Research Horizon

ISSN: 2808-0696 (p), 2807-9531 (e)

Research Horizon
Volume: 06
Issue: 03
Year: 2026
Page: 1145-1154

Citation:
Muhyin, M. Y. M., & Sapsudin, A. (2026). Paradigm shift in legal protection of health workers before and after the 2023 Health Law: A comparative review. *Research Horizon*, *6*(3), 1145-1154.

Article History:
Received: May 6, 2026
Revised: June 3, 2026
Accepted: June 17, 2026
Online since: June 25, 2026

Paradigm Shift in Legal Protection of Health Workers Before and After the 2023 Health Law: A Comparative Review

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Abstract

Law Number 17 of 2023 strengthens legal protection for medical personnel and healthcare workers through an omnibus approach, addressing prior regulatory fragmentation and unclear distinctions between medical risk and negligence that led to legal uncertainty, criminalization risks, and defensive medicine that undermined service quality and efficiency. This study analyzes differences in the construction of legal protection before Law Number 17 of 2023 on Health, examines the implications of the paradigm shift in medical dispute resolution toward legal certainty and substantive justice, and formulates policy recommendations to strengthen a more just and proportionate national health law ecosystem. This normative legal research uses statutory, comparative, and conceptual approaches with qualitative-prescriptive analysis, based on Radbruch, Friedman, and Pound theories. The findings show that Law Number 17 of 2023 shifts the punitive model into a restorative model by strengthening protection based on professional standards, disciplinary board recommendations as an initial filter, and prioritization of dispute resolution through alternative mechanisms outside the court system. Therefore, the law in question provides a clearer, hierarchical legal foundation to protect healthcare workers. However, its effectiveness depends on harmonized implementing regulations, institutional strengthening, and balanced protection between healthcare workers' legal safeguards and patients' right to remedies.

Keywords

Healthcare Workers, Health Law, Legal Certainty, Legal Protection, Medical Dispute Resolution.

1. Introduction

The legal relationship between medical personnel and patients is fundamentally a fiduciary relationship established through a therapeutic agreement *(therapeutische overeenkomst)*. In civil law construction, this relationship does not impose an obligation to guarantee cure *(resultaatsverbintenis)*, but rather an obligation of effort *(inspannings verbintenis)* requiring prudence, professional competence, good faith, and compliance with professional standards, service standards, and standard operating procedures (Daeng et al., 2023). The evaluation of medical responsibility is centered on the quality of the professional process rather than the final medical outcome. Within this framework, medical practice inherently involves uncertainty due to biological variability and scientific limitations, making the distinction between medical risk and medical negligence crucial. Medical risk refers to unavoidable complications despite proper procedures, whereas negligence refers to deviations from professional standards that cause harm (Putra, 2020; Rahmayanti et al., 2024).

Before the enactment of Law Number 17 of 2023 on Health, the blurred boundary between medical risk and negligence often placed medical personnel in a vulnerable legal position. Criminal law instruments were frequently used in healthcare disputes without adequate professional disciplinary assessment (Nurnanei & Bachri, 2024; Husamuddin et al., 2024). This condition contributed to legal uncertainty and fostered defensive medicine, where clinical decisions were influenced by litigation avoidance rather than patient needs (Bachri, 2024). Empirical evidence by Nurdin (2015) shows that defensive medicine is widely practiced globally, including unnecessary tests, referrals, and procedures, as well as excessive documentation, reflecting a shift from clinical judgment to legal risk mitigation. A meta-analysis further reports a prevalence of defensive medicine reaching 75.8% among doctors in 23 countries (Lajar et al., 2020).

In Indonesia, disciplinary case data from the Indonesian Medical Council (*Konsil Kedokteran Indonesia*/KKI) shows the continued relevance of professional accountability issues, with consistent numbers of resolved disciplinary cases and increased decisions in 2023 (Ministry of Health of the Republic of Indonesia, 2023). Although not equivalent to malpractice statistics, this data reflects the operational dynamics of medical discipline enforcement (Handoyo, 2020; Hyman et al., 2021). These conditions were reinforced by regulatory fragmentation across multiple laws governing medical practice, health workers, nursing, and midwifery, creating inconsistencies in legal interpretation and enforcement.

