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## Legal Protection for Medical Personnel in BPJS Affiliated Hospitals Based on Law Number 17 of 2023

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## Abstract

Technological developments and the need for better healthcare services are driving the transformation of health law in Indonesia. This study aims to analyze the impact of Law Number 17 of 2023 concerning Health on legal protection for healthcare workers and patients. The study used a qualitative approach using literature study methods and legal document analysis. Data were collected from laws and regulations, scientific journals, and official health-related documents. The findings indicate that the law strengthens legal protection for healthcare workers by clarifying their rights and obligations, including in anesthesia services and emergency treatment. For patients, the law improves access to equitable healthcare services and ensures the confidentiality of medical records. However, implementation still faces challenges, such as a lack of public awareness and harmonization with previous regulations. This study concludes that Law No. 17 of 2023 provides a strong foundation for a more structured healthcare system, but its success depends on consistent implementation and inter-agency coordination. This study recommends increased training for healthcare workers and public outreach to support the effective implementation of this law.

## Keywords

Health Services, Law Number 17 of 2023, Legal Protection, Medical Personnel, Social Health Insurance.

## 1. Introduction

Health is a very vital aspect of human life, and health services are an inseparable necessity. To provide optimal health services, the role of doctors as medical personnel is vital (Navarro, 1989; Matsoso & Fryatt, 2013). However, medical practice involves not only clinical aspects but also legal complexities surrounding it. Many cases show that medical personnel are trapped between the demands of professionalism, limited facilities, and the rules of the National Health Insurance (*Jaminan Kesehatan Nasional/JKN*) system which demands excellent service for the community with the lack of socialization of important regulations for the community by Social Security Administrator (*Badan Penyelenggara Jaminan Sosial/BPJS*) (Government of Indonesia, 2014; Ngwaru et al., 2019). Legal protection for medical personnel in medical practice, as outlined in Law 17 of 2023 concerning health, introduces a new paradigm to the national health system, encompassing the legal protection of health workers and medical personnel.

Medical personnel, including general practitioners, dentists, and specialists, engage directly with patients in diagnosis and therapy and frequently encounter challenges related to BPJS Health regulations (Al-Fatih & Shahzad, 2025). Beyond administrative burdens, they face legal, ethical, and reputational risks that may threaten professional sustainability (Naurah et al., 2025; Yandi et al., 2025). A key issue arises from mismatches between patient expectations and BPJS emergency criteria: for instance, families may deem a condition emergent, but following evaluation under Minister of Health Regulation Number 47 of 2018 and Presidential Regulation Number 82/2018, the case may not qualify, resulting in uncovered costs. Public unfamiliarity with these criteria often leads to accusations of negligence against healthcare providers, while treating non-qualifying cases kindizes hospital finances (Negara et al., 2023; Putri & Murdi, 2019). Consequently, cancelled claims pose an ethical dilemma for medical personnel, who must balance their duty of care with institutional constraints (Bharata et al., 2024; Hutapea et al., 2024; Situngkir et al., 2024; Tjua et al., 2024). This tension underscores the need for clearer communication of BPJS regulations and enhanced legal protection for practitioners (Taekema, 2018).

Unclear or too narrow emergency criteria in the implementation of BPJS health can indirectly encourage fictitious claims (Navarro, 1989; Matsoso & Fryatt, 2013). Hospitals or medical personnel know that claims will only be paid by BPJS if the patient's condition meets the emergency criteria. As a result, in the case of patients who do not meet the "emergency" criteria but need fast treatment, medical personnel or administration can "package" the patient's data as if it falls into the emergency category, such as two hospitals in Tegal submitting fictitious claims of Rp 4.8 billion (Government of Indonesia, 2013). Adequate legal protection for healthcare workers is crucial in addressing this situation. Space for self-defense must be provided, so that medical personnel can explain the rationale behind their medical decisions and elaborate on specific contexts that the general public or BPJS Kesehatan may not understand. Providing balanced justice is a critical step in building public trust in the medical profession (Hamzani et al., 2023; Wahyudiono et al., 2024).

