or negligent act that caused harm to the patient's interests or resulted in an adverse event (AE) (Widjaja & Triana, 2023).

According to R. Soeroso, legal consequences are the results of an act intentionally carried out to achieve a specific purpose, and which are regulated by legal provisions. His explanation is as

follows (Dewi Anggraeni & Yunus, 2021):

1. An act that is intentionally performed with the aim of giving rise to rights and obligations is referred to as a legal act (*rechtsbandeling*);
2. A legal act can only occur if there is a volition or intent to act and to produce consequences that are recognized by law;
3. Such intent does not need to be expressed in a particular form it may be conveyed orally, in writing, or through conduct.

In the context of civil law, *Perbuatan Melawan Hukum* (commonly abbreviated as PMH) is known by the Dutch legal term *onrechtmatige daad* (unlawful act) (Kamagi, 2018). One of the key provisions governing PMH is Article 1365 of the Indonesian Civil Code (KUHPperdata), which defines an unlawful act as follows:

“Every act that violates the law and causes harm to another person obliges the person who, due to his fault, has caused such harm to compensate for the loss.”

According to Rosa Agustina, in her book *Perbuatan Melawan Hukum* (Unlawful Acts), an act may be classified as an unlawful act (PMH) only if it meets the following four conditions:

1. It contravenes a legal obligation of the actor;
2. It violates the subjective rights of another person;
3. It violates morality (*kesusilaan*);
4. It violates the propriety or norms of decency (*kepatutan*).

Mariam Darus Badruzaman, in her book *KUHPperdata Buku III: Hukum Perikatan* (The Civil Code Book III: Law of Obligations), as cited by Rosa Agustina, outlines the essential elements of an unlawful act (*Perbuatan Melawan Hukum*/PMH) that must be fulfilled, as follows:

- a. There must be an act, either positive (an action) or negative (an omission)
The act must be unlawful; There must be damage or loss caused (*actual harm*)
- b. There must be a causal relationship (*causal link*) between the unlawful act and the resulting harm
- c. There must be an element of fault or wrongdoing (*mens rea / culpability*).

These elements must be cumulatively satisfied for a claim of civil liability based on an unlawful act under Article 1365 of the Indonesian Civil Code to be valid.

According to R. Subekti, in the context of civil law, particularly concerning therapeutic obligations (*perikatan terapeutik*), breach of contract (*wanprestasi*) refers to the failure to fulfill an obligation, or a default/breach committed by a party who is bound to perform such obligation. The elements and conditions of breach of contract are as follows (Darwis & Amir, 2022):

1. Total non-fulfillment of the obligation or performance (failure to perform altogether);
2. Late performance, i.e., fulfilling the obligation but not within the agreed time;

3. Defective or improper performance, i.e., fulfilling the obligation but in an incorrect or non-conforming manner.
4. Performing an act that is prohibited under the terms of the agreement.

This classification highlights that breach of contract is not limited to failure to perform, but also includes delayed, improper, or prohibited actions, each of which may give rise to civil liability and a right to compensation for the aggrieved party.

In the context of criminal law, fault or negligence (omission) may be considered a criminal act if it causes consequences prohibited by law (Kadir et al., 2022). In contrast, in health law, actions such as the provision of healthcare services or medical treatment automatically carry legal consequences attached to the patient as the recipient of such services (Henny Saida Flora, 2023). In resolving disputes involving medical malpractice, a physician should not be presumed at fault, let alone be subject to criminal prosecution, if the outcome of a medical procedure conducted in the context of treatment, care, or healthcare service delivery does not align with the expectations of the patient or their family, provided that the physician has complied with the applicable standards and procedures. This is in line with Article 291 of Law Number 17 of 2023 on Health, which stipulates that all medical personnel/health workers in performing medical services, treatments, actions, and care are obliged to comply with service standards, professional standards, and standard operating procedures (SOP). The healthcare service standards are regulated by ministerial regulation; professional standards are formulated by the relevant Medical Council and Collegium and established by the Minister; SOPs are stipulated by the heads of each healthcare facility.

