

Procedural Uncertainty in Professional Disciplinary Council Recommendations for Patient Civil Claims under Indonesia's Health Law

Aninditia Widianti¹, Arman Anwar², Renny Heronia Nendissa³

^{1,2,3} Faculty of Law, Pattimura University, Ambon, Indonesia

Corresponding author: ananditogandra07@gmail.com

ABSTRACT

Law No. 17 of 2023 on Health introduced a mandatory recommendation mechanism of the Professional Disciplinary Council (Majelis Disiplin Profesi, MDP) for civil accountability arising from medical and health services. Article 308(2) requires the recommendation, while Article 308(4) assigns the initiative to request it to the medical or health professional being sued, or that person's authorized representative. This article examines whether that design provides sufficient procedural certainty and balanced access to adjudication for patients. Using doctrinal legal research, the study analyzes Law No. 17 of 2023, Government Regulation No. 28 of 2024, Minister of Health Regulation No. 3 of 2025, relevant Constitutional Court decisions, selected civil litigation records, and scholarly literature on legal certainty, access to justice, medical dispute resolution, and professional discipline. The analysis shows that the recommendation mechanism has a legitimate protective and epistemic function: it supplies professional assessment of compliance with professional, service, and operational standards. The Constitutional Court has also upheld the constitutionality of Article 308. Nevertheless, an operational asymmetry remains. Patients may file civil claims, but they cannot directly trigger the statutory recommendation; the regulations do not expressly prescribe a civil-law consequence when the defendant does not apply for it; and the deemed-recommendation rule for institutional silence is expressly linked to criminal investigation. This design can generate inconsistent procedural interpretations. The article therefore proposes a clarification model that preserves professional review while preventing the recommendation from functioning as a procedural veto. The contribution of this study is to distinguish constitutional validity from procedural completeness and to identify targeted reforms capable of protecting both healthcare professionals and patients without displacing the authority of civil courts.

Keywords:

access to justice; civil liability; health law; legal certainty; medical disputes; Professional Disciplinary Council.

DOI: <https://doi.org/10.56442/pef.v4i3.1581>

1. Introduction

Indonesia's health-law framework changed substantially with the enactment of Law No. 17 of 2023 on Health. Among the most consequential innovations is the restructuring of professional discipline and its relationship with criminal and civil accountability. The statute establishes a Professional Disciplinary Council (Majelis Disiplin Profesi, MDP) and places professional assessment within the pathway through which alleged wrongdoing by medical and health professionals may enter the formal justice system. This architecture reflects an understandable policy concern: clinical conduct should not be evaluated solely through ordinary legal categories without adequate attention to professional standards, service standards, and standard operating procedures. Indonesian scholarship has therefore described the MDP as a protective institutional filter and, in some accounts, as a form of *primum remedium* or quasi-investigative professional review (Syarif, 2023; Siregar et al., 2024; Fitira et al., 2025).

The present article focuses on the civil branch of that mechanism. Article 308(2) of Law No. 17 of 2023 provides that when medical or health professionals are held civilly accountable for acts or conduct connected with healthcare services that harm a patient, a recommendation from the

professional disciplinary body must be requested. Article 308(4) then provides that the recommendation is issued after the medical or health professional concerned, or an authorized representative, submits a written application in response to the civil action brought by the patient or the patient's representative (Republic of Indonesia, 2023). The wording is significant. The recommendation is not accurately characterized as a condition that patients must themselves satisfy before filing a lawsuit; rather, the statute contemplates a lawsuit that has already been filed and then assigns the recommendation request to the professional who has been sued. This distinction matters because the central problem is not formal access to the courthouse alone, but the certainty and fairness of the subsequent adjudicatory process.

The 2024 and 2025 implementing framework did not remove this structural feature. Government Regulation No. 28 of 2024 provides the broader regulatory basis for professional discipline, while Minister of Health Regulation No. 3 of 2025 operationalizes disciplinary enforcement and the recommendation process. The ministerial regulation reiterates that a civil recommendation is requested by the medical or health professional, or the person authorized by that professional, and requires the MDP to assess conformity with professional standards, service standards, and standard operating procedures (Government of the Republic of Indonesia, 2024; Ministry of Health of the Republic of Indonesia, 2025). Thus, the implementing regulation strengthens the institutional machinery of the MDP but retains the allocation of procedural initiative found in Article 308(4).

