



RECONSTRUCTION OF COUNCIL ARRANGEMENTS IN LAW NUMBER 17 OF 2023 ON HEALTH BY THE PRINCIPLE OF INDEPENDENCE

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Abstract:

The right to health is a Human Right (HAM) as stated in Article 25 of the Universal Declaration of Human Rights. This right shows the importance of a good health system, which can only be realized if regulations are implemented properly. Law Number 17 of 2023 concerning Health (Health Law) affirms the right of every individual to receive health protection, as well as the state's obligation to guarantee the right to a healthy life for its citizens. The Health Law regulates the principles of ethics and professionalism, which are the basis for health services by medical personnel. Reconstruction of the council's independence arrangements based on the principle of Independence includes arrangements regarding the independence of the Council's Organizational Structure; determining the requirements for Council Members who are Free from External Intervention, consisting of elements of civil society, academics, professionals, and health law experts; regulation of Permanent Term of Office; separation of Supervisory Functions by professional organizations, and Guidance by the Council, and Competency Development by Educational Institutions; strengthening of Sanctions and Discipline Enforcement; accountability and Transparency of Council Performance; limitation of the Role of Government and the authority to determine the Code of Ethics and Professional Discipline

Keywords:

council, law, independence

1. Introduction

The right to health is a Human Right (HAM) as stated in Article 25 of the Universal Declaration of Human Rights. This right shows the importance of a good health system, which can only be realized if regulations are implemented properly. Law Number 17 of 2023 concerning Health (Health Law) affirms the right of every individual to receive health protection, as well as the state's obligation to guarantee the right to a healthy life for its citizens. The Health Law regulates the principles of ethics and professionalism, which are the basis for health services by medical personnel.

The Council, as an independent institution, has a strategic role in maintaining the quality of practice and competence of medical personnel. Its duties include granting licenses, supervising medical procedures, and legal protection for the community. The establishment of the Council is regulated in the Health Law and a presidential decree, but the independence of this institution is still being debated. Before the Health Law, the Indonesian Medical Council was autonomous and independent. With the new regulations, the Council is now under the Minister of Health, which raises concerns regarding the potential for political intervention. The merger of the Council's functions for medical and health personnel triggers the risk of overlapping authority, because the two professions have different characteristics. Article 269 of the Health Law shows that the Council's authority regarding the regulation of the

medical profession has been changed. Previous functions, such as technical guidance and supervision of the medical profession, are no longer clearly regulated.

Legal reconstruction is needed to emphasize the meaning of the Council's independence. This aims to ensure separate regulations for the Medical and Health Workers Councils, in accordance with the principle of professional autonomy. This reconstruction is also important to maintain health service standards, increase public trust, and provide optimal legal protection for health workers. Ambiguity in regulations can reduce public trust and create legal uncertainty. Reconstruction of the rules aims to strengthen the Council's independence, avoid overlapping authorities, and ensure a fair and effective health system.

2. Research Method

This research is a qualitative research through a normative legal approach.(Taira et al., 2025)

3. Results And Discussion

The Concept of an Independent State Institution that Oversees the Medical Profession

There are many questions that arise about State Auxiliary Agencies. Starting from their existence and authority to the products they produce. One of their characteristics is that they are institutions that have the right to regulate themselves. They are called self-regulatory bodies. The Constitutional Court (MK) also recognizes independent state institutions as institutions that have their own authority. In Case Number 005/PUU-I/2003, which relates to the judicial review of Law Number 32 of 2002 concerning Broadcasting (Broadcasting Law) against the 1945 Constitution, the Constitutional Court made two important decisions relating to the position of Independent State Institutions and their ability to issue legal products, even those that regulate administrative sanctions. State institutions that are formed and have authority based on the constitution are referred to as constitutional state organs. Meanwhile, state institutions that are formed and have authority based on other laws and regulations are referred to as state auxiliary agencies.(Ahmad Basarah, 2014).