In 2011, the case involving Dr. Dewa Ayu Sasiary Prawan and others concerned the death of Mrs. Julia Fransiska Makatey following an emergency caesarean section (C-section) performed due to a life-threatening obstetric emergency endangering the mother and/or fetus. The medical decision was made in an emergency situation that posed an imminent risk to the patient's life (Tarigan & Novita, 2025). Under Article 275 of Law Number 17/2023, medical personnel/health workers who provide healthcare services in the context of life-saving or disability-prevention procedures during emergencies are exempt from liability for damages. Moreover, Article 286(c) provides that in certain situations, medical personnel may perform services outside their scope of authority in the face of emergency conditions. This provision aligns with Article 51(d) of Law Number 29 of 2004 on Medical Practice, which allows medical personnel to render emergency aid on humanitarian grounds.

Initially, the District Court of Manado, in Decision Number 90/PID.B/2011/PN.MANADO dated 22 September 2011, acquitted Dr. Dewa Ayu Sasiary and her colleagues. However, in 2012, the Supreme Court of Indonesia (Cassation), through Decision Number 365K/Pid/2012 dated 12 September 2012, found them guilty of negligence for causing an air embolism to enter the patient's pulmonary artery, leading to heart failure and death. The defendants were convicted under Article 359 of the Indonesian Penal Code for negligence causing death. This ruling sparked national protests from medical professionals who demonstrated in solidarity. Consequently, a Judicial Review (Peninjauan Kembali/PK) was filed. In Supreme Court Decision Number 79 PK/PID/2013 dated 7 February 2014, the court overturned its prior ruling, declaring the

physicians not guilty on the grounds that they did not violate any standards or procedures during the operation.

This case occurred prior to the enactment of the Omnibus Law on Health (Law Number 17 of 2023), during which time medical practice was regulated under Law Number 29 of 2004. Notably, neither Law Number 29 of 2004 nor the newer Law Number 17 of 2023 in conjunction with Government Regulation Number 28 of 2024 defines or explicitly mentions the term “medical malpractice dispute” or explains what is meant by “harmed interests” of the patient. However, Article 305(1) of Law Number 17/2023 mentions that a patient or their family whose interests are harmed by actions of medical personnel may submit a complaint to the Council (Majelis). Similarly, Article 66(1) of Law Number 29/2004 provides that any person whose interests are harmed by a physician or dentist may file a complaint with the Indonesian Medical Disciplinary Board (MKDKI). Moreover, Article 713(2)(e) of Government Regulation Number 28/2024 empowers the Council to issue recommendations regarding healthcare personnel suspected of committing unlawful acts or who are held accountable for conduct that harmed a patient’s interests.

The term “Council” as referenced is explained in Article 712 of the same Government Regulation, referring to the Professional Disciplinary Council (Majelis Disiplin Profesi or MDP), an institution responsible to the Minister of Health and supporting the function of the Indonesian Medical Council (KKI). The phrase “interests that are harmed” is central to identifying the onset of what is commonly referred to as medical malpractice disputes. However, neither Law Number 29 of 2004, Law Number 17 of 2023, nor Government Regulation Number 28 of 2024 provides a specific definition of “interests harmed” or medical malpractice disputes.

Any complaint submitted by a patient or their family does not negate their right to file a criminal complaint or initiate civil proceedings. Under Article 66(3) of Law Number 29 of 2004, every individual retains the right to report suspected crimes to law enforcement and/or to file civil lawsuits. However, in Law Number 17 of 2023, this right is not explicitly reiterated; instead, Article 308(1) states that healthcare personnel alleged to have committed a criminal offense in the performance of medical services must first be subject to a recommendation from the Council. Similarly, Article 308(2) requires that if a civil claim is brought against medical personnel for alleged harm to the patient, a recommendation from the Council is also necessary.

In the case of Dr. Dewa Ayu Sasiary, the Chair of the Council at the time stated that no complaint had been submitted to the Council regarding the incident. The report came instead from the patient's family directly to the police, which led to criminal investigation and prosecution.

Law Number 17 of 2023 also introduces the principle of “ultimum remedium”, which means criminal law is to be used as a last resort after other legal remedies, such as administrative or civil sanctions, have proven ineffective. Criminal sanctions should not be applied directly unless the violation has caused serious harm and cannot be addressed through other legal means (Fitri, 2020).

In malpractice dispute cases where a patient’s interests are harmed, Article 308 paragraphs (1) and (2) of Law Number 17 Year 2023 stipulates that before pursuing criminal or civil liability, a recommendation from the Council must first be obtained. While this requirement does not eliminate the right of individuals to file complaints with law enforcement or initiate civil litigation,

bypassing these procedural steps and directly filing criminal or civil lawsuits may not be a wise or humane approach, particularly in cases involving medical risks, errors, or negligence, which, after thorough legal proceedings, are ultimately found to have no violation of medical standards or procedures and are deemed as medical risks inherent to treatment.