This model has a rational policy foundation. Medical liability disputes involve technical questions that generalist courts may need expert assistance to evaluate. Comparative literature shows that medical disputes often combine legal, scientific, relational, and communicative dimensions, and that systems which rely exclusively on adversarial litigation may carry significant transaction costs and may not always address the concerns that motivate patients to seek redress (May & Stengel, 1990; Studdert et al., 2006; Amirthalingam, 2017). Research on disclosure after adverse events likewise indicates that patients frequently seek an explanation, transparency, and recognition in addition to compensation (Gallagher et al., 2003; Iedema et al., 2011). A professional assessment mechanism can therefore contribute useful epistemic information and help distinguish adverse outcomes from departures from accepted standards.

The difficulty arises when a professional assessment that is designed to assist adjudication is embedded in a procedural sequence whose triggering power is controlled by the opposing party. Legal certainty requires more than the existence of a rule; it also requires that a rule be sufficiently determinate to guide conduct, allocate procedural responsibility, and enable institutions to respond when the expected procedural actor remains passive. Indonesian legal scholarship on vague norms similarly emphasizes that incompleteness in operative consequences can create divergent interpretations even where legislative objectives are legitimate (Harjono, 2022). In the present context, the relevant questions are straightforward but consequential: what happens if the defendant does not request the MDP recommendation; may the court request it; may the patient request it; may the court continue without it; and what is the legal significance of the recommendation once issued?

These questions became more concrete in litigation after the Health Law entered into force. Materials considered in Constitutional Court proceedings referred to Jakarta High Court Decision No. 1221/Pdt/2024/PT.DKI, in which the appellate court reportedly treated the absence of a professional disciplinary recommendation as relevant to the admissibility of a patient's civil claim, even though Article 308(4) allocates the statutory application to the sued professional. The example illustrates a broader doctrinal risk: if courts, parties, and professional bodies do not share the same

understanding of who must act and what follows from non-action, a mechanism intended to enhance legal certainty may itself become a source of procedural uncertainty (Constitutional Court of the Republic of Indonesia, 2026).

Constitutional adjudication has also changed the legal landscape and must be incorporated into any current analysis. In Decision No. 161/PUU-XXIII/2025, the Constitutional Court did not reach the merits because the applicants lacked sufficient constitutional standing. More importantly, in Decision No. 156/PUU-XXII/2024, delivered on 19 January 2026, the Court rejected a broader challenge to Article 308 and upheld the recommendation mechanism. The Court accepted the legislature's objective of providing professional protection and technical assessment before legal liability is determined, and it did not find Article 308 constitutionally defective (Constitutional Court of the Republic of Indonesia, 2025, 2026). The constitutional validity of the mechanism is therefore no longer the appropriate starting point for criticism.

The unresolved research problem is narrower and more practical: whether the civil recommendation mechanism, despite being constitutionally valid, is procedurally complete and sufficiently clear to ensure balanced protection for patients and healthcare professionals. This distinction between constitutional validity and procedural completeness is central to the article's contribution. Access to justice is not exhausted by the formal availability of a court; it also concerns whether institutional design permits rights to be effectively asserted and adjudicated without disproportionate procedural obstacles (Cappelletti & Garth, 1978). At the same time, legal protection must extend to professionals who should not be exposed to liability assessments that disregard the scientific standards governing clinical practice (Hadjon, 2011; Siregar et al., 2024).

Accordingly, this study addresses two questions. First, how should the obligation to obtain an MDP recommendation in civil litigation be understood within the current hierarchy of Law No. 17 of 2023 and its implementing regulations? Second, what juridical implications arise from the allocation of the recommendation request to the defendant, particularly when that party does not initiate the process? By answering these questions, the article seeks to formulate a procedural clarification that preserves the legitimate professional-review function of the MDP while ensuring that the recommendation cannot operate, intentionally or unintentionally, as a procedural veto over a patient's civil claim.

