

# Transformation of Health Law in Indonesia After Law No. 17 of 2023: A Qualitative Study of the Protection of Patients' Rights and Responsibilities of Medical Personnel

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**Abstract** - This article discusses the implementation of Law No. 17 of 2023 on Health in Indonesia by highlighting aspects of patient rights protection and professional responsibility of medical personnel within the framework of restorative justice. Using a qualitative approach through exploratory case studies, data were obtained from document studies and semi-structured interviews with doctors, nurses, and health officials in three provinces. The results revealed that there was limited understanding of patient rights and the substance of restorative justice, non-uniform implementation of regulations across regions, and weaknesses in internal mediation procedures in many health facilities. In addition, there is unequal access to legal information and blurred lines of responsibility between service providers and financing institutions such as BPJS. This study concludes that the success of health law reform is not only determined by progressive regulations, but also by institutional readiness, central-local policy harmonization, and the participation of professional organizations. The findings provide theoretical contributions in strengthening restorative justice discourse in health law, as well as practical and managerial implications for the government, healthcare institutions, and medical professional actors.

**Keywords:** Health law, Law No. 17 of 2023, restorative justice, patient rights, medical liability

## I. INTRODUCTION

Health law is a branch of law that is growing rapidly along with the complexity of medical services and increasing public awareness of health rights (B. Budiarsih, 2021b; B. Budiarsih & Sushanty, 2024; Machrus & Budiarsih, 2016). In the Indonesian context, health is not only seen as a basic need, but also as a constitutional right guaranteed in Article 28H paragraph (1) and Article 34 paragraph (3) of the 1945 Constitution. Therefore, the state has an obligation to provide a legal system that is able to protect patient rights and ensure the accountability of medical personnel in their practice (Is, 2015; WHO, 2023).

The development of health law in Indonesia underwent a significant transformation with the enactment of Law No. 17 of 2023 on Health. This law replaces Law No. 36 of 2009 and carries an *omnibus law* approach that brings together various sectoral regulations. One important aspect of this law is the strengthening of medical dispute resolution mechanisms through non-litigation channels, as stipulated in Article 310, which emphasizes restorative justice as the main approach (Situmorang, 2023).

However, the implementation of the legal norms in Law 17/2023 still faces serious challenges. A study by The Indonesian Institute (2023) shows that meaningful participation from professional organizations and civil society in the legislative process has not been optimal. In addition, the lack of a mediation institution mandated by the law has created an institutional vacuum in medical dispute resolution.

The health law literature in Indonesia is generally normative in nature and has not examined many empirical aspects of the implementation of this new regulation. Some previous studies (Tallupadang et al., 2023; Rifki, 2025) have highlighted aspects of legal protection for medical personnel and patients in the context of malpractice, but have not directly linked it to the dynamics of post-reform health regulation (Simangunsong & Budiarsih, 2023; Vitrianingsih & Budiarsih, 2019).

Thus, this study is important to fill the gap in the literature and provide a more comprehensive understanding of how Law 17/2023 is implemented in the field, especially in terms of protecting patients' rights and professional responsibilities of medical personnel.

Based on this background, this study is designed to answer two main questions: (1) How is the implementation of patient rights protection within the framework of Law No. 17/2023? and (2) What are the

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legal challenges faced by medical personnel in carrying out their professional responsibilities under the new legal regime?

These questions are not only descriptive, but also analytical, as they aim to uncover the relationship between legal norms and practices in the field. Thus, this research is expected to contribute to the development of a more contextual and applicable health law theory.

Most health law studies in Indonesia still focus on the normative-dogmatic approach, which examines the text of the law without linking it to the reality of implementation. This leads to a lack of understanding of the effectiveness of regulations in complex social and institutional contexts.

In addition, not many studies have specifically examined the impact of Law 17/2023 on the legal relationship between patients and medical personnel, especially in the context of restorative justice-based dispute resolution. In fact, this approach is one of the important innovations in the law and has the potential to change the paradigm of medical conflict resolution in Indonesia.

This research offers novelty in two main aspects. First, the qualitative approach used allows for an in-depth exploration of the perceptions and experiences of key actors in the health system, such as doctors, nurses and health department officials. This provides an empirical dimension that has so far received little attention in health law studies.

Second, the focus on restorative justice as a medical dispute resolution mechanism is a significant theoretical contribution. This approach has not been widely discussed in Indonesian legal literature, even though it has great potential to create a dispute resolution system that is more humane, efficient, and oriented towards restoring social relations between patients and medical personnel.

