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Updates to the Assembly's Recommendation Mechanism in Article 308 of Law Number 17 of 2023 concerning Health to Prevent Premature Investigations of Medical Personnel

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Abstract: Article 308 of Law Number 17 of 2023 concerning Health regulates the mechanism for recommendations from the panel prior to an investigation into medical personnel or health workers suspected of committing legal violations in the provision of health services. However, in practice, there are legal gaps, including unclear criteria for the panel in issuing recommendations, undefined professional standards, and consequences if the panel neglects or delays its recommendations. This gap has the potential to lead to premature investigations that can be detrimental to medical personnel. This study aims to analyze this legal gap and formulate proposals for reforming the panel's recommendation mechanism to make it clearer, more objective, and more effective in providing legal protection for medical personnel. The research method uses a normative-juridical approach, with an analysis of laws and regulations, legal doctrine, and case studies related to investigations of health workers. The results of this study are expected to form the basis for legal reform that guarantees legal certainty, transparency, and protection for the professional practices of medical personnel in the context of safe and responsible health services.

Keywords: Law Number 17 of 2023 concerning Health, Recommendations of the Assembly, Medical Personnel

INTRODUCTION

Article 308 of Law Number 17 of 2023 concerning Health introduces new regulations that substantially shift the paradigm of legal protection for medical personnel and healthcare workers (Satria, 2024). This provision stipulates that any alleged violation of the law by medical personnel in the provision of healthcare services cannot be directly investigated by law enforcement officials without first obtaining a recommendation from the Professional Disciplinary Council (Iskandar, 2024). This provision represents a legal innovation that seeks to balance the rights of medical personnel to legal protection and the state's obligation to ensure the accountability of healthcare services to the public (Nurnaeni, 2024). This formulation emphasizes that investigations of medical personnel must not be arbitrary or

premature without professional consideration from a competent institution to assess aspects of professional discipline (Kastury, 2024).

This normative change stems from several legal incidents that demonstrate the continued weakness of medical personnel in criminal proceedings. Many cases demonstrate that medical personnel are often named as suspects or defendants before an objective assessment of whether their actions constitute ethical or professional misconduct (Chazawi, 2022). This situation raises concerns among healthcare professionals due to the risk of criminalization of medical actions actually performed according to professional standards. This situation not only impacts the courage of medical personnel in carrying out their duties but can also reduce the quality of healthcare services, as they tend to adopt a defensive stance to avoid legal risks. Article 308 addresses this gap by prioritizing professional mechanisms before legal proceedings are initiated.

The implementation of this provision still leaves serious problems, particularly related to legal gaps that have not been addressed by implementing regulations. Unclear provisions regarding the panel's working procedures, recommendation criteria, and examination timeframes present a critical issue in the implementation of this norm. When the panel lacks standard guidelines for assessing whether an action meets the elements of a disciplinary violation, its recommendations are potentially inconsistent across cases. The lack of a timeframe can also delay the recommendation process, ultimately slowing law enforcement and creating uncertainty for both medical personnel and victims (Lakoro, 2025). This demonstrates that the substantive norms in Article 308 need to be balanced with measurable and evaluable technical mechanisms.

Another aspect complicating the implementation of Article 308 is the potential for conflicts of interest within the panel structure, drawing from professional elements. When panel members come from the same professional organization as the medical personnel being examined, concerns arise regarding the independence and objectivity of the recommendation-making process. These concerns relate not only to personal integrity but also to an institutional structure that does not fully guarantee the separation of disciplinary enforcement functions from the corporate interests of the profession. In such circumstances, substantive justice, the primary goal of norm formation, can be eroded by group interests. Legal protection for medical personnel must be established without sacrificing the principle of justice for the community and patients who may be victims of medical negligence (Mangkey, 2014).