2. Method

This study uses doctrinal legal research. Doctrinal research is appropriate when the research objective is to identify, systematize, interpret, and evaluate rules within a legal framework, particularly where the central problem concerns the coherence of statutes, implementing regulations, judicial decisions, and legal principles (Hutchinson & Duncan, 2012). The study therefore treats the relevant legal materials not as empirical observations of social behavior but as authoritative and persuasive sources from which the operative legal structure can be reconstructed. This approach is consistent with Indonesian normative legal research, which distinguishes primary legal materials from secondary scholarly materials and uses legal reasoning to assess consistency, hierarchy, and normative implications (Soekanto & Mamudji, 2022).

The primary legal materials comprise Law No. 17 of 2023 on Health, especially Article 308; Government Regulation No. 28 of 2024; Minister of Health Regulation No. 3 of 2025; and Constitutional Court Decisions No. 161/PUU-XXIII/2025 and No. 156/PUU-XXII/2024. The analysis also considers the civil-litigation example recorded in the materials before the Constitutional Court concerning Jakarta High Court Decision No. 1221/Pdt/2024/PT.DKI. Secondary materials include

Indonesian legal scholarship on the MDP, medical disputes, legal certainty, and professional protection, together with international literature on medical malpractice systems, dispute resolution, patient grievances, disclosure, and access to justice.

The research applies three complementary approaches. The statute approach examines the wording, structure, and relationship of the Health Law and its implementing regulations. The conceptual approach evaluates the mechanism through legal certainty, procedural fairness, access to justice, professional protection, and the distinction between disciplinary assessment and civil liability. The case approach uses constitutional and civil-court materials to test how the statutory design has been understood in adjudication. The analysis is qualitative and argumentative: it identifies points of congruence and tension among the sources, distinguishes rules from institutional interpretations, and develops a reform proposal limited to the procedural lacuna identified in the civil recommendation pathway.

3. Results And Discussion

3.1. The legal function of the Professional Disciplinary Council recommendation in civil disputes

Article 308 must be read as part of a broader design that separates professional discipline from the ultimate determination of criminal or civil liability. The MDP assesses whether professional practice conforms to professional standards, service standards, and standard operating procedures. That assessment is highly relevant to negligence and unlawful-act litigation because professional standards may inform the content of the duty of care. However, professional conformity is not identical to the complete legal test for civil liability. A civil court must still determine the applicable legal duty, breach or unlawfulness, causation, damage, defenses, and the evidentiary weight of the materials before it. In Indonesian private law, claims for unlawful acts remain governed by the legal elements of civil responsibility and the court's assessment of the entire evidentiary record (Fuady, 2017).

This distinction explains why a professional recommendation can be mandatory to request without necessarily being legally binding on the civil judge. The recommendation supplies specialized professional knowledge and reduces the danger that clinical decisions will be assessed without reference to the standards of the profession. Recent Indonesian scholarship similarly characterizes the MDP as an institution that occupies an intermediate position between internal professional discipline and formal legal processes (Fitira et al., 2025; Idris et al., 2025; Siregar et al., 2024). From this perspective, the recommendation is best understood as a mandatory professional assessment with evidentiary and advisory significance, not as a substitute judgment on civil liability.

The protective rationale is legitimate. Medical services frequently involve uncertainty, risk, and outcome variability even where appropriate standards are observed. International malpractice research shows that not every adverse outcome is attributable to error, while litigation can impose substantial financial and institutional costs (Studdert et al., 2006). A preliminary professional assessment may therefore help courts and litigants distinguish professional-standard questions from purely legal questions. It may also reduce defensive reactions and support more informed dispute resolution, objectives consistent with comparative scholarship favoring early, expertise-sensitive resolution of medical disputes (Amirthalingam, 2017).