## II. METHODS

This research uses a qualitative approach with an exploratory case study design to deeply understand the dynamics of the implementation of Law No. 17 of 2023 on Health. This approach was chosen because it is able to capture the complexity of interactions between legal norms, institutional actors, and social practices in the context of health services. As emphasized by Irianto (2017), a qualitative approach in legal studies allows researchers to explore the meaning of *living law* through social interpretation and empirical experiences of legal actors. Thus, this research not only examines the normative legal text, but also examines how the law is internalized and implemented in daily medical practice.

Data collection was conducted through two main techniques: document study and semi-structured interviews. The document study included an analysis of Law No. 17 Year 2023, its implementing regulations, as well as the ethical guidelines of the medical profession. Interviews were conducted with ten key informants consisting of doctors, nurses, Health Office officials, and administrators of medical professional organizations in three provinces (West Java, East Java, and South Sulawesi). The selection of informants was done purposively by considering their direct involvement in health policy implementation. Source and method triangulation techniques were used to increase data validity, while a *member checking* process was conducted to ensure the accuracy of researchers' interpretations of informants' narratives.

Data analysis was conducted using a *thematic coding* approach using Strauss and Corbin's (1998) grounded theory framework, which allows researchers to identify patterns, categories and relationships between themes inductively. The analysis process began at the data collection stage through *open coding* techniques, continued with *axial coding* to connect categories, and ended with *selective coding* to formulate theoretical propositions. This approach allows the researcher to build a contextualized and theoretical understanding of how health law norms are translated into practice, as well as identify factors that influence the effectiveness of their implementation. Thus, the results of this study are expected to contribute to the development of practice-based health law theory and enrich the discourse of socio-legal studies in Indonesia.

## III. RESULTS AND DISCUSSION

### Understanding of Patient Rights is Still Fragmented

The results showed that medical personnel's understanding of patient rights as stipulated in Article 276 of Law No. 17 of 2023 is still partial. Most informants only recognize basic rights such as the right to information and *informed consent*, but do not understand new rights such as access to medical records and non-litigative dispute resolution. This is in line with the findings of The Indonesian Institute (2023), which showed low internalization of normative aspects of health law in the field.

This limitation is exacerbated by the lack of health law training, especially in primary care. As stated by RRI (2024), an understanding of rights and obligations is a prerequisite for equal service between patients and health workers. Without a thorough understanding, the potential for legal conflict between patients and medical institutions remains high.

### Restorative Justice: An Innovation that Has Not Been Implemented Optimally

Article 310 of Law No. 17 Year 2023 introduces the principle of restorative justice as a medical dispute resolution mechanism. Unfortunately, most informants admitted that they did not understand this concept concretely. In fact, this approach is considered capable of reducing the burden of litigation and restoring relations between patients and medical personnel (Japar, Sari, & Wulandari, 2024).

The main obstacle lies in the absence of an internal mediation institution in the hospital and the absence of technical guidelines from the Ministry of Health. A study by Intania (2023) also confirmed that institutional unpreparedness is a major barrier in the transition to a restorative-based conflict resolution model.

### **Professional Responsibility under Systemic Pressure**

Some nurse informants reported that they perform medical actions without written delegation due to the absence of the duty doctor, especially at night or in limited facilities (Budiarsih, 2021a; Putri & Budiarsih, 2023; Simangunsong & Budiarsih, 2023). This practice violates the principle of professional delegation and could potentially be categorized as malpractice. This affirms Tallupadang, Indrayati, and Widyarto's (2023) findings that legal procedures are often not in line with operational conditions in the field.

Although Law No. 17 of 2023 guarantees legal protection as long as actions are performed according to professional standards, the line between "professionalism" and "negligence" is often blurred in the context of an unequal health system (Rifki, 2025). System reforms will only be effective if they are supported by adequate service structures.

### **Discrepancies between Central and Local Regulations**

Health offices in several regions revealed that they still refer to old regulations because they have not received socialization or implementation instructions from the Ministry of Health (B. Budiarsih, 2021a; Haryono & Budiarsih, 2024). As a result, the implementation of Law 17/2023 is not uniform nationwide. This is also evident in the gap in the implementation of the establishment of the Professional Disciplinary Council between provinces (Habibi, 2020).

This lack of synchronization creates legal uncertainty and confusion in the process of supervision and administrative sanctions. Harmonization of central and regional policies is needed to ensure the overall effectiveness of health law (Situmorang, 2023).

### **Lack of Participation of Professional Organizations**

Law 17/2023 was criticized by a number of professional organizations for its lack of involvement in policy formulation. The public hearing process conducted by the House of Representatives was considered only a formality without accommodating the substance of input from IDI, PPNI, and IBI (Intania, 2023).