The absence of clear derivative norms has resulted in various interpretations in practice, particularly during the investigation stage. Law enforcement officials face a dilemma between the obligation to uphold the law and the obligation to await the panel's recommendations. As a result, investigations are sometimes conducted before the recommendations are issued, creating legal uncertainty. Medical personnel are vulnerable to premature investigations, while law enforcement officers risk criticism for violating statutory procedures (Koto, 2021). This concern highlights the disparity between the law's normative intent and the legal system's ability to implement it effectively.

Efforts to reform the panel's recommendation mechanism are needed to strengthen the legal structure governing the relationship between the medical profession and law enforcement officers. The ultimate goal is not only to provide protection for medical personnel but also to uphold the rule of law, which guarantees justice for all parties (Sulolipu, 2019). This reform must address the principles of procedural clarity, time limits, and transparency in decision-making so that all parties involved understand their rights and obligations. Good legal norms not only contain the substance of justice but also can be applied consistently in various situations without creating interpretive confusion (Purbowati, 2024). The integration of normative and technical aspects is key to ensuring that Article 308

functions effectively as a legal instrument that protects the medical profession while guaranteeing the public's right to justice.

The idea of legal protection stems from the views of progressive legal experts such as Satjipto Rahardjo and Philipus M. Hadjon, who emphasize that the law must be present to protect basic human rights from arbitrary action (Siregar, 2024). In the professional context, legal protection means not only granting freedom of action but also creating a system that ensures that every professional action is judged fairly based on objective standards (Widjaja, 2025). Medical personnel, as a profession with high social responsibility and significant risks, require legal protection commensurate with the potential dangers faced in carrying out their duties (Satriawan, 2024). Such protection must include preventative mechanisms to prevent legal proceedings from being initiated before a valid professional judgment is issued.

The concept of procedural justice is a crucial pillar in assessing whether a law enforcement process can be considered fair (Adam, 2025). Justice is measured not only by the final outcome, but also by the process undertaken to achieve it (Assauri, 2025). In the context of investigations into medical personnel, procedural justice requires that every investigative action be conducted through legal, transparent procedures that respect the rights of those being investigated (Fauzi, 2025). This principle aligns with the principle of due process of law recognized in modern legal systems, which states that no person may be subject to legal action without following the procedures established by law (Fernando, 2021). The panel's recommendations, as stipulated in Article 308, are part of this due process mechanism.

The principle of legal protection affirms that the state has an obligation to guarantee legal security for every citizen, including those in high-risk professions. In the case of medical personnel, legal protection is not merely a privilege but a structural necessity for maintaining professional healthcare services (Fibrini, 2024). If medical personnel feel unprotected, psychological effects can arise, such as a fear of making quick medical decisions, even though such decisions are often necessary to save patients' lives. Legal protection through the panel mechanism provides a balance between the profession's moral responsibility and the legal guarantees provided by the state.

Accountability in the health profession implies that every medical professional must be accountable for their professional actions to society, the state, and their own profession. Accountability encompasses not only ethical aspects but also disciplinary and legal ones. In practice, these three aspects often overlap, particularly when a medical action is legally challenged (Sijabat, 2025). The lack of a clear line between ethical violations, disciplinary violations, and criminal acts can create confusion in the law enforcement process. Therefore, accountability theory serves as an important foundation for assessing the extent to which the legal system is able to differentiate and proportionately assign responsibility to medical personnel.

The relationship between ethical and disciplinary responsibilities and criminal law must be maintained to prevent criminalization of professional actions carried out in good faith. A botched medical procedure is not always a crime; failure can arise from the inherent medical risks of the profession (Pujiyono, 2023). Without a proper understanding of the boundaries between professional negligence and criminal negligence, law enforcement officials may conduct investigations before ethical and disciplinary mechanisms have been completely implemented. It is contrary to the principle of accountability, which demands that assessment be based on professional competence first. The disciplinary panel serves to enforce internal accountability, while criminal law is the instrument of last resort if there is evidence of misconduct that exceeds ethical and disciplinary boundaries.

