

THE LEGAL RATIO OF RESOLVING CRIMINAL ACTS THROUGH THE PROFESSIONAL DISCIPLINARY COUNCIL WITHIN IN THE HEALTH LAW SYSTEM

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Abstract: *The Professional Discipline Council (Majelis Disiplin Profesi, MDP) occupies a strategic role in Indonesia's health law system as an institution that enforces medical discipline and ethics while serving as a pre-judicial mechanism to prevent the criminalization of medical professionals. This study analyzes the ratio legis behind the establishment of the MDP to harmonize legal protection for medical workers with patients' rights. Using a juridical-normative approach, the research examines the MDP's position, authority, and functional relation to law enforcement bodies. The findings show that the MDP reflects the principle of *lex specialis derogat legi generali*, emphasizing disciplinary enforcement before criminal proceedings. However, overlapping authorities between the MDP and law enforcement agencies have led to medical criminalization and declining public trust. Strengthened policy frameworks, implementing regulations under Law No. 17 of 2023 on Health, enhanced legal competence of MDP members, and a national medical case database are needed. These reforms aim to establish a fair, proportional, and humanistic health law system, positioning the MDP as a key mechanism for substantive justice in healthcare.*

Keywords: *Professional Discipline Council; Health Law; Lex Specialis; Substantive Justice.*

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Introduction

Service is an activity that provides care and assistance to those in need. According to Kasmir, service refers to the actions or efforts of an individual or organization to provide satisfaction to its clients or consumers. In delivering services, one must strive to meet the needs of the recipient and communicate every action taken. Services come in various forms and types. As stated in the Decree of the Minister of Administrative Reform No. 58 of 2002, services are categorized into three types based on their characteristics and outcomes: administrative services, goods services, and professional services. In the provision of goods and professional services, the process must not only adhere to ethical standards but also to the applicable legal framework.

In the context of healthcare services—where health is a fundamental aspect of human life—Article 28H paragraph (1) of the 1945 Constitution guarantees that “every person has the right to live in physical and spiritual well-being, to reside in a good and healthy environment, and to receive health care.” In practice, every medical and health professional is obliged to comply with professional, service, and operational procedure standards. The relationship between medical practitioners, health professionals, and patients is thus founded not only on professional trust but also on legal and ethical principles. The evolution of modern legal systems requires clear accountability for every medical action, especially when disputes or alleged violations arise that may cause harm to patients. This condition places the Professional Discipline Council (Majelis Disiplin Profesi, MDP) as a strategic institution in maintaining the integrity and accountability of the healthcare profession, as codified in Article 304 of Law No. 17 of 2023 on Health. However, in practice, the boundaries of MDP’s role often overlap with criminal law enforcement, creating legal and ethical complexities in the pursuit of justice.

Normatively, the ratio legis for establishing the MDP within Indonesia’s health law system is to balance legal protection for medical and health personnel with patient protection, by enforcing professional discipline, ethics, and standards as stipulated in Law No. 17 of 2023 and its implementing regulations. The MDP’s purpose is to protect the public from malpractice while safeguarding medical personnel from disproportionate criminalization. Yet, in reality, many disciplinary violations have been treated as criminal cases, such as alleged medical negligence, malpractice, or breaches of patient rights. In some instances, law enforcement directly initiates investigations without involving the MDP, creating serious uncertainty in Indonesia’s health law system.

The main issue concerns the mechanism for resolving healthcare disputes based on professional justice. Numerous cases show that law enforcement agencies apply criminal law immediately without awaiting recommendations from the MDP or the Indonesian Medical Discipline Honorary Council (MKDKI). As stated by Dr. Busyra, M.Sc., Sp.F.M, a forensic and medicolegal specialist from Universitas Muhammadiyah.

Surakarta, during a joint hearing with the Minister of Health, the MDP, IDI, IBI, and PPNI on July 2, 2025, at the Parliament Complex, Senayan, Jakarta (as broadcast by TV Parlemen), there remains a legal vacuum regarding fair sanctions for medical professionals. He observed that in malpractice cases resulting in death, general criminal law—the *Kitab Undang-Undang Hukum Pidana* (KUHP)—is still applied, which he deemed unjust. According to him, doctors should not be criminalized under general

provisions when medical efforts to heal fail due to uncontrollable factors, as these differ fundamentally from deliberate acts of harm¹

Such practices risk obscuring the principle of *lex specialis derogat legi generali*, which positions disciplinary mechanisms as the first pre-judicial process. Consequently, medical and health personnel often become vulnerable to criminalization, eroding public trust in healthcare services. From a criminal law perspective, the MDP should function as a self-regulatory body to maintain professional standards and act as a filter against excessive criminal prosecution. Strengthening the MDP's role is crucial to ensure that disciplinary enforcement is objective and proportional, while criminal proceedings are reserved for cases meeting clear elements of *mens rea* and *actus reus*. Thus, the MDP should not be viewed merely as an ethical board but as a vital instrument in realizing substantive justice in healthcare.