However, existing studies, such as those by Ngwaru et al. (2019), highlight that while operational challenges of the JKN system are well-documented, there is a significant research gap in analyzing how Law Number 17 of 2023 addresses legal protections for medical personnel, particularly in resolving disputes and ensuring institutional accountability. Similarly, Putri (2023) notes that the law's provisions lack clarity on protecting practitioners from criminalization risks in BPJS-affiliated hospitals. This study aims to fill this gap by examining the legal protections offered by Law Number 17 of 2023, focusing on the regulation of medical practice, dispute resolution mechanisms, and the role of professional organizations. By analyzing real-

life cases and statutory provisions, this research aims to provide actionable recommendations that enhance legal certainty and promote ethical practice among medical personnel in BPJS-affiliated hospitals.

## **2. Literature Review**

Legal protection for health workers, particularly medical personnel, has become a growing concern in the context of Indonesia's health system, especially under the framework of JKN. Prior literature emphasizes that medical professionals, such as doctors and dentists in BPJS-partnered hospitals, are often entangled in legal and administrative conflicts arising from patient expectations, BPJS regulations, and limited infrastructure (Putri & Murdi, 2019). This is compounded by inadequate socialization of BPJS rules, especially regarding emergency care criteria, which frequently leads to disputes and claims of malpractice (Putri, 2023).

Studies have shown that unclear emergency definitions and administrative burdens may even drive some providers to submit fictitious claims, as reported in the case of two hospitals in Tegal involving nearly Rp 5 billion. These systemic issues underscore the pressing need for stronger and clearer legal frameworks to ensure both public protection and the legal safety of medical practitioners. The Ministry of Health has responded by warning that fictitious claims could lead to revocation of practice licenses, which raises additional legal risks for medical personnel (Government of Indonesia, 2014; Government of Indonesia, 2018; Robian et al., 2024).

The enactment of Law Number 17 of 2023 concerning Health represents a significant legislative shift intended to simplify health regulations by consolidating prior laws such as Law Number 29 of 2004 on Medical Practice and Law Number 36 of 2014 on Health Workers (Government of Indonesia, 2004; Government of Indonesia, 2009a; Government of Indonesia, 2009b). While simplification may improve administrative efficiency, it has raised critical academic and professional concerns. Scholars argue that the new law omits detailed provisions previously regulating professional organizations and dispute resolution mechanisms (Kesuma, 2023; Fadli & Dahlan, 2024). Specifically, Article 311 of Law 17 of 2023 only allows, but does not require, health professionals to form professional organizations, thereby potentially diminishing their structural role in standard-setting, licensing recommendations, and ethical enforcement.

This legislative transformation may create a legal vacuum, particularly regarding the number and recognition of professional organizations, which were previously regulated in laws like the Medical Practice Law, Nursing Law, and Midwifery Law (Government of Indonesia, 2014; Kesuma, 2023; Dahlan & Budiarsih, 2025). Without clarity, these omissions could hinder the maintenance of professional standards and complicate supervision. Trisnadi (2017) and Wijayanti (2023) also emphasize that the absence of strong organizational oversight may weaken the position of health professionals in navigating complex legal and ethical situations, particularly in high-stakes environments like hospital emergency rooms.

The dispute resolution model introduced by the Health Law further shifts toward restorative justice mechanisms, prioritizing mediation over litigation. While this approach is intended to promote reconciliation and reduce criminalization, it has received mixed reactions (Frass et al., 2012; Antonijevic et al., 2020). Some scholars warn that this mechanism may overly protect health personnel and infringe upon the principle of equal treatment before the law, especially if investigations are contingent on recommendations from internal panels (Khalid et al., 2024). Critics argue that this conditional investigation procedure could violate Article 28D (1) of the 1945 Constitution, which guarantees equality before the law (Government of Indonesia, 1945).