This study aims to examine how disputes involving medical malpractice are resolved using a legal certainty approach, based on Law Number 17 of 2023 in conjunction with Government Regulation Number 28 of 2024, which currently governs the provision of medical services, treatment, actions, and care for the benefit of patients, healthcare facilities, physicians/medical personnel, and law enforcement authorities. The study will analyze both prior and current legislation to determine whether legal certainty has been achieved and is beneficial and accessible to patients and healthcare providers alike. Understanding this is crucial for all stakeholders including patients, families, medical personnel, healthcare institutions, and law enforcement so that medical malpractice disputes can be resolved justly and equitably using the framework of legal certainty as outlined in Law Number 17 of 2023 and Government Regulation Number 28 of 2024.

METHOD

The method employed in this research is normative juridical, which involves the study of legal literature and statutory regulations related to legal principles, rules, and norms concerning the reform of health law in the resolution of medical malpractice disputes, using a legal certainty approach based on Law Number 17 of 2023 in conjunction with Government Regulation Number 28 of 2024. This Normative legal research focuses on analyzing legal norms, legislation, and doctrinal interpretations relevant to the Medical Malpractice disputes.

The type or specification of this research is descriptive and prescriptive-analytical. Descriptive-analytical research provides a depiction or description regarding the issue of resolving medical malpractice disputes through a legal certainty approach under Law Number 17 of 2023 in conjunction with Government Regulation Number 28 of 2024. Meanwhile, prescriptive-analytical research is conducted by the author to obtain recommendations on how the resolution of medical malpractice disputes should ideally be carried out using the same legal basis.

This study utilizes secondary data obtained through literature review. The data include:

- Primary legal materials, such as statutory laws and regulations.
- Secondary legal materials, which elaborate on or explain the content of the primary legal materials
- Tertiary legal materials, which offer supplementary guidance or explanations regarding both primary and secondary legal materials, such as legal dictionaries and encyclopedias.

Data analysis in this research is conducted qualitatively, using non-numerical data. The analysis is carried out in both descriptive-analytical form, in which the data is presented without subjective evaluation, and prescriptive-analytical form, in which the researcher provides argumentation and critical assessment of the collected data.

RESULTS AND DISCUSSION

Definitions of Medical and Health Personnel Article 1 points 6 and 7 of the Health Law Number 17 of 2023 in conjunction with Article 1 points 47 and 48 of Government Regulation Number 28 of 2024 provide identical definitions for “medical personnel” and “health personnel.” Medical personnel are defined as any individual who dedicates themselves to the health sector and possesses professionalism, knowledge, and skills acquired through professional medical or dental education that requires specific authority to carry out healthcare services. Health personnel are defined as individuals who dedicate themselves to the health sector and possess professionalism, knowledge, and skills acquired through higher education in health, which for certain professions requires specific authority to perform healthcare services.

Previously, Law Number 36 of 2009 on Health Article 1 paragraph (6) provided a definition of health personnel like that now included in Law Number 17 of 2023 and Government Regulation Number 28 of 2024. However, the term “medical personnel” was not defined in Law Number 36 of 2009. Conversely, the previous Law Number 29 of 2004 on Medical Practice defined “medical personnel” directly by outlining the qualifications and roles of doctors, dentists, and specialists as graduates of domestic or foreign medical/dental education programs recognized by the Government of the Republic of Indonesia pursuant to prevailing laws and regulations. Thus, medical personnel are individuals who dedicate themselves to healthcare, possessing professionalism, knowledge, skills, and competencies acquired through professional education in medicine or dentistry, and whose practice requires specific authority.

Health personnel refer to any individual working in the health sector with similar attributes acquired through higher education and who, for specific professions, must hold the necessary authority to provide healthcare services. Law Number 17 of 2023 on Health further affirms that healthcare services encompass medical practice as part of the healthcare system, including treatment, procedures, and care provided to the public.

Definition of Patient in the Law Number 17 of 2023 in conjunction with Government Regulation Number 28 of 2024 defines “patient” as any person receiving healthcare services, treatment, procedures, or care from medical or health personnel. The previous Law Number 36 of 2009 and Government Regulation Number 44 of 2009 did not define the term “patient.” However, Law Number 29 of 2004 on Medical Practice defines a patient as any person seeking consultation for a health issue to receive healthcare services whether directly or indirectly from a doctor or dentist.