The legal framework that underpins this research centers on Article 308 of Law Number 17 of 2023 concerning Health. This article is a legal breakthrough that emphasizes the need

for a panel recommendation before an investigation into medical personnel is carried out. This norm is closely related to Article 304, Article 305, and Article 312, which regulate the formation, duties, and authority of the Professional Disciplinary Council and the Honorary Council. The relationship between these articles shows the existence of a layered legal structure, where the enforcement of professional discipline is an integral part of the national health law system. Each layer has a distinct function, but all are aimed at creating a balance between professional protection and the public legal interest.

The relationship between the law and its implementing regulations is further clarified through the Minister of Health Regulation Number 3 of 2025 concerning the Enforcement of Professional Discipline for Medical and Health Workers, which serves as an operational guideline for the council in providing recommendations. This regulation serves as the technical implementation of the mandate of Article 308 and elucidates the working relationship between the Indonesian Health Workers Council and professional organizations. Furthermore, the legal basis for the Council's institutional structure is regulated in Presidential Regulation Number 90 of 2017 concerning the Indonesian Health Workers Council, which has been adjusted through Presidential Regulation Number 86 of 2019. All of these legal instruments form a complementary legal framework, although in practice, they still require harmonization to prevent overlapping authority.

This legal framework demonstrates that the Indonesian health professional disciplinary system is still in the transition phase toward a more structured and accountable model. Each regulation contributes differently, but alignment between them has not yet been achieved entirely. The biggest challenge lies in the consistent application of norms in practice, particularly when dealing with the general criminal law system as stipulated in the Criminal Procedure Code. Without an obvious and coordinated mechanism, the goal of Article 308 to prevent premature investigations will be difficult to achieve. Progressive legal norms will lose their effectiveness if they are not accompanied by a clear and accountable implementation system.

METHOD

This study uses a normative juridical method with a statutory and conceptual approach. The statutory approach is used to examine positive legal norms governing the responsibilities and legal protection for medical personnel as stipulated in Article 308 of the Health Law, as well as their relationship with other regulations such as the Criminal Procedure Code, the Medical Practice Law, and Minister of Health Regulation No. 3 of 2025. Through this approach, the research focuses on the consistency, hierarchy, and harmonization between regulations within the national health legal system. Meanwhile, a conceptual approach is used to understand the relevant legal principles, theories, and doctrines in interpreting the scope of legal protection for medical personnel, including the concept of professional responsibility, the principle of due process of law, and the principle of prudence in law enforcement. This approach provides a theoretical basis for assessing the extent to which existing legal policies have fulfilled the principles of justice and legal certainty. Research data were obtained through a literature review of various primary, secondary, and tertiary legal sources, such as laws, implementing regulations, academic literature, and previous research results. All data were analyzed qualitatively with an emphasis on legal interpretation, normative arguments, and the relevance between theory and practice in law enforcement against medical personnel in Indonesia.

RESULT AND DISCUSSION

Analysis of the Assembly's Recommendation Mechanism in Article 308 of Law No. 17 of 2023 concerning Health

Article 308 of Law Number 17 of 2023 concerning Health stipulates that investigations of medical and healthcare personnel may only be conducted after a recommendation from the Professional Disciplinary Council. This norm was enacted as an effort to provide proportional legal protection for medical personnel to prevent immediate criminalization for alleged professional misconduct before a professional review has been conducted. The legal subjects in this article are medical and healthcare personnel, while the object is investigations into alleged legal violations. The action regulated includes the obligation to obtain a recommendation from the council as a formal requirement before an investigation can be conducted. The limiting condition is if the alleged violation occurred while carrying out a professional health service task.

The primary significance of Article 308 lies in the council's role as an ethical and professional filter before a medical personnel case enters the realm of criminal law. This norm substantially emphasizes that professional aspects cannot be directly equated with legal errors. The examination by the council is intended to assess whether the alleged violation constitutes a disciplinary violation or meets the elements of a crime. This system embodies the spirit of due process of the profession, which allows for the assessment of expertise before law enforcement intervenes. Thus, these provisions serve as a preventative measure against premature investigations that could damage the reputation and fairness of medical personnel.

