

Juridical Analysis of Legal Protection for Doctors Who Become Victims of Persecution While Providing Health Services in Indonesia According to Law No. 17 Of 2023 (Health Law 2023)

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Abstract

The aim of this research is to obtain a juridical analysis of legal protection for doctors who experience abuse while providing health services in Indonesia according to Law no. 17 of 2023. This research method uses normative legal research, related to regulations and academic literature to examine the law as an applicable norm or rule and its implications in providing legal protection for doctors who experience abuse when providing health services in Indonesia. This analysis shows that Law no. 17 of 2023 includes a fairly comprehensive legal framework regarding legal protection for doctors who experience abuse while providing health services in Indonesia. However, there are several challenges in its implementation. The maximum fine for the perpetrators of abuse against doctors according to the Criminal Code is quite little. The courts need to provide harsher laws for perpetrators to provide a deterrent effect and make other people who want to abuse doctors think twice before acting. This research provides important insights into current policies and practices in protecting doctors from abuse, as well as offering recommendations for the punishment for the perpetrators.

Keywords: Legal Protection for Doctors, Abuse, Defending Doctors

1. INTRODUCTION

Health service efforts, including medical services, are based on individual relationships between doctors and patients who need healing for the illnesses they suffer from. A doctor is a party who has expertise in the medical or medical field who is considered to have the ability and expertise to carry out medical procedures. Meanwhile, patients are sick people who entrust themselves to be treated by doctors. According to Health Law No. 17 of 2023, a patient is anyone who receives health services from medical personnel and/or health workers. This relationship between the doctor and the patient makes each party a legal subject who has a contractual relationship called a therapeutic agreement. If the health facility is a hospital, then the hospital, doctors and patients become three legal subjects related to the field of health care. A therapeutic agreement (therapeutic transaction) is an agreement between doctors and patients, in the form of a legal relationship that has consequences to rights and obligations for both. The object of therapeutic transaction object is not healing but the efforts of doctors in curing the patient. From the perspective of legal relationship, the relationship between doctor and patient, relationship between doctor and hospital, and relationship between patient and hospital, are relationships that mutually agree to bind themselves in achieving therapy, known as engagement (*verbinten*). This relationship is generally an endeavor engagement (*inspanningsverbinten*) which is defined as an optimal effort possible to achieve health services for the patient being treated, not as an outcome engagement (*resultaatsverbinten*). Therefore, doctors should not be prosecuted in case that the patient does not recover. Doctors (medical personnels) are required to undertake their best in providing health services to their patients and every medical procedure has to comply with health professional standards. Doctors as legal subjects also have legal responsibility for their every action. Therefore, doctors also need to understand the legal aspects of health services.⁷ Lawsuits against doctors can be based on Article 1239 the Civil Code (Kitab Undang-undang

Hukum Perdata or KUHPerdata) concerning breach of contract (engagement to do something or not to do something) which reads, "every agreement to do something, or not to do something, must be resolved by providing compensation for costs, losses and interest, if the debtor does not fulfill his obligations."