Accordingly, this article critically examines the *ratio legis* of the MDP's establishment by analyzing its legal standing, authority, and implications for law enforcement. The analysis focuses on the functional relationship between the professional disciplinary system and the criminal justice system to propose a harmonized legal model that ensures both legal protection for medical and health professionals and the fulfillment of patients' rights. This study aims to contribute to the development of a national health law framework that is fair, proportional, and humanistic.

¹ Adrian Gede Arga, "Malapraktik Berulang di Indonesia Bukan Sekadar Angka", UMS, 18 Juli 2025, <https://www.ums.ac.id/berita/teropong-jagat/malapraktik-berulang-di-indonesia-bukan-sekadar-angka> (diakses 9 November 2025)

Discussion

The Legal Ratio for Establishing the MDP

The ratio legis behind the establishment of the Professional Discipline Council (Majelis Disiplin Profesi, MDP) embodies the legal principle of *lex specialis derogat legi generali* in the enforcement of health law.² The council's existence aims to prevent the criminalization of medical and health professionals who perform their duties in accordance with professional standards, service standards, and operational procedures but encounter medically unfavorable outcomes. This provision is grounded in the understanding that a medical error is not necessarily equivalent to a criminal act; rather, it must first be examined to determine whether a violation of professional standards or ethical codes has occurred.

The MDP was established under Law No. 17 of 2023 on Health and Government Regulation (PP) No. 28 of 2024 concerning the implementation of that law. The institution holds the authority to investigate alleged disciplinary violations as well as potential criminal acts committed by medical and health personnel. Its ratio legis does not merely treat these professionals as subjects of legal accountability but also ensures a peer review process grounded in scientific and professional judgment to objectively assess medical actions. This underscores that professional responsibility in healthcare must first be evaluated by a competent professional body that understands the norms and standards of medical practice before entering the domain of criminal law.³

Juridical Review of Criminal Handling in Health Services

Normatively, the Professional Discipline Council (Majelis Disiplin Profesi, MDP) must be understood as an institution that performs preventive, corrective, and evaluative functions in upholding the professionalism of health practitioners.⁴ Within the framework of modern health law, the MDP serves as a pre-judicial ethical forum, not merely as an administrative body.

Criminal prosecution should only proceed once two conditions are fulfilled A formal decision by the MDP confirming a serious violation of professional discipline; and The criminal elements of the act clearly meet the criteria of *actus reus* and *mens rea*.

² Fitriana, R. (2023). Kriminalisasi Tenaga Medis dalam Perspektif *Lex Specialis*. Jurnal Hukum dan Kesehatan Indonesia, 9(2), 45–61.

³ Wahyudi, D. (2024). Penegakan Disiplin Profesi dalam Sistem Hukum Kesehatan. Jakarta: Rajawali Pers

⁴ Nadeak Jasmen Ojak Haholongan (2024), Penerapan Disiplin Profesi Sebagai Instrumen Penegakan Hukum Pidana Kesehatan Berbasis Keadilan Prosedural, MHKI, 1 (1), 186

Accordingly, the ideal legal structure is a coordinated and tiered mechanism between the MDP and law enforcement agencies. The disciplinary review must serve as the initial stage to determine whether a disputed medical act constitutes an ethical breach or a criminal offense. If the MDP concludes that criminal elements exist, only then may investigators proceed to the stage of public legal inquiry. This process ensures legal certainty while upholding the principles of proportionality and substantive justice, thereby protecting the medical profession without compromising patients' rights to justice.

The main issue arises from overlapping authority between the MDP and law enforcement bodies (police, prosecutors, and courts). As shown in previous cases, law enforcement officers often invoke the Criminal Code (KUHP)—particularly Articles 359 and 360 concerning negligence resulting in injury or death—without awaiting ethical assessment from the MDP or the Indonesian Medical Discipline Honorary Council (MKDKI).

From a criminal law perspective, such an approach is formally legitimate but substantively undermines the principle of due process of law. Medical professional violations do not always constitute crimes, as not every medical error amounts to a criminal act. An error in persona in diagnosis or a failure in treatment due to limited facilities often represents an ethical infraction rather than criminal wrongdoing. This reflects a lack of harmony within the health law system, where the self-regulatory mechanism of the profession is not granted sufficient authority to function as intended. Consequently, health professionals frequently become victims of criminalization, while internal disciplinary mechanisms lose effectiveness—leading to parallel and unsynchronized proceedings that create legal uncertainty for both healthcare providers and patients.