The procedure for issuing recommendations by the Professional Disciplinary Council, based on implementing regulations, is an integral part of the healthcare worker disciplinary enforcement mechanism. Ministerial Regulation No. 3 of 2025 provides guidelines that every report or alleged violation be first examined by the council to determine the level of culpability and its relationship to professional practice. This process involves verification, clarification, and examination of medical records and statements from relevant parties. The resulting recommendation is final within the ethical scope and serves as the basis for law enforcement officials to initiate or suspend an investigation. Its primary purpose is to ensure that legal action taken does not violate professional standards and the principle of prudence.

The Professional Disciplinary Council consists of representatives from professional organizations, council representatives, and government officials with expertise in the legal and healthcare fields. Under Ministerial Regulation No. 3 of 2025, the council is authorized to examine and decide on disciplinary violations, issue recommendations regarding alleged criminal acts committed by healthcare workers, and provide professional ethics guidance. The relationship between the Indonesian Healthcare Workers Council and professional organizations is key to maintaining the council's legitimacy. The Council acts as a coordinating body that validates the work of the panel and ensures uniform standards across professions. This structure is intended to prevent the dominance of one party and ensure professionalism in decision-making.

The panel's independence is crucial in exercising this authority. Membership drawn from diverse elements often creates the potential for conflicts of interest, especially if panel members are also active in professional organizations with interests in a particular case. Another risk that arises is bias against colleagues being examined. To maintain integrity, ideally, the panel should be semi-autonomous and subject to a strict internal code of ethics. The professionalism of its members needs to be maintained through regular training, term limits, and external oversight mechanisms to ensure that decisions are truly objective and free from interference.

A legal vacuum begins to emerge when Article 308 does not provide clear criteria regarding the basis or parameters for the panel's recommendations. It does not explicitly explain what standards are used to assess whether an act constitutes a disciplinary violation or a violation of the law. This ambiguity opens up room for subjectivity in decision-making. In some cases, the panel may refuse to issue recommendations without a measurable basis, creating legal uncertainty for the medical personnel being examined. This situation has the potential to prolong the legal process and exacerbate psychological stress for the parties involved.

Another problem arises from the lack of a time limit for the panel to issue recommendations. When the examination process drags on for too long, law enforcement officers cannot continue the investigation, while medical personnel are left in limbo without certainty about their legal status. This delay poses the risk of hampering the entire law enforcement process. Several reports indicate that the lack of clarity regarding time limits leads to differences in practice across regions and professions. Proportional time limits are crucial to ensure that the rights of victims and medical personnel are equally protected without creating an imbalance of justice.

Another identified weakness is the lack of sanctions against the panel for negligence, delay, or failure to provide recommendations. The Health Law and the Minister of Health Regulation do not yet regulate the panel's accountability mechanism for administrative negligence that harms the party being examined. Existing provisions focus solely on the substance of recommendations without addressing accountability for the process. This lack of sanctions creates a powerful panel with minimal oversight, potentially creating an imbalance of power within the healthcare profession's law enforcement system. This lack of institutional accountability can also undermine public trust in the professional disciplinary system.

The potential for overlap between disciplinary violations and criminal offenses is an unresolved legal issue. Many cases demonstrate that a single medical professional's actions can simultaneously involve ethical, administrative, and criminal aspects. Without clear guidelines, law enforcement officials can immediately process a case as a criminal offense while the panel is also conducting an ethics review. This situation risks indirect double jeopardy and disharmony between the criminal law system and the professional ethics system. A clear division of jurisdiction is needed to ensure that ethical violations are not automatically considered criminal offenses.

The impact of this legal vacuum is very real on the investigative practices of medical personnel in the field. Several cases have shown that investigators take legal action before the panel issues a recommendation, citing protection of the victim's interests or public pressure. This practice violates the spirit of Article 308 because it negates the panel's role as a professional filter. As a result, medical personnel face social pressure, loss of reputation, and disruption to their practice, even if the panel's recommendation later states there has been no disciplinary violation. This situation undermines the confidence of healthcare workers and creates fear in carrying out their duties.

