



A Study on Healthcare Delivery, Reproductive Health Rights, Informed Consent, Legal Relationship between Hospitals-Patients-Healthcare Professionals, and the Impact of the New Criminal Code and Criminal Procedure Code

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Abstract

This normative legal research analyzes the legal protection of healthcare services in Indonesia following the enactment of Law No. 17 of 2023 on Health, while anticipating the implementation of the new Criminal Code (KUHP) and Criminal Procedure Code (KUHP) in 2026. It focuses on holistic health administration, strengthening reproductive rights (including therapeutic abortion exemptions for victims of sexual violence up to 14 weeks of pregnancy), stricter informed consent requirements, the legal relationship between hospitals, patients, and healthcare workers with shared responsibilities, and criminal implications of medical negligence. The main novelty of the research lies in an integrated analysis of the implementation challenges of the 2023 Health Law amid the 2026 criminal law reforms, particularly the increased risk of litigation, reduced professional autonomy, and ambiguities in responsibility allocation and reproductive rights. Nevertheless, it strengthens constitutional guarantees under Article 28H paragraph (1) of the 1945 Constitution through comprehensive, patient-oriented regulations. To achieve balanced and effective legal protection, the research recommends developing supportive policies such as continuous professional education, clearer implementing regulations, standardized documentation, and institutionalized alternative dispute resolution mechanisms.

Keywords: Reproductive health rights, informed consent, medical legal relationship, new Criminal Code, healthcare professionals.

Introduction

In 2023, Indonesia enacted Law Number 17 of 2023 on Health, which is a comprehensive regulation integrating various elements of health services, such as patient rights, service standards, and community roles to achieve optimal health. This law highlights principles of welfare, equality, non-discrimination, participation, and sustainability, with the aim of improving national health resilience, closing gaps, and enhancing service quality [1]. One key point is the legal aspect in providing health services, which stems from agreements



between health facilities (such as hospitals) and patients, followed by relationships between medical or health personnel and those patients. This approach indicates a shift towards more transparent regulations regarding funding and accountability, although challenges remain, such as limited understanding of regulations among stakeholders, infrastructure constraints, and expanding service access [2].

The reconstruction of authority in the 2023 Health Law is also significant, particularly regarding professional organizations and medical colleges. Previously, these institutions had broad autonomy in formulating competency standards, certification, registration, and ethical oversight. Now, primary authority has been transferred to the Indonesian Health Workforce Council (KTKI) to build a more open, accountable, and uniform system at the national level, although this reduces professional autonomy and raises concerns about the risk of excessive bureaucracy and a decline in scientific and ethical independence [4]. Health workers' understanding of these new regulations varies; some have a good grasp, while others still need deeper explanations and face difficulties adapting to these major changes [3]. In general, this law aims to ensure comprehensive public health rights, including patient protection through informed consent, reproductive rights, and balanced legal relationships between hospitals, patients, and medical personnel, while aligning with the criminal impacts of the new Criminal Code (KUHP) and Criminal Procedure Code (KUHAP) effective from 2026.

Based on the background and issues raised, the objectives of this research are:

1. To discuss the legal regulations protecting health service implementation according to the 2023 Health Law, covering core principles, the transfer of authority to the Indonesian Health Workforce Council (KTKI), and barriers in practical application within society.
2. To review the enhancement of reproductive health rights and medical procedure consent (informed consent) in the 2023 Health Law, especially progressive provisions such as therapeutic abortion, and the function of informed consent to align patient rights with the obligations of health personnel.
3. To describe the legal relationships among hospitals, patients, and medical personnel, including the types of liabilities that arise, and to identify the impacts of the new Criminal Code and Criminal Procedure Code on criminal accountability in health services.

This research is expected to contribute a normative analysis of the implementation of the 2023 Health Law, along with recommendations to improve legal certainty and protection for patients and health personnel in Indonesia.

Materials and Method

This research employs a normative legal approach with a descriptive-analytical method. The normative legal approach is chosen because the study focuses on analyzing applicable legal norms as the basis for legal protection in healthcare services in Indonesia. The descriptive-analytical method is used to describe, explain, and systematically analyze legal provisions related to health administration, reproductive health rights, medical procedure consent (informed consent), the legal relationship between hospitals, patients, and healthcare workers, as well as the impact of implementing the new Criminal Code (Law No. 1 of 2023) and the Criminal Procedure Code on the health sector.

Data collection was conducted through library research. Data analysis employs qualitative deductive techniques with systematic, grammatical, and teleological interpretations to yield conclusions that align with the problem formulation. Inclusion or exclusion criteria are not applied because the research is purely normative without primary empirical data.