Previous literature thus provides a nuanced foundation for understanding the tension between legal protection and public accountability (Hwei & Octavius, 2021). While Law Number 17 of 2023 aims to reinforce legal safeguards for medical personnel, it raises normative and constitutional questions related to the weakening of professional organizations and potential legal uncertainty. Further empirical study is needed to assess how these regulatory changes are implemented and experienced by medical professionals in practice.

### **3. Methods**

This research employs a normative legal research method, a common approach in legal studies that analyzes and interprets the content of positive law. Normative legal research, also referred to as doctrinal legal research, is focused on examining legal norms as contained in statutory regulations, court decisions, and other authoritative legal sources. The reason for selecting this method lies in the nature of the research problem itself, which concerns the analysis of legal authority, institutional arrangements, and the implications of Law Number 17 of 2023 on Health toward the legal status of professional health organizations in Indonesia. The normative approach is appropriate in this context because the study aims to evaluate the legal implications and potential constitutional issues arising from the restructuring of professional authority, especially regarding the roles previously granted to health professional organizations under older legal frameworks. Normative legal research enables the researcher to examine the consistency of legal provisions, identify potential normative gaps, and assess whether the new law aligns with the principles of legal certainty, justice, and constitutional mandates.

This study applies two main approaches within the normative legal research framework: the statutory approach and the conceptual approach. The statutory approach involves an in-depth analysis of various regulations, including Law Number 17 of 2023, Law Number 29 of 2004 on Medical Practice, Law Number 36 of 2014 on Health Workers, and relevant Constitutional Court decisions, such as Decision Number 88/PUU-XIII/2015. The conceptual approach is employed to examine fundamental legal concepts, including legal protection, institutional authority, freedom of association, and the role of professional organizations within a democratic legal system. The sources of legal material in this study are derived from library research, including primary legal materials (statutes, constitutional articles, and court rulings) and secondary legal materials (legal commentaries, scholarly journal articles, and expert opinions). These materials are critically analyzed to draw legal arguments and construct a structured understanding of the impact of the new health law on the legal position of professional health organizations.

### **4. Results**

#### **4.1. Legal Uncertainty and the Role of Professional Organizations**

This journal focuses on two important aspects closely related to legal protection for the health profession, particularly for medical personnel, including doctors and dentists who provide services at BPJS partner hospitals. Namely, the regulation of professional organizations and the resolution of medical problems that can arise in the field. As is known, many cases have surfaced on social media related to false claims, handling of hospital emergency rooms according to emergency criteria, rigid referral systems, and administrative pressure on medical personnel become threats and legal burdens for medical personnel as the spearhead of hospital servants to meet public expectations as JKN users and BPJS Health dues payers (Matsoso & Fryatt, 2013). Public ignorance about BPJS regulations is due to a lack of socialization.

The repeal of several laws related to the health profession, including Law Number 29/2004 on Medical Practice, has sparked pros and cons (Khalid et al., 2024). The

positive conclusion is that the repeal of these laws can simplify regulations, as Law Number 17 of 2023 aims to simplify health regulations by repealing several old laws that are considered overlapping. However, it raises concerns that the new law may overlook important details and could potentially create new problems. Regarding professional organizations, the latest Health Law does not specify the requirement to establish professional organizations for health and medical personnel, the number required for each type of profession, or the process for their formation. According to the latest Health Law, Article 311 regulates the formation of professional organizations by health and medical personnel, subject to applicable laws and regulations. Based on Article 311 paragraph (1) of the latest Health Law, the formation of professional organisations uses the word “may”, which indicates that health and medical personnel are not required to form professional organisations. Article 311 also does not specify the number of professional organizations that can be formed for each health and medical personnel so that the number may vary from 0 (zero) to more than 1 (one). For the laws and regulations referred to by Article 311 paragraph (2), this research has not found implementing regulations related to the formation of professional organizations.