To address regulatory challenges in the health sector, Law Number 17 of 2023 introduced a unified legal framework through an omnibus approach, replacing several sectoral laws with a more integrated system (Guwandi, 2019; Noor, 2025). This reform strengthens legal protection for medical personnel who act in accordance with professional standards, service standards, ethical codes, and patient needs (Rompis, 2017; Widhiantoro et al., 2021). In addition, the law reinforces professional accountability by establishing a structured dispute resolution mechanism that prioritizes disciplinary review and alternative dispute resolution before litigation. Provisions concerning disciplinary sanctions, mandatory board recommendations, and pre-litigation settlement procedures reflect a shift toward a filtered accountability model that emphasizes professional judgment and non-litigious conflict resolution (Dachban et al., 2023).

Despite these reforms, prior studies remain limited in capturing the full transformation of Indonesia's health law system. Most research is either conducted before the enactment of Law Number 17 of 2023 or focuses narrowly on post-reform criminal liability without a comprehensive comparative analysis of the old and new legal frameworks (Lajar et al., 2020; Nurnanei & Bachri, 2024). This creates a research gap in understanding how legal protection for medical personnel has

structurally changed and how such changes affect legal certainty, substantive justice, and dispute resolution mechanisms in practice (Widhiantoro et al., 2021).

This study is grounded in Radbruch's theory of legal purpose, Friedman's legal system theory, and Pound's concept of law as a tool of social engineering. These frameworks provide a basis for evaluating the balance between justice, legal certainty, and utility, as well as the interaction among legal substance, structure, and culture in health law reform (Hidayat, 2017; Heriani, 2022). The reform is viewed as a mechanism for creating a more accountable and proportionate healthcare system. The study's novelty lies in conceptualizing limited professional immunity integrated with the gatekeeping role of professional disciplinary bodies under Law Number 17 of 2023. Accordingly, the research examines changes in legal protection for medical personnel before and after the law's enactment, analyzes their implications for legal certainty and substantive justice, and proposes policy recommendations for a more balanced national health law system.

2. Methods

This study is a normative legal research employing a library research method that focuses on the analysis of legal norms, principles, doctrines, and institutional frameworks governing the legal protection of medical and health workers before and after the enactment of Law Number 17 of 2023 on Health (Taekema, 2018). The selection of this method is grounded in the doctrinal nature of the research problem, which emphasizes the reconstruction and evaluation of legal concepts rather than empirical field data.

This study applies three complementary approaches. The statutory approach is used to examine the hierarchical structure of legislation and identify the normative transformation from a fragmented sectoral health legal regime into an integrated legal framework under the 2023 Health Law. This approach enables the identification of changes in legal provisions related to professional standards, liability, disciplinary mechanisms, and dispute resolution. The comparative approach is employed to systematically compare the legal protection models, responsibility frameworks, and medical dispute settlement mechanisms between the pre-2023 regime and the post-reform legal system, highlighting shifts in legal orientation, institutional roles, and protection guarantees for healthcare professionals and patients. Meanwhile, the conceptual approach is used to critically analyze key legal doctrines and theoretical constructs, such as *inspanning verbintenis*, medical risk, medical negligence, defensive medicine, restorative justice, and the concept of limited professional immunity, which underpin the normative evolution of health law in Indonesia.

The legal materials used in this study consist of primary legal materials, including relevant statutes and regulations governing health law and medical practice, and secondary legal materials comprising academic journals, textbooks, scholarly commentaries, and legal doctrines that provide theoretical and analytical support. Data collection is conducted through an extensive literature review of both printed and electronic legal sources. The analysis is carried out using a qualitative-prescriptive method, which involves interpreting legal materials to identify patterns, inconsistencies, and normative developments, and subsequently constructing arguments for improving the legal framework. Through this method, the study seeks to produce a comprehensive and systematic understanding of the transformation of legal protection for medical and health workers within Indonesia's evolving health law system.

3. Results and Discussion

3.1. Healthcare Workers Before and After Law Number 17 of 2023

Before the enactment of Law Number 17 of 2023 concerning Health, the regulatory framework governing medical and healthcare workers in Indonesia was heavily characterized by fragmentation (Makarim & Wijayanto, 2024). The regulations were scattered across various sectoral laws, including but not limited to the Medical Practice Law, the Health Workers Law, the Nursing Law, and the Midwifery Law (Ranchoff & Declercq, 2020). This legislative fragmentation created profound harmonization issues, particularly in defining the exact parameters of professional responsibility. Because each profession was governed by a distinct legal instrument, there was a lack of a unified standard regarding what constituted an acceptable standard of care across the broader health ecosystem. Furthermore, this sectoral approach complicated the relationship between ethical, disciplinary, civil, and criminal pathways. When a medical dispute arose, it was often unclear which regulatory body had the primary jurisdiction to adjudicate the matter, leading to overlapping investigations and overlapping sanctions.