The legal and social consequences of premature investigations impact not only individual healthcare workers but also the healthcare system as a whole. The reputation of healthcare institutions can be tarnished, relationships between patients and healthcare workers can become strained, and public trust in professional disciplinary mechanisms can decline. This decline in trust leads to a decline in the quality of care, as healthcare workers become reluctant to make risky medical decisions. The legal system, which is supposed to protect, can instead become an instrument of pressure if not balanced with clear procedural certainty. Improvements at the recommendation mechanism stage are an urgent need so that legal protection and a sense of justice are truly realized for all interested parties.

Discussion and Proposals for Renewal of the Assembly's Recommendation Mechanism

The reform of the panel's recommendation mechanism, as stipulated in Article 308 of Law Number 17 of 2023 concerning Health, must be based on the fundamental principles of modern law, namely legal certainty, transparency, accountability, independence, and proportionality. Legal certainty is a key pillar to ensure that every medical professional understands the procedures and limits of authority in ethical and legal review processes. Transparency is necessary to ensure the public understands the recommendation process without creating a closed perception of the healthcare profession. Accountability ensures the panel is responsible for every decision it makes, while independence protects the process from interference from external interests. The principle of proportionality serves to maintain a balance between protecting the medical profession and the victim's right to justice.

Protection of the profession should not be interpreted as a form of impunity, but rather as a means of ensuring objectivity in assessing alleged violations. Balancing the interests of medical professionals and victims is the essence of procedural justice. Rushing legal proceedings without waiting for the panel's recommendation will violate the medical professional's right to professional judgment, while excessive delays can harm victims seeking justice. A system that regulates time limits and the panel's work standards is needed to prevent the process from becoming a source of legal uncertainty. The reformed mechanism must ensure fair procedures for all parties without compromising the substance of legal protections.

The ideal recommendation mechanism design should begin with establishing a maximum time limit for the panel's review of reports. This time limit can be set proportionally, for example, between 14 and 30 working days from when the report is received in full. This provision is crucial so that law enforcement officials have a clear reference point for awaiting the results of the recommendations without having to interpret the length of the process themselves. Establishing a time limit also fosters administrative discipline within the panel and expedites case resolution. Implementing regulations can be outlined through a Ministerial Regulation of Health or council regulations, directly derived from the Health Law.

The assessment standards for issuing recommendations need to be based on an official national code of ethics and professional standards that apply across health disciplines. The Indonesian Health Workers Council plays a role in developing and periodically updating these standards to align with developments in modern medical science and practice. These standards will reduce subjectivity in assessments and strengthen the legitimacy of the panel's recommendations. Alignment between professional codes of ethics and legal norms is an important requirement so that recommendations not only have a moral dimension but also have legal force that can be recognized in the investigation process. Strengthening council regulations is one concrete form of vertical harmonization between professional legal instruments.

High-urgency cases, such as allegations of fatal malpractice or serious ethical violations, can be resolved through a fast-track mechanism. This scheme allows the panel to conduct a rapid initial examination to determine whether the alleged violation is worthy of proceeding to the formal recommendation stage. This mechanism aims to prevent stagnation in examinations, especially in cases with widespread social impact. The expedited procedure must still ensure the principles of prudence and fairness by involving independent experts as technical verifiers. The existence of a fast-track mechanism can reduce public pressure and ensure law enforcement officials do not overstep established ethical procedures.

Digitizing the recommendation process is a strategic step to increase the panel's efficiency and transparency. Implementing an online reporting system allows for real-time case submission, status monitoring, and communication between parties. Digitization also

prevents data concealment or document manipulation during the examination process. The Ministry of Health can develop a national portal that integrates the disciplinary panel with the council and law enforcement agencies, so that every recommendation is recorded electronically. This step not only expedites the process but also strengthens public accountability to the health professions' recommendation system.