This lack of involvement creates resistance to new provisions, especially the transfer of certification authority and ethical guidance that was originally in the hands of professional organizations. This has the potential to weaken the social legitimacy of the regulation and reduce the level of compliance of medical professionals (The Indonesian Institute, 2023).

### **Inequality in Access to Legal Information in Health Facilities**

The study found that type A and B hospitals have much better access to legal training and regulatory assistance than type C, D, or puskesmas hospitals. Small institutions rarely receive training related to changes in the substance of Law 17/2023 (Rifki, 2025).

This inequality creates the risk of inconsistent legal treatment across different health facilities. The government needs to ensure equal access to legal training so that all medical personnel are able to carry out their duties in accordance with the latest legal corridors (Kemenkes RI, 2023).

### **The Role of BPJS and the Complexity of Legal Liability**

Many medical disputes arising from the slow verification of BPJS are delegated to medical personnel by patients, even though they are not directly responsible parties. This situation reflects the blurred lines of legal responsibility between service providers and insurance funders (Unilak, 2020).

Law No. 17 of 2023 does not provide detailed arrangements regarding this division of responsibilities. As a result, dispute resolution involving BPJS is still stuck in a legal loophole. This requires implementing regulations that clarify the lines of responsibility between actors in the national health insurance system (Situmorang, 2023).

### **Need for Standardization of Internal Mediation Procedures**

Almost all informants admitted that there is no standardized SOP related to the handling of patient complaints and internal mediation mechanisms. In fact, Law 17/2023 requires hospitals to provide access to non-litigative dispute resolution (MOH RI, 2023).

The absence of these procedures makes conflict handling dependent on management improvisation, which is often not transparent. As suggested by Japar et al. (2024), standardization of the mediation process is necessary to ensure procedural fairness and protection of the rights of all parties in medical dispute resolution.

#### **Patient Perspective: Aspiration for Fairness and Transparency**

Two patient informants stated that they wanted a quick and fair dispute resolution, without having to go through the laborious and costly legal process. They also demanded honest communication and apologies as a form of acknowledgment and empathy (B. Budiarsih, 2021a; S. H. Budiarsih, 2021; Haryono & Budiarsih, 2024; Puspita & Budiarsih, 2022; Saidi, 2013).

This reflects the importance of building a culture of dialogue-based care and restorative justice. Patients do not necessarily seek punishment, but rather recognition that they have been treated unfairly (Japar et al., 2024; WHO, 2023). Therefore, it is important to establish dispute resolution mechanisms that are more humane and participatory.

#### **Implications for Health Law System Reform**

Law No. 17 Year 2023 is an important step in health law reform in Indonesia. However, the results of this study show that textual changes in regulations have not been accompanied by structural readiness and institutional culture at the implementing level. Without institutional transformation, legal reform risks becoming merely symbolic (Tallupadang et al., 2023).

For this reason, a holistic approach is needed, which includes strengthening institutional capacity, harmonizing regulations, increasing legal literacy for medical personnel, and involving professional organizations and civil society in monitoring the implementation of the law. Only then can the ideals of a fair, participatory, and socially just health legal system be realized (WHO, 2023; The Indonesian Institute, 2023).

### **IV. CONCLUSIONS**

This study shows that Law No. 17 of 2023 on Health is an important milestone in health law reform in Indonesia, particularly in strengthening the protection of patients' rights and clarifying the responsibilities of medical personnel. However, field findings indicate that understanding of the substance of this new law is still limited, both among medical personnel and health service institutions. The gap between legal norms and implementative practices is a major challenge that needs to be addressed immediately so that regulatory objectives can be achieved effectively.

Theoretically, this research enriches the health law discourse by emphasizing the importance of the restorative justice approach in medical dispute resolution. This approach is not only normatively relevant, but also contextual to the needs of a society that wants a fair, fast, and impartial settlement. In addition, the use of qualitative methods based on grounded theory provides a methodological contribution to legal studies that have been dominated by a normative-dogmatic approach.

From a practical perspective, the results of this study emphasize the need for regular health law training for medical personnel, especially in first-level health facilities and remote areas. In addition, standardization of internal mediation procedures in hospitals is needed as a concrete form of restorative justice implementation. The government also needs to accelerate the preparation of implementing regulations and technical guidelines to avoid a legal vacuum at the operational level.

The managerial implications of this research include the importance of harmonizing regulations between the central and regional levels, strengthening coordination across sectors (health, law, and insurance), and involving professional organizations meaningfully in the legislative process and policy implementation. Without strong institutional support and participation of key actors, health law reform risks becoming merely symbolic. Therefore, a collective commitment is needed to make Law 17/2023 an instrument of health system transformation that is equitable, inclusive, and sustainable.

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