The mechanism nevertheless requires careful conceptual boundaries. The MDP's expertise justifies assessment of professional conformity, but not exclusive control over a patient's legal cause of action. A recommendation that professional standards were met may be highly persuasive, yet it

should not automatically extinguish a civil claim where other legally relevant allegations exist, such as informed-consent failures, deficient communication, institutional negligence, defective administration, or other conduct not reducible to the technical performance of a clinical procedure. Conversely, a recommendation that standards were breached should not automatically establish all elements of civil liability. The institutional roles are complementary rather than hierarchical.

Minister of Health Regulation No. 3 of 2025 clarifies the operational content of the MDP assessment by providing for examination of medical or health professionals, patients, witnesses, experts, and documentary materials, including medical records (Ministry of Health of the Republic of Indonesia, 2025). This strengthens the quality of the professional review. It also reinforces the need to describe the recommendation precisely in civil litigation: it is a professional-standard determination produced through a specialized process, to be integrated into—not substituted for—the civil court’s independent adjudicative function.

3.2. Procedural asymmetry and the civil-law lacuna in Article 308(4)

The principal ambiguity lies not in the existence of the recommendation requirement but in the allocation of procedural initiative. Article 308(4) expressly states that the civil recommendation is issued after the sued medical or health professional, or that professional’s authorized representative, applies in writing in response to the patient’s lawsuit. This means that the patient can initiate the civil action but cannot, under the literal statutory wording, directly initiate the recommendation that the statute expects to accompany the professional assessment. The same allocation is reproduced in Minister of Health Regulation No. 3 of 2025 (Republic of Indonesia, 2023; Ministry of Health of the Republic of Indonesia, 2025).

Procedural asymmetry is not automatically unlawful. Legislatures may assign different procedural responsibilities to different actors when there is a rational basis for doing so. Here, one possible rationale is that the professional who seeks the benefit of specialized disciplinary assessment should bear responsibility for activating that protection and supplying clinical documents. The problem is instead one of incomplete contingency design. The statutory and regulatory texts do not clearly state what a civil court should do when the professional does not request the recommendation. Nor do they expressly authorize the patient or the court to cure that non-action by submitting the request directly.

The asymmetry becomes more visible when the civil and criminal pathways are compared. Article 308 contains an express deemed-recommendation rule for criminal investigations: if the MDP does not issue the recommendation within the prescribed period, the legal design allows the investigation to proceed under the statutory deeming mechanism. The civil branch does not contain an equivalent express consequence tailored to non-application by the defendant. Minister of Health Regulation No. 3 of 2025 similarly provides the 14-working-day framework but links the express deeming consequence to investigative authorities and criminal investigation. Prior scholarship has also identified timing and certainty problems in the professional-recommendation pathway on the criminal side (Iskandar et al., 2024). This difference creates a normative lacuna rather than a complete legal vacuum: the law regulates the process extensively, but it does not expressly regulate the contingency that is most relevant to the patient—defendant inaction in a civil case.

The importance of this lacuna is demonstrated by divergent procedural understandings. In the civil-litigation materials later placed before the Constitutional Court, Jakarta High Court Decision No. 1221/Pdt/2024/PT.DKI was cited for the proposition that the plaintiff should have reported the matter or requested a disciplinary recommendation. That reasoning sits uneasily with the text of Article 308(4), which assigns the written application to the sued professional rather than the patient. Whether

or not that individual judgment should be generalized, its appearance in constitutional litigation demonstrates that the legal framework can generate uncertainty over who carries the procedural burden (Constitutional Court of the Republic of Indonesia, 2026).

The potential consequence is therefore more precise than the broad claim that Article 308 prevents patients from filing lawsuits. The statute does not, on its face, transfer control of filing to the defendant. Rather, it creates uncertainty over the continuation, evidentiary completion, or procedural treatment of a case when a recommendation has not been requested. This distinction is important for rigorous legal analysis. It also supports a narrower reform: the law need not abolish professional review to protect access to justice; it needs to specify how the civil court proceeds when the designated applicant does not activate the review.