Lately we have heard or read various news about lawsuits or expressions of dissatisfaction from patients with health services from doctors or hospitals. This indicates that public legal awareness is increasing. In line with this, there are increasing voices demanding that law play a major role in the world of health. Patients also become unwilling to simply accept treatment provided by doctors (medical personnel) or hospitals. The public spotlight on the health profession is a sign that currently some people are not satisfied with health services. This feeling of dissatisfaction on the part of the patient can lead to medical disputes. Medical disputes arise because patients think that the doctor has not fulfilled the performance as promised, so the patient or his family looks for the cause of the dissatisfaction. The cause of disputes between doctors (or hospitals) and patients (or their families) is due to patient dissatisfaction with doctors in carrying out treatment efforts or carrying out medical procedures. Recently, there are many news about lawsuits or expressions of dissatisfaction from patients against doctors or hospitals. This indicates that public legal awareness is increasing. Patients also become unwilling to simply accept treatment provided by doctors (medical personnels) or hospitals. The public spotlight on the health profession is a sign that currently some people are not satisfied with health services. This feeling of dissatisfaction on the part of the patient can lead to medical disputes. Medical disputes arise because patients think that the doctor has not fulfilled the performance as promised, so the patient or his family looks for the cause of the dissatisfaction. The source of disputes between doctors (or hospitals) and patients (or their families) is as result of patient dissatisfaction to the services or medical procedures. In 2023, we heard news about the abuse of a doctor at the Fajar Bulan Community Health Center, Way Tenong District, West Lampung Regency.⁹ The case started with a medical dispute, the patient disappointed to the doctor, who according to the patient, had not fulfilled his performance as promised. The doctor was physically abused. This opens our eyes that legal protection for medical personnel who are carrying out their duties is very important. Doctors (medical personnels) in carrying out their duties need to be given a sense of security so that they can examine patients calmly and thoroughly. Perpetrators of abuse must be given appropriate punishment. In Law No. 17 of 2023 (Health Law 2023), article 273 letter b, stated that Medical Personnel and Health Personnel in performing their practices have the right to receive legal protection as long as they perform their duties in accordance with professional standards, standard operational procedures, and professional ethics and patient's health needs. Reflecting on this case, the author would like to raise the issue of legal protection for medical personnel who are victims of abuse due to medical disputes.

2. METHODOLOGY

This research methodology adopts a normative approach, which focuses on analysis of statutory regulations and related legal documents, especially Law No. 17 of 2023 (Health Law 2023) concerning concerning legal protection for medical personnels, especially doctors. This approach involves examining legal norms, legal interpretations, and the application of these regulations. Analysis is carried out through examination of legal documents, both primary such as laws, government regulations and ministerial regulations, as well as secondary documents in the form of legal literature, journals and relevant scientific publications, to understand the legal basis, scope and implications of Law No. 17 of 2023 (Health Law 2023). This method aims to assess the effectiveness of regulations in protecting doctors, as well as identifying potential obstacles and challenges in their implementation, in order to provide recommendations for improving policies and practices in the future.

3. RESULTS AND DISCUSSION

Indonesia is a country based on law. In such manner, all aspects of life in the territory of Indonesia are based on law. The highest source of law in Indonesian constitutional system is the 1945 Constitution of the Republic of Indonesia (Undang-Undang Dasar 1945). In the Fourth Amendment to the 1945 Constitution in 2002, Indonesia adhered to the concept of the State of Law or *rechtsstaat* which was previously only contained in the Explanation of the 1945 Constitution, formulated expressly in Article 1 paragraph (3) which states that, "The Indonesian State is a State of Law". According to the theory of the rule of law, the concept of *rechtstaat* recognizes two sets of courts, i.e. general courts and administrative courts. On the other hand, the concept of the rule of law recognizes only one set of courts, specifically those handled by ordinary courts based on *ultra vires*. Indonesia recognized two sets of courts after Law number 5 of 1986 about State Administrative Courts. However, in its development, Indonesia adhered to the "intermediate" path, namely adhering to the concept of *rechtsstaat* and the rule of law which was proven by the recognition of a codified legal system and also jurisprudence. Other than the rule of law theory, there is also the theory of legal protection. The theory of legal

protection developed from the concept of recognition and protection of human rights in the 1800s. This concept has a direction regarding legal recognition and protection of human rights which is a limitation and mapping of obligations to society and the government. In the theory of legal protection, it is stated that the purpose of law is to integrate and coordinate interests in society by regulating the protection and limitations of these various interests. Legal protection is protecting human rights that are harmed by other people. So this protection is given to the community so that they can enjoy all the rights provided by law. Therefore, legal protection can be defined as various legal measures that must be provided by law enforcement officials to provide a sense of security, both mentally and physically from interference and various threats from any party. Law No.17 of 2023 (Health Law 2023) includes several articles regarding protection for medical personnel (doctors). In article 12 letter d, it is stated that the Central Government (Pempus) and Regional Government (Pemda) are responsible for protecting Health Human Resources (HR). In article 1, it is stated that Health Human Resources is someone who works actively in the health sector, whether they have formal health education or not. In more detail, it is explained in article 197 that Health Human Resources consists of: Medical Personnel, Health Personnel, and health support or support personnel. Furthermore, in article 198, medical personnel are grouped into doctors and dentists. Thus, it is clear that doctors are health human resources and have the right to receive protection from the Central Government and Regional Government.