In practice, the lack of an integrated and cohesive legal umbrella often positions medical personnel as general legal subjects rather than professionals governed by specific expertise-based regulations. Healthcare workers were highly prone to premature criminal prosecution. Law enforcement agencies, often lacking specialized medical knowledge, would apply general criminal provisions (such as those found in the Indonesian Penal Code regarding negligence causing injury or death) before any adequate professional assessment could be made by a competent medical disciplinary board (Saragih & Hadiyanto, 2021). The core problem during this pre-2023 regime lay in the absolute dominance of a repressive and punitive approach. The legal system frequently failed to recognize the inherent uncertainties of medical science, resulting in a blurred boundary between an unavoidable medical risk (a recognized complication that occurs despite adherence to all protocols) and medical negligence (a failure to meet the required standard of care). This blurred line fostered a climate of fear, driving medical practitioners toward defensive medicine, ordering unnecessary tests and avoiding high-risk patients merely to shield themselves from potential litigation.

This precarious condition differs significantly from the post-2023 regime. Law Number 17 of 2023 utilized an omnibus method to consolidate various sectoral regimes into a single, comprehensive national health law framework, simultaneously revoking several older, overlapping laws. This monumental change is not merely administrative in its consolidation; it is deeply substantive. Under the new regime, the legal protection of medical personnel is directly and inextricably linked to their compliance with professional standards, service standards, Standard Operating Procedures (SOPs), and professional ethics, as explicitly affirmed in Article 273 (Rahma & Prayuti, 2025). By establishing this clear parameter, the law shifts the focus from the outcome of the medical intervention to the process of the medical intervention. Meanwhile, Article 291 positions compliance with these aforementioned standards as an explicit normative obligation, creating a dual framework where protection is guaranteed as long as the obligation to standard adherence is fulfilled (Kinanti et al., 2015).

The measure of legal protection is no longer solely derived from the final service outcome, which in medicine can be adverse despite flawless execution due to patient biology or unforeseen complications, but from the strict alignment of the professional process with applicable standards (Darwaman et al., 2023). From Gustav Radbruch's theoretical perspective on the philosophy of law, this paradigm change is vital because the law must deliver certainty alongside justice. A law that punishes a doctor for an uncontrollable medical risk fails the test of justice, while a law that provides no clear boundaries for prosecution fails the test of certainty.

Under the new regime, the legislature attempts to rectify past uncertainties by establishing professional discipline as the preliminary, mandatory gateway for assessment. By ensuring that medical actions are first evaluated by medical peers rather than lay investigators, the law achieves a harmonious balance between protecting the practitioner and serving justice (Fitriono et al., 2016).

One of the most prominent and transformative changes introduced in Law Number 17 of 2023 is the entirely new design for medical dispute resolution, which deliberately moves away from litigation-first approaches. Article 306 regulates that disciplinary violations committed by medical or health workers are subject to specific, tiered disciplinary sanctions. These sanctions are corrective rather than purely punitive, ranging from written warnings and the mandatory obligation to attend further education or training to temporary suspension of practice and eventually recommendations for license revocation in severe cases. This tiered approach ensures that administrative and disciplinary mechanisms are exhausted before any other legal avenues are explored. More importantly, paragraph (3) of Article 306 states that if a suspected criminal offense remains after disciplinary sanctions have been fully implemented, law enforcement agencies must prioritize resolving the dispute through restorative justice mechanisms (Makarim & Wijayanto, 2024).

This specific norm indicates a monumental orientation shift from a rapid punitive model toward a corrective, step-by-step resolution model (Bachri, 2024). Restorative justice in the medical context acknowledges that while harm may have occurred, throwing a healthcare provider into the penal system does not heal the patient, nor does it improve the healthcare system. Instead, restorative justice brings the affected parties together to find a meaningful resolution, emphasizing accountability, explanation, apologies, and appropriate compensation, thereby restoring the harmony that was disrupted by the adverse medical event.