From an access-to-justice perspective, a right is meaningful only when procedural architecture makes its adjudication realistically available (Cappelletti & Garth, 1978). At the same time, procedural fairness does not require removing protections from healthcare professionals. A balanced system should prevent both premature legal condemnation of professional conduct and strategic non-activation of a mechanism that may be relevant to the dispute. The appropriate question is therefore how to preserve professional protection without allowing procedural passivity to produce indeterminate consequences.

3.3. Constitutional Court jurisprudence: constitutional validity does not eliminate the need for procedural clarification

The Constitutional Court's decisions require the critique of Article 308 to be reformulated. Decision No. 161/PUU-XXIII/2025, delivered on 16 October 2025, declared the application inadmissible because the applicants did not establish the necessary constitutional standing. That decision left the substantive validity of the challenged provisions unresolved. Decision No. 156/PUU-XXII/2024, delivered on 19 January 2026, subsequently addressed a broader challenge and rejected it in full. The Court accepted the legitimacy of the MDP recommendation as a professional safeguard and as technical support for law-enforcement authorities and courts (Constitutional Court of the Republic of Indonesia, 2025, 2026).

The 2026 decision is doctrinally important for two reasons. First, it confirms that the recommendation mechanism cannot now be analyzed as though its constitutional legitimacy were an open question. The policy choice to insert professional assessment into disputes arising from healthcare services has been sustained. Second, the Court's conclusion does not necessarily answer every procedural question that can arise in civil litigation. Constitutional review asks whether the statutory design violates constitutional norms; it does not always supply a detailed civil-procedure code for every contingency that the statute leaves implicit.

Government submissions recorded in the constitutional proceedings argued that the civil recommendation may be requested in parallel with an ongoing court process and therefore need not suspend civil adjudication. That interpretation reduces the risk of treating the recommendation as a pre-filing barrier. It is also consistent with the principle that the MDP does not replace the civil court. Yet the need for the Government to articulate this interpretation during constitutional proceedings itself shows why clearer legislative or regulatory text would be beneficial. If parallel processing is the intended rule, the statute or implementing regulation should say so expressly and should identify the procedural consequence if the defendant never applies.

The Court's acceptance of professional review and the present article's concern with procedural asymmetry are therefore not contradictory. The Court addressed the legitimacy of the mechanism; this article addresses its operational completeness. A constitutionally permissible rule may still benefit

from clarification to reduce inconsistent lower-court interpretations, litigation costs, and uncertainty for both plaintiffs and defendants. Legal certainty is enhanced when the consequences of action and inaction are expressed *ex ante* rather than reconstructed through scattered litigation after disputes arise (Harjono, 2022).

The same point can be seen by comparing the civil and criminal treatment of institutional delay. Where the legislature considered delay in the criminal pathway, it created a deeming rule. That drafting choice demonstrates legislative awareness that a mandatory recommendation can become obstructive if the system does not specify what happens after a deadline. The absence of an equally explicit civil fallback is therefore a meaningful structural gap. The solution is not to infer unconstitutionality from silence, but to provide an operational rule consistent with the constitutional framework that has already been upheld.

3.4. Implications for patients' rights and a model for procedural reform

The first juridical implication of the current design is interpretive uncertainty. Patients, healthcare professionals, lawyers, the MDP, and civil judges may reasonably agree that professional assessment is relevant while disagreeing about its procedural status. Some may treat the recommendation as a formal prerequisite to substantive examination; others may treat it as evidence that can be obtained in parallel; still others may consider its absence curable during proceedings. These different approaches can generate inconsistent outcomes in similar cases and increase the cost of litigation.

The second implication concerns equality of procedural opportunity. The patient controls the decision to sue, but the defendant controls the statutory application for a professional recommendation. Because the recommendation exists partly to protect the defendant from technically uninformed liability assessments, assigning the initial application to the defendant is understandable. However, once a lawsuit is pending, the patient also has an interest in obtaining a professional assessment if the court considers it material. A system that denies the patient any direct or derivative mechanism to trigger the assessment after defendant inaction risks transforming a protective mechanism into an asymmetric procedural dependency.