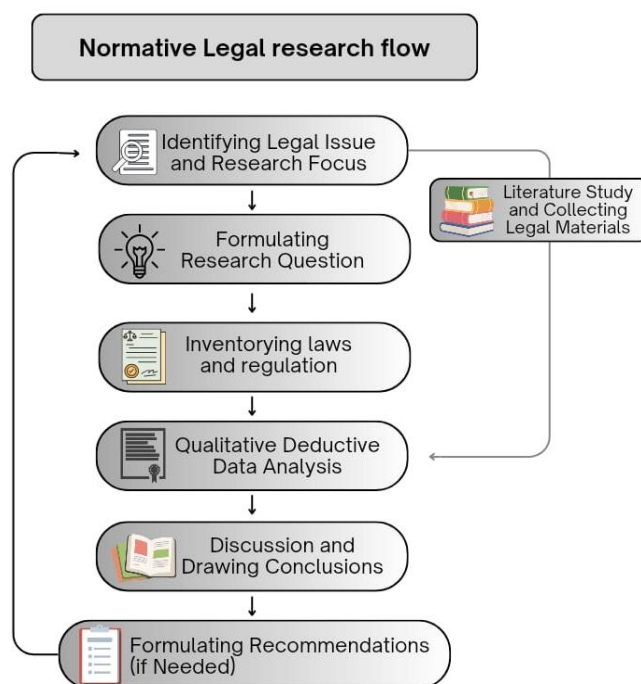


Figure 1. Flow of Normative Legal Research

Result and Discussion

This research evaluates the legal protection of healthcare services in Indonesia through a normative legal approach, focusing on Law No. 17 of 2023 on Health along with supporting regulations [1]. The main findings indicate significant changes in the health



legal framework post-this law, encompassing holistic health administration, reproductive rights, informed consent, the legal relationship between hospitals-patients-healthcare workers, and the criminal impacts of the new Criminal Code (Law No. 1/2023) and the Criminal Procedure Code effective in 2026 [13]. Deductive analysis of primary and secondary legal sources reveals efforts to balance patient rights and healthcare worker obligations, although challenges such as varying interpretations of regulations and risks of medical litigation persist [10]. Below is a summary of findings per aspect, accompanied by relevant article references and literature.

1. Health Administration

Law No. 17/2023 adopts an omnibus method to replace old regulations (e.g., Law No. 36/2009), emphasizing values of welfare, equal access, non-discrimination, community participation, and sustainability, in line with Article 28H paragraph (1) of the 1945 Constitution [1]. Administration includes promotive, preventive, curative, and rehabilitative aspects, with task division between central (national policies, minimum standards) and regional (local implementation via community health centers, regional hospitals, integrated health posts) according to Article 17 [1]. Legal relationships start from therapeutic contracts between facilities and patients, supported by BPJS Health financing [2]. Key changes: transfer of professional organization authority (IDI, PPNI) to the Indonesian Health Workforce Council (KTKI) for competency standards, registration, and ethics (Article 272), for national transparency but risking bureaucratization and reduced independence [4]. Healthcare workers' understanding varies, with adaptation difficulties to new procedures like electronic data reporting [3]. Obstacles: limited facilities in remote areas and uneven healthcare worker distribution, disrupting national targets like reducing maternal/infant mortality rates. Long-term impact with KUHP 2026: stricter sanctions (Articles 440-447) increase accountability but add bureaucratic burdens [1].

Concrete data notes: Constitutional Court Decisions No. 111/PUU-XXII/2024 and 182/PUU-XXII/2024 (January 2026) affirm KTKI/Council independence directly under the President, ordering a single "big house" for professional organizations within 1 year, and involving professional organizations in standards-correcting potential weakening of professional autonomy [from related MK decisions].

2. Reproductive Rights and State Obligations

Reproductive rights are recognized as human rights (Article 28H paragraph (1) of the 1945 Constitution), with the state obligated to provide safe, affordable, quality services (contraception, STI prevention, pregnancy care, delivery, postpartum, gender violence protection) according to Articles 74-80 [1]. Active obligations: free/subsidized services



for vulnerable groups (youth, poor women, sexual violence victims, disabilities), integration into family planning and maternal-child health programs. Progressive provisions: therapeutic abortion for sexual violence victims up to 14 weeks of pregnancy, requiring forensic evidence, informed consent, accredited facilities, and reporting (Article 428 paragraph (3))-providing legal certainty for licensed doctors [9]. Removal of female circumcision regulations in PP No. 28/2024 (Article 102 letter a) sparks cultural-religious vs. medical standard debates, with views from PCLBMNU Malang (part of fitrah & cleanliness) and Obgyn specialists (neutral as long as not risky) [8]. Triggers for abortion in rape victims: tensions in old regulations, low legal awareness, psychological trauma, financial burdens [12]. Komnas Perempuan data shows thousands of sexual violence cases leading to unwanted pregnancies; CATAHU 2024 records sexual violence dominance (36.43% of GBVtP cases), with overall report increases [from Komnas Perempuan 2024 report]. The Ministry of Health emphasizes fulfilling reproductive rights for healthy generations, including stunting prevention [14]. Challenges: regulation harmonization to avoid ambiguities and discrimination.