Article 308 further reinforces this institutional filter by requiring a formal recommendation from the professional disciplinary council before any alleged unlawful acts in health services can be subject to formal criminal investigation or specific civil liability proceedings (Pintabar et al., 2024; Betlehem & Herman, 2025). This acts as a crucial gatekeeping mechanism. It recognizes that police investigators and prosecutors are legal experts, not medical experts. Therefore, determining whether a doctor's action deviated from the standard of care requires the scientific and clinical evaluation of the disciplinary council. Only if the council finds that a gross deviation amounting to a criminal act occurred should the criminal justice system be activated.

Furthermore, Article 310 mandates that if medical personnel allegedly make professional errors causing patient harm, the resulting dispute must first be resolved through Alternative Dispute Resolution (ADR) outside the court system. This statutory requirement confirms a deeply restorative orientation, providing mandatory and significantly greater room for mediation, negotiation, or other non-litigation mechanisms. Medical disputes are inherently complex, highly technical, and deeply emotional. Traditional courtroom litigation is adversarial; it forces doctors and patients into opposing corners, often destroying the therapeutic relationship and involving years of costly, public, and exhausting trials. ADR, on the other hand, is confidential, collaborative, and far more conducive to mutual recovery. It allows patients to receive direct explanations and compensation without the burden of strict legal evidentiary proofs, and it protects healthcare providers from public defamation while allowing them to learn from clinical errors without the threat of imprisonment. In essence, these non-litigation mechanisms are fundamentally more humane and effective in restoring therapeutic relations than destructive legal battles (Widjaja, 2020).

3.2. Implications of the Paradigm Shift on Legal Certainty and Substantive

For medical and healthcare workers navigating the complexities of modern clinical practice, these profound regulatory changes significantly strengthen legal certainty. Prior to the enactment of the 2023 Health Law, medical personnel operated under the constant, looming threat of what is known in medical-legal discourse as "triple exposure." Because the previous legal framework was fragmented, a single adverse medical event could simultaneously trigger uncoordinated proceedings in ethical tribunals, disciplinary boards, civil courts for tort or breach of contract, and criminal courts for negligence. This meant a doctor could be cleared of ethical and disciplinary wrongdoing by their professional peers, yet still be successfully sued in civil court and simultaneously prosecuted and imprisoned by the criminal justice system. This chaotic, uncoordinated legal landscape bred severe anxiety and a defensive medical culture that ultimately harmed patient care by inflating healthcare costs through unnecessary diagnostic testing (Widjaja, 2020).

Post-2023, the sequence of resolution is vastly clearer and more systematically structured. Professional assessment and discipline take strict precedence. Council recommendations act as absolute prerequisites before the state's coercive powers can be unleashed, and professional disputes involving patient harm are mandatorily directed to non-litigation channels first (Putra, 2020). This procedural regularity dramatically reduces the unpredictability and uncertainty that plagued the old system. It provides a more objective, science-based measure for law enforcement to distinguish inherent professional risks that should never be criminalized from genuine professional deviation or gross negligence. Law enforcement now has a clear statutory roadmap: they must defer to the expertise of the disciplinary councils to translate complex medical facts into legally actionable conclusions.

This enhanced legal certainty also acts as a vital "safe harbor" based entirely on standard compliance. Articles 273 and 291 systematically demonstrate that legal protection is not an arbitrary privilege, but a right granted to medical personnel who meticulously act according to professional standards, standard operating procedures, and ethics. If a physician can document that they followed the accepted clinical pathways, they are shielded from criminal liability even if the patient suffers an adverse outcome. From the aspect of substantive justice, the new regime attempts to strike a delicate and necessary balance between two equally important and sometimes competing interests: protecting medical personnel from unfair, premature criminalization over inherent medical risks, and ensuring the patient's undeniable right to recovery, transparent explanation, and fair compensation in genuine cases of negligence (Mangkey, 2014). Substantive justice is achieved because the law no longer demands perfection, which is biologically and medically impossible, but rather demands professional diligence and accountability.