Disputes involving medical malpractice may occur while providing healthcare services, treatment, or procedures by medical or health professionals, particularly when patients perceive harm or when the outcomes fall short of their expectations (Rajumi et al., 2022). Such disputes often arise when patients undergoing medical treatment for an illness or health condition experience outcomes that do not lead to recovery, or instead result in worsening conditions, disability, or even death (Dimas Cahyo Widhiantoro et al., 2021). There are a few points that can be analyzed regarding disputes between patients and medical/health personnel concerning medical actions in medical/health practice from the perspective of legal certainty under Law Number 17 of 2023 and

Government Regulation Number 28 of 2024, such as:

1. Therapeutic Contract and Medical Risk

A therapeutic contract refers to a binding agreement between a patient and medical/health personnel, in which the latter commit to providing the best possible healthcare, treatment, procedures, and care in accordance with their agreement. In medical practice, such agreements are classified as *inspanningsverbintenis* (obligation of effort), wherein the medical/health personnel strive to deliver optimal care using their professional skills and competencies. They are not permitted to promise specific outcomes as in a *resultaatsverbintenis* (obligation of result).

This principle is embedded in Article 280 Paragraph (1) and (2) of Law Number 17 of 2023, which mandates that medical and health personnel must provide the best efforts in healthcare delivery according to norms, service standards, professional standards, and patient needs. In medical practice, complications or unintended consequences despite adherence to standard procedures and ethical norms may occur. Such adverse outcomes, including permanent injury, coma, or death, are known as *unexpected events* (KTD). Article 280 Paragraph (3) of the Health Law explicitly states that best efforts do not guarantee successful treatment, and unsatisfactory results do not automatically imply negligence or error.

2. Violations in Medical Practice

Disputes typically arise when one party feels disadvantaged or receives care that fails to meet expectations. Such disputes may be caused by ethical or legal violations by medical or health personnel.

Even though these professionals are only obligated to perform to the best of their ability (*inspanningsverbintenis*), they can still commit violations that cause harm to patients, which may be classified as ethical breaches, professional misconduct, or legal (civil/criminal) offenses.

3. Disciplinary Violations

Harm to patients may result from ethical violations, civil offenses, or criminal acts all of which fall under disciplinary breaches. Medical/health personnel committing such acts may be subject to disciplinary sanctions and may also be held civilly or criminally liable by patients or their families.

Disciplinary breaches may serve as the basis for imposing disciplinary, civil, or criminal penalties. Law Number 17 of 2023 outlines medical practice provisions in Article 279; professional authority in Article 285; professional standards in Article 291; professional discipline in Article 304; and dispute resolution through restorative justice in Article 306. Notably, Article 308 stipulates that civil or criminal sanctions may only be imposed upon recommendation by a permanent or ad hoc professional council.

Interestingly, terms such as “medical malpractice,” “medical risk,” “medical error,” “medical negligence,” or “loss-causing conflict of interest” are not defined or regulated in Law Number 17 of 2023, Government Regulation Number 28 of 2024, or prior laws such as Law Number

36 of 2009, Law Number 44 of 2009, and Law Number 29 of 2004.

4. Civil or Criminal Violations

Law Number 17 of 2023 and Government Regulation Number 28 of 2024 do not explicitly define the types of harm that can be pursued through civil or criminal action. However, Law Number 29 of 2004 on Medical Practice (Article 66 paragraph 3) states that it does not remove the right of any person to report suspected criminal acts to authorities and/or file civil lawsuits for damages in court. Law Number 17 of 2023 (Article 308) specifies that:

- Paragraph (1): If a medical/health worker is suspected of committing an unlawful act in providing healthcare that could incur criminal liability, a recommendation must first be obtained from the relevant council;
- Paragraph (2): If the suspected act results in civil liability for damages, a recommendation must also be obtained from the council.

According to Beni Satria, a medical crime refers to an unlawful act involving healthcare providers and patients during medical practice, caused by negligent conduct by someone who can be held legally accountable. Criminal Sanctions, Criminal provisions regarding medical negligence are found in Article 440 of Law Number 17 of 2023:

- Paragraph (1): Medical/health personnel who, through negligence, cause serious injury to a patient are subject to a maximum imprisonment of three years or a maximum fine of IDR 250,000,000.
- Paragraph (2): If such negligence causes death, the penalty is up to five years' imprisonment or a maximum fine of IDR 500,000,000.