The third implication concerns the relationship between professional discipline and civil evidence. Research on patient grievances shows that disputes are shaped by information gaps, trust, explanation, and perceived fairness as much as by final compensation (May & Stengel, 1990; Gallagher et al., 2003). A transparent MDP process can therefore contribute to dispute resolution beyond the narrow question of liability. Conversely, if the recommendation process is perceived as inaccessible to the patient or controllable only by the opposing party, it may undermine the legitimacy that professional review is intended to provide. Open and well-defined procedures are particularly important in medical disputes, where communication failures can intensify conflict (Iedema et al., 2011).

A proportionate reform should preserve four principles. First, the MDP should remain responsible for professional-standard assessment; courts should not be required to replicate disciplinary expertise. Second, the recommendation should be expressly characterized as non-dispositive of civil liability: it informs the court but does not replace judicial determination. Third, the civil process should not depend indefinitely on the unilateral initiative of the defendant. Fourth, procedural safeguards should prevent patients from bypassing legitimate professional review merely because they prefer immediate adjudication.

These principles can be translated into a targeted procedural model. Once a civil claim involving alleged professional-standard violations has been duly served, the defendant should retain a primary period in which to request the MDP recommendation. If the defendant does not apply within that period, the court should be expressly authorized to request the recommendation either *ex officio* or

upon a reasoned application by the patient. The implementing regulation should specify the documents that must be transmitted and permit the court to order production of relevant clinical records subject to confidentiality safeguards. This preserves the professional's opportunity to activate the protective mechanism while preventing non-action from producing a procedural dead end.

The regulation should also specify a civil consequence for MDP delay. A rule need not mechanically copy the criminal deeming provision, because criminal investigation and civil adjudication serve different functions. A more suitable civil rule would authorize the court to continue proceedings after the statutory period has expired, while allowing a subsequently issued recommendation to be admitted subject to ordinary evidentiary principles if it does not unfairly prejudice the parties. Such a rule would transform the deadline from an uncertain procedural obstacle into a case-management mechanism.

Finally, the scope of the recommendation should be stated with precision. The MDP should answer professional questions—whether the relevant conduct conformed to applicable professional, service, and operational standards—while the civil court determines unlawfulness, fault where relevant, causation, damage, and remedies. This allocation respects institutional competence. It is also consistent with the broader literature on medical dispute resolution, which supports expertise-sensitive mechanisms but warns against allowing professional processes to displace independent legal accountability (Amirthalingam, 2017; Studdert et al., 2006).

Such clarification would benefit healthcare professionals as well as patients. A predictable pathway reduces the risk that courts will use inconsistent standards for the presence or absence of an MDP recommendation. It also gives professionals certainty about when the recommendation should be sought and what effect it will have. Professional protection is stronger when it is rule-based and transparent rather than dependent on ad hoc procedural interpretation. In that sense, improving access to justice for patients and legal certainty for professionals are not competing goals; both are advanced by a clearer allocation of procedural responsibility.

4. Conclusion

Article 308 of Law No. 17 of 2023 establishes a legitimate professional-review mechanism for disputes arising from healthcare services. The MDP recommendation can improve the legal process by providing specialized assessment of professional standards and by protecting medical and health professionals from liability determinations detached from the scientific and procedural norms of clinical practice. The Constitutional Court's Decision No. 156/PUU-XXII/2024 confirms that this institutional design is constitutionally permissible. The principal problem is therefore not the existence of the MDP mechanism, nor a categorical denial of patients' right to file civil claims. The remaining problem is procedural completeness. Article 308(4) allocates the civil recommendation request to the sued professional, while the legislation does not expressly regulate the consequence of defendant inaction or provide an alternative route for the patient or court to trigger the recommendation. The resulting asymmetry can produce inconsistent interpretations of the recommendation's procedural status. A targeted reform should preserve the MDP's professional function while expressly allowing court-initiated or patient-requested referral after defendant non-action, clarifying that civil proceedings may continue after the recommendation deadline, and confirming that the recommendation informs but does not determine civil liability. This model offers a more balanced reconciliation of professional protection, legal certainty, and effective access to adjudication.

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