3.3. Legal Protection for Medical Professionals and Policy Recommendations

Based on the comprehensive legal and theoretical analysis above, the ideal concept of legal protection for the medical profession in the future needs to be firmly built on the principle of limited professional immunity. It is crucial to emphasize that this immunity does not equate to absolute impunity, nor does it place healthcare workers above the law. Rather, limited professional immunity is a conditional, functional protection granted strictly as long as the medical personnel act within the established boundaries of professional standards, service standards, operating procedures, and ethical guidelines (Hadi, 2018). In this ideal model, the inherent professional risks that are an unavoidable part of medical intervention cannot be easily converted into criminal offenses by overzealous prosecutors or aggrieved families. Yet, the system ensures that accountability mechanisms must remain proportionally active, robust, and accessible for proven deviations that cause actual, preventable harm to the patient (Dachban et al., 2023).

To fully realize this ideal concept and to ensure the paradigm shift intended by Law Number 17 of 2023 operates effectively in practice, several urgent and strategic policy recommendations emerge: First, the government must ensure the absolute synchronization of implementing regulations and technical guidelines. The broad mandates of the omnibus Health Law must be translated into clear, unambiguous governmental and ministerial decrees so that there is no normative vacuum or conflict of interpretation at the operational level. Second, law enforcement requires specialized technical guidelines and intensive training in health law. Police investigators, prosecutors, and judges must be educated on the nuances of medical practice. They must understand the fundamental differences between an adverse event, a medical error, and criminal negligence, ensuring they respect the gatekeeping function of the disciplinary councils rather than attempting to bypass them (Widjaja, 2020).

Third, the independence, transparency, and capacity of the professional disciplinary councils must be heavily fortified. If these councils are to serve as the primary filter for the justice system, their assessments and recommendations must be highly credible, scientifically rigorous, and entirely free from professional bias or the instinct to simply protect their peers. They must earn the trust of both the medical community and the public. Fourth, legal literacy for both medical personnel and patients must be aggressively expanded. Healthcare providers must understand that legal protection is contingent upon meticulous documentation and adherence to SOPs, while patients must be educated to understand that not every negative medical outcome is a result of malpractice (Bawono, 2011).

Enhancing communication and informed consent processes is vital to this educational effort. Fifth, in the long term, the state should seriously consider strengthening and institutionalizing non-litigation compensation schemes, exploring the adoption of "no-fault compensation" models used in several advanced jurisdictions. Such a system would streamline patient recovery rights, allowing victims of medical adverse events to receive swift, adequate financial support from a centralized fund without having to endure the burdensome, adversarial process of proving the exact nature of the doctor's negligence. This would represent the ultimate realization of restorative justice, shifting the focus entirely from blaming the provider to healing the patient (Dachban et al., 2023).

4. Conclusion

Based on the research findings, it can be concluded that there is a fundamental difference between the legal protection regimes for medical personnel before and after the enactment of Law Number 17 of 2023 concerning Health. Prior to 2023, health law regulations were sectoral and fragmented, allowing for inconsistencies across ethical, disciplinary, civil, and criminal mechanisms. In that situation, medical personnel were vulnerable to premature criminalization due to blurred lines between medical risks and negligence. Conversely, the new regime presents a unification of norms and establishes compliance with professional and operational standards as the foundation for legal protection. This paradigm shift strengthens legal certainty through a tiered dispute resolution system involving disciplinary sanctions, council recommendations, and prioritization of alternative dispute resolution outside court. It also enhances substantive justice by repositioning law from a punitive instrument to a balanced framework that protects healthcare workers while safeguarding patients' rights to remedies. Empirically, the reform is relevant as defensive medicine remains widespread and undermines health system efficiency and patient care access.

In terms of implications, the reform indicates a transition toward a standards-based accountability system that may improve trust in the healthcare system and reduce litigation-driven medical practice. However, its effectiveness depends heavily on consistent implementation and institutional readiness across disciplinary and

enforcement bodies. The limitation of this study lies in its normative approach, which relies solely on legal materials without empirical validation of how the new framework operates in practice at the institutional or clinical level. Future research is recommended to employ empirical or socio-legal methods to examine the practical implementation of Law Number 17 of 2023, particularly in relation to disciplinary mechanisms, dispute resolution effectiveness, and the lived experiences of healthcare workers and patients within the new legal framework.

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Acknowledgment
We gratefully acknowledge the contributions of individuals who supported the completion of this article.

Funding Information
This research did not receive any funding.

Conflict of Interest Statement
The authors declare that there is no conflict of interest.

Ethical Approval and Originality Statement
Ethical approval was obtained for this study. The manuscript represents original work and has not been previously published, nor is it under consideration by another journal.

Data Disclosure Statement
The data that support the findings of this study are available from the corresponding author upon reasonable request.