3. Medical Procedure Consent (Informed Consent)

Informed consent is tightened in Law No. 17/2023, mandating complete information (diagnosis, purpose, benefits, risks, alternatives, refusal consequences) before procedures (Articles 293-294) [1]. Forms: written (invasive/high-risk procedures), oral (simple); emergencies can be exempted if patient is unconscious [1]. Major changes: strict documentation prevents disputes, enhances doctor-patient interaction, and standardization [10]. Obstacles: effective communication (avoid technical terms), litigation risks if merely formal [10]. Related to protection & safety principles, lack of informed consent can lead to administrative to criminal sanctions [11]. PP No. 28/2024 does not regulate deeply, needing derivative regulations [16]. Functions: protect patients from unwanted procedures, and doctors from malpractice claims if compliant with standards & documented [15]. Example case: 2023 tonsillectomy in Jakarta ending in brainstem death, lawsuit due to insufficient risk information-emphasizing substantive implementation [10].

4. Legal Relationship Between Hospitals – Patients – Healthcare Workers

Relationship based on bilateral therapeutic contracts, hospitals obligated to quality & safe services (Articles 193, 280) [1]. Patients entitled to information, medical record confidentiality, compensation for negligence [2]. Hospitals bear vicarious liability for their healthcare workers' errors (Law No. 44/2009 still applies) [5], subject to civil, criminal (gross negligence), or administrative claims [6][17]. Hospitals must have ethics/medical committees and professional liability insurance. Challenges: unclear burden division between institutions & individuals, although Article 447 regulates



corporate sanctions [17]. From healthcare workers' side: direct/personal relationship, obligated to professional standards & informed consent; personal responsibility for intentional/gross negligence remains, tightened by KUHP 2026 (Article 474 aligned with Article 440) [1][18]. Hospitals liable if negligence due to poor supervision/training [18].

5. Impact of Implementing the New Criminal Code and Criminal Procedure Code on Health Law

The new Criminal Code (Law No. 1/2023) and Criminal Procedure Code effective January 2, 2026 reform criminal accountability in health [13]. Medical negligence: Article 474 (aligned with Article 440 of the Health Law) sanctions up to 5 years imprisonment/fine for gross culpa (death/permanent disability), stricter than old Criminal Code Article 359 [1]. Inconsistencies: emphasize individual responsibility, while Article 447 regulates institutional sanctions-potential ambiguities [1]. Procedural: Criminal Procedure Code strengthens medical expert evidence, witness protection (healthcare workers), and alternative mechanisms before criminal proceedings [19][20]. Reproductive impact: exemption for abortion of sexual violence victims up to 14 weeks aligned with Article 428(3), protecting doctors if conditions met; abortion outside that is heavily penalized [9][12]. Challenges: higher litigation burden, needing intensive education to avoid misunderstandings of time/procedure limits.

Overall, the 2023 Health Law integrates administration, reproductive rights, informed consent, legal relationships, and KUHP/Criminal Procedure Code adjustments for balancing patient rights-healthcare worker obligations (Article 2) [1]. However, 2026 implementation shows practical obstacles: varying healthcare worker understandings and increased litigation risks [3][7].

Table I. Summary of the Impact of the New Criminal Code (KUHP) Effective 2026 on Health Law

Element	Old Criminal Code	New Criminal Code (2026)	Impact on the Health Sector
Criminal Sanctions for Medical Negligence	Light penalties (e.g., Article 359: maximum 5 years for causing death by negligence, often lighter in practice)	Up to 5 years imprisonment or fines for serious culpa (Article 474, aligned with Article 440 of the 2023 Health Law), especially if resulting in death or permanent disability	Increases accountability and deterrence, but raises risks of litigation and defensive medicine practices [7]
Abortion Provisions	Almost absolute prohibition (except to save the mother's life)	Broader exceptions for therapeutic abortion in cases of sexual violence victims up to 14 weeks of pregnancy (aligned with Article 428(3) of the 2023 Health Law)	Provides stronger legal certainty and protection for doctors performing compliant therapeutic abortions; non-compliant cases face heavier penalties, requiring intensive education on time limits and procedures [9][12]
Dispute Resolution Mechanisms	Primarily direct civil or criminal proceedings	New Criminal Procedure (KUHP) promotes alternative dispute resolution mechanisms before formal criminal processes, with strengthened expert medical evidence and witness protection	Potentially reduces court burdens and litigation intensity for medical personnel/hospitals, but requires effective implementation and training to be meaningful [19][20]



Conclusion

Law No. 17 of 2023 on Health strengthens legal protection in healthcare services in Indonesia through the principles of equality, justice, and patient safety, by affirming the shift of professional standardization authority to the Indonesian Health Workforce Council (KTKI) to promote national accountability, although challenges such as human resource readiness, potential bureaucratization, and regional regulation harmonization remain obstacles. Furthermore, the 2023 Health Law reinforces reproductive rights as part of human rights as guaranteed in Article 28H paragraph (1) of the 1945 Constitution, tightens informed consent requirements to protect patient autonomy, and affirms the legal relationship between hospitals, patients, and healthcare workers based on the principle of shared responsibility. The strengthening of criminal sanctions in the criminal law reforms to be implemented in 2026 will also increase accountability, but may also encourage defensive medicine practices. Therefore, supportive policies are needed, such as continuous professional education, clearer implementing regulations, standardization of informed consent documentation, and institutionalized alternative dispute resolution mechanisms to reduce litigation risks and ensure effective fulfillment of patient rights.

Conflict of Interest Statement

The authors declare no conflict of interest related to this work.

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