All patients have the right to a good doctor. In the UK, the General Medical Council (GMC) is appointed by Parliament to ensure that doctors are of the right quality. To achieve this aim, the GMC reflects the complex and evolving relationship between the medical profession and diverse social interests, and patients, the public, Parliament and the National Health Service (NHS). (Irvine, 2006). The contract or agreement made between the medical profession and the public, represented by the State, is known as self-regulation. In this contract, the profession promises the public that it will be served by good doctors, and protected from bad doctors. In return, those working in the profession have a great deal of freedom to decide for themselves on their own matters. Particularly in matters of clinical practice, some doctors believe in self-regulation as the right to do as they please. This is still the basis for the regulation of doctors throughout the British Commonwealth and the United States.

There are two main reasons for self-regulation, the first being that, because of the sheer complexity of medical practice, doctors themselves are best placed to say what should and should not be done, from a scientific standpoint, of course. The second is that doctors are generally more careful to follow their own standards than those imposed from outside. Most people still believe that self-regulation of professionals will serve society best if it is a system that is patient-centered, fully accountable and transparent, and inclusive of public input.(R.G. Smith, 1994).

The Authority of the Minister in Work Procedures of the Council in Law No. 17 in 2023 and its Implementing Regulations

In Law No. 17 of 2023 concerning Health and PP No. 28 of 2024, the working procedures of the council are always related to the Minister and this is regulated in detail. However, this regulation poses challenges in maintaining the independence of the Council. The following is evidence of the article on this relationship:

A. Article 268 paragraph (2) of the Health Law concerning the Responsibilities of the Council

This article reads: "The Council as referred to in paragraph (1) is positioned under and responsible to the President through the Minister and in carrying out its role is independent."

B. Article 696 paragraph (1) of PP No. 28 of 2024

"The Indonesian Health Council in carrying out its duties, functions and authorities as referred to in Article 695 paragraph (2) to paragraph (4) must coordinate with the Minister in order to ensure compliance with the policies stipulated by the Minister."

C. Article 696 paragraph (2) of PP No. 28 of 2024

“In the event that the implementation of duties, functions, and authorities as referred to in paragraph (1) do not comply with the policies stipulated by the Minister, the Minister may make adjustments to the implementation of duties, functions, and authorities.”

D. Article 703 of PP No. 28 of 2024 concerning the Working Procedures of the Council

Article 24 of Law No. 29 of 2004 states that: "Further provisions regarding the working procedures of the Indonesian Medical Council are regulated by the Regulations of the Indonesian Medical Council". The working procedures of the Indonesian Medical Council will be further regulated through the Regulation of the Indonesian Medical Council. This means that the law gives the Indonesian Medical Council the authority to regulate its own working procedures independently. Prior to the enactment of Law No. 17 of 2023, this regulation was implemented through the Council Regulation (Perkonsil), which gave the Council the authority to determine internal working mechanisms more autonomously.

E. Article 702 PP No. 28 of 2024

Article 702 :

- (1) The Minister conducts a selection of candidates for the leadership of the Indonesian Health Council;
- (2) The results of the selection of candidates for the leadership of the Indonesian Health Council as referred to in paragraph (1) are proposed by the MINISTER to the President;
- (3) The President determines the leadership of the Indonesian Health Council based on the MINISTER'S PROPOSAL as referred to in paragraph (2)

F. Article 707 of PP No. 28 of 2024 concerning the Independence of the Collegium

The regulation regarding the independence of the Collegium is one of the crucial points in the Indonesian health system, especially in relation to the Indonesian Health Council. Based on Article 698 of PP No. 28 of 2024, the Collegium plays an important role in supporting the duties, functions, and authorities of the Indonesian Health Council. The role of this Collegium is basically to provide technical and scientific support in order to maintain the professional quality standards of medical personnel and health workers in Indonesia. In Article 705 paragraph (2) of PP No. 28 of 2024, it is stated that in carrying out its role, the Collegium is independent. This shows that the Collegium is expected to operate independently, without any interference from external parties, including the government, to maintain quality and integrity in carrying out its functions. This independence should be a guarantee that the Collegium can regulate professional standards without intervention that could interfere with the objectivity of the assessment of the competence of the medical profession. However, inconsistencies began to appear when further regulations regarding coordination between the Collegium and the Minister were regulated in Article 707 of PP No. 28 of 2024. Because, Article 707 paragraph (1) explains that;

- (1) The Collegium in carrying out its duties, functions and authorities as referred to in Article 705 paragraph (3) to paragraph (5) must coordinate with the Minister in order to ensure compliance with the policies determined by the Minister.
- (2) In the event that the implementation of the duties, functions and authorities as referred to in paragraph (1) do not comply with the policies determined by the Minister, the Minister may make adjustments to the implementation of the duties, functions and authorities.