In article 273 paragraph (2) Law no. 17 of 2023 explains the rights of Medical Personnels and Health Personnels, i.e. (a) to receive legal protection as long as they carry out their duties in accordance with professional standards, professional service standards, standard operational procedures (SOP), and professional ethics, as well as patient health needs; (b) obtain complete and correct information from the patient or his family; (c) receive appropriate salaries/wages, service benefits and performance allowances in accordance with the provisions of laws and regulations; (d) obtain protection for safety, occupational health and security; (e) obtain health insurance and employment security in accordance with statutory provisions; (f) receive protection for behavior that is not in accordance with human dignity and dignity, morals, decency, and social and cultural values; (g) receive awards in accordance with statutory provisions; (h) get the opportunity to develop themselves through competency, knowledge and career development in their professional field; (i) refuse requests from patients or other parties that conflict with professional standards, service standards, standard operational procedures, codes of ethics, or provisions of laws and regulations; and (j) obtain other rights in accordance with statutory provisions. When a doctor become the victim of abuse, the doctor deserves legal protection. In Health Law No. 17 of 2023, especially article 273 letter a, it is explained that doctors as part of medical personnels have the right to receive legal protection as long as they perform their duties in accordance with professional standards, professional service standards, standard operational procedures and professional ethics, as well as the health needs of patients. When carrying out their duties according to standards, for example when doctors ask the medical history of a patient, this is part of establishing a diagnosis. The results of the anamnesis contain the main complaints and accompanying complaints stated by the patient and the patient's family. The doctor traces the history of the patient's current illness, history of other diseases which are risk factors, family history, social history and allergy history are part of anamnesis. Apart from anamnesis and physical examination, in confirming the diagnosis of several diseases, the results of laboratory investigations are also required because they are part of the algorithm for establishing a diagnosis. Patients are supposed to follow doctors when doctors carry out their duties following medical professional standards, and not abusing the doctors. If cases of abuse against doctors occur in a hospital, they have the right to receive protection and legal assistance from the hospital as stated in Health Law No. 17 of 2023, article 189 letter s, that every hospital should protect and provide legal assistance to all hospital staff during their duties.

Perpetrators of abuse against doctors can be charged using Article 351 of the Criminal Code (Kitab Undang-Undang Hukum Pidana) about abuse. In more detail, paragraph (1) reads "abuse is punishable by a maximum imprisonment of two years and eight months or a maximum fine of four thousand five hundred rupiah (Rp. 4,500)," paragraph (2) reads "if the act results in serious injuries, those who are guilty are threatened with imprisonment for a maximum of five years," paragraph (3) reads "if it results in death, they are threatened with imprisonment for a maximum of seven years," and paragraph (4) reads "with abuse it is equated with deliberately damaging health," and paragraph (5) reads "attempts to commit this crime are not punishable." The maximum fine for perpetrators of abuse is IDR. 4500 (equivalent to USD 0.30 or 30 cents dollar, with an exchange rate of 1 USD = Rp. 15,000) is felt to be too cheap and it is felt that justice has not been met for doctors who have experienced abuse. Even a maximum prison sentence of two years and eight months is still considered too light. According to the Republic of Indonesia Supreme Court Regulation (Peraturan Mahkamah Agung Republik Indonesia) No. 2 of 2012 concerning Adjustments to Limits for Light Crimes and the Amount of Fines in the Criminal Code article 3, each maximum amount of fines threatened in the Criminal Code except