This research has also not found it in the latest Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation. The Health Law no longer states that health and medical workers are required to form a professional organization as previously regulated in the Health Workers Law. This raises concerns about the loss of the role of professional organizations in regulating the competency standards, ethics and morals of health workers and the tendency to decrease legal protection for health professionals by each professional organization. On the other hand, it facilitates the granting of practice licenses and the elimination of membership dues. The revocation of each profession's law may lead to a legal vacuum in some of the revoked profession's legal arrangements that are not regulated in the Health Law. Each profession has its own needs and this requires readjustment to the provisions in the Health Law. The omission of professional organizations in the latest Health Law that were previously mentioned in the Midwifery Law, Health Personnel Law, Nursing Law, and Medical Practice Law provides a legal vacuum for which professional organizations are recognized and how many professional organizations are needed in each type of health and medical personnel (Government of Indonesia, 2019).

#### **4.2. Restorative Justice and Medical Dispute Resolution**

Regarding medical dispute resolution, it was found that the Health Law prioritizes alternative methods, emphasizing restorative justice. Restorative justice is a method of resolving disputes outside the court, through mediation efforts that involve all parties to the dispute. Mediation, which is stipulated in the Health Law, is favored because it allows the disputing parties to resolve the issue amicably and under their wishes. However, if mediation is unsuccessful, litigation (court) may be the last option to reach a legally binding settlement. This has created pros and cons due to its protection mechanism that seems to give health and medical workers immunity from investigation and is prone to politicization. Dispute resolution provides a communication space between medical personnel and patients, allowing them to understand the limitations of doctors and shift the paradigm of healthcare into a shared responsibility between doctors and patients. Where patients have a role in taking responsibility for their health, per the principles of Article 4 of the Health Law. By still paying attention to the rights and obligations of patients as consumers and doctors or health service providers as business actors according to Law Number 8 of 1999 concerning Consumer Protection (Government of Indonesia, 1981).

In the new mechanism, it can be seen that the Health Law protects the medical and health professions from being subject to dispute resolution mechanisms in court. The Health Law prioritizes alternative dispute resolution and restorative justice in

enforcing violations of professional discipline. This allows health and medical personnel to be protected in performing their duties because health and medical work is done to the best of their ability with results that may not always be successful. However, it can be seen in this new mechanism that the panel's recommendation is required for whether or not an investigation can be carried out by Civil Servant Investigators or investigators of the Indonesian National Police as stipulated in Article 308 paragraph (5) of the Health Law. Based on Article 109 of the Criminal Procedure Code, the termination of an investigation is the authority of the investigator on the grounds that there is insufficient evidence or the event turns out not to be a criminal offense or the investigation is terminated for the sake of law. The Panel as in the Health Law is not authorized to provide recommendations to determine whether health or medical personnel can be examined for the investigation stage or not, especially if there are indications of criminal acts, especially with ordinary offenses (Putri & Murdi, 2019).

If the provision of recommendations is a condition for conducting an investigation and to protect health and medical personnel from criminal charges, then this needs to be reviewed. Although the legal protection of health and medical personnel is one of the urgent needs of practitioners from time to time, this recommendation policy has the potential to violate Article 28D, paragraph (1), of the 1945 Constitution. This article states that everyone is entitled to equal treatment before the law. The existence of recommendations as a condition for investigation by the assembly for health and medical personnel will result in health and medical personnel being treated unequally before the law and being differentiated from the investigation process in general (Situngkir et al., 2024).

## 5. Discussion

The enactment of Law Number 17 of 2023 on Health has introduced significant changes to Indonesia's health governance, particularly for medical personnel in BPJS-affiliated hospitals, but it has also sparked legal, ethical, and structural challenges (Setiadi et al., 2023). The repeal of prior laws, such as Law Number 29 of 2004 on Medical Practice and Law Number 36 of 2014 on Health Workers, aimed to streamline regulations but has created ambiguity, especially concerning the role of professional organizations (Government of Indonesia, 2014). Article 311 of the law uses non-mandatory language, stating that medical personnel "may" form professional organizations, without specifying their number or legal standing. This vagueness contrasts with the previously clear mandates for organizations like the Indonesian Doctors Association (*Ikatan Dokter Indonesia/IDI*), which played critical roles in setting ethical standards and overseeing licensure.