G. Article 710 paragraph (1) and (2) of PP No. 28 of 2024 concerning Candidates for Collegium Members

The provisions regarding prospective members of the Collegium and their appointment and dismissal carried out by the Minister indicate significant government involvement in the structure and function of the Collegium. In Article 710 paragraph (1) and (2) of PP No. 28 of 2024, it is emphasized that the membership of the Indonesian Health Collegium is appointed and dismissed directly by the Minister. This means that the Collegium, which should be independent, is in fact very much influenced by executive interference, in this case the Ministry of Health, both in the selection of members and in the process of dismissing them.

H. Regulations regarding the Disciplinary Honorary Council

As additional information regarding the Minister's involvement in the Council and matters within it, the author will add regarding the Indonesian Medical Disciplinary Honorary Council. That, in Law No. 29 of 2004, article 55 paragraph (2) explains that:

“The Indonesian Medical Discipline Honorary Council is an autonomous institution of the Indonesian Medical Council.”

It is also explained in Article 56 that:

"The Indonesian Medical Disciplinary Honorary Council is responsible to the Indonesian Medical Council."

The Impact of Reconstruction on the Protection of Patient Rights and Doctors' Professionalism

Legal reconstruction in the health sector has a significant impact on the protection of patient rights and the professionalism of doctors. In this context, legal reconstruction is not just a change in regulations, but also an effort to reaffirm the values that underlie the relationship between doctors and patients. Protection of patient rights becomes increasingly important along with the complexity of health services and increasing public awareness of their rights. On the other hand, the professionalism of doctors is key to maintaining public trust in the medical profession, which must be in line with changes in regulations and legal practices. Therefore, understanding the influence of legal reconstruction in this context is very important to improve the quality of health services in Indonesia. (Muhammad, S. F. L., & Muhammad, I. S. R., 2021)

In this context, legal reconstruction also serves to change the paradigm of health service providers and the community regarding the importance of patient rights. Many parties still consider the relationship between patients and doctors to be hierarchical, where doctors have full authority over medical decisions without actively involving patients. In fact, the concept of patient rights emphasizes the importance of patient involvement in every decision made regarding their health. In other words, legal reconstruction must be able to encourage a change in this perspective, so that a more equal relationship between patients and health workers can be realized.

The regulation of the independence of the Medical Council is an important part of this legal reconstruction effort, because this institution has a strategic role in ensuring the protection of patient rights and enforcing medical ethics. With strong independence, the Medical Council can be more effective in carrying out its duties, including in handling violations of patient rights and ensuring that the professionalism of doctors is maintained.

The professionalism of doctors includes a series of values, attitudes, and behaviors that every medical worker must have in carrying out their duties. This includes maintaining medical ethics, upholding integrity, and committing to providing quality health services to patients. The professionalism of doctors refers not only to clinical competence but also to the ability to comply with applicable ethical and legal standards. This professionalism is the foundation for patient trust in doctors and the health system as a whole. (Wahyu, 2022). In the context of legal reconstruction, the professionalism of doctors must be integrated with the underlying legal policies, ensuring that doctors not only fulfill legal demands, but also prioritize the interests of patients. This requires the enforcement of medical ethics and laws that support each other to create a safe and quality health environment. (Indonesia Medical Council, 2021)

Limitation of Ministerial Authority and Separation of Authority with the Council in Health Governance

In the health governance system, the Minister of Health has an important role as a strategic policy maker based on Government Regulation No. 28 of 2024. However, the dominance of authority without clear limitations risks causing problems such as overlapping tasks, weakening the role of the council, and reducing the efficiency of the health system. Therefore, regulations are needed that limit the authority of the Minister and separate the authority between the Minister and the Council.