Strengthening the panel's accountability requires an independent oversight structure. The establishment of a Supervisory Board under the Ministry of Health or an institution like the Ombudsman could be a solution to oversee the assembly's performance without compromising its autonomy. This supervisory body would have the authority to investigate allegations of ethical violations by the assembly, delays in proceedings, or administrative negligence. The existence of an external oversight mechanism provides assurance to the public that the assembly's decisions can be tested from a procedural perspective without interfering with their ethical substance. This system strengthens the principle of checks and balances in the governance of enforcing discipline in the health profession.

The publication of the results of the panel's decisions in a concise and anonymous manner is a form of healthy transparency in the health legal system. The information provided does not need to contain personal identification, but simply explains the type of violation, the norms violated, and the sanctions or recommendations imposed. This publication serves as a means of public education and a reminder for healthcare workers to maintain professional standards. Such transparency can increase public trust in the profession's internal processes and reduce the risk of misleading rumors or speculation. Similar practices have been implemented in various countries as part of open governance in the healthcare sector.

Harmonizing the recommendation mechanism with other legal systems is the next stage of the proposed reforms. Integration with the Criminal Procedure Code (KUHAP), particularly Article 1, number 2, and Article 7, is important so that investigators have clear legal guidance on when investigations can begin after recommendations are issued. This alignment will prevent ambiguity between criminal procedure law and healthcare law. Law enforcement officials need to understand that the panel's recommendations are part of due process, not an obstacle to investigations, but rather a legal prerequisite that must be met.

The link between Article 308 and Law Number 29 of 2004 concerning Medical Practice, as amended by Law Number 17 of 2023, demonstrates the need for consistent norms across legal instruments. Articles relating to the implementation of professional discipline and the authority of the Indonesian Medical Council must be synchronized to avoid overlap with the new recommendation system. Furthermore, the administrative objection mechanism can refer to Law Number 30 of 2014 concerning State Administration, so that medical personnel dissatisfied with the council's recommendations have a clear legal path without having to go directly to court. This integration between legal systems will create a transparent, responsive, and equitable professional discipline ecosystem.

A comprehensive update to the council's recommendation mechanism is a strategic step to rebalance the balance between professional protection and the public interest. The draft policy resulting from this reform is expected to close the existing legal gap and strengthen the role of Article 308 as a preventative instrument against the criminalization of medical personnel. A modern, scalable, and integrated recommendation system will create stronger legal trust in the healthcare sector. Transparent and accountable enforcement of professional discipline not only protects medical personnel but also strengthens the assurance of quality health services for the wider community.

CONCLUSION

Article 308 of the Health Law represents a progressive step in providing legal protection for medical and healthcare personnel from potential criminalization in the performance of their professional duties. However, in practice, there is still a gap in norms that has the potential to cause legal uncertainty, particularly regarding investigations carried out without waiting for the results of the disciplinary panel's recommendations. This legal loophole raises the risk of premature investigations, which could undermine the principle of due process of law and compromise the independence of the medical profession. Therefore, it is necessary to strengthen implementation norms that ensure that any legal action against medical personnel is carried out proportionally, transparently, and in accordance with fair legal procedures. Furthermore, the recommendation mechanism by the disciplinary panel requires clarity in technical aspects, such as the deadline for issuing recommendations, the standards for assessing disciplinary violations, and an external oversight system to ensure that the resulting decisions maintain legal legitimacy and accountability.

To strengthen the effectiveness and fairness of the implementation of Article 308, regulatory updates are needed in the form of revisions or additions to the Minister of Health Regulation Number 3 of 2025. These updates should set a definite deadline for the panel to provide recommendations, as well as administrative sanctions for delays or abuse of authority. The independence of the disciplinary panel also needs to be strengthened through an open recruitment mechanism involving non-professional elements such as academics and community representatives to avoid conflicts of interest. Furthermore, harmonization of regulations between the Health Law, the Criminal Procedure Code, and medical professional regulations is absolutely necessary so that investigations of medical personnel can only be conducted after a legally valid recommendation from the panel. This step will ensure legal certainty, protect the dignity of the profession, and increase public trust in the health law enforcement system.

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