articles 303 paragraph 1 and paragraph 2, 303 bis paragraph 1 and paragraph 2, is doubled to 1000 (one thousand) times. Thus, in this case, the maximum fine is Rp. 4500 can be doubled 1000 times to Rp. 4,500,000 (four million five hundred thousand rupiah). In such manner, the court decision after this regulation is decided, the maximum fine could be Rp. 4,500,000 (equivalent to USD 300, with an exchange rate of 1 USD = Rp. 15,000). The Supreme Court Regulation needs to be implemented by all courts, because the author still finds a court decision that have not applied this fine even though the decision was implemented in 2014, two years after the Supreme Court Regulation No. 2 of 2012. For example, in the Central Jakarta District Court Decision number 779PID.B/ 2014/PN.JKT.PST dated 3 September 2014 which stated that the defendant was legally proven and guilty of committing the crime of "torture", only sentenced to pay court costs of Rp. 2,000 (equivalent to USD 0.13) without being sentenced to prison. This law is felt to be too light and does not provide justice for doctors who are victims of abuse. The legal process in defending doctors in this case is also quite long. In carrying out his work duties, a doctor carries out a noble task by making efforts to cure patients from their illnesses. Therefore, it is appropriate for doctors to receive legal protection if it is proven that all the procedures that should be carried out as a doctor have been carried out by the doctor. Doctors in Indonesia are increasingly vulnerable to facing legal problems, so doctors need adequate legal knowledge so they can protect themselves as well. In the Indonesian Medical Professional Education Standards, the legal curriculum is only discussed in the Medical Humanities section with its subsections namely bioethics and health law. This is felt to be still insufficient and it could be proposed to add a separate course in Legal Studies which includes Health Law so that medical students are required to learn more deeply about this law, at least thoroughly discussing the law relating to doctors in Law No.17 of 2023. The hospitals also supposed to provide seminars about health law for their doctors. Health Law No. 17 of 2023, article 189 letter s, stated that every hospital should protect and provide legal assistance to all hospital staff during their duties. However, not all of the hospitals in Indonesia have hospital legal departments and no law is required to do so. Facing the increasing number of legal problems related to hospitals, it is fitting that there are legal regulations that require every hospital to have a hospital legal department.

4. CONCLUSION

This research has carried out a juridical analysis of the Law Number 17 of 2023 (Health Law 2023) concerning legal protection for medical personnels, especially doctors, who experience abuse while providing health services in Indonesia. This analysis shows that Law no. 17 of 2023 includes a fairly comprehensive legal framework regarding legal protection for doctors who experience abuse while providing health services in Indonesia. However, there are several challenges in its implementation. In a case where there was a final decision from the Court, the doctor won and the perpetrator was punished, the defendant was only given a very light sentence. Therefore, the challenge is a long legal process in defending doctors who are victims of abuse and the defendant only gets a light sentence. This does not provide a deterrent effect for perpetrators. We recommended that the government has to provide protection and legal defense for doctors who are victims of abuse and the courts need to provide harsher laws for perpetrators to provide a deterrent effect and make other people who want to abuse doctors think twice before acting. These challenges require real attention and action from all stakeholders to ensure that the objectives of this regulation can be achieved effectively. Based on the findings of this research, several suggestions that can be given to improve protection for doctors:

1. **Increasing Law Education for Doctors:** Provide a course about Legal Studies included in Indonesian Medical Professional Education Standards so the medical students are required to learn more deeply about this Health Law, at least thoroughly discussing the law relating to doctors in Law No.17 of 2023. The hospitals also supposed to provide seminars about health law for their doctors
2. **Legal Departments in Hospitals:** According to Health Law, every hospital should protect and provide legal assistance to all hospital staff during their duties. However, not all of the hospitals in Indonesia have hospital legal departments. There is a need for legal regulations that require every hospital to have a hospital legal department.

Maximal Punishment for the Perpetrators: The maximum fine for the perpetrators of abuse against doctors according to the Criminal Code is quite little. According to the Republic of Indonesia Supreme Court Regulation No. 2 of 2012, the fine is doubled to 1000 (one thousand) times. This fine supposed to be implemented by all of the Court in Indonesia.

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