Limiting the authority of the Minister is needed to increase the independence of the Council in carrying out its functions as a professional body. With this limitation, the Council can work without excessive intervention that can often affect the objectivity and public trust in the health profession. An independent council will be more effective in maintaining the competency standards and code of ethics of health workers. The affirmation of this limitation is in line with the principle of institutional independence as regulated in several good governance regulations. (Ipan Nurhidayat, 2023)

The limitation of authority also aims to avoid overlapping tasks between the Minister and the Council. If the division of tasks is not clear, role conflicts can occur, which can potentially slow down decision-making. A specific division of tasks allows each party to carry out their functions efficiently, as recommended in the theory of separation of administrative powers.

The separation of authority between the Minister and the Council can be done by allocating technical responsibilities to the Council. For example, the Council is responsible for issuing recommendations for practice licenses, enforcing discipline for health workers, and preparing competency standards. These functions are technical in nature and require supervision by experts who understand their profession, so it is not appropriate to hand them over to the

Minister. This is in accordance with the concept of decentralization of tasks to increase the effectiveness of the implementation of operational functions.

4. Conclusion

Reconstruction of the council's independence arrangements based on the principle of Independence includes arrangements regarding the independence of the Council's Organizational Structure; determining the requirements for Council Members who are Free from External Intervention, consisting of elements of civil society, academics, professionals, and health law experts; regulation of Permanent Term of Office; separation of Supervisory Functions by professional organizations, and Guidance by the Council, and Competency Development by Educational Institutions; strengthening of Sanctions and Discipline Enforcement; accountability and Transparency of Council Performance; limitation of the Role of Government and the authority to determine the Code of Ethics and Professional Discipline.

References

- Ahmad, B. (2014). Kajian Teoritis Terhadap Auxiliary State's Organ Dalam Struktur Ketatanegaraan Indonesia. *Masalah-Masalah Hukum*, 43(1).
- Irvine, D. (2006). A short history of the General Medical Council. *Medical Education*, 40(3), 202–211. <https://doi.org/10.1111/j.1365-2929.2006.02397.x>
- R.G. Smith. (1994). *The Professional Conduct Jurisdiction of the General Medical Council*. Clarendon Press.
- Badan Pengembangan dan Pembinaan Bahasa. (2023). KBBI Daring. Badan Pengembangan Dan Pembinaan Bahasa, Kementerian Pendidikan Dan Kebudayaan Republik Indonesia.
- Muhammad, S. F. L., & Muhammad, I. S. R. (2021). *Rekonstruksi Hukum Pidana Nasional Indonesia* (U. Abduloh, Ed.). Eureka Media Aksara.
- World Health Organization. (2023, November 11). Patient safety. World Health Organization.
- Konsil Kedokteran Indonesia. (2021). *Konsil Kedokteran Indonesia “Optimalisasi Peran KKI Dalam Era Disrupsi Global.”*
- Maulana, M. A., & Avrillina, J. P. (2024). Kesehatan sebagai Hak Asasi: Perspektif Filosofis tentang Hukum Kesehatan. *Journal of Contemporary Law Studies*, 2(1), 42–54. <https://doi.org/10.47134/lawstudies.v2i1.2075>
- Wahyu, A. (2022, December 5). Kode Etik Kedokteran Indonesia sebagai Penjaga Profesionalitas Dokter Oleh Wahyu Andrianto. *Fakultas Hukum Universitas Indonesia*.
- Kode Etik Kedokteran Indonesia, Indonesia Medical Council (2021).
- Jazim Hamidi, & Mustafa lutfi. (2010). *Civic education: antara realitas politik dan implementasi hukumnya*. Gramedia.
- Nugroho, H. (2018). Kesehatan Publik: Sebuah Tinjauan Sosio-Legal. *Jurnal Kesehatan Masyarakat*, 14(1), 1–12.
- The Health and Care Professions Council. (2014). *Professionalism in healthcare professionals*.
- Ipan Nurhidayat. (2023). Prinsip-Prinsip Good Governance di Indonesia. *Journal E-Gov Wiyata: Education and Government*, 1(1), 40–52.
- Jimly Asshidiqie. (2008). *Pokok-Pokok Hukum Tata Negara Indonesia*. Bhuna Ilmu Populer.
- Taira, K. S. N., Warka, M., & Michael, T. (2025). Pasubaya Mawarang in Marriage at Gelahang: A Review Based on Balinese Customary Law. *Technium Social Sciences Journal*, 67, 207–212. <https://techniumscience.com/index.php/socialsciences/article/view/12262>