According to Joob and Wiwanitkit (2020), similar challenges in Thailand's health system highlight the risks of weakened professional oversight, where unclear regulations led to inconsistent ethical enforcement among medical practitioners. In contrast, international guidelines, such as those from the World Medical Association (WMA), emphasize the importance of strong, autonomous professional bodies in maintaining standards and protecting practitioners from undue legal risks. The absence of detailed provisions in Law Number 17 of 2023 risks diluting professional governance, leaving medical personnel vulnerable to ethical and legal disputes in high-pressure environments, such as BPJS hospitals.

The shift toward restorative justice in dispute resolution, as outlined in Article 308 paragraph (5), prioritises mediation over litigation to reduce the criminalisation of medical decisions. However, this mechanism introduces procedural concerns, as it requires a panel's recommendation before law enforcement can investigate, diverging from the Criminal Procedure Code (*Kitab Undang-undang Hukum Acara Pidana/KUHAP*). Xing et al. (2020) note that in China, similar restorative justice approaches in healthcare disputes have faced criticism for creating perceptions of

bias, as panels often favour medical professionals, undermining public trust. This raises questions about compliance with Article 28D (1) of the 1945 Constitution, which guarantees equality before the law. Furthermore, compared to the United Kingdom's National Health Service (NHS) framework, which provides clear procedural guidelines for investigations and balances practitioner protection with public accountability, Indonesia's approach lacks specificity in implementation. The lack of detailed implementing regulations exacerbates this issue, leaving medical personnel uncertain about how disputes will be resolved in practice, particularly when navigating BPJS regulations.

The administrative burdens imposed by BPJS Health, coupled with the ambiguous emergency care criteria outlined in Minister of Health Regulation Number 47/2018 and Presidential Regulation Number 82 of 2018, continue to create ethical dilemmas. Misaligned patient expectations and rigid BPJS policies often lead to accusations of negligence or fictitious claims, as seen in the Tegal hospitals case involving Rp 4.8 billion. Afrilies and Naili (2023) argue that inadequate socialization of BPJS rules exacerbates these tensions, a problem also observed in South Africa's National Health Insurance system, where poor communication of coverage criteria led to disputes between providers and patients. The absence of robust legal safeguards in Law Number 17 of 2023 fails to address these practical challenges, leaving medical personnel exposed to legal risks despite adherence to protocols. A critical gap lies in the law's failure to establish clear mechanisms for educating the public on BPJS criteria or supporting hospitals in managing administrative compliance, unlike Singapore's MediShield Life, which integrates public education campaigns to align expectations.

## **6. Conclusion**

This study finds that legal protection for the health profession, particularly medical personnel such as doctors and dentists, remains a crucial issue amid shifting legal frameworks. The enactment of Law Number 17 of 2023 on Health, while intended to consolidate and streamline health-related legislation, has unintentionally created a legal vacuum by repealing prior laws specific to each health profession, such as the Medical Practice Law and Nursing Law. Although the Health Law provides a broad foundation for regulating medical practice and dispute resolution, the absence of detailed provisions on professional organizations and procedural protections poses significant implementation challenges. Moreover, the tension between administrative compliance under BPJS Health and ethical obligations to patients frequently places medical personnel at risk of discrimination, legal threats, and professional burnout.

Practically, the findings imply that a clear legal structure is essential to protect both medical personnel and patient rights. Theoretically, this study underscores the importance of aligning statutory reform with professional autonomy and legal certainty. Ensuring that dispute resolution mechanisms do not violate constitutional rights such as the principle of equality before the law must be a central concern in health policy-making. However, this study is limited by its normative focus and reliance on secondary sources, which may not fully capture the real-world complexity of implementing the Health Law. Future research should incorporate empirical data from medical professionals, patients, and regulators to evaluate how legal uncertainties affect service delivery and professional security in practice. Further doctrinal and comparative legal analysis is also recommended to assess how other jurisdictions balance centralized regulation with professional autonomy in the health sector.

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### ***Data Disclosure Statement***

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



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