These provisions distinguish unintended adverse events (KTD) from gross negligence (*culpa lata*) or intentional misconduct (*dolus*), which fall under general criminal law.

If intent is involved, the case is governed by the Indonesian Penal Code (KUHP). For example:

- Article 351: Intentional assault punishable by up to 2 years and 8 months' imprisonment or a fine of IDR 4,500
- Article 354: Serious assault punishable by up to 8 years (non-fatal) or 10 years (if causing death)
- Article 338: Homicide punishable by up to 15 years' imprisonment.

Other relevant provisions include:

- Chapter XIX: Crimes against life (Articles 338–350)
- Chapter XX: Assault (Articles 351–358)
- Chapter XXI: Death or injury due to negligence (Articles 359–361).

5. Applicable Standards in Medical Practice

There are three standards that must be adhered to by medical personnel/health workers, including those mentioned in Law Number 17 of 2023 on Health (hereinafter referred to as “Health Law”). These are specifically stated in Article 308, which regulates unlawful acts in healthcare services, including medical practice, that may be subject to criminal sanctions. The three standards are as follows:

1. Service Standards issued by the Government through the Minister of Health
2. Professional Standards established by professional organizations through the Indonesian Medical Council (Konsil Kedokteran Indonesia/KKI), Collegiums, and the Professional Disciplinary Council (Majelis Disiplin Profesi/MDP)
3. Standard Operating Procedures (SOPs) developed by each healthcare facility and enacted by the head/director of the respective institution.

A violation occurs when the actions of a medical personnel or health worker are inconsistent with any of these three standards in delivering healthcare services to patients.

- Professional Standards are established by the professional organization, applicable to all members, and ratified by a Ministerial Decree.
- Service Standards are formulated by the Government through the Ministry of Health, involving the professional body, KKI, and Collegiums, and also ratified by a Ministerial Decree.
- Standard Operating Procedures (SOPs) are elaborated in the elucidation of Article 308 of the Health Law and are drafted and enacted by each health facility in accordance with its operational needs and policies, thereby potentially differing across healthcare providers.

a. Professional Standards

Professional standards are a set of guidelines or norms used as benchmarks for practicing a profession in a competent, ethical, and accountable manner. These standards encompass knowledge, skills, attitudes, and behaviors required of professionals. Their primary purpose is to ensure the quality of services, protect the public interest, and provide a foundation for education, training, skill development, and performance evaluation. Typically issued by a recognized professional body, professional standards safeguard the integrity, trust, and accountability of the profession.

b. Service Standards

Service standards are benchmarks used to assess the quality of services rendered by providers to the public. These standards include elements such as procedures, completion time, cost, infrastructure, personnel competence, and user satisfaction. Their goal is to ensure that services are transparent, effective, efficient, and accountable. In the context of healthcare, service standards provide clear references for service providers, medical personnel, and patients in implementing and evaluating healthcare quality. These standards

are generally established by government institutions and serve as a framework for continuous improvement in service delivery.

c. Standard Operating Procedures (SOP)

SOPs are written instructions outlining systematic and consistent steps for executing specific tasks or processes. Their purpose is to ensure operational activities are conducted correctly, safely, and efficiently in accordance with established standards. SOPs maintain service quality, reduce errors, clarify responsibilities, and serve as tools for control, measurement, training, and evaluation. In healthcare, SOPs are developed by healthcare facilities based on professional standards and reflect the agreed-upon best practices tailored to their specific operational context.

6. Mechanism for Resolving Medical Malpractice Disputes

The term "dispute" is not explicitly regulated in either the previous Health Law (Law Number 36 of 2009) or the current Health Law Number 17 of 2023 in conjunction with Government Regulation Number 28 of 2024. However, due to the unique risks inherent in medical practice, a special body is required to assess whether a professional disciplinary violation occurred that resulted in patient harm.

According to Article 304 paragraph (3) of the Health Law, the Minister of Health forms a council responsible for upholding professional discipline. This council is elaborated in Article 712 paragraph (2) of Government Regulation Number 28 of 2024, which names the body the Professional Disciplinary Council (Majelis Disiplin Profesi/MDP). The MDP is accountable to the Minister and functions to support the Indonesian Health Council (Konsil Kesehatan Indonesia/KKI).