Substantive Justice in Medical Criminal Cases

From the perspective of substantive justice, the resolution of criminal cases in healthcare must be grounded in a balance between the protection of patients and the protection of medical and health professionals. An approach that focuses solely on repressive measures may lead to defensive medicine—a practice in which medical personnel act excessively or avoid high-risk cases out of fear that their actions might later be criminalized. Conversely, an overly protective approach toward medical professionals could neglect patients' fundamental right to justice.

The ratio legis of the Professional Discipline Council (Majelis Disiplin Profesi, MDP) lies in its role as an instrument of corrective and preventive justice. It is called corrective

because it seeks to restore public trust in the medical profession through a transparent disciplinary enforcement mechanism, and preventive because it provides education and guidance to medical and health practitioners to prevent violations. Therefore, the MDP is not merely an ethical forum but an integral part of the health law system, serving as a bridge between scientific knowledge, professional morality, and legal justice.

Implementation Challenges and Institutional Reform

The main challenge faced by the MDP lies in institutional weaknesses and the lack of coordination across legal systems. Several recurring issues in the field include:

1. Limited human resources and ethics experts who understand criminal law aspects;
2. The absence of clear regulations defining the formal relationship between the MDP and police investigators;
3. Insufficient dissemination among law enforcement officers regarding the *lex specialis* principle in health law.

To strengthen the MDP's institutional function, policy reformulation is needed through several strategic steps:

1. Establishing a Memorandum of Understanding (MoU) between the Ministry of Health, the Indonesian Health Council, and the National Police to ensure coordinated investigation and law enforcement;
2. Enhancing legal capacity among MDP members to deepen their understanding of criminal aspects in health law;
3. Developing a national database system on criminal health cases to improve transparency and accountability;
4. Integrating MDP examination results into the case screening process conducted by law enforcement authorities.⁵

These measures will affirm the MDP's position as an integral part of the health law system, serving to maintain the balance between professional protection and legal enforcement.

⁵ Kurniawan, H. (2022). Koordinasi Lembaga Profesi dan Aparat Penegak Hukum dalam Kasus Malpraktik. *Jurnal Yustisia*, 11(1), 21–37

Implications for Health Law Reform

In the context of national legal reform, the ratio legis of resolving criminal cases through the Professional Discipline Council (Majelis Disiplin Profesi, MDP) requires regulatory strengthening and institutional synergy. It is necessary to revise the overlapping legal norms among the Health Law, the Medical Practice Law, and the Criminal Code (KUHP) to align them with the principles of restorative justice. This approach allows the resolution of medical disputes to be conducted proportionally, based on scientific evidence, and with a focus on restoring the social relationship between patients and medical or health professionals.⁶

Furthermore, the capacity of the MDP must be enhanced through competency development of its members, institutional independence, and access to forensic medical evidence. In this way, the mechanism can function optimally as part of a health justice system that not only punishes but also rehabilitates and educates.

⁶ Muladi & Arief, B. N. (2021). Teori dan Praktik Restorative Justice di Indonesia. Semarang: Pustaka Magister

Conclusion

This study demonstrates that the Professional Disciplinary Council (MDP) plays a strategic role in maintaining a balance between enforcing professional ethics and ensuring criminal law in healthcare. Ideally, the MDP serves as an initial ethical and legal filter (pre-judicial mechanism) that evaluates behavior or violations committed by medical and healthcare personnel in providing services. Its members are selected individuals knowledgeable about healthcare regulations and standards. Therefore, the MDP's inspection process should be prioritized. If a violation of the law is proven, it is resolved through criminal law mechanisms. However, its implementation in practice is still far from ideal due to overlapping authority between professional bodies and law enforcement agencies. Normatively, Law Number 17 of 2023 concerning Health provides a strong legal basis for the MDP to enforce professional discipline. However, weak coordination and communication between institutions and the disregard for the legal principle of *lex specialis derogat legi generali* have hampered optimal law enforcement. As a result, the phenomenon of criminalization of medical personnel has emerged, which has eroded public trust and threatened the independence of medical and healthcare personnel in providing services. Therefore, the MDP should not be understood merely as an administrative and ethical body, but rather as an instrument of substantive justice within the national health legal system. The MDP serves as a vital link between professional disciplines (specialized law) and criminal law (common law), with the ultimate goal of ensuring legal protection for patients without compromising the professionalism of healthcare providers.

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