The framework of KKI includes the MDP, the Indonesian Medical Ethics Council (Majelis Etik Kedokteran Indonesia/MKEKI), and the Disciplinary Hearing Council (Majelis Pemeriksaan Disiplin/MPD), as stated in Article 268 of the Health Law. The Collegium is regulated under Article 272, and the Indonesian Medical Association (Ikatan Dokter Indonesia/IDI) under Article 311.

These bodies function based on the due process of law, reaffirmed by Constitutional Court Decision Number 21/PUU-XXI/2023.

If a patient or their family believes they have been harmed by a medical professional's actions, they may submit a complaint to the MDP as regulated in Article 305 paragraph (1). The MDP then reviews the case to determine whether a disciplinary violation occurred under Article 304 paragraph (3).

If dissatisfied with the MDP's decision, the patient or family may request a review by the Minister, but only under certain conditions, such as the presence of new evidence (*novum*) or a conflict of interest, as stated in Article 307.

7. Mechanism for Resolving Disputes Related to Professional Discipline

Pursuant to Article 306 paragraph (3) of the Health Law, dispute resolution in healthcare

must prioritize restorative justice, and as stated in Article 310, should initially proceed through Alternative Dispute Resolution (ADR) mechanisms. If a violation of professional discipline is established, the MDP may impose disciplinary sanctions under Article 306 paragraph (1), including:

- Written warnings,
- Mandatory education or training,
- Temporary suspension of the Registration Certificate (STR),
- Recommendations for revocation of the Practice License (SIP) by the competent authority.

The suspension of an STR or revocation of an SIP legal prerequisites for practicing medicine can be tantamount to a “professional death penalty” for the healthcare worker. Therefore, if there is any suspicion of criminal wrongdoing, restorative justice and ADR should be pursued first, as per Article 306 paragraph (3).

8. Mechanism for Civil or Criminal Dispute Resolution

Apart from filing a complaint with the MDP, patients who believe they have suffered harm may also file a lawsuit in court (administrative, civil, or criminal). However, Article 310 of the Health Law mandates that disputes should first undergo non-litigation resolution.

If the patient or their family opts for court proceedings, the law requires that they first obtain a written recommendation from the MDP this is a formal requirement for both civil and criminal proceedings involving allegations of medical malpractice.

- In criminal cases (e.g., death or serious injury), law enforcement must request a recommendation from the MDP before initiating investigation.
- In civil cases, the patient or their representative must request the MDP’s recommendation before filing suit.

Article 308 paragraphs (1), (3), and (5) govern criminal proceedings; paragraphs (2), (4), and (6) govern civil cases. If the written recommendation states that no violation occurred (i.e., the healthcare provider complied with the professional, service, and procedural standards), the case cannot proceed. If a violation is confirmed, criminal investigations or civil lawsuits may be initiated in accordance with general procedural law.

9. Importance of the Council’s Role in Legal Proceedings

The case of Dr. Dewa Ayu Sasiary Prawan, Dr. Hendry Simanjuntak, and Dr. Hendy Siagian illustrates the critical role of the council in ensuring objective and fair resolution. These doctors were acquitted by the Manado District Court in 2011 in the death of patient Mrs. Julia Fransiska Makatey, but were later found guilty by the Supreme Court in 2012 and sentenced under Article 359 of the Criminal Code. In 2014, the Supreme Court, upon review, declared them not guilty, citing no SOP violations in the surgical procedure. The moral and material damages they suffered including imprisonment could have been avoided if the

council had initially determined whether any standard had been breached. If a violation existed, they should be punished; if not, the case should not proceed to court nor result in unjust incarceration.

10. Comparison Between MKDKI and MDP

Under the previous Medical Practice Law Number 29 of 2004, Chapter VIII addressed disciplinary action against doctors/dentists, with the Medical Disciplinary Board (Majelis Kehormatan Disiplin Kedokteran Indonesia/MKDKI) serving a similar function as MDP but limited to doctors/dentists.

- MKDKI received complaints, investigated, and issued decisions regarding professional discipline under Article 66 paragraph (1).
- MKDKI also imposed disciplinary sanctions if warranted under Article 69 paragraph (2), such as warnings, suspension of STR/SIP, or mandatory training.

However, MKDKI lacked the authority granted to the MDP under Article 308 of the 2023 Health Law to issue recommendations necessary to initiate civil or criminal proceedings. This enhanced role of the MDP is confirmed in Government Regulation Number 28 of 2024 Article 713, which specifies that MDP:

- Upholds professional discipline (paragraph 1),
- Determines the existence of violations and issues sanctions (paragraph 2, points c and d),
- Issues recommendations in cases involving alleged unlawful acts causing patient harm (paragraph 2, point e).

11. Integrity and Professionalism of the Disciplinary Board (MDP)

To achieve justice, members of the Disciplinary Board (MDP) must consist of individuals with high integrity, who uphold professionalism, and are capable of working fairly, objectively, and transparently. To ensure representation from diverse sectors, Government Regulation Number 28 of 2024 Article 714 paragraph (1) stipulates that the MDP shall comprise nine individuals representing five elements: the ministry responsible for health, professional organizations, healthcare facilities, legal experts, and public representatives. Membership requirements are regulated under Article 715 of Government Regulation Number 28 of 2024, which provides that candidates must be Indonesian citizens, physically and mentally healthy, of good moral character, devout, and free from any negative record. For medical and health personnel, a minimum of ten years of practical experience and a valid Registration Certificate (STR) are required. Legal experts must also possess at least ten years of professional experience. Additionally, candidates must not currently be or have ever been subject to ethical, disciplinary, or legal sanctions, and must not hold any other position that could give rise to a conflict of interest. The formation of the MDP is based on Article 304 of Law Number 17 of 2023 in conjunction with Article 718 of Government Regulation Number 28 of 2024, which states that the selection mechanism, procedures for appointment and dismissal of members, and the working procedures for disciplinary enforcement shall be

further regulated by a Ministerial Regulation.

CONCLUSION

Based on the analysis presented above, several important conclusions can be drawn. A therapeutic agreement is a binding understanding between patients and medical or health personnel that covers services, treatment, procedures, and care. Violations in medical practice often result in disputes due to unmet expectations or perceived harm. These may include professional disciplinary violations, which involve breaches of professional ethics and require disciplinary sanctions, as well as civil and criminal violations, for which existing laws (both current and previous) provide no specific definitions—only the requirement to obtain a recommendation from the disciplinary board (*majelis*). Regarding applicable standards in medical practice, service standards are issued by the Minister of Health; professional standards are developed by professional organizations and enacted by the Minister; and SOPs (standard operating procedures) are created and enforced at the level of each healthcare facility.

The mechanism for resolving medical malpractice disputes is not explicitly addressed in current or prior health laws, and the phrase "medical malpractice dispute" itself lacks legal definition. In contrast, professional disciplinary disputes are resolved through complaints submitted to the disciplinary board. In cases involving civil or criminal violations, health personnel suspected of unlawful acts must first be referred to the disciplinary board to obtain a formal recommendation.

The role of the disciplinary board in court proceedings is thus crucial, as it is legally authorized to issue binding recommendations. A comparison between the roles of MKDKI (Medical Council of Indonesia) and the MDP (Professional Disciplinary Board) shows that while MKDKI is responsible for receiving complaints, investigating, and ruling on professional discipline cases, MDP is specifically tasked with assessing whether health services conform to applicable standards. To uphold justice, members of the MDP must embody integrity and professionalism, acting fairly, objectively, and transparently. Notably, the study affirms that legal terms such as "medical malpractice dispute," "injured interest," and "medical risk" remain undefined in Indonesian health law, creating ambiguity. For example, since Law Number 17 of 2023 on Health is a *lex specialis*, it should contain a dedicated article explicitly addressing medical malpractice.

Such a provision would provide legal certainty and facilitate dispute resolution within the legal framework of Law No. 17/2023 in conjunction with Government Regulation No. 28/2024. Legal certainty is essential to ensure clarity and consistency in the application of law and to establish a just and orderly society. The principle of legality requires all actions to be in accordance with the law, placing the law as the highest authority over all powers, rights, and obligations.

Therefore, it is necessary to propose the formulation of new legal provisions to fill this legal vacuum through a proper legislative process. This would help avoid injustices in the future, such as the case of Dr. Dewa Ayu Sasiari Prawan et al., who were initially acquitted by the District Court of Manado, later convicted on appeal (cassation), and eventually declared not guilty through a judicial review, despite already having been detained for two months—resulting in significant material and non-material losses.

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